Reapportionment in Vermont

An Introduction for the Legislative Apportionment Board

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It's Reapportionment Time!

Vermont legislative representation and reapportionment have changed significantly in Vermont since the original 1777 Vt. Const. . . .

1777-1964:
One town-One Vote and County Rule

- **House.** 1777 Vt. Const., Ch. II, § XVI provided each town with one elected Representative to Vermont's unicameral legislature, annually and "forever thereafter." **246 Representatives.**

  - By 1785, the first Council of Censors (the body that could propose constitutional amendments) recognized this as unequal representation and proposed to amend the Vt. Const. so that representation was apportioned by population. This was rejected.

- **Senate.** In 1836 when the **30-member Senate** was created, each of Vermont's 14 counties received one Senator, and the remaining Senators were apportioned among the counties by population.

Pre-1965: Inequality in Representation

By the early 1960s:

- The 38 residents of the Town of Stratton had one Representative, as did the 35,531 residents of the City of Burlington.

- A House majority could be achieved by towns holding 9% of Vermont's population.

- Vermont's 22 largest towns were represented by less than 9% of the House members.

- In the Senate, the one Grand Isle Senator represented 2,927 residents, whereas in the five-member Chittenden Senate district, there was one Senator per 14,885 residents.

Early 1960s SCOTUS Caselaw

- **Judicial Review**. Legislative apportionment is not a political question exempt from judicial review. <u>Baker v. Carr</u>, 369 U.S. 186 (1962).

- **Supremacy Clause**. "When there is an unavoidable conflict between the Federal and a State Constitution, the Supremacy Clause of course prevails." <u>Reynolds v. Sims</u>, 377 U.S. 533, 584 (1964).

Early 1960s Vt. Caselaw

- The U.S. District Ct. of Vt. held that both bodies of the Vermont General Assembly were malapportioned in contravention to the Equal Protection Clause of the 14th Am. and therefore unconstitutional and void. <u>Buckley v. Hoff</u>, 234 F. Supp. 191 (1964).

  - **House:** "Grossly malapportioned." "[C]itizens of the state's larger communities are invidiously discriminated against because of the inequality of representation . . ." <u>Id</u>. at 197.

  - **Senate:** "[I]mpossible to apportion the Senate in any way which will not result in at least a 5-1 disparity between the largest and smallest number of people represented per Senator." <u>Id</u>. at 197-98.

Vt. Transition; Enter the LAB

- The <u>Buckley</u> Court ordered the Vermont General Assembly to reapportion by July 1965.

  - The Vermont General Assembly reapportioned the House from 246 to 150 members, and reapportioned both chambers based on population. It also created the Legislative Apportionment Board.

  - At a Nov. 1965 special election, legislators were elected for one-year terms.

  - Regular elections – returning to two-year terms – began in 1966.

- However, at the time, the Vt. Const. was under a 10-year time-lock for amendments, so the General Assembly was technically in violation of the Vt. Const. until reapportionment amendments were ratified in 1974.

Vt. Const. Ch. II, § 73:

==The General Assembly shall establish== senatorial districts within and including all of the state, and shall further establish representative districts within and including all of the state.

At the biennial session following the taking of each decennial census under the authority of Congress, and at such other times as the General Assembly finds necessary, it shall revise the boundaries of the legislative districts and shall make a new apportionment of its membership in order to maintain equality of representation among the respective districts as nearly as is practicable. ==The General Assembly may provide for establishment of a legislative apportionment board to advise and assist the General Assembly concerning legislative apportionment.== If the General Assembly fails to revise the legislative districts as required in this section, the Supreme Court in appropriate legal proceedings brought for that purpose may order reapportionment of the districts.

17 V.S.A. § 1904
(creation of Legislative Apportionment Board)

- Seven-member board.
  - "Special Master" designated by Chief Justice of SCOV, who is Chair.
  - Governor appoints one member from each political party that has had more than three members serve as members of the Leg., who are not all from the same county, for at least 3/5 bienniums since the last Census.
  - Each of those political parties appoints one member.
- LAB members must be VT residents for at least five years and cannot be legislators or legislative staff.
- Technically a 10-year term.
- Secretary of State is Secretary of LAB, but has no vote.
- $50 per diem and reimbursement of expenses.

LAB Powers via 17 V.S.A. § 1904 and § 1908

- Employing or contracting for expert assistants or services, or both.

- Receiving assistance of governmental entities for obtaining information regarding Vermont's population.

- Holding public hearings.

- Delegating its powers to one or more of its members or to investigators or hearing examiners in its employ.

Vermont's LAB Operates
in an Advisory Capacity

- The Vt. Const. requires the General Assembly to reapportion legislative districts.

- Once the LAB submits its reapportionment proposals to the General Assembly, the General Assembly "shall then accept the proposal and enact it into law or substitute another plan for reapportionment[.]" 17 V.S.A. § § 1906 and 1907.

- Along with submitting its reapportionment proposals, the LAB normally submits a report explaining its rationale, which provides helpful information to the General Assembly about the State.

Vt. Const. Standards of Reapportionment

- <u>Ch. II, § 73; generally</u>: Reapportionment of legislative districts membership "in order to maintain equality of representation among the respective districts as nearly as is practicable."

- <u>Ch. II, § 13; House</u>: **150 Reps.** Leg. shall establish "one or two Representatives" for each district; "shall afford equality of representation"; and "seek to maintain geographical compactness and contiguity and to adhere to boundaries of counties and other existing political subdivisions."

- <u>Ch. II, § 18; Senate</u>: **30 Sens.** Leg. shall establish "one or more Senators" for each district; "shall afford equality of representation; and "seek to maintain geographical compactness and contiguity and to adhere to boundaries of counties and other existing political subdivisions."

  - ***Note:*** Last year, the General Assembly required the LAB to propose in 2022 Senate districts with a maximum of three members in each district, and provided in law that the General Assembly shall limit each senatorial district to a maximum of three members. <u>2019, Act No. 2</u>.

17 V.S.A. ch. 34A
Standards of Reapportionment

- Reapportionment based on "population," defined as the most recent census taken under congressional authority or a special census ordered to be taken by the Leg. § 1902(4).

- Standard is to form districts "with minimum percentages of deviation from the apportionment standard" for each chamber, "consistent with the following policies insofar as practicable:

  - "(1) preservation of existing political subdivision lines;

  - "(2) recognition and maintenance of patterns of geography, social interaction, trade, political ties, and common interests;

  - "(3) use of compact and contiguous territory." § 1903.

17 V.S.A. ch. 34A
Standards of Reapportionment
for Senate

- LAB proposes "apportioning the 30 senatorial seats among the counties or combination of counties with a maximum of three members in each proposed district, an in such manner as to achieve substantial equality in the choice of members as guaranteed by the Equal Protection Clause of the Fourteenth Amendment to the U.S. Constitution." § 1907.

- "General Assembly shall then accept the proposal and enact it into law or enact into law a substitute plan for reapportionment of the Senate that limits each senatorial district to a maximum of three members." § 1907.

17 V.S.A. ch. 34A
Standards of Reapportionment
for House

- LAB prepares tentative proposal. If it appears a town should be divided into two or more initial districts, or part of one town should be combined with part or all of another town to form an initial district, LAB notifies the BCA of those towns.

  - BCAs may recommend to LAB manner in which initial district lines should be drawn in accordance with § 1903 standards. Upon request of BCA, LAB designee shall "call and preside without vote over a joint meeting of two or more BCAs for the purpose of making joint recommendations. § 1905.

- LAB considers the recommendations and prepares a final proposal. § 1906.

17 V.S.A. ch. 34A

Standards of Reapportionment for House (cont.)

- Since House districts are constitutionally required to have one or two members, this chapter establishes a process by which the Leg. enacts initial districts that may contain more than two members, and subsequently enacts a final plan to further subdivide multi-member districts to a maximum of two members.

- After enactment of the initial districts, BCAs of towns with at least 25% of the population in a multi-member initial district may call a meeting of all the proposed initial district's BCAs to propose to the Leg. a further subdivision.

  - BCAs get one vote, but they shall not propose a line be drawn through a town if that BCA objects.

  - BCAs must consider 1) preservation of existing political subdivision lines; 2) recognition and maintenance of patters of geography, social interaction, trade, political ties, and common interests; 3) use of compact and contiguous territory, and 4) incumbencies. §§ 1906b and 1906c.

Deviation Calculations

<u>Ideal District Population</u> = State population / number of members in chamber x number of members in district

<u>District Deviation Calculation</u>:

- Actual district population – Ideal district population = Deviation

- Deviation / Ideal population x 100 = Percentage Deviation

<u>Overall State Deviation</u> = Highest high percentage deviation + Lowest low percentage deviation (disregarding negative)

2012 Vermont Reapportionment Stats

2010 Population = **625,741**

One congressional district

House

- 150 Representatives, max. of 2 members/district
- Ideal populations:
    - 1-member = 4,172
    - 2-member = 8,344

Senate

- 30 Senators, no max. member/district
- Ideal populations
    - 1-member = 20,858
    - 2-member = 41,716
    - 3-member = 62,574
    - ~~4-member = 83,432~~
    - ~~5-member = 104,290~~
    - 6-member = 125,148

Recent Overall Deviations

2012   *See also* 2012 Reapportionment webpage

- House = 18.90%
- Senate = 18.01%

2002   *See also* 2002 Reapportionment webpage

- House = 18.86%
- Senate = 14.73%

1992

- House = 17.6%
- Senate = 16.4%

Vt. Reapportionment Timeframe

- July 1, 2020: Deadline to appoint seven-member Legislative Apportionment Board (LAB). 17 V.S.A. § 1904(b).

- July 1, 2021: LAB deadline to:
    - Prepare tentative House proposal. 17 V.S.A. § 1905.
    - Submit its final Senate proposal to Senate. 17 V.S.A. § 1907.

- Aug. 1, 2021: Town deadline to respond to LAB tentative House proposal. 17 V.S.A. § 1905.

- Aug. 15, 2021: LAB deadline to submit its final House proposal to House. 17 V.S.A. § 1906.

- Mid-2022 Leg. Session: Enact initial House plan. *See* 2012, No. 74, enacted 2/28/12.

- "As soon as practical" thereafter, by April 1, 2022: BCAs may propose further House district divisions. 17 V.S.A. § 1906b(b) and (e); 17 V.S.A. § 1906c(b) and (e).

- Adjournment *Sine Die*: Deadline to enact final House and Senate districts. Vt. Const. Ch. II, § 73. *See* 2012, No. 93, enacted 5/1/12.

Thanks and good luck to you all in working on this constitutionally vital decennial project!