

# Redistricting 2011

## Statutory and Constitutional Provisions

**R**eapportionment. Redistricting. At the beginning of each decade, the words are trotted out, dusted off, and put to work by legislative bodies across the United States.

Although the words have a long and illustrious history, their precise meanings have proved somewhat elusive. Even the United States Supreme Court has been observed treating them like synonyms—which they're not.

So what, exactly, is meant by "reapportionment" and "redistricting"?

### Reapportionment

*Webster's Third New International Dictionary* tells us that to "apportion" is (in the political context) "to assign among the states in proportion to population." To "reapportion" is simply to make this assignment again, which is what is done early in the year following each decennial census, when the President transmits to Congress a statement showing how many seats in the U.S. House of Representatives each state can claim, based on its newly calculated population.

Until 1941, this state-by-state determination was done by simply dividing the total population of the United States by the number of congressional seats. In that year, however, a more complicated formula was adopted. The formula ensures that the portion of a state's population that is "left over" following the simple-division approach is factored in when congressional seats are allocated.

Reapportionment, then, is a process that 1) is done on the federal level and 2) has to do with determining how many seats each state gets in the U.S. House of Representatives.

### Redistricting

**A**nd what of that other term, "redistricting"? One hardly needs to consult *Webster's* to figure out that to "district" is to divide a geographical entity into smaller units. For example, after every decennial census, the State of Nebraska is reconfigured or redistricted into geopolitical units. Voters in each of these districts then elect someone to represent them as a member of whatever political body the district pertains to.

In 2011, as it does every 10 years, the Nebraska Legislature will create new district boundaries for itself and for Nebraska's seats in the U.S. House of Representatives, as well as for several other statewide bodies—the Public Service Commission, the State Board of Education, the Board of Regents, and the Supreme Court.

The U.S. Census Bureau releases population estimates every year. County population figures from the previous census are adjusted for births, deaths, and migration. These figures are then added together to provide state population estimates.

The population of the State of Nebraska based on the 2000 census was 1,711,263—6,499 more than the immediately preceding population estimate, which was published July 1, 1999. The most recent estimate, from July 1, 2008, puts Nebraska's population at 1,783,432.

Population estimates are also available for some smaller units of geography, such as cities and villages. However, there are no estimates available for any of the smaller geographic units, such as voting precincts or census blocks, that are used in drawing redistricting maps.

With all this in mind, it's easy to see that *reapportionment*, done by the federal government, is the easy task. It involves (relatively) simple math. The heavy lifting, *redistricting*, is done by the states, whose decisions can be influenced by any number of factors—*e.g.*, political, historical, geographic—in addition to simple population counts.

But population is always the bottom line in any redistricting process

undertaken under the laws of the United States. A discussion of relevant federal and state laws follows.

### Federal Constitutional Provisions

**A**rticle I, section 2, of the U.S. Constitution provides the legal foundation for reapportionment: "Representatives . . . shall be apportioned among the several States which may be included within this Union, according to their respective Numbers, which shall be determined by adding to the whole Number of Free Persons . . . three-fifths of all other persons." For those who have forgotten their high school American history, under this provision, an individual held in slavery was counted as three-fifths of a person. This practice was ended after the Civil War with the adoption of the 13<sup>th</sup> Amendment, which abolishes slavery, and the 14<sup>th</sup> Amendment, which provides that "[r]ep-

resentatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State."

Article I, section 2 also provides for the decennial census, and it mandates that each state is to have at least one seat in the U.S.

House of Representatives.

The Constitution is silent about the number of seats in the U.S. House of Representatives, other than to state that "[t]he Number of Representatives shall not exceed one for every thirty Thousand." Historically, the number of seats, established by Congress, has ranged from 65 in 1789 to the current total of 435. The current number of

seats was established by Congress in 1911.

### **Federal Statutory Provisions**

Until fairly recently, there was no national consensus on how members of Congress should be elected—by district or at large. The individual states experimented with both methods. In fact, as late as 1962, representatives in five states were elected at large. That changed in 1967 with the enactment of Public Law 90-196, codified at 2 U.S.C. 2c, which provides that no congressional district shall elect more than one representative.

The provisions of 2 U.S.C. 2a require the President to report official state population counts, along with the number of representatives to which each state is entitled, to Congress on the first day it convenes in the year following each decennial census, or within one week thereof. Within 15 calendar days, the clerk of the House of Representatives must certify to the governor of each state the number of representatives to which the state is entitled.

Finally, U.S.C. Title 13 contains procedures directed specifically at the conduct of the census.

### **Nebraska Constitutional Provisions**

The Nebraska Constitution is silent on the subject of congressional redistricting. It does, however, provide guidance to lawmakers as they redraw district boundaries for the Legislature and other specified statewide bodies.

Article III, sections 5 to 8, of the Nebraska Constitution set forth the parameters for redrawing the state's legislative districts. Section 5 requires the state to be divided into single-member legislative districts "as nearly equal in population as may be and composed of contiguous and compact territory." The section also directs the Legislature to redistrict after each federal decennial census and, when redistricting, to follow county lines whenever practicable.

Article III, section 6 authorizes the number of districts the Legislature can have by providing that the Legislature will consist of not more than 50 nor less than 30 members. Section 7

provides for continuity of district representation by stating that "[w]hen the Legislature is redistricted, the members elected prior to the redistricting shall continue in office, and the law providing for such redistricting shall where necessary specify the newly established district which they shall represent for the balance of their term."

By prescribing the eligibility requirements for legislative candidates, Article III, section 8, establishes a deadline for the completion of legislative redistricting. An eligible candidate must reside "within the district from which he is elected for the term of one year next before his election." Based on this requirement, every time redistricting is done, it must be completed at least one year prior to the next general election so that potential candidates can reside within their new districts for at least one year. In 2012, the General Election will take place November 6.

As noted on page 1, the Nebraska Constitution directs the Legislature to draw districts of substantially equal population for the Public Service Commission, the State Board of Education, the Board of Regents and for the appointment of judges to the Nebraska Supreme Court. The constitutional provisions relating to the Board of Regents and the Supreme Court require the Legislature to redraw the applicable districts after each decennial census. While there is no mandated timeframe for redistricting the Public Service Commission and the State Board of Education, the Legislature has chosen to redraw those districts when it redistricts the other entities.

### **Nebraska Statutory Provisions**

There is only one statutory provision—Neb. Rev. Stat. sec. 50-1101—that prescribes general standards for legislative districts. It establishes the number of such districts at 49 and reiterates the single-member district concept set forth in the Constitution.

On a related note, Nebraska statutes also provide for redistricting for subdivisions such as cities and counties that elect members of their governing bodies by district. The responsibility for such redistricting lies with each

subdivision's governing body. Pursuant to Neb. Rev. Stat. sec. 32-553, redistricting for these subdivisions must be done within six months of the date on which the governor signs the bill establishing new legislative districts.

### **How Redistricting Is Done**

Since 1991, the Legislature has carried out its redistricting responsibilities using computerized mapping equipment and electronic data it receives from the U.S. Bureau of the Census following each decennial head count. By law, the Census Bureau must provide the states with electronic population data by April 1 of the year following the year in which the census is taken. In 2001, the redistricting data was provided to Nebraska on March 15.

During the 2001 session, the Legislature established by rule a special committee, the Redistricting Committee, to oversee the redistricting process. Members of that committee were appointed by the Executive Board of the Legislative Council after the Legislature convened in January 2001. The committee was comprised of nine members of the Legislature, with three from each congressional district. The rule provided that no more than five members of the committee could be affiliated with the same political party. (The 2001 committee included four Democrats, four Republicans, and one Independent.) Legal, technical, and administrative staff support for the process was provided by the Legislative Research Office.

Looking towards 2011, the Legislature adopted Rule 3, Section 6, in 2008. This rule sets up a similar redistricting committee to oversee the 2011 process. ❖

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***This is the first in a series of newsletters to be released by the Legislative Research Office in conjunction with the 2011 redistricting process. The newsletters are designed to provide interested parties with information about the history of and some of the principal legal issues related to redistricting. If you would like additional information, please contact the Legislative Research Office at 402.471.2221.***