

MAINE STATE LEGISLATURE

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Legislative Apportionment Procedure

The United States Supreme Court decision in Baker v. Carr established the principle that Federal courts have jurisdiction to hear suits involving the apportionment of State legislatures. While we recognize that the actual formulas for apportioning seats in the legislative bodies of the State is a matter of individual State concern, subject to whatever limits may be imposed by the United States Constitution, it is essential that State constitutions specifically provide procedures that will insure that the States themselves are in a position to comply with their constitutional requirements for periodic reapportionment of the legislature. The suggested constitutional amendment below is designed to insure compliance with apportionment provisions of the State constitution.

The language is modeled after the provisions of the Oregon constitution, although it should be noted that at least 14 States have constitutional provisions which are designed to insure periodic apportionment of the State legislature. Some of these States have removed responsibility for apportionment completely from the hands of the State legislature. Others have directed that an individual State official or a separate apportionment board undertake the apportionment only after the legislature itself has failed to enact an apportionment law or failed to apportion in accordance with the provisions of the State constitution. The proposal below should be included as the first series of sections under the legislative article of the constitution or in a separate article covering apportionment.

Section 1 would spell-out the formula for apportioning seats in the State legislature and the appropriate provisions should be inserted by each State. The formula should be as clear and as specific as possible in order to permit the State Supreme Court to easily determine whether the apportionment statute complies with the constitutional formula.

Section 2 mandates the State legislature to reapportion itself in the first legislative session immediately following the decennial census of the United States. It should be noted that several States still require reapportionment, based on population, at intervals which do not coincide with the decennial census. This is a carry-over from the 18th century when States themselves conducted censuses. Since State censuses are no longer taken, it is suggested that this requirement be keyed to the Federal census.

Section 3 gives the State Supreme Court original jurisdiction to determine whether a reapportionment statute enacted by the legislature complies with the provisions of the State constitution. Any qualified voter of the State can bring this question before the court within 30 days after enactment of the reapportionment. If the court finds that the reapportionment does not comply with the constitution, the court shall direct either the named State official or the apportionment board to reapportion the legislature in accordance with the constitution. The court is also granted authority to review a reapportionment plan so prepared and if it is found that such plan does not comply with the constitution, the court is authorized to direct the named State official or apportionment board to make appropriate changes.

Section 4 authorizes the named State official or apportionment board to prepare a reapportionment of the State legislature where the legislature, by July 1st of the year of the legislative session following a decennial census, has not enacted reapportionment legislation. Here again, such an apportionment is subject to court review only if challenged by a qualified voter of the State.

Section 5 is to be used only if the State determines that an apportionment board, rather than a single State official, shall apportion seats in the event that the legislature itself fails to do so.

It would create the apportionment board and determine its membership. Two alternatives are presented. The first would consist of named State officials. Most States that have apportionment boards follow this approach. It is important to note that members of the judiciary should not be members of an apportionment board. This recommendation is made because the Supreme Court of the State is granted jurisdiction over cases involving apportionment. The second alternative for membership on the apportionment board is modeled after the provisions of the Missouri constitution.

Section 6 would authorize the use of the initiative process, in addition to any other procedure that may exist in the constitution, for amendment of the formula for apportioning seats in the State legislature. At the present time no constitution authorizes constitutional initiative in this limited sense. A number of State constitutions have general provisions relating to constitutional initiative, but the desirability of

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1. On lines 1 and 2 of Section 2, place brackets around "Senators and Representatives" and add a footnote.
2. At bottom of page 4, add a footnote to read as follows:

"If Section 1 requires only one house of the legislature to be reapportioned at regular intervals an appropriate change should be made."

providing general constitutional initiative is a question which must be considered in a different context. Here, it is enough to point out that the formula for apportioning seats in a State legislature is of such vital concern and significance in the democratic form of government, that the people, on their own, should have an opportunity to initiate changes therein.

Legislative Article

1 Section 1. Apportionment of Senators and Representatives.

2 a. Senators (insert provisions for the apportionment of State Senators).

3
4 b. Representatives or Assemblymen (insert provisions for apportionment of House of Representatives or Assembly).

1 Section 2. Reapportionment Duty. The number of Senators and
2 Representatives shall, not later than July 1st at the session of the
3 legislature next following the decennial census conducted by the
4 United States Government, be reapportioned according to the provisions
5 of Section 1 of this Article by the legislature.

1 Section 3. Jurisdiction of Supreme Court. Original jurisdiction
2 is hereby vested in the (State) Supreme Court upon the petition of
3 any qualified voter of the State filed with the clerk of the Supreme
4 Court within 30 days after enactment of a reapportionment measure
5 to review any measure so enacted. If the Supreme Court determines

6 that the measure complied with Section 1 of this Article it shall
7 dismiss the petition by written opinion within 30 days and the
8 legislation enacted shall become operative upon the date of opinion.
9 If the Supreme Court determines that the measure does not comply
10 with Section 1 of this Article said measure shall be null and void
11 and the Supreme Court shall direct the named State official the
12 apportionment board to prepare a reapportionment of the legislature
13 in compliance with Section 1 of this Article and return same to the
14 Supreme Court within 30 days. The Supreme Court shall review the
15 reapportionment thus returned and, if it is in compliance with Section 1
16 of this Article, shall file it with the Governor within 30 days and
17 it shall become law upon the date of filing. If the Supreme Court
18 shall determine that the draft returned to it by the named State
19 official apportionment board does not comply with Section 1 of this
20 Article the Supreme Court shall return it forthwith accompanied by
21 a written opinion specifying with particulars wherein the draft fails
22 to comply with the requirements of Section 1 of this Article. The
23 opinion shall further direct the named State official apportionment
24 board to correct the draft in these particulars and in no others and
25 file the corrected reapportionment with the Governor within 30 days
26 and it shall become law upon the date of filing.

1 Section 4. Failure of Legislature to Reapportion Itself. If the
2 legislature fails to enact any reapportionment measure by July 1st of
3 the year of the session of the legislature next following a decennial
4 census by the United States, the named State official apportionment

5 board shall make a reapportionment of the legislature in accordance
6 to the provisions of Section 1 of this Article. The reapportionment
7 so made shall be filed with the Governor within 30 days and shall
8 become law, subject to Supreme Court review, upon date of filing.

9 Original jurisdiction is hereby vested in the Supreme Court upon
10 petition of any qualified voter of the State filed with the clerk
11 of the Supreme Court within 30 days after any reapportionment made
12 by the named State official appportionment board has been filed with
13 the Governor. If the Supreme Court determines that the reapportion-
14 ment thus made complies with the provisions of Section 1 of this
15 Article it shall dismiss the petition by written opinion within 30 days
16 and the reapportionment law shall become operative upon the date of
17 the opinion. If the Supreme Court determines that the reapportionment
18 law does not comply with Section 1 of this Article, said reapportion-
19 ment shall be null and void and the Supreme Court shall return it
20 forthwith to the named State official appportionment board
21 accompanied by a written opinion specifying with particulars wherein
22 the reapportionment fails to comply with Section 1 of this Article.
23 The opinion shall further direct the named State official appportion-
24 ment board to correct the reapportionment in those particulars and
25 in no others and file the corrected reapportionment with the Governor
26 within 30 days and it shall become law upon the date of filing.

1 Section 5. Apportionment Board. There is hereby created an
2 Apportionment Board consisting of named State officials; do not include

3 members of the judiciary] [consisting of two members appointed by the
4 Chairman of the political party whose candidate for Governor in the
5 last preceding gubernatorial election received the largest number of
6 votes, two members appointed by the Chairman of the political party
7 whose candidate for Governor received the second largest number of
8 votes at the last preceding gubernatorial election and one member, who
9 shall be Chairman of the Apportionment Board, appointed by the afore-
10 mentioned members]. The Apportionment Board shall convene prior to
11 July 10th of any year in which the legislature has failed to comply
12 with its responsibility under Section 2 of this Article and reapportion
13 the State legislature in accordance with the provisions of Section 1
14 of this Article. In such event the Apportionment Board shall within
15 30 days reapportion seats in the State legislature in accordance with
16 the provisions of Section 1 of this Article and file a copy of such
17 apportionment with the Governor. Such reapportionment shall become law,
18 subject to Supreme Court review, upon date of filing. In the event
19 the Supreme Court shall declare that a reapportionment law enacted by
20 the legislature fails to comply with the provisions of Section 1 of this
21 Article the apportionment board shall convene within 10 days after the
22 decision of the Supreme Court that the action of the legislation fails
23 to comply with the provisions of Section 1 of this Article and the
24 Board shall proceed to reapportion seats in the legislature as if no
25 reapportionment action was taken by the legislature].

1 Section 6. Right Reserved to the People. In addition to any
2 authority the legislature possesses for initiating amendments to the

3 constitution, the people reserve to themselves the power to propose
4 changes in Section 1 of this Article. This power is reserved by the
5 people and as set forth herein. Qualified and registered voters of
6 State equal in number to at least (15 percentum) of the total vote
7 cast for all candidates for Governor at the last preceding general
8 election at which a Governor was elected shall be required to propose
9 any such amendment. The petition shall set forth in full the proposed
10 amendment and shall be filed with the Secretary of State or such
11 other person or persons as may hereafter be authorized by law to
12 receive same. Every petition shall be certified to as having been
13 signed by the required number of qualified and registered voters of
14 the State. Upon receipt of any such petition the Secretary of State
15 or such other person or persons hereafter authorized by law shall
16 canvas the petition to ascertain if such petition has been signed by
17 the required number of qualified and registered voters and may in
18 determining the validity thereof cause any doubtful signatures to be
19 checked against the registration records by the clerk of any political
20 subdivision in which said petition was circulated for properly
21 determining the authenticity of such signatures. If a petition is
22 filed with the Secretary of State or such other person or persons
23 hereafter authorized by law to receive same and if the canvas determines
24 that the petition is legal and in proper form and has been signed
25 by a required number of qualified and registered voters such proposed
26 amendment shall be submitted to the people for approval or rejection
27 at the next ensuing general election.