

THE CONSTITUTION OF THE STATE OF HAWAII

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ARTICLE IV REAPPORTIONMENT

Note

This article, entitled "Reapportionment," is new, added by Const Con 1978 and election Nov 7, 1978. The former Article IV, entitled "The Executive," now appears as Article V.

Cross References

Statutory provisions, see chapter 25.

Law Journals and Reviews

A History of Recent Reapportionment in Hawaii. 22 HBJ 171.

REAPPORTIONMENT YEARS

Section 1. The year 1973, the year 1981, and every tenth year thereafter shall be reapportionment years. [Add Const Con 1978 and election Nov 7, 1978]

REAPPORTIONMENT COMMISSION

Section 2. A reapportionment commission shall be constituted on or before May 1 of each reapportionment year and whenever reapportionment is required by court order. The commission shall consist of nine members. The president of the senate and the speaker of the house of representatives shall each select two members. Members of each house belonging to the party or parties different from that of the president or the speaker shall designate one of their number for each house and the two so designated shall each select two members of the commission. The eight members so selected, promptly after selection, shall be certified by the selecting authorities to the chief election officer and within thirty days thereafter, shall select, by a vote of six members, and promptly certify to the chief election officer the ninth member who shall serve as chairperson of the commission.

Each of the four officials designated above as selecting authorities for the eight members of the commission, at the time of the commission selections, shall also select one person from each basic island unit to serve on an apportionment advisory council for that island unit. The

councils shall remain in existence during the life of the commission and each shall serve in an advisory capacity to the commission for matters affecting its island unit.

A vacancy in the commission or a council shall be filled by the initial selecting authority within fifteen days after the vacancy occurs. Commission and council positions and vacancies not filled within the times specified shall be filled promptly thereafter by the supreme court.

The commission shall act by majority vote of its membership and shall establish its own procedures, except as may be provided by law.

Not more than one hundred fifty days from the date on which its members are certified, the commission shall file with the chief election officer a reapportionment plan for the state legislature and a reapportionment plan for the United States congressional districts which shall become law after publication as provided by law. Members of the commission shall hold office until each reapportionment plan becomes effective or until such time as may be provided by law.

No member of the reapportionment commission or an apportionment advisory council shall be eligible to become a candidate for election to either house of the legislature or to the United States House of Representatives in either of the first two elections under any such reapportionment plan.

Commission and apportionment advisory council members shall be compensated and reimbursed for their necessary expenses as provided by law.

The chief election officer shall be secretary of the commission without vote and, under the direction of the commission, shall furnish all necessary technical services. The legislature shall appropriate funds to enable the commission to carry out its duties. [Add Const Con 1978 and election Nov 7, 1978; am HB 2322 (1992) and election Nov 3, 1992]

CHIEF ELECTION OFFICER

Section 3. The legislature shall provide for a chief election officer of the State, whose responsibilities shall be as provided by law and shall include the supervision of state elections, the maximization of registration of eligible voters throughout the State and the maintenance of data concerning registered voters, elections, apportionment and districting. [Add Const Con 1978 and election Nov 7, 1978]

APPORTIONMENT AMONG BASIC ISLAND UNITS

Section 4. The commission shall allocate the total number of members of each house of the state legislature being reapportioned among the four basic island units, namely: (1) the island of Hawaii, (2) the islands of Maui, Lanai, Molokai and Kahoolawe, (3) the island of Oahu and all other islands not specifically enumerated, and (4) the islands of Kauai and Niihau, using the total number of permanent residents in each of the basic island units and computed by the method known as the method of equal proportions; except that no basic island unit shall receive less than one member in each house. [Add Const Con 1978 and election Nov 7, 1978; am HB 2327 (1992) and election Nov 3, 1992]

Case Notes

Plaintiff citizens had not shown a likelihood of succeeding on their claim that Hawaii's legislative reapportionment plan's use of a permanent resident base, coupled with extraction of military personnel, their dependents, and students, constituted an equal protection violation for the purpose of a preliminary injunction; further, the equities and public interest tipped overwhelmingly in defendant reapportionment commission's favor, as any preliminary relief at this stage would significantly upend the election process; plaintiff's motion for preliminary injunction denied. 878 F. Supp. 2d 1124 (2012).

Where the final reapportionment plan included thousands of non-permanent university student residents and non-permanent active duty military residents, as well as thousands of other non-permanent residents who were the dependents of the non-permanent active duty military residents, the plan disregarded the express mandate of this section that only permanent residents be counted in the population base for the purpose of reapportionment of the state legislature; the inclusion of non-permanent residents was an error in the plan rendering the plan constitutionally invalid under this section. 126 H. 283, 270 P.3d 1013 (2012).

MINIMUM REPRESENTATION FOR BASIC ISLAND UNITS

Section 5. The representation of any basic island unit initially allocated less than a minimum of two senators and three representatives shall be augmented by allocating thereto the number of senators or representatives necessary to attain such minimums which number, notwithstanding the provisions of Sections 2 and 3 of Article III shall be added to the membership of the appropriate body until the next reapportionment. The senators or representatives of any basic island unit so augmented shall exercise a fractional vote wherein the numerator is the number initially allocated and the denominator is the minimum above specified. [Am Const Con 1968 and election Nov 5, 1968; ren Const Con 1978 and election Nov 7, 1978]

Note

A proposal of the 1978 Constitutional Convention deleting this provision from the Constitution was not validly ratified. Kahalekai v. Doi, 60 H. 324, 590 P.2d 543. In view of the holding, the revisor has restored this provision (formerly a part of section 4 of the old Article III), with a necessary change in reference, and renumbered it as section 5 under the authority of Resolution No. 29 of the 1978 Constitutional Convention.

APPORTIONMENT WITHIN BASIC ISLAND UNITS

Section 6. Upon the determination of the total number of members of each house of the state legislature to which each basic island unit is entitled, the commission shall apportion the members among the districts therein and shall redraw district lines where necessary in such manner that for each house the average number of permanent residents per member in each district is as nearly equal to the average for the basic island unit as practicable.

In effecting such redistricting, the commission shall be guided by the following criteria:

1. No district shall extend beyond the boundaries of any basic island unit.
2. No district shall be so drawn 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, such as streets, streams and clear geographical features, and, when practicable, shall coincide with census tract boundaries.
6. Where practicable, representative districts shall be wholly included within senatorial districts.
7. Not more than four members shall be elected from any district.

8. Where practicable, submergence of an area in a larger district wherein substantially different socio-economic interests predominate shall be avoided. [Add Const Con 1978 and election Nov 7, 1978; am HB 2327 (1992) and election Nov 3, 1992]

Note

A proposal of the 1978 Constitutional Convention adding to the second paragraph an item 9 reading: "9. No consideration shall be given to holdover senators in effecting redistricting." was not validly ratified. Kahalekai v. Doi, 60 H. 324, 590 P.2d 543. In view of the holding, the revisor has deleted the provision under the authority of Resolution No. 29 of the 1978 Constitutional Convention.

In view of the addition to this article of a new section 5, the revisor has renumbered this section as section 6 under the authority of Resolution No. 29.

Case Notes

Plaintiff citizens had not shown a likelihood of succeeding on their claim that Hawaii's legislative reapportionment plan's use of a permanent resident base, coupled with extraction of military personnel, their dependents, and students, constituted an equal protection violation for the purpose of a preliminary injunction; further, the equities and public interest tipped overwhelmingly in defendant reapportionment commission's favor, as any preliminary relief at this stage would significantly upend the election process; plaintiff's motion for preliminary injunction denied. 878 F. Supp. 2d 1124 (2012).

"Compact and contiguous" districts discussed in context of council district reapportionment plan under city charter. 75 H. 463, 868 P.2d 1183.

ELECTION OF SENATORS AFTER REAPPORTIONMENT

Section 7. Regardless of whether or not a senator is serving a term that would have extended past the general election at which an apportionment plan becomes effective, the term of office of all senators shall end at that general election. The staggered terms of senators in each district shall be recomputed as established by the next section in this article, and the number of senators in a senatorial district under the reapportionment plan of the commission. [Add Const Con 1978 and election Nov 7, 1978; am SB 2234 (1992) and election Nov 3, 1992; am HB 1 (2000 2d) and election Nov 7, 2000]

Revision Note

Renumbered from section 6 under the authority of Resolution No. 29 of the 1978 Constitutional Convention.

STAGGERED TERMS FOR THE SENATE

Section 8. The reapportionment commission shall, as part of the reapportionment plan, assign two-year terms for twelve senate seats for the election immediately following the adoption of the reapportionment plan. The remaining seats shall be assigned four-year terms. Insofar as practicable, the commission shall assign the two-year terms to senate seats 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 the reapportionment year; provided that in the event of a multi-member senate district, the senators elected with the highest number of votes in that district in the election immediately following the adoption of the reapportionment plan shall fill the senate seats in that district which were assigned the four-year terms by the commission. [Add Const Con 1978 and election Nov 7, 1978; am HB 572 (1987) and election Nov 8, 1988; am SB 2234 (1992) and election Nov 3, 1992; am HB 1 (2000 2d) and election Nov 7, 2000]

Revision Note

Renumbered from section 7 under the authority of Resolution No. 29 of the 1978 Constitutional Convention.

CONGRESSIONAL REDISTRICTING FOR UNITED STATES HOUSE OF REPRESENTATIVES

Section 9. The commission shall, at such times as may be required by this article and as may be required by law of the United States, redraw congressional district lines for the districts from which the members of the United States House of Representatives allocated to this State by Congress are elected. [Add Const Con 1978 and election Nov 7, 1978]

Revision Note

Renumbered from section 8 under the authority of Resolution No. 29 of the 1978 Constitutional Convention.

Case Notes

Plaintiff citizens had not shown a likelihood of succeeding on their claim that Hawaii's legislative reapportionment plan's use of a permanent resident base, coupled with extraction of military personnel, their dependents, and students, constituted an equal protection violation for the purpose of a preliminary injunction; further, the equities and public interest tipped overwhelmingly in defendant reapportionment commission's favor, as any preliminary relief at this stage would significantly upend the election process; plaintiff's motion for preliminary injunction denied. 878 F. Supp. 2d 1124 (2012).

MANDAMUS AND JUDICIAL REVIEW

Section 10. Original jurisdiction is vested in the supreme court of the State to be exercised on the petition of any registered voter whereby it may compel, by mandamus or otherwise, the appropriate person or persons to perform their duty or to correct any error made in a reapportionment plan, or it may take such other action to effectuate the purposes of this section as it may deem appropriate. Any such petition shall be filed within forty-five days of the date specified for any duty or within forty-five days after the filing of a reapportionment plan. [Add Const Con 1978 and election Nov 7, 1978]

Revision Note

Renumbered from section 9 under the authority of Resolution No. 29 of the 1978 Constitutional Convention.

Attorney General Opinions

Delegates to convention devising reapportionment plan are not prohibited from becoming candidates under the new plan. Att. Gen. Op. 77-3.

Case Notes

Use of registered voters as basis of apportionment. 384 U.S. 73, 84, 90, upon review of 238 F. Supp. 468, 240 F. Supp. 724.

Whether reapportionment can be as infrequent as every ten years if registered voters used as basis raised but not decided. 384 U.S. 73, 96, upon review of 238 F. Supp. 468, 240 F. Supp. 724.

Last clause providing for minimum representation is invalid. 316 F. Supp. 1285.

Method of equal proportions is constitutionally permissible; so is use of registered voters as basis of apportionment. 316 F. Supp. 1285.

Provisions for minimum representation and fractional voting are invalid. 316 F. Supp. 1285.

Direction for first reapportionment held applicable to initial state elections held pursuant to §§6 and 7(a) of Hawaii Admission Act, 73 Stat 4. 43 H. 261.

Departure from strict adherence to allocation under method of equal proportions permitted to balance off inequities. 55 H. 85, 515 P.2d 1253.

Determination that first senatorial district shall consist of the whole island of Hawaii does not violate criterion that "insofar as practicable, districts shall be compact". 55 H. 89, 515 P.2d 1249.

CHAPTER 25
[REAPPORTIONMENT]

SECTION

- 25-1 Reapportionment commission**
- 25-2 Duties**
- 25-3 Powers**
- 25-4 Penalty for violation and false evidence**
- 25-5 Compensation**
- 25-6 Cooperation**
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Law Journals and Reviews

A History of Recent Reapportionment in Hawaii. 22 HBJ 171.

§25-1 Reapportionment commission. (a) A reapportionment commission shall be constituted before May 1 of each reapportionment year, and the members shall be appointed and certified to hold office until a general election is held under a reapportionment plan of the commission, or of a court of competent jurisdiction, or a new commission is constituted under article IV, section 2 of the state constitution, whichever event shall occur first.

(b) The reapportionment commission shall be placed within the office of elections for administrative purposes only.

(c) In each regular session of the legislature that immediately precedes a reapportionment year, the chief election officer shall request an appropriation that is separate from the office of elections' operating budget and sufficient to enable the commission to carry out its duties, to be effective in the year in which the reapportionment commission is constituted.

[L 1969, c 79, §1; am L 1979, c 51, §2; am L 1982, c 249, §2; am L 1992, c 320, §2; am L 2012, c223, §1]

§25-2 Duties. (a) Legislative reapportionment. The commission shall reapportion the members of each house of the legislature on the basis, method, and criteria prescribed by the Constitution of the United States and article IV of the Hawaii Constitution. Pursuant thereto, the commission shall conduct public hearings and consult with the apportionment advisory council of each basic island unit. Not more than one hundred days from the date on which all members are certified, the commission shall cause to be given in each basic island unit, public notice of a legislative reapportionment plan prepared and proposed by the commission. At least one public hearing on the proposed reapportionment plan shall be held in each basic island unit after initial public notice of the plan. At least twenty days' notice shall be given of the public hearing. The notice shall include a statement of the substance of the proposed reapportionment plan, and of the date, time, and place where interested persons may be heard thereon. The notice shall be given at least once in the basic island unit where the hearing will be held. All interested persons shall be afforded an opportunity to submit data, views, or arguments, orally or in writing, for consideration by the commission. After the last of the public hearings, but in no event later than one hundred fifty days from the date on which all members of the commission are certified, the commission shall determine whether or not the plan is in need of correction or modification, make the correction or modification, if any, and file with the chief election officer, a final legislative reapportionment plan. Within fourteen days after the filing of the final reapportionment plan, the

chief election officer shall cause public notice to be given of the final legislative reapportionment plan which, upon public notice, shall become effective as of the date of filing and govern the election of members of the next five succeeding legislatures.

(b) Congressional reapportionment. At times that may be required by the Constitution and that may be required by law of the United States, the commission shall redraw congressional district lines for the districts from which the members of the United States House of Representatives allocated to this State shall be elected. The commission shall first determine the total number of members to which the State is entitled and shall then apportion those members among single member districts so that the average number of persons in the total population counted in the last preceding United States census per member in each district shall be as nearly equal as practicable. In effecting the reapportionment and districting, the commission shall be guided by the following criteria:

- (1) No district shall be drawn so as to unduly favor a person or political party;
- (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 such as streets, streams, and clear geographical features, and when practicable, shall coincide with census tract boundaries;
- (5) Where practicable, state legislative districts shall be wholly included within congressional districts; and
- (6) Where practicable, submergence of an area in a larger district wherein substantially different socio-economic interests predominate shall be avoided.

Not more than one hundred days from the date on which all members are certified, the commission shall cause public notice to be given of a congressional reapportionment plan prepared and proposed by the commission. The commission shall conduct public hearings on the proposed plan in the manner prescribed under subsection (a). At least one public hearing shall be held in each basic island unit after initial public notice of the plan. After the last of the public hearings, but in no event later than one hundred fifty days from the date on which all members of the commission are certified, the commission shall determine whether or not the plan is in need of correction or modification, make the correction or modification, if any, and file with the chief election officer, a final congressional reapportionment plan. Within fourteen days after filing of the final reapportionment plan, the chief election officer shall cause public notice to be given of the final congressional reapportionment plan which, upon public notice, shall become effective as of the date of filing and govern the election of members of the United States House of Representatives allocated to this State for the next five succeeding congresses. [L 1969, c 79, §2; am L 1979, c 51, §3; am L 1992, c 320, §3; am L 1998, c 2, §8]

Note

L 1990, c 199 amendment canceled by nonratification of amendments to Const. art. IV, §§4 to 6.

Law Journals and Reviews

Trailblaze or Retreat? Political Gerrymandering After Vieth v. Jubelirer. 27 UH L. Rev. 269.

Case Notes

Plaintiff citizens had not shown a likelihood of succeeding on their claim that Hawaii's legislative reapportionment plan's use of a permanent resident base, coupled with extraction of military personnel, their dependents, and students, constituted an equal protection violation for the purpose of a preliminary injunction; further, the equities and public interest tipped overwhelmingly in defendant reapportionment commission's favor, as any preliminary relief at this stage would significantly upend the election process; plaintiff's motion for preliminary injunction denied. 878 F. Supp. 2d 1124 (2012).

Hawaii's choice of a permanent resident population base for the 2012 reapportionment plan was constitutionally permissible; among other things, there was no evidence that Hawaii discriminated unreasonably among non-resident groups. 960 F. Supp. 2d 1074 (2013).

Plaintiffs had standing to assert equal protection challenges to Hawaii's 2012 reapportionment plan, where plaintiffs had suffered the injury of losing an Oahu senate seat and three of the plaintiffs lived in underrepresented districts. 960 F. Supp. 2d 1074 (2013).

Where plaintiffs contended that the reapportionment commission violated the equal protection clause by apportioning Hawaii's legislative districts unequally, the reapportionment commission's justifications for the challenged population deviations embodied rational, legitimate, and substantial state policies, and the 2012 reapportionment plan reasonably advanced those policies in a neutral and nondiscriminatory manner. 960 F. Supp. 2d 1074 (2013).

§25-3 Powers. The commission may require all such persons as it deems necessary to appear personally and testify before it and to produce to it all books, records, files, papers, maps and documents as shall appear to be necessary for the purpose of formulating a reapportionment plan. The chairperson of the commission or any member thereof acting on behalf of the chairperson shall have power to administer oaths to persons summoned to appear before the commission and such persons may be questioned, under oath, concerning all matters necessary for the due execution of the duties vested in the commission by the Constitution and by this chapter. All hearings and proceedings shall be governed by this chapter and by rules of practice and procedure established by the commission. A majority of its membership shall constitute a quorum to do business, and the concurrence of a majority of its membership shall be necessary to make any action of the commission valid. Meetings shall be called and held at the call of the chairperson or by a quorum. [L 1969, c 79, §3; gen ch 1993]

§25-4 Penalty for violation and false evidence. Any person who, having been summoned under section 25-3 to give testimony or to produce any books, records, files, papers, maps and documents, wilfully makes default, or who, having appeared, refuses to answer any questions or wilfully gives false evidence shall be fined not more than \$1,000, or imprisoned not more than twelve months, or both. [L 1969, c 79, §4]

§25-5 Compensation. Each of the members of the reapportionment commission selected and certified shall, for the period the member holds the member's office, receive compensation of \$50 per meeting but not to exceed \$1,000 per month and shall be allowed actual and necessary expenses incurred in the performance of the member's duties. Payments for compensation and expenses shall be paid by warrants signed by the comptroller upon vouchers properly endorsed by the chairperson of the commission. The members of the commission shall be exempt from the provisions of chapter 76. [L 1969, c 79, §5; am L 1973, c 217, §9(a); gen ch 1985, 1993; am L 2000, c 253, §150]

§25-6 Cooperation. The commission may request and shall receive from every department, division, board, bureau, commission or other agency of the State cooperation and assistance in the performance of its duties. [L 1969, c 79, §6]

§25-7 Apportionment advisory councils. The apportionment advisory councils for the respective basic island units shall be constituted at the same time as the reapportionment commission and the members shall be appointed to hold their offices for such term in the manner prescribed in Article IV of the Constitution. Each advisory council shall serve in an advisory

capacity to the reapportionment commission as to matters affecting its basic island unit. Each member shall be a registered voter of the member's basic island unit. A member of a council shall, for the period the member holds the member's office, receive compensation of \$50 per meeting but not to exceed \$500 per month and shall be allowed actual and necessary expenses incurred in the performance of the member's duties. Payments for compensation and expenses shall be made by warrants signed by the comptroller on vouchers properly endorsed by the chairperson of the appropriate advisory council. The members of the council shall be exempt from the provisions of chapter 76. Each council shall elect its own chairperson and may elect other officers as may be necessary to carry out its functions. Meetings shall be called and held at the call of the chairperson or by a quorum which shall be a majority of the members. [L 1969, c 79, §7; am L 1973, c 217, §9(b); am L 1979, c 51, §4; gen ch 1993; am L 2000, c 253, §150]

§25-8 Records, reports. The commission shall keep a written record of its meetings and hearings and shall submit a written report to the legislature twenty days prior to the regular session next convening. [L 1969, c 79, §8; am L 1992, c 320, §4]

Law Journals and Reviews

Ensuring the Right to Equal Representation: How to Prepare or Challenge Legislative Reapportionment Plans. 5 UH L. Rev. 1.

Case Notes

Reapportionment and redistricting of senatorial and representative districts for the State effective as of the 1982 elections. 552 F. Supp. 554.

Departure from strict adherence to allocation under method of equal proportions permitted to balance off inequities. 55 H. 85, 515 P.2d 1253.

Determination that first senatorial district shall consist of the whole island of Hawaii does not violate criterion set forth in article III, §4 of the state constitution that "insofar as practicable, districts shall be compact." 55 H. 89, 515 P.2d 1249.

[§25-9] Commission; continuance after challenge of plan. In the event of a successful court challenge of a reapportionment plan, the reapportionment commission shall continue in operation and may assist the court in formulating a new reapportionment plan. [L 1992, c 320, §1]

FREQUENTLY ASKED QUESTIONS

What is reapportionment?

Reapportionment is the process of dividing the number of State representatives and senators among the State's population in order to assure, as close as possible, districts of equal population size. Additionally, the Reapportionment Commission is required to redraw the congressional district lines for the districts associated with the State's members of the U.S. House of Representatives.

What is the difference between reapportionment and redistricting?

While the terms are often used interchangeably, "reapportionment" refers to the allocation of seats among the basic island units, whereas "redistricting" concerns the drawing of district lines.

When is reapportionment conducted?

Reapportionment is conducted once every 10 years.

What is the Reapportionment Commission?

State law requires the establishment of a bipartisan commission to conduct reapportionment. The leaders of the legislature's majority and minority parties name members to serve on the Reapportionment Commission. Each party names four members, for a total of eight members. The eight commission members, by a vote of six members, are to select a ninth member to serve as commission chair. Otherwise, the Hawaii State Supreme Court selects the ninth member.

The State Office of Elections provides support services to the Commission via the Reapportionment Project Office. The Chief Election Officer serves as the commission's secretary.

What is the Advisory Council?

The Advisory Council is comprised of 16 members, four from each basic island unit - Hawaii, Kauai, Maui, Oahu. The Advisory Council serves in an advisory capacity to the commission for matters affecting its island unit. The leaders of the legislature's majority and minority parties name members to serve on the Advisory Council.

How long does the Reapportionment Commission have to complete its tasks?

The commission has two important deadlines.

The first is 100 days after the appointment of the commission chair. The commission shall produce an initial draft reapportionment plan for public comment and review. Meetings are held statewide to gather input from the public.

The second deadline 150 days after the appointment of the commission chair. At this time, the final reapportionment plan is submitted to the Chief Election Officer.

What other elective offices in Hawaii are subject to reapportionment?

The counties of Hawaii and Honolulu conduct redistricting of council seats.