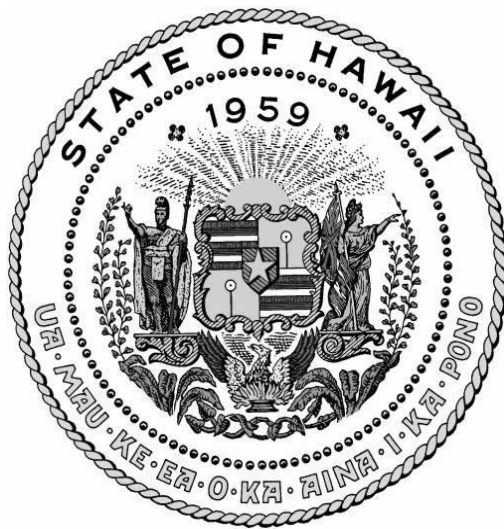


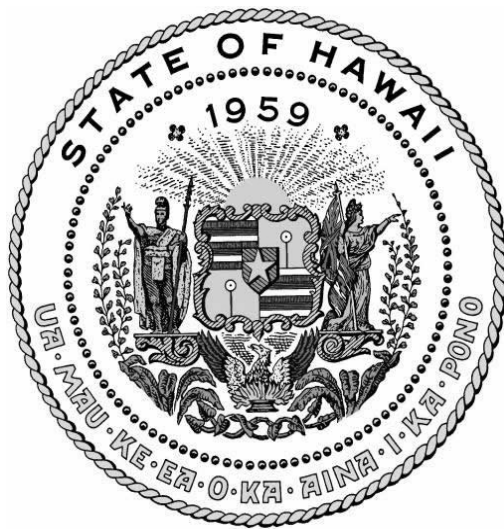
STATE OF HAWAII
2011 REAPPORTIONMENT COMMISSION
FINAL REPORT AND REAPPORTIONMENT PLAN



Submitted to
The Twenty-Sixth Legislature
Regular Session 2012

Submitted by
Office of Elections

STATE OF HAWAII
2011 REAPPORTIONMENT COMMISSION
FINAL REPORT AND REAPPORTIONMENT PLAN



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Victoria S. Marks
Chair

Calvert Chipchase IV

Clarice Hashimoto

Harold Masumoto

Elizabeth Moore

Dylan Nonaka

Lorrie Lee Stone

Anthony Takitani

Terry Thomason



STATE OF HAWAII
2011 REAPPORTIONMENT COMMISSION
802 LEHUA AVENUE
PEARL CITY, HAWAII 96782

December 29, 2011

The Honorable Shan S. Tsutsui, President, and Members of the Senate
The Honorable Calvin K.Y. Say, Speaker, and Members of the House of Representatives
Twenty-Sixth Legislature, State of Hawaii
State Capitol
Honolulu, Hawaii 96813

Dear Mr. President, Mr. Speaker, and Members of the Twenty-Sixth Legislature:

The 2011 Reapportionment Commission submits the Final Reapportionment Commission Report pursuant to Article III, Section 4, Hawaii State Constitution, and Section 25-2, Hawaii Revised Statutes. This report addresses the plans adopted by the Commission to govern the election of the members of the next five legislatures of the State of Hawaii and the election of the representatives of the State of Hawaii to the United States House of Representatives for next five congresses, commencing with the 2012 Elections, subject to action by the Supreme Court of Hawaii as noted.

This report discusses the work done by the Commission and offers recommendations for future reapportionment.

Very truly yours,

JUDGE VICTORIA S. MARKS (RET.),
Chair

CALVERT CHIPCHASE IV
CLARICE V. HASHIMOTO
HAROLD S. MASUMOTO
ELIZABETH N. MOORE
DYLAN W. NONAKA

/s/ Lorrie Lee Stone
LORRIE LEE STONE

ANTHONY P. TAKITANI
TERRY E. THOMASON

STATE OF HAWAII
2011 REAPPORTIONMENT COMMISSION

FINAL REPORT AND REAPPORTIONMENT PLAN

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**STATE OF HAWAII
2011 REAPPORTIONMENT COMMISSION
FINAL REPORT AND REAPPORTIONMENT PLAN
EXECUTIVE SUMMARY**

The 2011 Reapportionment Commission had three basic tasks: (1) redraw the U.S. Congressional Districts of the State of Hawaii; (2) reapportion and redistrict the Senate and House of Representative districts of the State of Hawaii Legislature; and (3) designate twelve of the twenty-five State Senate district seats that will have two-year terms in the election immediately following the reapportionment.

This executive summary provides an overview of the above actions taken by the Commission and lists recommendations described more fully in the Final Report for consideration by the Legislature and future Reapportionment Commissions. Also included is a list of reports and resources that can be viewed on the Reapportionment website <http://www.hawaii.gov/elections/reapportionment>.

U.S. CONGRESSIONAL DISTRICTS

The Federal Government determined that the State of Hawaii is entitled to two members in the U.S. Congress. Section 25-2(b) of the Hawaii Revised Statutes requires the Commission to apportion those two members among single member districts so that the average number of persons in the total population counted in the last U.S. Census per member in each district is as nearly equal as practicable.

Based on the 2010 U.S. Census, the Commission determined that the current Congressional Districts needed to be adjusted as:

- (a) The total population of the State of Hawaii was 1,360,301 persons;
- (b) The ideal district size of the State of Hawaii Congressional Districts is 680,151 persons;
- (c) Congressional District No. 1 is 680,496 persons or 0.05% below the ideal district size; and
- (d) Congressional District No. 2 is 679,805 persons or 0.05% above the ideal district size.

By transferring census blocks in the West Oahu region from Congressional District No. 2 to Congressional District No. 1, the Commission increased the size of the population of Congressional District No. 1 and decreased the size of the population of Congressional District No. 2. The deviation between the two districts is 0.10%.

STATE LEGISLATIVE DISTRICTS

The Constitution of the State of Hawaii, Article IV, Section 4, requires the Commission to allocate the total number of members of each house of the state legislature among the four basic island units (Hawaii, Maui, Kauai and Oahu) using the total number of permanent residents of each basic island unit and computed by the method of equal proportions. After making this allocation, Article IV, Section 6 of the Constitution requires the Commission to apportion the number of legislators allocated to each basic island unit among the districts therein 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. Section 6 provides other criteria to guide the Commission in its redistricting.

The Commission determined the permanent resident population of the State of Hawaii and each basic island unit by taking the total population figures from the last U.S. Census and subtracting: (a) military personnel who were counted by the U.S. Census on-base in group quarters and who therefore could be located with reasonable certainty in census blocks, and (b) college students who were identified as non-residents by their institutions and could be located with reasonable certainty in census blocks. No data was available on the residency status of military dependents, who are considered private citizens by the military reporting agencies and who are not identified or located in any way in the U.S. Census. Therefore, military dependents could not be accurately identified as to status or located for extraction. The permanent resident population for the State of Hawaii and the basic island units are as follows:

State of Hawaii	1,343,843 persons
Oahu	937,547 persons
Hawaii	184,286 persons
Maui	154,920 persons
Kauai	67,090 persons

Based on the permanent resident population figures above, and using the Huntington-Hill Method of Equal Proportions, the Commission allocated the 25 members of the Senate and the 51 members of the House of Representatives among the four basic island units as follows:

<u>Basic Island Unit</u>	<u>Senate</u>	<u>House</u>
Oahu	18 seats	35 seats
Hawaii	3 seats	7 seats
Maui	3 seats	6 seats
Kauai	1 seat	3 seats

Under the method of measuring legislative representation used in Burns v. Gill, 316 F. Supp. 1285, 1296 (D. Haw. 1970), the maximum statewide percentage deviation in the Commission's

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allocation is 9.3%. The basic island unit percentage deviations are: Oahu +0.04%, Hawaii +4.22%, Maui -2.65%, and Kauai -5.14%.¹

After allocating the members of the state legislature among the four basic island units, the Commission redrew district boundaries in each of the four basic island units. The Commission considered the nature and extent of the population deviations among the districts in making its final plan. Among the methods considered were the following:

Deviations Within Each Basic Island Unit

The deviations in population between districts within each basic island unit were determined, e.g., the difference between the largest and smallest Senate Districts on Oahu was 8.50%, and the difference between the largest and smallest House Districts on Hawaii was 4.71%. The largest deviation statewide on the Senate District side is 8.85% (Maui), and the largest deviation statewide on the House District side is 9.52% (Maui). More detail is shown in the Commission’s Principal Tasks section of this report.

For each basic island unit the deviation percentages are:

<u>Basic Island Unit</u>	<u>Senate</u>	<u>House</u>
Oahu	8.50%	9.46%
Hawaii	8.18%	4.71%
Maui	8.85%	9.52%
Kauai	0.0%	3.82%

Maximum Deviation Between Districts In Each House

The maximum statewide deviation among Senate Districts is 32.91%, i.e., Senate District 7 on Kauai is 24.81% and Senate District 5 on Maui is -8.10%. The maximum statewide deviation among House Districts is 23.27%, i.e., House District 43 on Oahu is 6.59% and House District 15 on Kauai is -16.68%.

Staggering of Senate Seats

The Constitution of the State of Hawaii, Article IV, Section 8 provides that the Commission shall assign two-year terms to twelve Senate seats for the election immediately following the adoption of its reapportionment plan. Section 8 provides that insofar as practicable, the Commission shall assign such terms so that the resident population of each Senate district shall have no more than two regular Senate elections for a particular Senate seat within the six-year period beginning in the even-numbered year prior to reapportionment.

¹ These percentages are the percentage deviations from the statewide average number of permanent residents per legislator (both senators and representatives combined) of each basic island unit’s average number of permanent residents per legislator (both senators and representatives combined).

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After the Commission approved its final reapportionment plan for the state legislative districts, the Commission's technical staff: (a) determined the percentage of population in each new Senate District that had a regular Senate election in the year 2010; and (b) identified the twelve new Senate District seats that had the smallest percentage of population that had a regular Senate election in the year 2010.

The Commission's staff identified each census block that did and did not have a regular election for State Senator in the year 2010. In 2010, two Senate contests held to fill vacancies when incumbents resigned to run for another office were not counted as regular elections for the purpose of computing the staggering of Senate terms.

These twelve new Senate Districts were designated by the Commission to have two-year terms in the next election:

Hawaii:	Senate Districts 1 and 3
Maui	Senate Districts 5 and 6
Kauai	Senate District 7
Oahu	Senate Districts 12, 16, 17, 18, 21, 22 and 23.

The remaining Senate districts will have four-year terms in the 2012 election.

Recommendations for Future Reapportionment

The 2011 Reapportionment Commission's recommendations focus primarily on the population base to be used for reapportionment and redistricting or "the total number of permanent residents in each basic island unit." Article IV, Section 4 of the Constitution of Hawaii. This provision, which was amended in 1992 to broaden the population base from registered voters to a base of permanent residents, does not define "permanent residents" or identify a method to accurately identify and locate these persons for extraction or exclusion.

The 2011 Reapportionment Commission offers the following recommendations, discussed further in the Recommendations section of this report:

- 1. The 2011 Reapportionment Commission recommends that in future reapportionment years, the U.S. Census population base should be adjusted using U.S. Census figures for military personnel at their on-base residence in group quarters and non-resident university students who can be located by street address or zip codes that identify a specific location such as a dormitory. This method was selected as "Extraction A" by the 2011 Reapportionment Commission to adjust the population for reapportionment.*
- 2. The 2011 Reapportionment Commission recommends that the legislature initiate appropriate changes in law to codify the method used by the 2011 Reapportionment Commission, above, to adjust the population base.*
- 3. If the legislature or the Supreme Court of Hawaii (see section on Reapportionment Lawsuits) determines that the extraction applied in 2011 is not acceptable, the 2011*

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Reapportionment Commission recommends two alternatives for which the legislature should initiate changes in law: (1) use the U.S. Census population or (2) clearly define the term permanent resident population and establish a system and funding to perform an accurate extraction.

4. *If it is necessary to continue to adjust the state population for reapportionment, the 2011 Reapportionment Commission recommends that the legislature initiate changes in the law to establish a standard for accuracy in implementing the system with adequate funding for this purpose.*
5. *The 2011 Reapportionment Commission recommends that the legislature review whether changes are needed to require appointment of commissioners from basic island units as suggested by witnesses, particularly those from the Neighbor Islands. (The 2011 Reapportionment Commission makes no recommendation on this subject, but conveys it to the legislature and its leaders, the latter in their role as appointing authorities.)*
6. *The 2011 Reapportionment Commission recommends that advisory councils continue to receive appropriate training to assist local communities with technical tools used by the public. Future Commissions may also consider scheduling meetings on the Neighbor Islands prior to approving a proposed plan and/or increasing member and staff interaction with the advisory councils.*
7. *The 2011 Reapportionment Commission recommends that future Commissions evaluate the need for independent counsel when the department of the attorney general: (a) represents both the Commission and another government entity or individual whose position is adverse to the Commission's position or (b) takes an action, including but not limited to issuing advice, on which the Commission wishes to obtain further counsel.*
8. *The 2011 Reapportionment Commission recommends that the legislature initiate changes in law to clarify that a state senate election held to fill a vacancy created when an incumbent resigns is not a "regular election" for the purpose of computing staggering of state senate terms pursuant to Article IV, Section 8 of the Constitution.*
9. *The 2011 Reapportionment Commission recommends that the legislature provide funding for the operation and staffing of the 2021 Reapportionment Commission to begin in the year prior to reapportionment or, at the latest, prior to appointment of Commission members. The governor should release funding as soon as possible after legislative approval.*

Reapportionment Lawsuits

In October 2011, two lawsuits were filed against the Commission. Petitioners in both lawsuits allege that the Commission improperly calculated the permanent resident population and did not extract enough people to reallocate a fourth Senate seat to the Island of Hawaii. The lawsuits are:

The Hon. Malama Solomon, Ph.D., State Senator, 1st Senatorial District; Louis Hao; Patricia A. Cook; and Steven G. Pavao vs. Neil Abercrombie, in his Official Capacity as Governor and Chief Executive Officer of the State of Hawaii; The State of Hawaii Office of Elections; The 2011 Hawaii Reapportionment Commission and Its Members; The Honorable Victoria Marks, Circuit Court Judge of the First Circuit Court (Ret.), Chairman; Lorrie Lee Stone, Anthony Takitani, Calvert Chipchase IV, Elizabeth Moore; Clarice Y. Hashimoto, Harold S. Masumoto, Dylan Nonaka, and Terry E. Thomason, In Their Official Capacities, and Scott Nago, in his Official Capacity as Chief Elections Officer, State Of Hawaii, No. SCWP-11-0000732, filed October 10, 2011, and

Michael J. Matsukawa vs. State of Hawai‘i 2011 Reapportionment Commission; and Scott Nago, Chief Election Officer, State of Hawai‘i, No. SCWP-11-000741, filed October 11, 2011.

The Supreme Court has set consolidated oral argument on January 4, 2012 at 9:00 a.m. at the Supreme Court Courtroom, Aliiolani Hale, 417 South King Street, Honolulu, Hawaii. A supplement to the Final Report will be issued after the Court’s decision in 2012.

REPORTS AND RESOURCES ON THE REAPPORTIONMENT WEBSITE

***Reports marked with an asterisk are included in this report or in the Appendix section.**

All reports available at <http://www.hawaii.gov/elections/reapportionment>:

2011 Reapportionment Plan adopted by the 2011 Reapportionment Commission on September 26, 2011 – subject to action by the Supreme Court; oral argument set for January 4, 2012. *

2011 Reapportionment Commission Members*

2011 Advisory Councils*

Introduction Guide to Redistricting (04-11-11)*

Criteria for Reapportionment*

Rules of the 2011 Reapportionment Commission

Frequently Asked Questions

Reapportionment Timeline Revised

Reapportionment Online Maps - Population Changes 2000-2010

Census Block Maps with Population

Minutes of 2011 Reapportionment Commission Meetings* (agendas and other material available online)

Power Point presentations (slides):

Presentation of the Technical Committee (8-3-11)*

Staff Presentation of Permanent Resident Population Adjustment (8-17-11)*

Staff Presentation on Public Viewing of Proposed Plan (8-17-11)

Staff Presentation on Permanent Resident Population Adjustment – Alternative Extraction Methods (9-6-11 & Updated* 9-19-11)

Presentation of the Technical Committee – 2011 Legislative Reapportionment Plan (9-23-11)

Presentation of the Technical Committee – 2011 Legislative Reapportionment Plan Overview and Senate Staggered Terms (9-26-11)*

Senate Staggered Terms – Proposed Correction (9-27-11)

Senate Staggered Terms – Proposed Correction Revised (9-30-11)

Staff Presentation of Revised Senate Staggered Terms (10-5-11)*

Reapportionment Staff Reports

Glossary

Summary-Proposed Congressional Plan (8-5-11)

Summary-Proposed Senate Plan (8-5-11)

Summary-Proposed House Plan (8-5-11)

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Reapportionment Staff Reports, continued

- Non-Permanent Population Assessment (8-16-11)
- Permanent and Non-Permanent Military Residents (8-16-11)
- Military Contacts Report (8-17-11)
- Alternative Extraction Methods (9-6-11)*
- Summary of Kansas Census Population Adjustment (9-12-11)
- Summary of Military Privatization Housing Initiative (MPHI) and Non-Military Residents Living on Military Installations (9-16-11)
- Assessment of Non-Permanent Population Adjustment - Final*
- Summary of Congressional Plan Adopted by Commission (9-26-11)
- Summary of Senate Plan Adopted by Commission (9-26-11)
- Summary of House of Representatives Plan Adopted by Commission (9-26-11)

Information - 1991 and 2001 Reapportionment Commissions

Federal, State and County Laws Governing Redistricting

[Link to U.S. Census Bureau](#)

[Link to Hawaii Statewide GIS Program](#)

MEMBERSHIP OF THE COMMISSION AND THE ADVISORY COUNCILS

1. The Commission.

Article IV, Section, 2, State Constitution, prescribes the manner in which the members of the reapportionment commission are to be appointed. Pursuant to this section, the President of the Senate, the Speaker of the House of Representatives, the leader of the minority party, members of the Senate, and the leader of the minority party members of the House of Representatives, all of the State legislature, each appointed two persons to the 2011 Reapportionment Commission (the “Commission”) as follows:

<i>Appointing Authority</i>	<i>Commission Members Appointed</i>
President of the Senate	Lorrie Lee Stone Anthony P. Takitani
Speaker of the House of Representatives	Clarice Y. Hashimoto Harold S. Masumoto
Minority party leader, the Senate	Calvert Chipchase IV Elizabeth N. Moore
Minority party leader, the House of Representatives	Dylan W. Nonaka Terry E. Thomason

All of the above members were appointed on or before May 1, 2011, as prescribed by the State Constitution. The Supreme Court of Hawaii selected The Honorable Victoria S. Marks (Ret.) as the ninth member and chairperson of the Commission. This selection was made on May 1, 2011, within the thirty-day time period prescribed by the State Constitution for the appointment of the ninth member. Scott T. Nago, Chief Election Officer, served as non-voting secretary to the Commission.

2. The Advisory Councils.

At the same time that they each named two members to serve on the Commission, the appointing authorities, pursuant to the State Constitution, each appointed one member to each of the basic island unit’s apportionment advisory councils, as follows:

<i>Appointing Authority</i>	<i>Advisory Council Members Appointed</i>
President of the Senate	Ka’aina Hull – Kauai Richard Ha – Hawaii Nathaniel Kinney – Oahu Christopher Chang – Maui

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Speaker of the House of Representatives

Randall Nishimura – Kauai
Glenn Ida – Oahu
Mark Andrews – Maui
James Arakaki – Hawaii

Minority party leader, the Senate

Michael Palcic – Oahu
Joanne Georgi – Kauai
Fred Rohlfig – Maui
Barry Lamb – Hawaii

Minority party leader,
the House of Representatives

David Ross – Hawaii
Madge Schaefer – Maui
Linda Smith – Oahu
Laurie Yoshida – Kauai

ACKNOWLEDGMENTS

Throughout the performance of their reapportionment and redistricting tasks, the members of the Commission have been reminded of the magnitude of their responsibilities. The Commission could not have discharged these responsibilities without the encouragement and assistance of many people. The Commission owes a debt of gratitude to each of them. In particular, the Commission wishes to acknowledge with heartfelt thanks the assistance of the following:

1. The Public.

During the course of its deliberations, the Commission had the opportunity to hear from and discuss with various people in the community the many aspects of reapportionment and redistricting. To name all such persons individually would result in an exhaustive list. A limited listing of these people is contained in those sections of this report dealing with the Commission's public hearings. The Commission would like to thank all members of the public who participated in the Commission's public hearings and meetings or who provided written testimony or comments to the Commission.

2. The Advisory Councils.

Under the State Constitution, the advisory councils of each basic island unit were vested with the responsibility of advising the Commission with respect to reapportionment and redistricting within that basic island unit. This year, Councils also served as a resource for their communities in using GIS mapping system to submit plans. The Commission notes that every council discharged their responsibilities well. The Commission is grateful for the work of the councils in measuring the pulse of their respective basic island units and in recommending changes to the plans for their respective island units. A portion of the final reapportionment plan for the State legislative districts reflects the views and recommendations of the advisory councils.

3. The Project Office Staff.

The project office staff was responsible for technical, logistical, and support services to the Commission including the day-to-day operations of the Commission's office. The Office of Elections provided the project office staff. The Commission is very appreciative of the work performed by the project office staff. Without the project office staff's diligent efforts, the Commission could not have completed its work in the limited time provided. The project office staff included:

David J. Rosenbrock, Project Manager
Caryn M. Moran, Administrative Assistant
Charles C. Wong, Geographic Information System Technician
Karen M. Tam, Secretary

4. Office of Elections.

In addition to the project office staff, the Office of Elections staff provided additional logistical and support services to the Commission and the project office.

Scott T. Nago, Chief Election Officer
Anthony Akamine, Election Information Specialist
Noe De Leon, Voter Services Specialist
Judy Gold, Precinct Operations Specialist
Wayne Hirayama, Warehouse Supervisor
Holly-Ann Kiaaina, Election Support Services Specialist
Kristin Oka, Voter Services Specialist
Rex Quidilla, Voter Services Section Head
Carolyn Roldan, Secretary
Rhowell Ruiz, Election Support Services Section Head
Aaron H. Schulaner, General Counsel
Edward Tamura, Computer Services Acting Section Head
Lori Tomczyk, Ballot Operations Section Head

5. Professionals.

The Commission relied on a team of professionals from the Department of the Attorney General and technical specialists to aid them both in understanding the problems related to reapportionment and in performing the Commission's various tasks. These individuals were consulted by the Commission to provide legal, statistical and logistical services:

Robyn B. Chun, Deputy Attorney General
Russell A. Suzuki, First Deputy Attorney General
Royce A. Jones, Hawaii Region Manager, Environmental Systems Research Institute, Inc. (Esri)
Rodman Low, GIS Technician, Environmental Systems Research Institute, Inc. (Esri)

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Mirjam Stadelman, Senior Consultant, Project Manager, Environmental Systems
Research Institute, Inc. (Esri)

PROCEDURE FOLLOWED

In the development of its final plans for the reapportionment and redistricting of the U.S. Congressional Districts and the State legislative districts, the Commission proceeded as follows:

1. *Legal and statistical background.*

At the outset, the Commission sought to familiarize itself with the legal and statistical aspects of reapportionment and redistricting. In this respect, the members of the Commission reviewed or were briefed on matters including, but not limited to, the following:

- a. The requirements for reapportionment and redistricting set forth in Article IV of the State Constitution and Chapter 25 of the Hawaii Revised Statutes.
- b. Relevant court decisions regarding reapportionment and redistricting. In particular, the Commission considered case decisions such as Reynolds v. Sims, 377 U.S. 533 (1964); Burns v. Richardson, 384 U.S. 73 (1966); Travis v. King, 552 F. Supp. 554 (D. Haw. 1982); and Burns v. Gill, 316 F. Supp. 1285 (D. Haw. 1970).
- c. The final reports of prior reapportionment commissions.
- d. Information from the 2010 U.S. Census as it related to the existing U.S. Congressional and State legislative districts.
- e. The results of the 2010 general election.
- f. Other publications regarding the legal principles governing reapportionment and redistricting and statistical information relevant to reapportionment and redistricting.

2. *Meetings of the 2011 Reapportionment Commission*

In accordance with Article IV, Section 3 of the Constitution of the State of Hawaii, the eight members of the Commission appointed by the presiding officers and minority party leaders of each house of the Legislature began meeting on April 11, 2011 at the State Capitol. Pending selection of a Commission chair, the members received briefings on applicable law, technical requirements, and administrative procedures at meetings also held on April 21 & 28, 2011.

The Commission selected two members as a subcommittee to recommend a ninth member and chair to serve pursuant to the Constitution. The subcommittee and the Commission were unable to agree on a chair and notified the Hawaii Supreme Court that it was unable to do so, requesting that the Court select the chair as provided by law. On May 1, 2011, The Honorable Victoria S. Marks (Ret.) was appointed as Chair of the 2011 Reapportionment Commission by the Supreme Court.

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Judge Marks began presiding over the Commission meeting on May 4, 2011 and subsequent meetings held at the State Capitol on:

May 11 & 24, 2011
June 9 & 28, 2011
July 12 & 19, 2011
August 3, 5 & 17, 2011
September 19, 23 & 26 2011
October 5 & 13, 2011

Agendas, Minutes and materials from the Commission's meetings were posted on the Reapportionment website. The Commission also broadcasted meetings on 'Olelo public access stations.

3. *Advisory Council Meetings.*

The Commission directed the project office staff to support the advisory councils in conducting a series of public meetings of its Apportionment Advisory Councils at various places in each basic island unit. The purpose of this series of meetings was to present information about reapportionment and redistricting and to present the criteria the Commission developed for its reapportionment plans. In this series of meetings, the advisory councils were most helpful in preparing the public for participation in the reapportionment process. The public meetings of the Advisory Councils were held were as follows:

Date		Council	Place
June	28	Oahu	State Capitol
July	12	Joint Meeting	Hawaii, Maui & Kauai at State Capitol
	13	Oahu	State Capitol
	15	Hawaii	Waimea Community Center
	18	Kauai	Historic County Annex Building
	22	Kauai	Historic County Annex Building
	28	Oahu	State Capitol
August	1	Hawaii	Hawaii County Council Chambers
	1	Kauai	Historic County Annex Building
	18	Oahu	State Capitol
	26	Hawaii	Hawaii County Council Chambers
	31	Maui	Maui Waena Intermediate School
September	2	Oahu	State Capitol
	13	Oahu	State Capitol
	29	Oahu	State Capitol
October	12	Kauai	Historic County Annex Building
December	12	Maui	Maui Marketplace

4. *Criteria development.*

The Commission closely reviewed the reapportionment and redistricting criteria set forth in the State Constitution and Hawaii Revised Statutes. On June 9, 2011, the Commission adopted standards and criteria based on the Constitution of the State of Hawaii, Hawaii Revised Statutes, case law, and technical requirements for submission of plans by the public.

On June 28, 2011, the Commission: (a) made a preliminary decision to start with the U.S. Census population of 1,360,301 so its Technical Committee could begin drafting reapportionment plans, and (b) directed the Commission staff to continue research on military and student population data through appropriate agencies.

As of that date, the Commission had determined that plans could be developed using the Census population, particularly for Congressional districts for which use of the Census population was required by the U.S. Constitution, Article I; for House and Senate districts on Maui and Kauai whose populations were not close to a level that would result in a change of seats, and for Hawaii House districts, for which the island's population was not close to the level requiring change. Preliminary plans also could be drafted for Hawaii Senate and Oahu House and Senate, although their respective populations were recognized by the Commission as possibly requiring changes in allocation of legislative seats, depending on the final population adjustment. Thus, the Commission voted on a preliminary population base and promised to reconsider the issue at a later meeting when more population data was available. The population base was amended at a later meeting for the final plan, see section 7 below.

5. *Proposed reapportionment plans.*

The Commission formed a Technical Committee to investigate possible reapportionment plans for the Commission's consideration. After the Commission made a preliminary decision on the population base, it continued to accept testimony on the population base at its meetings and by mail and email. However, the Commission did not receive sufficient population data in time to adjust the population base in time to meet the statutory 100-day deadline for adoption of a proposed plan.

Based on proposals from its Technical Committee, and after an opportunity for public comment, the Commission adopted proposed reapportionment plans for the U.S. Congressional Districts and State legislative districts. These actions were taken by the Commission at its meeting on August 5, 2011. However, Chair Marks and other members of the Commission reiterated that the Commission would remain open to public comment and to taking further action on the population base at a later date. The Commission set a schedule of 13 public hearings throughout the State to receive input from the public regarding the proposed reapportionment plans.

6. *Public hearings.*

As required by Section 25-2 of the Hawaii Revised Statutes, the Commission held a series of public hearings on its initial proposed reapportionment plans in all of the basic island

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units. The hearings began on August 30, 2011 (20 days after the publication of the proposed plans) and concluded on September 16, 2011. The places at which the hearings were held and the names of the people who signed in at the hearings (“witnesses”) were as follows:

August 30, 2011

Kapolei High School Cafeteria

Kapolei, Oahu

Witnesses

Christopher Lewis, Polly “Granny” Grace, Michael Golojuch, Jr., Keira Kamiya, Michael Palcic, Evelyn Souza, Franklin Souza, Brian O’Leary, Ralph Riley, Judy Riley, C.E. Zahn, Jaice Mikulanel, Marissa Capelouto, Kapua Keliikoa-Kamai, Rock Riggs, Gary Kubota, Linda Young, Johnnie-Mae L. Perry, Clarence Nishihara, Anthony T. Austin, Carl Vincenti, Teri Heede, Matt Flach, Maeda Timson

August 31, 2011

Maui Waena Intermediate School Cafeteria

Kahului, Maui

Witnesses

Todd Craine, Dottie Binder, Christopher P.H. Chang, Madge Schaefer, George Fontaine, Ilima Loomis, Mark Andrews

September 1, 2011

Lahaina Civic Center

Lahaina, Maui

Witnesses

Todd Craine, Bill Tony, Roz Baker, Nell Woods

September 2, 2011

Kauai Council Chamber

Lihue, Kauai

Witnesses

Ka’aina Hull, Randall Nishimura, Cira de Castillo, Carol Bain

September 6, 2011

Aikahi Elementary School Cafeteria

Kailua, Oahu

Witnesses

Bart Dame, Charlotte Farmer, Nancy Davlantes, Pohai Ryan, Michael Palcic, Chris Lee, Levani, Glenn Ida, Shirley Hasenyager, Myrna Zezza, Bill Chung, Melody Heidel, Albert Lewis, Mona Ryan

September 7, 2011

State Capitol Auditorium
(continued)

Honolulu, Oahu

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Witnesses

Glenn Ida, Josh Frost, Larry Johnson, Bart Dame, David Monk, Amy Monk, Karl Rhoads, Shannon Wood, Kat Brady, Polly Grace, Nikki Love, Malia Zimmerman, Carol Fukunaga, Donna Wong, Barbara Polk, Sam Slom, Keira Kamiya, Kris Hanselma, Michelle Matson, Eric Fujishige, Rose Tsukenjo, Michael Palcic, Ethann Oki, Carlton N. Middleton, Tom Brower, Anthony Chang, Clarence Nishihara, Jame Schaedel

September 8, 2011

Mililani High School Cafeteria

Mililani, Oahu

Witnesses

Carole M. Siegel, Bill Bass, Alice J. Rogers, Ryan Yamane, Edmund Aczon, Katherine Kupukaa, Nikki Love, Luella Costales, Glenn Ida, Dane Wicker, Ken Nakamoto, Dick Poirier, Nestor Garcia, Carol Bass, Danielle Bass, Park Kaleiwainea, Alena Pule, Mary Segura, Marilyn B. Lee

September 9, 2011

Lanai High School Cafeteria

Lanai City, Lanai

Witnesses

Riki Hokama, Pat Reilly, Ron McOmber

September 12, 2011

Kaunakakai School Cafeteria

Kaunakakai, Molokai

Witnesses

None

September 13, 2011

Hawaii County Council Chamber

Hilo, Hawaii

Witnesses

Malama Solomon, Stanley H. Roehrig, Robert Herkes, Patti Cook, Ed James, Michael Janovsky, Louis Hao, James Arakaki, Jeani Worthington, Debbie Anderson, Clift Tsuji, Philip Matlage, Moanikeala Akaka, Richard Henderson, Richard La, Claybert V. Lito, Wendy Botelho-Cortez, Don Anderson, Steven Pavao, Hugh J. Clark, Cory Harden, Niyati Brown, Dwight J. Vicente, Arthur Roberts, Lorraine R. Inouye, Fetulima Tamasese, Phil Barnes, Nancy Anderson, Dwayne D. Yoshina, John A. Ervin, Nelson Ho, Arthur Roberts, Rene Siracusa

September 14, 2011

Kona Civic Center

Kona, Hawaii

Witnesses

Robert Herkes, Daniel Medeiros, Sara Medeiros, Rell Woodward, Robert Kim, Gail Jackson, Lila Esperon, Chip Begay, Skylar Eisler, Loka Esperon, Sr., Michael J. Matsukawa, Barry J. Lamb, Kelly J. Pillette, Martie Nitsche, Don Nitsche, Ruth Nichols, Fred Housel, John

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Buckstead, Tsing Young, Cheryl King, Susan Dursin, Anika Glass, David Ross, Sherry Bracker, Karin Stanton, Larry Gering (via video from Hilo)

September 15, 2011

Waipahu High School Cafeteria

Waipahu, Oahu

Witnesses

Ann Peterson, Henry Aquino, Alvin Toda, Jane Gay, James Gay, Kapua Keliikoa-Kamai, Cory Chun, Darlene Loo-McDowell, Loretta Cullen, Ty Cullen, Clarence Nishihara, Lynn Nishihara, Michael Palcic, Nikki Love, Monika Mordasini, Richard McDowell, Bill Kunia, Solray Duncan

September 16, 2011

Kalani High School Cafeteria

Honolulu, Oahu

Witnesses

Gene Ward, Bart Dame, Nikki Love, Amy Monk, David Monk, Michael Palcic, Judy Strait-Jones, Todd Kingman, Tom Brower, Greg Knudsen, Andrei Soto, Liz Morita, Roy Oshiro, Fran Kagawa, Shannon Wood, Natalie Iwasa

7. *Adjustment to population base and revised reapportionment plan*

Based on additional population data received from universities and the U.S. Census, the Commission voted on September 19, 2011 to extract 16,458 people from the State population reported by the Census. The adjusted population of 1,343,843 was used to apportion seats and redraw district boundaries for the State House and State Senate in the four basic island units. The unadjusted Census population of 1,360,301 was used in redrawing Hawaii's two Congressional districts, as required by the U.S. Constitution, so no revision was needed for the congressional plan.

After the population adjustment by the Commission, the Technical Committee made adjustments to the proposed legislative plans.

8. *Decision.*

Based on comments received at the public hearings as well as at its public meetings and via correspondence, the Commission accepted numerous plan revisions developed by the Technical Committee. The primary reason for changes was to maintain the integrity of long-standing community concerns. The Commission continued to receive submissions from the public of proposed redistricting plans using the software program of its consultant, Esri.

Although not every suggested change was possible, the Technical Committee presented its revised plans on September 23, 2011. At the meeting on September 26, 2011, the Commission adopted: (a) the final reapportionment plan for the U.S. Congressional Districts in the State of Hawaii; (b) the final reapportionment plan for the Senate and House of Representatives in the State of Hawaii Legislature; and (c) adopted a designation of the Senate district seats that would receive two-year and four-year terms. Item (c), the portion of the plan pertaining to the

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staggering of Senate terms, was amended by the Commission at its October 5, 2011 meeting reconvened on October 13, 2011 to correct computation of seats that held vacancy elections in 2010. The final reapportionment plans adopted by the commission appear in Appendix F to this report.

COMMISSION'S PRINCIPAL TASKS

The Commission had three basic tasks: (1) redraw the U.S. Congressional Districts of the State of Hawaii; (2) reapportion and redistrict the Senate and House of Representatives of the State of Hawaii Legislature; and (3) designate twelve of the twenty-five State of Hawaii Senate district seats that will have two-year terms in the election immediately following the 2011 reapportionment.

LEGAL CONSTRAINTS AND DISTRICTING CRITERIA

In the performance of its tasks, the commission was guided by certain criteria and legal requirements. Among them are federal constitutional standards and state constitutional requirements.

1. Federal Constitution

a. U.S. Congressional Districts.

Article I, Section 2 of the United States Constitution establishes a high standard of justice and common sense for the apportionment of U.S. Congressional Districts, i.e., “equal representation for equal numbers of people”. Karcher v. Daggett, 462 U.S. 725, 730 (1983) citing Wesberry v. Sanders, 376 U.S. 1, 18 (1964). In apportioning U.S. Congressional Districts, the standard is that such districts are to be apportioned to achieve population equality “as nearly as is practicable”. Karcher, 462 U.S. at 730. Congressional redistricting plans with maximum deviations in population of up to 1% have been approved by federal courts, “provided the state policies underlying each individual deviation are both legitimate and sufficiently related to the deviation.” See Hebert, *et al.*, *The Realists’ Guide to Redistricting, Second Edition*, ABA Section of Administrative Law and Administrative Practice, at page 7 (2010), citing Vera v. Bush, 933 F. Supp. 1341, 1348 & n. 9 (S.D. Tex., 1996) (three-judge court) and Vera v. Bush, 980 F. Supp. 251, 253 (S.D. Tex., 1997) (three-judge court).

b. State Legislative Districts.

The Equal Protection Clause of the Fourteenth Amendment to the United States Constitution also requires that both houses of a bicameral state legislature be apportioned substantially on a population basis. In Reynolds v. Sims, 377 U.S. 533, 577 (1964), the United States Supreme Court stated:

[W]e mean that the Equal Protection Clause requires that a State make an honest and good faith effort to construct districts, in both houses of its legislature, as nearly of equal population as is practicable. We realize that it is a practical impossibility to arrange legislative districts so that each one has an

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identical number of residents, citizens, or voters. Mathematical exactness or precision is hardly a workable constitutional requirement.

The U.S. Supreme Court has allowed more flexibility in population deviations with respect to state legislative reapportionment than for federal congressional redistricting. Mahan v. Howell, 410 U.S. 315, 321-322 (1977). As a general matter, the U.S. Supreme Court has held that state legislative reapportionment plans with a maximum population deviation under 10% are prima facie constitutional while those above 10% are prima facie discriminatory and must be justified by the state. Brown v. Thomson, 462 U.S. 835, 842-843 (1983). It has also held that state legislative plans with a maximum population deviation in excess of 10% can be justified by a state policy that seeks to preserve the integrity of political subdivisions. Brown, 462 U.S. at 843-844 and Voinovich v. Quilter, 507 U.S. 146, 161-162 (1993). To date, the U.S. Supreme Court has not expressly stated how much of a maximum population deviation may be permitted in order to preserve the integrity of state political subdivisions. Cf. Gorin v. Karpan, 775 F. Supp. 1430, 1438, (D. Wyo. 1991).

The U.S. Supreme Court has held that in reapportioning state legislative districts, a slight overrepresentation of a particular area in one house could be balanced with minor underrepresentation of that area in the other house. Lucas v. Forty-Fourth General Assembly of State of Colo., 377 U.S. 713, 735, fn. 27 (1964); Reynolds, 377 U.S. at 577.

The United States Supreme Court has not specified what population base must be used to reapportion and redistrict state legislative districts. In Davis v. Mann, 377 U.S. 678, 691-692 (1964), the United States Supreme Court held that a state could not exclude from the reapportionment population base, a class of persons (military and military related personnel) based solely on the nature of their employment. However, the Court later stated that nothing in its prior decisions was meant to require the states to include in their reapportionment population base, “aliens, transients, short-term or temporary residents, or persons denied the vote for conviction of a crime”. Burns v. Richardson, 384 U.S. 73, 92 (1966). Further, with respect to its decision in Davis v. Mann, the Court said:

Discrimination against a class of individuals, merely the nature of their employment, without more being shown, is constitutionally impermissible. [citation omitted]. Where the exclusion is of those not meeting a State’s residence requirements, however, different principles apply. The difference between exclusion of all military and military-related personnel, and exclusion of those not meeting a State’s residence requirements is a difference between an arbitrary and a constitutionally permissible classification.

(Burns, 384 U.S. at 93, fn.22.)

2. *State Constitution and Laws*

a. *U.S. Congressional Districts.*

With respect to U.S. Congressional Districts, Section 25-2 of the Hawaii Revised Statutes requires the commission to determine the total number of members to which the State is entitled and to apportion those members into single member districts so that the number of persons in the total population of such districts (based on the last preceding U.S. Census) shall be as nearly equal as practicable. In addition, it provides that the Commission shall be guided by certain criteria including the following:

- (1) No district shall be drawn so as to unduly favor a person or political faction;
- (2) Except in the case of districts encompassing more than one island, districts shall be contiguous;
- (3) Insofar as practicable, districts shall be compact;
- (4) Where possible, district lines shall follow permanent and easily recognized features, and where practicable, shall coincide with census tract boundaries; and
- (5) Where practicable, submergence of an area in a larger district wherein substantially different socio-economic interests predominate shall be avoided.

b. *State Legislative Districts.*

With respect to the State legislative districts, Article IV of the State Constitution provides for reapportionment to be performed using the following steps. First, the Commission is to allocate the total number of members of each house of the State legislature among the four basic island units, using the total number of permanent residents in each of the basic island units (Hawaii, Maui, Kauai and Oahu), and computed using the method of equal proportions. Second, the Commission is to draw the district lines within each basic island unit so that for each house the average number of permanent residents per member is as nearly equal to the average for the basic island unit as practicable. In effectuating this redistricting, the Commission is to be guided by certain specified criteria, including the following:

- (1) No district shall extend beyond the boundaries of any basic island unit;
- (2) No district shall be drawn so as to unduly favor a person or political faction;
- (3) Except in the case of districts encompassing more than one island, districts shall be contiguous;
- (4) Insofar as practicable, districts shall be compact;
- (5) Where possible, district lines shall follow permanent and easily recognized features, and where practicable, shall coincide with census tract boundaries; and
- (6) Where practicable, submergence of an area in a larger district wherein substantially different socio-economic interests predominate shall be avoided.

In Blair v. Ariyoshi, 515 P.2d 1253 (Haw. 1973), the Hawaii Supreme Court upheld the 1973 Reapportionment Commission's action in assigning seats in the State legislature so as to balance the overrepresentation of the basic island unit of Kauai in the House of Representatives (-0.98%) with underrepresentation of that basic island unit in the Senate (+16.19%). The Court

said it was satisfied that the allocation in question was an eminently reasonable one, and that the Commission had made a good faith effort to achieve statewide voter equality.

3. *Other Standards and Criteria.*

In performing its reapportionment and redistricting responsibilities, the Commission also adopted other standards and criteria including, but not limited to, the following: (1) no splitting of census blocks; (2) attempting to maintain the integrity of existing districts; and (3) within each basic island unit, trying to keep the population deviations of all districts within plus or minus 5% of the ideal district size for that basic island unit.

The technical staff and consultants advised the Commission to avoid splitting census blocks, as that would require staff to go to the blocks that were split and attempt to ascertain the number of permanent residents in each portion of the split block. The Commission had neither the time nor the staff to perform such work.

The Commission decided to attempt to maintain the integrity of existing districts for a number of reasons. The Commission felt that maintaining existing districts would create less confusion for voters who had grown used to their current districts. The Commission also felt that maintaining existing districts would help residents maintain their relationship with the legislators who currently represented them. At several of the public hearings, residents of current districts voiced displeasure at losing their relationship with their current legislators as a result of the Commission's proposed reapportionment plans. Finally, it appeared to the Commission that the existing district represented the work of prior reapportionment commissions that had attempted to align districts with geographic features and communities of interest in the State.

The Commission attempted to keep population deviations within each basic island unit within plus or minus 5% of the average population of districts in that basic island unit in order to comply with Article IV, Section 6, State Constitution. The amount of the deviation standard was based on federal constitutional law which holds that deviations up to 10% are prima facie constitutional for state legislative reapportionment and redistricting.

THE REAPPORTIONMENT PLANS

1. *U.S. Congressional Districts*

a. General description of the redistricting plan.

The State is entitled to two members in the U.S. House of Representatives in the U.S. Congress. Under Section 25-2(b) of the Hawaii Revised Statutes, the Commission is required to apportion those two members among single member districts so that the average number of persons in the total population counted in the last U.S. Census per member per district was as nearly equal as possible.

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Based on the 2010 U.S. Census, the Commission determined that the current U.S. Congressional Districts needed to be adjusted as:

- (1) The total population of the State of Hawaii was 1,360,301 persons;
- (2) The ideal district size of the two Congressional districts is, therefore, 680,151 persons;
- (3) In the final plan, Congressional District No. 1 includes 680,496 persons or .05% above the ideal district size; and
- (4) In the final plan, Congressional District No. 2 includes 679,805 persons or .05% below the ideal district size.

The final Congressional redistricting plan appears as part of Appendix D to this report.

b. Explanation and justification of deviations.

Under the Commission's final redistricting plan, the deviation between the two Congressional Districts is one-tenth of one percent (.1%). This percentage is within the deviations that have been found acceptable in the past by the U.S. Supreme Court.

2. State Legislative Districts

a. A general description of the reapportionment plans.

(1) The reapportionment base.

The Commission approved a permanent resident reapportionment population base that extracted 16,458 people from the U.S. Census population of Hawaii, the number of non-permanent residents deemed to be identified and located with a high degree of certainty that they were in fact non-permanent residents in specific locations. In essence, the Commission's decision reflects its preference for a higher degree of certainty about people's status and location to be excluded from representation in the Legislature, resulting in the adjusted population of 1,343,843 for reapportionment and redistricting in 2011.

In 1992, the State Constitution was amended to provide that reapportionment is to be based on the "total number of permanent residents." Like its predecessors, the 2011 Reapportionment Commission gave extensive consideration to the term "permanent residents" mandated by the State Constitution. The difficulty was primarily due to the Commission's limited ability to accurately identify and locate active duty military members, their dependents, and out of state students at universities in Hawaii. After carefully considering the data available and the possible methods of adjusting the U.S. Census population base, the Commission decided to use data for military personnel from the Census itself and data for students as reported by their respective universities. This data was determined to provide the most certainty in extracting accurate numbers of non-permanent residents from specific locations.

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The Commission was mindful of the State Constitution's mandate and considered various models and other adjustment techniques that could be applied to larger numbers of residents provided by the U.S. Pacific Command (PACOM) and the universities. However, these groups of data were not sufficient to accurately locate all persons identified for the following reasons:

- (a) PACOM reported an accurate count of active duty personnel, but zip codes were provided for duty (work) stations only. Individuals could not be extracted from the residence census block in which they were initially counted in the Census.
- (b) PACOM reported counts of resident and non-resident active duty personnel based solely on payroll records indicating the state chosen by the service member to be used for state income tax withholding. Commission members did not agree that this designation was the sole indicator of permanent residency, since PACOM's designation did not consider other factors such as voter registration, home ownership, length of residency, participation in civic and economic activities, etc.
- (c) PACOM reported the number of military dependents in Hawaii but did not have a means to designate them as residents or non-residents. Military sources consider dependents to be private citizens and do not collect other data on dependents that might provide indicia of residency, such as the factors noted in (b), above.
- (d) With regard to non-resident students, accurate extractions are possible only if universities report residence addresses for their students. Standard five-digit zip codes alone are not sufficient to locate these students.

In addition to the limited data, the majority of Commission members were concerned that the modeling or other forms of population adjustment would involve assumptions that would exclude significant numbers of people who actually were permanent residents. These residents would have no notice of extraction and no way to establish that they were permanent residents who should be included. While proponents of a larger extraction argued that method for extraction used in 1991 and 2001 could be used in 2011, it was not possible to do so with certainty or accuracy due to the problems with data from reporting agencies.

Further, the Commission did not agree with the level of uncertainty indicated by the previous method of adjustment. The final reports of the 1991 and 2001 Commissions include the 1991 consultant's report describing difficulties with data from those years. Models were based on assumptions, estimates, and sampling to "correct" data for past extractions. The level of uncertainty based upon previous modeling was not acceptable to the 2011 Reapportionment Commission.

Proponents of including active duty military and dependents argued that: (a) the exclusion of such persons violated federal law; (b) the bias of federal law was in favor of inclusion in the reapportionment population base rather than exclusion; (c) there was no evidence that the dependents lacked the intention of being residents of Hawaii; (d) case law from other jurisdictions indicated that the Commission had the ability to include the military and dependents in the reapportionment population base when reliable data was not available; and (e) military members and dependents needed or should have representation in the State legislature since they pay State taxes, attend State schools, and work and participate in the local community.

Opponents of including active duty military and dependents argued that: (a) U.S. Supreme Court decisions to date did not require the inclusion of non-residents in the reapportionment population base and, in fact, permitted the exclusion of non-residents; (b) the dependents would follow the state of residence of their military member and various State statutes show that military dependents should not be considered permanent residents; (c) the legislative history of the constitutional amendment that mandates the use of a “permanent resident” reapportionment base indicates that the amendment was meant to exclude non-resident military dependents; (d) a fact sheet that was posted at 1992 voting places indicated to the voters that the constitutional amendment meant to exclude non-resident military and dependents from the reapportionment base; and (e) long-standing State policies support the exclusion of non-resident military dependents from the reapportionment base – as evidenced by the proceedings of past constitutional conventions and the work of prior reapportionment commissions.

Due to the lack of reliable population data from PACOM, the Commission turned to military population data from the 2010 U.S. Census to be analyzed by the technical consultant. The Census reported the number of persons residing on military installations in two categories, as reported by the military: residents of group quarters such as barracks, medical facilities and detention/jail facilities, who were most likely active duty members only in transient circumstances, and residents of on-base housing that allowed active duty personnel, dependents, and other persons allowed by federal programs. The Commission determined that only the population in group quarters would be extracted from the population base because the larger population in other on-base housing could not be sorted by permanent and non-permanent resident status.

Two private universities in Hawaii reported residence addresses, not names, of out of state students. These numbers were extracted from the corresponding census blocks. The University of Hawaii (UH) statewide system reported only residence zip codes for students who paid higher non-resident tuition in 2010. Students were not identified by name. When a 9-digit zip code could identify a specific dorm or group residence, the number of students reported was extracted from the census block. The Hawaii County Council Reapportionment Commission obtained more specific addresses for some UH-Hilo students, also without names. These numbers were also extracted from the corresponding census blocks.

The 2011 Reapportionment Commission’s decision to extract 16,458 non-permanent residents is the subject of two lawsuits pending in the Supreme Court of Hawaii, see Section 3, “Reapportionment Lawsuits,” below.

(2) Apportionment among basic island units.

Note: Tables shown in this Report are lettered A-E for comparison among basic island units. Tables are numbered 1-10 for comparison among districts.

In reapportioning and redistricting the State legislative districts, the Commission followed the two-step process set out in Sections 4 and 6 of Article IV of the State Constitution. The first step in that process is the apportionment of the total number of members of each house of the State legislature among the four basic island units, using the total number of permanent residents in each of the basic island units and computed by the method of equal proportions.

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The final plan adopted by the Commission allocates the total number of members of the State Senate and the House of Representatives among the four basic island units as shown in Table A below:

Table A – Allocation of State Senate and House Members to Basic Island Units

Basic Island Units	Senators	Representatives
Island of Hawaii	3	7
Islands of Maui, Lanai, Molokai, and Kahoolawe	3	6
Island of Oahu and all other islands not specifically enumerated	18	35
Islands of Kauai and Niihau	1	3
Total	25	51

There is no change in the apportionment of legislative seats from the 2001 reapportionment plan.

(3) Apportionment within basic island units.

The second step in the process of reapportioning and redistricting the State legislature is apportioning the members allocated to each basic island unit among districts within that basic island unit and redrawing district lines where necessary in such a manner that for each house the average number of permanent residents per member is as nearly equal to the average for the basic island unit as is practicable.

The table below illustrates this step in the process. We see Kauai has 67,090 permanent residents and is entitled to 3 House members. Therefore the average or target population is 22,363 permanent residents per House member, see Table B, next page. Remaining House seats for each basic island unit are calculated in the same fashion.

House Targets by Basic Island Unit

Table B – Average Population Per House Member by Basic Island Unit

Basic Island Unit	State Base Population	House Seats	Target Population Per Seat (House)
Oahu	937,547	35	26,787
Hawaii	184,286	7	26,327
Maui	154,920	6	25,820
Kauai	67,090	3	22,363

Senate Targets by Basic Island Unit

Redistricting the Senate assumes the same methodology, see Table C below.

Table C – Average Population Per Senate Member by Basic Island Unit

Basic Island Unit	State Base Population	Senate Seats	Target Population Per Seat (Senate)
Oahu	937,547	18	52,086
Hawaii	184,286	3	61,429
Maui	154,920	3	51,640
Kauai	67,090	1	67,070

Again using Kauai as an example, it has with 67,070 permanent residents and one apportioned Senate district (67,070 divided by 1 = 67,070). The Senate district on Kauai equals the total population of 67,070. Remaining Senate seats within the other basic island units are calculated in the same fashion.

The Commission’s final reapportionment and redistricting plan shows how the Commission accomplished this part of its task. There was no change to the number of districts and seats per basic island unit from the 2001 reapportionment plan.

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(a) Basic Island Unit of Kauai.

The final plan allocates three (3) House seats to Kauai in House Districts 14, 15 and 16. The final plan allocates one (1) Senate seat to Kauai in Senate District 7. No change from existing number of House and Senate seats.

(b) Basic Island Unit of Oahu.

The final plan allocates 35 House seats to Oahu in House Districts 17 through 51. The final plan allocates 18 Senate seats to Oahu in Senate Districts 8 through 25. No change from existing number of House and Senate seats.

(c) Basic Island Unit of Maui.

The final plan allocates six (6) House seats to Maui in House Districts 8 through 13. The final plan allocates three (3) Senate seats to Maui in Senate Districts 4 through 7. No change from existing number of House and Senate seats.

(d) Basic Island Unit of Hawaii.

The final plan allocates seven (7) House seats to Hawaii in House Districts 1 through 7. The final plan allocates three (3) Senate seats to Hawaii in Senate Districts 1 through 3. No change from existing number of House and Senate seats.

(4) Deviations within each basic island unit.

With respect to the Commission’s apportionment within basic island units, the deviations among the districts in each basic island unit shown for each house of the legislature are as follows:

Table 1 – Oahu Basic Island Unit Targets and Deviations (House Districts)

DISTRICT	BIU TARGET POPULATION	TOTAL_POP	DEVIATION FROM BIU TARGET	% DEVIATION FROM BIU TARGET
House 17	26,787	26,937	150	0.56%
House 18	26,787	27,256	469	1.75%
House 19	26,787	27,120	333	1.24%
House 20	26,787	26,898	111	0.41%
House 21	26,787	26,970	183	0.68%
House 22	26,787	27,693	906	3.38%
House 23	26,787	25,969	-818	-3.05%
House 24	26,787	25,889	-898	-3.35%
House 25	26,787	26,299	-488	-1.82%
House 26	26,787	26,599	-188	-0.70%
House 27	26,787	26,173	-614	-2.29%

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House 28	26,787	27,593	806	3.01%
House 29	26,787	26,540	-247	-0.92%
House 30	26,787	26,787	0	0.00%
House 31	26,787	26,149	-638	-2.38%
House 32	26,787	27,109	322	1.20%
House 33	26,787	26,747	-40	-0.15%
House 34	26,787	27,473	686	2.56%
House 35	26,787	26,822	35	0.13%
House 36	26,787	26,502	-285	-1.06%
House 37	26,787	27,430	643	2.40%
House 38	26,787	27,461	674	2.52%
House 39	26,787	26,057	-730	-2.73%
House 40	26,787	27,590	803	3.00%
House 41	26,787	27,706	919	3.43%
House 42	26,787	27,421	634	2.37%
House 43	26,787	28,086	1299	4.85%
House 44	26,787	26,170	-617	-2.30%
House 45	26,787	27,602	815	3.04%
House 46	26,787	27,999	1212	4.52%
House 47	26,787	25,553	-1234	-4.61%
House 48	26,787	25,716	-1071	-4.00%
House 49	26,787	25,772	-1015	-3.79%
House 50	26,787	25,702	-1085	-4.05%
House 51	26,787	25,757	-1030	-3.85%
Oahu BIU Deviation (House)				9.46%

Table 2 – Oahu Basic Island Unit Targets and Deviations (Senate Districts)

DISTRICT	BIU TARGET POPULATION	TOTAL_POP	DEVIATION FROM BIU TARGET	% DEVIATION FROM BIU TARGET
Senate 8	52,086	52,038	-48	-0.09%
Senate 9	52,086	52,162	76	0.15%
Senate 10	52,086	50,370	-1716	-3.29%
Senate 11	52,086	51,134	-952	-1.83%
Senate 12	52,086	51,948	-138	-0.26%
Senate 13	52,086	52,582	496	0.95%
Senate 14	52,086	52,704	618	1.19%
Senate 15	52,086	53,440	1354	2.60%
Senate 16	52,086	52,000	-86	-0.17%

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Senate 17	52,086	52,742	656	1.26%
Senate 18	52,086	53,096	1010	1.94%
Senate 19	52,086	51,591	-495	-0.95%
Senate 20	52,086	54,332	2246	4.31%
Senate 21	52,086	52,815	729	1.40%
Senate 22	52,086	53,578	1492	2.86%
Senate 23	52,086	50,666	-1420	-2.73%
Senate 24	52,086	49,905	-2181	-4.19%
Senate 25	52,086	50,444	-1642	-3.15%
Oahu BIU Deviation (Senate)				8.50%

Table 3 – Hawaii Basic Island Unit Targets and Deviations (House Districts)

DISTRICT	BIU TARGET POPULATION	TOTAL_POP	DEVIATION FROM BIU TARGET	% DEVIATION FROM BIU TARGET
House 1	26,327	26,628	301	1.14%
House 2	26,327	25,825	-502	-1.91%
House 3	26,327	26,015	-312	-1.19%
House 4	26,327	27,063	736	2.80%
House 5	26,327	26,152	-175	-0.66%
House 6	26,327	26,418	91	0.35%
House 7	26,327	26,185	-142	-0.54%
Hawaii BIU Deviation (House)				4.71%

Table 4 – Hawaii Basic Island Unit Targets and Deviations (Senate Districts)

DISTRICT	BIU TARGET POPULATION	TOTAL_POP	DEVIATION FROM BIU TARGET	% DEVIATION FROM BIU TARGET
Senate 1	61,429	58,784	-2645	-4.31%
Senate 2	61,429	63,807	2378	3.87%
Senate 3	61,429	61,695	266	0.43%
Hawaii BIU Deviation (Senate)				8.18%

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Table 5 – Maui Basic Island Unit Targets and Deviations (House Districts)

DISTRICT	BIU TARGET POPULATION	TOTAL_POP	DEVIATION FROM BIU TARGET	% DEVIATION FROM BIU TARGET
House 8	25,820	26,927	1107	4.29%
House 9	25,820	27,044	1224	4.74%
House 10	25,820	24,585	-1235	-4.78%
House 11	25,820	24,815	-1005	-3.89%
House 12	25,820	25,551	-269	-1.04%
House 13	25,820	25,998	178	0.69%
Maui BIU Deviation (House)				9.52%

Table 6 – Maui Basic Island Unit Targets and Deviations (Senate Districts)

DISTRICT	BIU TARGET POPULATION	TOTAL_POP	DEVIATION FROM BIU TARGET	% DEVIATION FROM BIU TARGET
Senate 4	51,640	53,971	2331	4.51%
Senate 5	51,640	49,400	-2240	-4.34%
Senate 6	51,640	51,549	-91	-0.18%
Maui BIU Deviation (Senate)				8.85%

Table 7 – Kauai Basic Island Unit Targets and Deviations (House Districts)

DISTRICT	BIU TARGET POPULATION	TOTAL_POP	DEVIATION FROM BIU TARGET	% DEVIATION FROM BIU TARGET
House 14	22,363	22,809	446	1.99%
House 15	22,363	21,955	-408	-1.82%
House 16	22,363	22,326	-37	-0.17%
Kauai BIU Deviation (House)				3.81%

Table 8 – Kauai Basic Island Unit Targets and Deviations (Senate Districts)

DISTRICT	BIU TARGET POPULATION	TOTAL_POP	DEVIATION FROM BIU TARGET	% DEVIATION FROM BIU TARGET
Senate 7	67,090	67,090	0	0.00%
Kauai BIU Deviation (Senate)				0.00%

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Statewide Deviation

The Commission is aware that federal courts generally review reapportionment and redistricting plans under a different methodology than set forth above. The federal courts generally seek to determine what is the maximum deviation percentage between the largest and smallest district in each house of the state legislature statewide. Under this methodology, the deviation percentages in the Commission's final reapportionment plan are as follows, as shown in Table 9 for the House of Representatives and Table 10 for the Senate:

Table 9 – House Statewide Targets and Deviations

DISTRICT	STATEWIDE TARGET POPULATION	DISTRICT POPULATION	DEVIATION FROM TARGET POPULATION	DEVIATION % FROM TARGET
House 1	26,350	26,628	278	1.06%
House 2	26,350	25,825	-525	-1.99%
House 3	26,350	26,015	-335	-1.27%
House 4	26,350	27,063	713	2.71%
House 5	26,350	26,152	-198	-0.75%
House 6	26,350	26,418	68	0.26%
House 7	26,350	26,185	-165	-0.63%
House 8	26,350	26,927	577	2.19%
House 9	26,350	27,044	694	2.63%
House 10	26,350	24,585	-1765	-6.70%
House 11	26,350	24,815	-1535	-5.83%
House 12	26,350	25,551	-799	-3.03%
House 13	26,350	25,998	-352	-1.34%
House 14	26,350	22,809	-3541	-13.44%
House 15	26,350	21,955	-4395	-16.68%
House 16	26,350	22,326	-4024	-15.27%
House 17	26,350	26,937	587	2.23%
House 18	26,350	27,256	906	3.44%
House 19	26,350	27,120	770	2.92%
House 20	26,350	26,898	548	2.08%
House 21	26,350	26,970	620	2.35%
House 22	26,350	27,693	1343	5.10%
House 23	26,350	25,969	-381	-1.45%
House 24	26,350	25,889	-461	-1.75%
House 25	26,350	26,299	-51	-0.19%
House 26	26,350	26,599	249	0.94%
House 27	26,350	26,173	-177	-0.67%
House 28	26,350	27,593	1243	4.72%
House 29	26,350	26,540	190	0.72%

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House 30	26,350	26,787	437	1.66%
House 31	26,350	26,149	-201	-0.76%
House 32	26,350	27,109	759	2.88%
House 33	26,350	26,747	397	1.51%
House 34	26,350	27,473	1123	4.26%
House 35	26,350	26,822	472	1.79%
House 36	26,350	26,502	152	0.58%
House 37	26,350	27,430	1080	4.10%
House 38	26,350	27,461	1111	4.22%
House 39	26,350	26,057	-293	-1.11%
House 40	26,350	27,590	1240	4.71%
House 41	26,350	27,706	1356	5.15%
House 42	26,350	27,421	1071	4.06%
House 43	26,350	28,086	1736	6.59%
House 44	26,350	26,170	-180	-0.68%
House 45	26,350	27,602	1252	4.75%
House 46	26,350	27,999	1649	6.26%
House 47	26,350	25,553	-797	-3.02%
House 48	26,350	25,716	-634	-2.41%
House 49	26,350	25,772	-578	-2.19%
House 50	26,350	25,702	-648	-2.46%
House 51	26,350	25,757	-593	-2.25%
Statewide Deviation (House-All)				23.27%

Table 10 – Senate Statewide Targets and Deviations

DISTRICT	STATEWIDE TARGET POPULATION	DISTRICT POPULATION	DEVIATION FROM TARGET POPULATION	DEVIATION % FROM TARGET
Senate 1	53,754	58,784	5030	9.36%
Senate 2	53,754	63,807	10053	18.70%
Senate 3	53,754	61,695	7941	14.77%
Senate 4	53,754	53,971	217	0.40%
Senate 5	53,754	49,400	-4354	-8.10%
Senate 6	53,754	51,549	-2205	-4.10%
Senate 7	53,754	67,090	13336	24.81%
Senate 8	53,754	52,038	-1716	-3.19%
Senate 9	53,754	52,162	-1592	-2.96%
Senate 10	53,754	50,370	-3384	-6.30%
Senate 11	53,754	51,134	-2620	-4.87%
Senate 12	53,754	51,948	-1806	-3.36%

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Senate 13	53,754	52,582	-1172	-2.18%
Senate 14	53,754	52,704	-1050	-1.95%
Senate 15	53,754	53,440	-314	-0.58%
Senate 16	53,754	52,000	-1754	-3.26%
Senate 17	53,754	52,742	-1012	-1.88%
Senate 18	53,754	53,096	-658	-1.22%
Senate 19	53,754	51,591	-2163	-4.02%
Senate 20	53,754	54,332	578	1.08%
Senate 21	53,754	52,815	-939	-1.75%
Senate 22	53,754	53,578	-176	-0.33%
Senate 23	53,754	50,666	-3088	-5.74%
Senate 24	53,754	49,905	-3849	-7.16%
Senate 25	53,754	50,444	-3310	-6.16%
Statewide Deviation (Senate-All)				32.91%

(5) *Explanation and justification for deviations among districts.*

The Commission decided to eliminate “canoe districts” because of the State of Hawaii’s long-standing policy of protecting the integrity of basic island units and the overwhelming public sentiment voiced against the use of “canoe districts” at the Commission’s public hearings and meetings. The State’s policy of protecting the integrity of basic island units is evidenced by Sections 4 and 6 of Article IV, State Constitution, the proceedings of certain constitutional conventions in the State, the work of prior reapportionment commissions, and the general history of reapportionment in the State. Based on universal dissatisfaction with canoe districts and in the absence of any supporting testimony, the 2011 Reapportionment Commission voted against the use of canoe districts.

When viewed under the method of comparing maximum deviations among State and House districts statewide, the elimination of “canoe districts” resulted in substantial deviations particularly for the basic island unit of Kauai. Given the size of Kauai’s population, providing Kauai with two Senate seats would result in Kauai being overrepresented in the Senate by 37.6%, and providing Kauai with one Senate Seat would result in Kauai being underrepresented in the Senate by 24.8%. Following the U.S. Supreme Court’s statements that underrepresentation of an area in one house can be balanced with overrepresentation of that area in the other house, the 2011 Commission again assigned three House of Representative seats to Kauai, which resulted in Kauai being overrepresented in the House of Representatives by -12.7%, balanced with underrepresentation in the Senate by +24.8%.

In previous court cases, equality of representation as it related to reapportionment among the basic island units has been measured by determining whether the total number of legislators (both House and Senate) representing each basic island unit is fair from the standpoint of population represented per legislator. *Burns v. Gill, supra*; *Blair v. Ariyoshi, supra*; see also Report and Reapportionment Plan of the 1973 Legislative Reapportionment Commission at page 26, and Report and Reapportionment Plan of the 1981 Reapportionment Commission, at page 31.

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This has been done as shown in Tables D and E below: (a) combining the number of state legislators in both the Senate and House of Representatives to determine the total number of legislators statewide; (b) determining the average number of persons that each legislator represents on a statewide basis by dividing the State’s total reapportionment population base by the total number of state legislators; (c) determining the average number of persons in each basic island unit that the state legislators apportioned to that basic island unit represent by dividing the reapportionment population base of that basic island unit by the number of state legislators allocated; and (d) comparing the average number of persons represented by the state legislators on each basic island unit to the average number of persons represented by each state legislator on a statewide basis. Based on this methodology, the maximum deviation in the allocation of legislative representation under the Commission’s final reapportionment plan is 9.3%.

Apportionment among basic island units

The following table shows the average number of permanent residents represented per legislator statewide and by Basic Island Unit. This number is derived by dividing the population by the total number of legislators apportioned in each Basic Island Unit. The total population of 1,343,843 divided by 76 equals 17,682, shown in Table D below.

Table D – Apportionment Among Basic Island Units – Average No. Represented

	State Base Population	Senate Seats	House Seats	Total Seats	Average Pop. Per Seat
State of Hawaii	1,343,843	25	51	76	17,682
Oahu	937,547	18	35	53	17,690
Hawaii	184,286	3	7	10	18,429
Maui	154,920	3	6	9	17,213
Kauai	67,090	1	3	4	16,773

Under the method of measuring legislative representation used in Burns v. Gill, 316 F. Supp. 1285, 1296 (D. Haw. 1970), the maximum statewide percentage deviation in the Commission’s apportionment among basic island units is 9.3%. The basic island unit percentage deviations are: Oahu 0.4%, Hawaii 4.2%, Maui -2.7% and Kauai -5.1%.

Method used to calculate deviation in Burns v. Gill (1970)

The next table depicts the deviation between the Basic Island Units for the average permanent resident population base for each legislator. For example, Kauai has 4 legislators, 1 Senator and 3 Representatives. Kauai’s population of 67,090 divided by 4 legislators equals a population per legislator of 16,773.

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Deviation is the difference between the statewide average population and the Basic Island Unit population as a percent of the statewide average population.

Each basic island unit will have a different deviation based on its population and the total number of legislators assigned to it. Using Kauai as an example: 16,773 – 17,682 equals -909, then -909 divided by 17,682 equals - 5.1% deviation, see Table E below.

Table E –Deviation Between Basic Island Units Using Total Number of Legislators

	State Base Population	Senate Seats	House Seats	Total Seats	Population Per Seat	Deviation
State of Hawaii	1,343,843	25	51	76	17,682	
Oahu	937,547	18	35	53	17,690	0.04%
Hawaii	184,286	3	7	10	18,429	4.2%
Maui	154,920	3	6	9	17,213	-2.7%
Kauai	67,090	1	3	4	16,773	-5.1%

By adding the largest positive deviation 4.2% on Hawaii to the largest negative deviation -5.1%, which is Kauai the statewide deviation, equals 9.3%.

This method serves a rational state policy articulated in the Hawaii Constitution, which recognizes the geographic insularity and unique political and socio-economic identities of the Basic Island Units.

As noted previously, the Commission also considered the size of deviations in its final reapportionment plan under other methodologies. Under the methodology generally used by federal courts, the size of the deviations, particularly as they relate to the basic island unit of Kauai, is substantial. However, the Commission still felt that its final reapportionment plan is justified by the state of Hawaii’s policy of protecting the integrity of political subdivisions (basic island units), the concerns of the public who historically have opposed canoe districts, the overall fairness in representation of each basic island unit when measured by the Huntington-Hill Method of Equal Proportions, and the nature of U.S. Supreme Court decisions to date.

STAGGERING OF STATE SENATE DISTRICT SEATS

1. Description of the methodology used.

The Commission’s staff identified each census block that did and did not have a regular election for State Senator in the year 2010. After the Commission approved its final reapportionment plan for the state legislative districts, the Commission’s staff: (a) determined the population in each new Senate district that had a regular Senate election in the year 2010; and (b) identified the twelve new Senate district seats that had the smallest percentage of population that had a regular Senate election in the year 2010. These twelve new Senate districts were designated by the Commission to have two-year terms in the next election. When considering the term “regular Senate election” as used in Article IV, Section 8 of the Hawaii Constitution, the Commission did not designate as “regular” elections those contests for vacancies held in conjunction with the regular 2010 Primary and General Elections. These two vacancies in Senate Districts 7 and 22 were caused by resignation of the incumbents to run for other offices in 2010, when both seats had two years remaining until expiration of the terms.

2. Designation of Senate district seats.

The 12 new Senate districts that will have two-year Senate terms in the 2012 election are:

Hawaii:	Senate Districts 1 and 3
Maui:	Senate Districts 5 and 6
Kauai:	Senate District 7
Oahu:	Senate Districts 12, 16, 17, 18, 21, 22 and 23

The remaining Senate districts will have four-year terms in the 2012 election.

RECOMMENDATIONS FOR FUTURE APPORTIONMENT

The Commission’s recommendations are for legislative consideration. Some call for statutory changes and others require amendments to the State Constitution, in either event to be considered for initiation by the Legislature. The Commission believes that initiation of changes should be considered by the Legislature during its Regular Session in a manner that allows for appropriate research and full participation by the public to assure that consensus is reached for needed improvements.

1. The permanent resident population base

The focus of reapportionment is representation of residents by their elected officials. The Commission worked diligently to balance opposing views about which residents of Hawaii should be counted in the population base for representation in the State Legislature. Commission members were mindful that a person excluded from Hawaii’s reapportionment population base, whether military, students or felons, would be not counted in any other state and thus would have

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no representation before any state legislature. The Constitution of Hawaii does not require Commissioners themselves to be permanent residents.

The following recommendations address ways to clarify the process and avoid delays in future reapportionment years.

a. Continue to use the extraction method used by 2011 Commission to implement current language in the Constitution, Article IV, Section 4.

Several changes beyond the Commission's control affected their ability to use the adjustment methods used in 1991 and 2001. In 2011, PACOM's liaison was extremely open and helpful in explaining the limits of military data reports, but acknowledged that military data collection was done for their purposes and may not be an exact "fit" for reapportionment. The 2011 Commission considered limitations beyond its control concerning data collection and reporting by agencies. For example:

- The most accurate count of active duty military personnel is by duty station, not residence;
- Enactment of federal laws governing dependents' home state, i.e., the Military Spouse Residency Relief Act (MSRRA, P.L. 111-97, 50 U.S.C. §571) ;
- Limited disclosure of student information governed by the Family Educational Rights and Privacy Act (FERPA, 20 U.S.C. §1232g), and
- Inconsistent types of data disclosed by various agencies.

Future Reapportionment Commissions may face the same or more stringent limitations on data available from previous sources other than the U.S. Census. The extraction method used by the 2011 Commission should be utilized if there is no change in Constitutional language before the next reapportionment in 2021.

Recommendation:

The 2011 Reapportionment Commission recommends that in future reapportionment years, the U.S. Census population base should be adjusted using U.S. Census figures for military personnel at their on-base residence in group quarters and non-resident university students who can be located by street address or zip codes that identify a specific location such as a dormitory. This method was selected as "Extraction A" by the 2011 Reapportionment Commission to adjust the population for reapportionment.

b. Clarify "permanent residents" as used in the Constitution of the State of Hawaii, Article IV, Section 4.

As noted throughout the proceedings of the 2011 Commission and its predecessors, the State Constitution, Hawaii Revised Statutes and case law do not provide a clear definition or specific criteria to determine the permanent resident population. This lack of clarity was the cause of "dissension ...and much delay" reported a decade earlier with the 2001 Commission as well as the 2011 proceedings.

Recommendation.

The 2011 Reapportionment Commission recommends that the legislature initiate appropriate changes in law to codify the method used by the 2011 Reapportionment Commission, above, to adjust the population base.

c. Alternative methods for population adjustment.

If the legislature or the Supreme Court determines that the above population adjustment is unacceptable, it will be necessary for the legislature to initiate changes to the Constitution. Without a clear definition and means of implementation of the population base, future Reapportionment Commissions will likely face similar delays and litigation. This concern was emphasized in the 1991 and 2001 Reapportionment Commissions' Final Reports as well.

All but two of the 50 states use the U.S. Census population as the base for legislative reapportionment. A majority of 2011 Commission members expressed a preference for this system prior to the preliminary vote on population adjustment on June 28, 2011, and two members voted against the "Extraction A" adjustment on September 19, 2011 for this reason.

Kansas is the only other state that does not use the Census population for state legislative reapportionment. However, Kansas' laws provide definitions, requirements for individuals or groups to extract, a process for identifying and locating individuals for extraction, and a system for mandatory reporting of each individual's status. This method allows Kansas residents to provide evidence that they should be included at their present address, included at a different address in the state, or excluded. Kansas's system of a statewide census does not produce a completely accurate extraction; for example, fewer than 1,000 of more than 25,000 active duty military members responded to the Kansas survey in 2011.

The 2011 Commission heard testimony on the population base at nearly all their meetings and public hearings. The majority of Commissioners expressed concern about extracting people who would meet a definition of permanent residents if there were objective criteria to define this status.

Numerous witnesses testified in favor of excluding or extracting all non-resident active duty military and dependents from the U.S. Census population to arrive at the permanent resident population, based on legislative reports and publications in 1992, when the Constitutional amendment was placed on the ballot for ratification by voters. A number of witnesses testified not on the characteristics or merits of these people's residency status but rather on the desire to allocate one more State Senate seat to the Big Island of Hawaii. Witnesses stated that Hawaii was "entitled" to an additional seat based on its population growth of 24.5% since 2000; however, the rate of growth in basic island units is not specified by the Constitution as the basis for allocating seats.

Other witnesses testified in favor of including some or all military and/or dependents in the population base to recognize greater integration of military families in local communities over the years, although the Census still reports military population residing on-base who appear to be in transit between assignments and others. There was discussion of considering objective factors other than the state designated for income tax withholding to determine status as

“permanent residents” for those previously not included in the population base. Further, a few legislators testified that they currently represent significantly larger districts than legislators whose districts were not affected by the 2001 extraction. They reported that it was challenging to determine who is a registered voter or permanent resident, as well as to provide service to a larger constituency with the same funding and staff as members with smaller districts.

Many witnesses used the term “non-residents” in place of “non-permanent residents,” even though “non-residents” were not counted, according to the U.S. Census. It was noted that the 2010 Census includes aliens, workers (other than military) assigned temporarily to Hawaii, children and some part-time residents in the population of Hawaii. These anomalies in persons being counted blurred the issue further, but it is the Big Island Senate seat issue that was mentioned most frequently by witnesses as the reason to make a larger extraction.

Nearly all the discussion concerning people to be extracted in 2011 centered on military personnel, who could not be located in the residence census block where they were counted in the Census, even if modeling or other adjustment techniques were developed. The major concerns about population figures received from military data agencies were:

- Active duty military personnel were counted accurately but were reported by duty station zip codes, not residence zip codes as in the past.
- The military’s designation of “resident” and “non-resident” personnel was based solely on the state chosen by the service member for state income tax withholding purposes.
- The military could provide residence or mailing addresses of dependents, but had no data to classify them as “resident” or “non-resident” dependents.
- Neither military nor civilian agencies collected other data that could be considered as indicia of permanency, such as home ownership, voter registration, school attendance, occupational licensing, payment of taxes and fees, vehicle registration, length of residency or other participation in civic and economic activities.

There was discussion of extracting military dependents, but there was no method of identifying which dependents were “permanent” or “non-permanent” unless assumptions were developed for disaggregation models. Although a few speakers suggested that incarcerated felons be counted at their homes instead of at a correctional facility, no action was taken to adjust these numbers and felons remained in the count at facilities in Hawaii or elsewhere.

Recommendation.

If the legislature or the Hawaii Supreme Court (see section on Reapportionment Lawsuits below) determines that the extraction applied in 2011 is not acceptable, the 2011 Reapportionment Commission recommends two alternatives to clarify the term “permanent residents” for reapportionment:

- *Do not exclude persons from the U.S. Census population and instead initiate an amendment to the Constitution designating the U.S. Census population as the population base for legislative reapportionment. This method was recommended by the Oahu Apportionment Advisory Council and was favored by some members of the Commission in their discussions and some public testimony.*
- or*

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- *Define who is and who is not a permanent resident of Hawaii for the purpose of the reapportionment population base and establish criteria for exclusion of such persons from the reapportionment population base.*
 - *Establish a method for excluding or subtracting persons from the U.S. Census population.*
 - *Establish a method for a person who is extracted to demonstrate that he or she meets the legal criteria for inclusion in the population base and that he or she should not be extracted for the purpose of reapportionment.*
 - *Provide funding for a statewide system to identify and locate an accurate population base for reapportionment prior to convening of the next Reapportionment Commission.*
- e. Determine the level of accuracy and certainty that will be required to exclude people from the population base that determines representation in the legislature.***

The 2011 Commission started with no clear legal standard to extract certain people from the U.S. Census population. Members of the Commission were particularly concerned that a higher degree of certainty should be used in making an extraction, given the importance of representation in the legislature.

In 1991 and 2001, Commissions used statistical surveying and modeling to arrive at the numbers of people to extract and locations from which they should be extracted. The 1991 Commission received a report from its consultant, the Social Science Research Institute (SSRI) at the University of Hawaii at Manoa. Although some extraction proponents suggested using the SSRI method of adjustment, it required population data that was not available to the 2011 Commission. The 1991 SSRI report took 10 single-spaced pages to describe the methodology for adjusting raw data before modeling could begin, noting many of the same problems faced by this year's Commission. The SSRI methodology covered only for active duty military and dependents, not non-resident students, felons or others. *See* 2001 Final Report at page A-196 *et seq.*

In 1991, SSRI itself stated: “The definition of ‘state of legal residence’ was a consistent problem over all of the services... The declaration of residency for the state of Hawaii is also problematic. In essence the qualification of residency for Hawaii can be satisfied by payment of State taxes, voting or simply by virtue of having lived here for a period of time. The definition is difficult to operationalize given the data available... The entire question [of] residency is characterized by a lack of a consistent rule to apply.” (*Ibid* at A-198, emphasis added)

The SSRI model for extraction relied on numerous assumptions, estimation and sampling or modeling methods that the current Commission did not deem sufficiently accurate. Further, such techniques did not give individuals any notice of extraction or a way to demonstrate that they should be counted based on their individual circumstances.

The Commission was unable to conduct a timely statewide survey of possible non-permanent residents, since such a survey needed to be done around the same time as the U.S. Census for valid data. Nor did the Commission have sufficient funding to develop and conduct a survey, such as the decennial statewide survey conducted in Kansas that cost approximately \$200,000 in 2010 and began planning two years before the federal census.

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Finally, the Commission's ability to require timely, accurate and mandatory reporting of non-permanent residents' status was and will continue to be limited by its scope of authority. It cannot, for example, require military personnel to respond to a survey about permanent resident status. While the Commission has statutory authority to obtain information from State agencies, such as the UH system, it cannot override federal privacy laws, such as the Family Educational Rights and Privacy Act (FERPA).

The 2011 Commission therefore considered an extraction process developed by its technical consultant, Environmental Systems Research Institute, Inc. (Esri). In essence, the Esri methods proposed extraction options for a lower number of people with higher certainty that persons being extracted were not permanent residents, or a higher number of people but lower certainty that those being extracted were not permanent residents. The Esri report did not recommend which level to choose but stated that the Commission's decision would depend on "the level of uncertainty the Commission deems acceptable when excluding populations for state redistricting." See Esri Final Report at 1-2. The Commission approved Extraction A, excluding 12,551 active duty military members living on-base in group quarters and 3,907 non-resident students who could be located by street address or 9-digit zip code, for a total of 16,458 persons extracted.

If Hawaii considers conducting its own survey to determine permanent residents, it will require significant funding and preparation. As a comparison, the State of Kansas conducted its 2010 statewide census of only active duty military (not dependents) and students, costing an estimated \$200,000 without an additional appropriation from the legislature. For 2011 legislative reapportionment, Kansas extracted fewer persons than Hawaii did (13,673 from Kansas vs. 16,458 from Hawaii). Kansas' population was reported as 2,853,118, more than twice the size of Hawaii's population of 1,360,301. See *Adjustment to the 2010 U.S. Decennial Census*, Kris W. Kobach, Kansas Secretary of State, July 26, 2011.

Recommendation.

If it is necessary to continue to adjust the state population for reapportionment, the 2011 Commission recommends that the legislature initiate changes in the law to establish a standard for accuracy in implementing the system and adequate funding for this purpose.

2. Consider geographical diversity in composition of the Commission.

The Commission was criticized as "Oahu-centric" based upon the fact that eight of the nine Commission members appointed were residents of Oahu and one member was from Maui. A second member relocated to the Big Island, his former home, during the Commission's proceedings. The Chair noted at public meetings that Commission members were appointed by elected officials and the Supreme Court, as mandated by the State Constitution, Article IV, Section 2. Some members of the public and Neighbor Island advisory councils suggested that the Commission be constituted to approximate the distribution of State population among the basic island units to increase fairness and diversity.

The 2011 Reapportionment Commission was able to deliberate in an open and collegial manner regardless of where members resided. The Commission finds nothing in the record to support any suggestion that they made decisions based on where they reside. The Commission

does not make a specific recommendation on composition of the body but, based on public input, brings it to the attention of the legislature for consideration and action if appropriate.

Recommendation.

The 2011 Reapportionment Commission recommends that the legislature review whether changes are needed to require appointment of commissioners from basic island units as suggested by witnesses, particularly those from the neighbor islands. The Commission makes no recommendation on this subject but conveys this concern expressed at public meetings and hearings, both to the legislature and to its leaders, the latter in their role as appointing authorities.

3. *Continue the role of the Advisory Councils as advisors to the Commission and as technical resources to the community.*

The purpose of the advisory councils is to advise and counsel the reapportionment commission with respect to apportionment and districting within their respective basic island units. This Commission was substantially aided by such advice and counsel. The councils actively participated in Commission meetings, commented on the Commission's plans, developed their own plans, and reviewed plans from local residents submitted on the Commission's mapping website. When Commission members and staff attended advisory council meetings on the Neighbor Islands, council and community members were very appreciative of the interaction.

The 2011 Commission continues to recognize the advisory councils as advocates for their respective basic island unit's interests. Unlike the 1991 Reapportionment Commission, which recommended elimination of the advisory councils, the current Commission found the advisory councils to be helpful to the public at local meetings, particularly as advisors on the new GIS mapping tools available to the public. Recommendations submitted by the advisory councils are included at the end of Appendix B.

Recommendation.

The Commission recommends that advisory councils continue to receive appropriate training to assist local communities with technical tools used by the public in reapportionment. Future Commissions may also consider scheduling meetings on the Neighbor Islands prior to approving a proposed plan and/or increasing member and staff interaction with the advisory councils.

4. *Legal matters – independent counsel to the Commission in limited circumstances*

The 2011 Reapportionment Commission included five attorneys, including a retired Circuit Court Judge as the chair; two former legislators, and a returning member of the 1991 and 2001 Commissions, appointed independently by legislative officers as provided by the Constitution. Future Commissions may not have this level of institutional memory and independent legal backgrounds and, in certain limited circumstances, may wish to consider legal counsel in addition to that provided by the department of the attorney general.

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The 2011 Commission encountered a legal situation that could occur in lawsuits filed against future commissions. A lawsuit challenging the 2011 Reapportionment Plan was filed on October 10, 2011 naming the Governor, the Commission, its individual members, the Office of Elections and the Chief Election Officer as respondents. The deputy attorneys general assigned to the Commission (hereinafter “the Commission’s attorneys”) represented all respondents except the Governor. The attorney general himself and a different deputy (hereinafter “the Governor’s attorneys”) represented the Governor, filing a response adverse to the position of the Commission and other respondents. A second lawsuit was filed on October 11, 2011, naming the Commission and the chief election officer as respondents.

It is not unusual for government attorneys in the same legal department to represent different government entities in the same legal matter. The unusual circumstance in 2011 was that prior to litigation, the Governor’s attorneys had issued an advisory letter on constitutional problems with the Commission’s decision on extraction. This advisory letter was cited by Petitioners in both cases as evidence that the Commission had not complied with the Constitution in its extraction decision.

The 2011 Commission had the perspectives of members’ past legal and Commission experiences that might not occur in future commissions. However, future Commissions might find that conflicting positions of the Commission and another State entity or individual(s) are of sufficient concern to seek independent counsel or at least evaluate the need for it. This would require the legislature to include contingency funds for this purpose in appropriations for future Commissions.

Recommendation.

The 2011 Reapportionment Commission recommends that future Commissions evaluate the need for independent counsel when the department of the attorney general: (a) represents both the Commission and another government entity or individual whose position is adverse to the Commission’s position, or (b) takes an action, including but not limited to issuing advice, on which the Commission wishes to obtain further counsel. The Commission recommends that the legislature provide funding for independent legal services, contingent upon such limited circumstances.

5. Clarify the term “regular election” as used to determine staggering of Senate terms, Article IV, Section 8 of the Constitution.

The Constitution of Hawaii requires that a state or county elected official must resign before seeking another state or county office if the term of the current office ends after the new office begins, Article II, Section 7. A gubernatorial election was held in 2010, the census year, and two members of the State Senate resigned prior to the end of their terms. As required by HRS, §17-3, elections to fill the vacancies were held in conjunction with the regular 2010 primary and general elections.

When the Commission considered staggering of senate terms, a question arose regarding whether the elections to fill vacancies were or were not regular elections for the purpose of staggering of terms. The Commission did not designate these vacancy elections as regular

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elections for this purpose; however, this designation is not expressly addressed in the Constitution or HRS Chapter 11-Elections or Chapter 17-Vacancies.

Recommendation.

The 2011 Reapportionment Commission recommends that the legislature initiate changes in the law to clarify that a state senate election held to fill a vacancy created when an incumbent resigns is not to be counted as a “regular election” for the purpose of computing staggering of state senate terms pursuant to Article IV, Section 8 of the Constitution.

6. Provide earlier funding for Commission operations.

Reapportionment funding was approved by the legislature on May 6, 2011 (House Bill 838) after the Commission was convened. Release of funding by the governor also was delayed until June after the Commission was convened. These factors beyond the control of the 2011 Commission delayed their initial work, including hiring of staff, retaining a technical consultant and beginning the population adjustment.

Recommendation:

The 2011 Reapportionment Commission recommends that in 2020-2021, the legislature expedite funding for the operation and staffing of the 2021 Reapportionment Commission to begin in the year prior to reapportionment or, at the latest, prior to appointment of Commission members. The governor should release funding as soon as possible after legislative approval.

REAPPORTIONMENT LAWSUITS

On October 10, 2011, the Commission was named as a Respondent in the lawsuit *Malama Solomon, Ph.D., et al. vs. Neil Abercrombie in his capacity as the Chief Executive Officer of the State of Hawaii, et al.*, No. SCWP-11-0000732. The Petitioners ask the Supreme Court of Hawaii to rule that the 2011 legislative reapportionment plan violates Article IV, Section 4, of the State Constitution, that the plan is invalid, and that a new plan should be drawn after extracting 106,031 people from the population base.

On October 11, 2011, the Commission was named as a Respondent in the lawsuit *Michael J. Matsukawa vs. State of Hawaii 2011 Reapportionment Commission, et al.*, No. SCWP-11-0000741. The Petitioner asks the Supreme Court to order the Commission to redraw the legislative district boundaries using a larger unspecified extraction number.

On November 18, 2011, the Commission’s attorneys filed an Answer in both lawsuits and deny Petitioners’ allegations and assert that the Commission complied with the State Constitution. On November 23, 2011, the Commission’s attorneys filed a Motion for Summary Judgment in both lawsuits, asserting that there is no dispute as to the facts in each case and that summary judgment should be entered in favor of the Commission. Responses by the parties were filed in December 2011.

The Supreme Court has set consolidated oral argument in the two lawsuits on January 4, 2012 at 9:00 a.m. at the Supreme Court Courtoom, Aliiolani Hale, 417 South King Street, Honolulu, Hawaii. A supplement to the Final Report will be issued in 2012.

CONCLUSION

The 2011 Reapportionment Commission approached its responsibilities in reapportioning and redistricting the U.S. Congressional Districts and the State legislature with great seriousness. The Commission believes that the final plans it has adopted are fair and equitable, and provide meaningful representation for the people of Hawaii. Members further believe that the recommendations made in this report, if adopted, will assist future reapportionment commissions. Although the tasks of reapportionment and redistricting were demanding, the members of the Commission are gratified for the opportunity to participate in this meaningful endeavor.

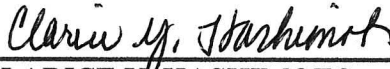
Respectfully submitted,



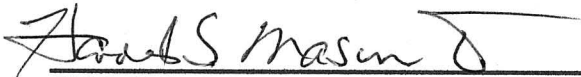
JUDGE VICTORIA S. MARKS (RET.), Chair



CALVERT CHIPCHASE IV



CLARICE Y. HASHIMOTO



HAROLD S. MASUMOTO



ELIZABETH N. MOORE



DYLAN W. NONAKA

/s/ Lorrie Lee Stone

LORRIE LEE STONE



ANTHONY P. TAKITANI



TERRY E. THOMASON

MINORITY REPORT

I respectfully disagree with the 2011 Reapportionment Commission's final report as it pertains to the permanent resident population and its use in the legislative reapportionment plan. I supported the Commission's congressional reapportionment plan and most of the 2011 Reapportionment Commission's legislative reapportionment plan, **with the exception of plans for Hawaii Senate, Oahu Senate and Oahu House.**

I believe the three plans mentioned above did not allocate legislative seats based upon the permanent resident population as required by the Constitution of the State of Hawaii, Article IV, Section 4. We know for a fact that there are 47,082 active duty military members who declared they are residents of another state. At the very least, this number needs to be extracted to comply with the Constitution. We extracted 16,458 persons. We are short by 30,524. I believe that one way or another, we are bound by the Constitution to make the complete extraction. Having failed to accomplish this, I submit this minority report.

Although I was critical of some of the decisions of the Commission, it should not be construed as criticism of my fellow Commission members. They were at all times cordial, dedicated and open to hearing the many views presented, and I was honored to serve Hawaii with them.

Thank you for the opportunity to clarify that I am not in agreement with portions of the legislative plan and Final Report of the 2011 Reapportionment Commission as described above.

DATED: December 19th, 2011 at Wailuku, Hawaii.

Respectfully submitted,



ANTHONY F. TAKITANI, Member