

**"CHAPTER 25  
[REAPPORTIONMENT]**

Section

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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, c 223, §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]