
A BILL FOR AN ACT

RELATING TO LEGISLATIVE REAPPORTIONMENT.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. The legislature finds that pursuant to
2 article IV of the Hawaii State Constitution, Hawaii reapportions
3 its state legislative and federal congressional districts every
4 ten years, after the decennial United States census. The United
5 States Census Bureau counts a state's "usual residents",
6 determined by the place where a person lives and sleeps most of
7 the time and is not necessarily the same as the person's voting
8 residence or legal residence. The Census Bureau provides a
9 lengthy document considering various living situations to
10 determine who qualifies as a "usual resident" of a state. For
11 example, tourists and business travelers are excluded as usual
12 residents of a state, but active duty military personnel who are
13 usual residents of a state are included in the census count for
14 that state. In addition, students attending college away from
15 their parental homes are counted as usual residents for the
16 state where they live and attend school.



1 The Hawaii State Constitution requires the reapportionment
2 commission to use the United States census' usual residents
3 figure as Hawaii's total population for purposes of apportioning
4 Hawaii's federal congressional districts. The Hawaii State
5 Constitution requires the reapportionment commission to allocate
6 the total number of members of each house of the legislature
7 among the four basic island units by using the total number of
8 permanent residents in each of the basic island units. However,
9 the term "permanent resident" is not defined, either by law or
10 by the courts.

11 In 2010, the reapportionment commission excluded
12 approximately one hundred eight thousand usual residents from
13 its final reapportionment plan for the legislature as a result
14 of a lawsuit adjudicated by the Hawaii supreme court. The
15 permanent resident population used in the final plan was taken
16 to be the total usual resident population of the State as shown
17 in the last United States census less groups consisting of
18 students and military families deemed not to be permanent
19 residents of Hawaii. No consideration was given to persons in
20 these groups as individuals per census protocols. In *Solomon v.*
21 *Abercrombie*, 126 Hawaii 283 (2012), the state supreme court,



1 without defining what constitutes permanent residency, held that
2 the 2010 final reapportionment plan that included persons deemed
3 not to be permanent residents in the population base, was
4 constitutionally invalid. As a result, the reapportionment
5 commission submitted a 2012 final reapportionment plan, which
6 resulted in one senate seat moving from the Oahu basic island
7 unit to the Hawaii basic island unit.

8 Shortly after the 2012 final reapportionment plan was
9 presented, parties filed a lawsuit in federal court against the
10 chief elections officer, reapportionment commission, and members
11 of the reapportionment commission that the extraction of active
12 duty military personnel, military dependents, and university
13 students deemed not to be permanent residents from the
14 apportionment population base violated Equal Protection Clause
15 of the United States Constitution. In *Kostick v. Nago*, 878
16 F.Supp.2d 1124 (2012), the court held that citizens were not
17 likely to succeed on the merits of their equal protection
18 challenge to population basis.

19 The legislature finds that excluding all military families
20 and university students deemed not to be permanent residents of
21 Hawaii from the population base for the purposes of



1 apportionment deprives these people from apportionment to any
2 other legislative body in the nation. These individuals are
3 included as usual residents of Hawaii in the United States
4 Census. They are not considered a resident of any other state
5 for the purpose apportionment to its legislative bodies.

6 The purpose of this Act is to:

- 7 (1) Define "permanent resident" for legislative
8 reapportionment as any individual counted as a usual
9 resident of the State in the last preceding United
10 States census; and
- 11 (2) Require reapportionment to be done using data on the
12 total number of permanent residents in the State.

13 SECTION 2. Section 25-2, Hawaii Revised Statutes, is
14 amended by amending subsection (a) to read as follows:

15 "(a) Legislative reapportionment. The commission shall
16 reapportion the members of each house of the legislature on the
17 basis, method, and criteria prescribed by the Constitution of
18 the United States and article IV of the Hawaii Constitution[-],
19 and using population data of the total number of permanent
20 residents within the State; provided that "permanent resident"
21 means any person counted as a usual resident of the State in the



1 last preceding United States census. Pursuant thereto, the
2 commission shall conduct public hearings and consult with the
3 apportionment advisory council of each basic island unit. Not
4 more than one hundred days from the date on which all members
5 are certified, the commission shall cause to be given in each
6 basic island unit, public notice of a legislative
7 reapportionment plan prepared and proposed by the commission.
8 At least one public hearing on the proposed reapportionment plan
9 shall be held in each basic island unit after initial public
10 notice of the plan. At least twenty days' notice shall be given
11 of the public hearing. The notice shall include a statement of
12 the substance of the proposed reapportionment plan, and of the
13 date, time, and place where interested persons may be heard
14 thereon. The notice shall be given at least once in the basic
15 island unit where the hearing will be held. All interested
16 persons shall be afforded an opportunity to submit data, views,
17 or arguments, orally or in writing, for consideration by the
18 commission. After the last of the public hearings, but in no
19 event later than one hundred fifty days from the date on which
20 all members of the commission are certified, the commission
21 shall determine whether or not the plan is in need of correction



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1 or modification, make the correction or modification, if any,
2 and file with the chief election officer, a final legislative
3 reapportionment plan. Within fourteen days after the filing of
4 the final reapportionment plan, the chief election officer shall
5 cause public notice to be given of the final legislative
6 reapportionment plan which, upon public notice, shall become
7 effective as of the date of filing and govern the election of
8 members of the next five succeeding legislatures."

9 SECTION 3. Statutory material to be repealed is bracketed
10 and stricken. New statutory material is underscored.

11 SECTION 4. This Act shall take effect upon its approval.

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INTRODUCED BY: _____

Calvin K. Ay

JAN 22 2018



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Report Title:

Legislative Reapportionment; Permanent Resident; Reapportionment Commission

Description:

Defines "permanent resident" for legislative reapportionment as any individual counted as a usual resident of the State in the last preceding United States census and requires reapportionment to be done using data on the total number of permanent residents in the State.

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