REAPPORTIONMENT

Bulletin No. 81-27

LEGISLATIVE COMMISSION

OF THE

LEGISLATIVE COUNSEL BUREAU

STATE OF NEVADA

January 1981

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Assembly Concurrent Resolution No. 32—Committee on Elections

FILE NUMBER.. 126

ASSEMBLY CONCURRENT RESOLUTION—Directing the legislative commission to study the requirements of reapportionment in advance of the 1981 legislative session.

WHEREAS, The 61st session of the Nevada legislature will face the task of reapportioning the election districts for the members of the legislature, the board of regents of the University of Nevada, and the state board of education; and

WHEREAS, The reapportionment will require extensive preparation, including study of data from the national decennial census of 1980; and

WHEREAS, The Bureau of the Census of the United States Department of Commerce is making every effort to have the data needed for reapportionment available to state legislatures before August 1980; and

WHEREAS, Compliance with the legal standards for reapportionment will require complex processing of the population data by computer; and

WHEREAS, The 1981 legislative session should be provided with the capability to make the reapportionments, and the existence of that capability depends upon having resources available and procedures tested in advance; and

WHEREAS, The drafting of detailed maps, the development and refinement of programs for computers and the development of procedures to be used during the session will require considerable time in preparation; and

WHEREAS, Many of the preparations will involve questions of policy, on which guidance will be necessary; and

WHEREAS, The 1971 legislative session was handicapped in performing reapportionments because of inadequate preparation, which limited the time available for actual consideration of reapportionment plans; now, therefore, be it

Resolved by the Assembly of the State of Nevada, the Senate concurring, That the legislative commission study the requirements for reapportionment in Nevada in conjunction with data which will become available from the national decennial census of 1980; and be it further

Resolved, That the study include an examination of:

1. All resources and capabilities needed for making the 1981 reapportionment, as well as of the most efficient and equitable means for presenting the data and proposed plans;

2. The options in contracting for computer services, and the preparation of specifications for the contract; and be it further

Resolved, That necessary contracts be entered into by the legislative commission to allow the timely commencement of data processing in advance of the 1981 session; and be it further

Resolved, That the legislative commission submit a report to the 61st session describing the 1980 census data, the legal and technical requirements for the reapportionment, and the actions taken by the commission to prepare for the reapportionment, and making recommendations of effective procedures which the legislature may use in its task of reapportionment.

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REPORT OF THE LEGISLATIVE COMMISSION

TO THE MEMBERS OF THE 61ST SESSION OF THE NEVADA LEGISLATURE:

This report is submitted in compliance with Assembly Concurrent Resolution No. 32 of the 60th session of the Nevada legislature which directs the legislative commission to study the requirements of reapportionment for the 1981 legislative session.

The legislative commission assigned the study to the research division of the legislative counsel bureau.

The staff has attempted in this report to provide members of the 1981 legislature with a basic understanding of the standards for reapportionment, the capabilities that will be available to the legislature to actually carry out reapportionment and general guideline information based on preliminary 1980 census figures. This report does not attempt to suggest any particular reapportionment plan. The legislative commission and the staff have carefully avoided any efforts that might favor any reapportionment concept or scheme over another, leaving such specifics entirely to the 1981 session.

The report is transmitted to the members of the 1981 legislature for their consideration and appropriate action.

Respectfully submitted,

Legislative Commission
Legislative Counsel Bureau
State of Nevada

Carson City, Nevada
January 1981

LEGISLATIVE COMMISSION

Senator Keith Ashworth, Chairman
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	Assemblyman Robert F. Rusk
	Assemblyman Darrell D. Tanner

SUMMARY OF RECOMMENDATIONS

It is the recommendation of this staff study that the 1981 legislature adopt a joint rule limiting the direction of the research division on reapportionment matters to the committee in each house charged with reapportionment. Further, the rule should allow the introduction of only those reapportionment bills drafted at the request of the responsible committees. (BDR 655)

I. INTRODUCTION AND BACKGROUND

The Nevada constitution at article 4, section 5, says:

> Senators and members of the assembly shall be duly qualified electors in the respective counties and districts which they represent, and the number of senators shall not be less than one-third nor more than one-half of that of the members of the assembly.
>
> It shall be the mandatory duty of the legislature at its first session after the taking of the decennial census of the United States in the year 1950, and after each subsequent decennial census, to fix by law the number of senators and assemblymen, and apportion them among the several counties of the state, or among legislative districts which may be established by law, according to the number of inhabitants in them, respectively.

In addition, article 15, section 13 says:

> The enumeration of the inhabitants of this State shall be taken under the direction of the Legislature if deemed necessary in AD Eighteen hundred and Sixty five, AD Eighteen hundred and Sixty seven, AD Eighteen hundred and Seventy five, and every ten years thereafter; and these enumerations together with the census that may be taken under the direction of the Congress of the United States in A.D. Eighteen hundred and Seventy and every subsequent ten years shall serve as the basis of representation in both houses of the Legislature. (Emphasis added.)

These two provisions have an interesting history. Article 15, section 13, is the original 1864 language. Article 4, section 5, has been amended twice. In 1950, it was amended to say that the senate would be composed of one senator from each county and the assembly would be based on population but with each county having at least one assemblyman. In 1970, at the conclusion of what might be called the "reapportionment decade," article 4, section 5, was amended again to the present form. Federal court decisions, of course, had already mandated these changes. The 1970 vote by the people merely changed the constitution to reflect the new realities imposed by the federal judiciary.

An interesting anomaly from 1950 until the federal courts became involved in the mid-1960's was the coexistence in the constitution of article 15, section 13, calling for both houses of the legislature to be apportioned based on population and article 4, section 5, which called for one senator per county and a minimum of one assemblyman per county. In fact, until 1919, both senate and assembly were based, in rough terms, on population. No county was ever without its own representation in both houses until 1967. From 1919 until 1967, the senate, in fact, was one senator from each county.

With the 1970 amendment to article 4, section 5, there are no longer internal conflicts in the constitution on the subject of reapportionment.

A. Reapportionment as a Legislative Issue.

Matters of great concern and controversy in a legislature fall basically into two categories. There are those major issues that affect a large part of the population with significant numbers of that population in opposition over the outcome. Major tax reform, or the imposition of a new tax, fall into this category. Some social legislation, such as civil rights acts, is also in this area. The question of the death penalty is likewise such an issue.

The other category of controversial issues are matters of government structure and process that directly affect the participants in that process. For the most part, these issues do not inflame the passions of the citizenry. They do inflame the passions of legislators and others directly involved in the process of government. Reapportionment is the quintessential issue of governmental structure for a legislature. It is the issue that is perceived as determining the political futures of those deciding the issue. It is expected that the 1981 session will have more than its share of difficult, time-consuming issues including taxes, MX, appropriation for state government in an era of declining revenues and utility regulation. On top of these matters will be the decennial Donnybrook over reapportionment.

The purpose of this report is not to speculate on how Nevada might be reapportioned in terms of results for the legislature, the board of regents and the state board of education.

The possibilities for alternative reapportionment plans are so numerous that it would be of no value to discuss any particular plans or ideas before the session. Rather, the purpose is to explain the general legal and practical parameters for reapportionment and the resources that will be available to the legislature to do its reapportionment work.

B. Reapportionment Terminology

The court cases of the past 18 years since Baker v. Carr in 1962 have used a number of terms related to mathematical equality. These terms are important in 1981 and every member should have a general familiarity with them. They are also used in much of the general literature on reapportionment. They are provided here as reference definitions, not something that needs to be learned and retained.

STATISTICAL TERMINOLOGY FOR DISTRICTING

IDEAL DISTRICT POPULATION	State Population "Divided by" Number of Districts

INDIVIDUAL DISTRICTS

ABSOLUTE DEVIATION	District Population Minus Ideal Population
RELATIVE DEVIATION	Absolute Deviation "Divided by" Ideal Population

ALL DISTRICTS

RANGE

ABSOLUTE	Largest Absolute Deviation and Smallest Absolute Deviation
RELATIVE	Largest Relative Deviation and Smallest Relative Deviation

OVERALL	Largest Deviation plus Smallest Deviation (Ignoring "+" and "-" Signs) Absolute or Relative
RATIO	Largest Population "divided by" Smallest Population
ABSOLUTE MEAN DEVIATION	Sum of All Absolute Deviations "divided by" Number of Districts (Ignoring "+" and "-" Signs)
STANDARD DEVIATION	The Square Root of the Sum of The Squares of All Deviations "divided by" Number of Districts; (Ignoring "+" and "-" Signs)

*The chart assumes single member districts but the terminology is applicable for multimember districts too.

An example using 1980 final state census figures for the four rural senate districts should be helpful in understanding these terms.

1980 State Population 799,184*

Ideal District Population

$$\frac{799,184}{20} = 39,959$$

Current District Populations for Four Rural Senate Districts:

Northern Nevada	32,262
Central Nevada	27,864
Capital District	51,614
Western Nevada	32,406

*The final state figures were reported by the Census Bureau on December 31, 1980. The final city, county and township figures were not released at that time so those figures are preliminary counts. The total difference between the preliminary state figure and the final one was the 14/100ths of 1 percent so the discrepancy with any local area figure would be very small.

Absolute Deviation

Northern Nevada	32,262 - 39,959	=	- 7,697
Central Nevada	27,864 - 39,959	=	-12,095
Capital District	51,614 - 39,959	=	11,655
Western Nevada	32,406 - 39,959	=	- 7,553

Relative Deviation

Northern Nevada	$\frac{-7,697}{39,959}$	=	-.193
Central Nevada	$\frac{-12,095}{39,959}$	=	-.303
Capital District	$\frac{11,655}{39,959}$	=	.292
Western Nevada	$\frac{-7,553}{39,959}$	=	-.189

(The goal in relative deviation is to get as close to zero as possible.)

Absolute Range

(Using just the four senate districts for purposes of illustration although this measure would apply to all districts.)

Largest absolute deviation = -12,095
in the central district.

Smallest absolute deviation = - 7,553
in the western district.

Relative Range

Largest relative deviation = -.303
in the central district.

Smallest relative deviation = -.189
in the western district.

Overall Range

Central district at 12,095 is the largest negative number.

Capital district at 11,655 is the largest positive number.

Overall range = 12,095 plus 11,655 = 23,750.

Ratio

Capital district at 51,614 divided by central district at 27,864 = 1.85.

(This means the largest district of the four is almost twice the smallest.)

Absolute Mean Deviation

Total deviation of 39,000 (adding the four absolute deviations without regard to negative numbers) divided by 4 (number of districts) = 9,750.

Standard Deviation

Add the squares of each absolute deviation for a total of 398,419,668. The square root of that is 19,969. Divide that by 4, the number of districts, and the standard deviation is 4,992. (The standard deviation smooths out the extremes so is usually a smaller figure than the mean deviation.)

II. THE HISTORICAL CONTEXT OF REAPPORTIONMENT

An understanding of the general evolution of the reapportionment issue is useful in order to appreciate the current context. No attempt will be made to chronicle the 1971 reapportionment in Nevada. An excellent job has been done on that by Eleanor Bushnell in an article entitled "Reapportionment and Redistricting in Nevada: The Politics of Incumbency."[1]

There is only one form of government in which the question of apportionment is relevant. That is representative democracy. In direct democracy, such as the New England town meeting or the Greek city-state, every citizen has, or had, the right, and even duty, to participate personally in the decisions of government. In rule by kings, dictators, politburos and juntas, the concept of decisionmaking by representatives of citizens is very foreign and largely irrelevant.

The earliest concerns about apportionment go back to the development of representative democracy which means we must look to our English heritage. Robert G. Dixon, Jr., one of the foremost scholars of reapportionment, finds little in the seminal writings on representative democracy about apportionment.[2] Hobbes, Locke and Burke were concerned with the grand design of representative government, not the details.

John Locke did see the dangers to his grand design in a failure to maintain a rational basis for electing representatives. Locke never thought in terms of one man, one vote, because he did not envision a mass electorate. The members of Locke's electorate were those with some education, wealth and power. They were landowners, not laborers. Nevertheless, Locke opposed the "rotten boroughs" which sent members of Parliament to the House of Commons even though population shifts had stripped the voting districts of voters.

Edmund Burke, writing in the 18th Century, contributed directly to the theory of representation. His discussion of the representative as the "delegate" sent to a legislative body to reflect the wishes of his constituents versus one sent as a "trustee" to use his best judgment on behalf of his constituents remains the classic work on the subject of representation.[3]

What Burke set forth as a dichotomy, of course, is not. While a legislator has a responsibility to lead and to educate his constituency--the trustee--he also has a responsibility to respond to the expressed wishes of his constituents--the delegate. Nineteenth Century thought, including that of Walter Bagehot, confirmed the duality of the legislative function.[4] It is the part of that function requiring responsiveness to constituents that forms the theoretical underpinnings of arguments for equality of population in voting districts.

The U.S. Constitution is very brief and very general on the specific matter of apportionment. Article I, section 2 says there shall be a representative in Congress for no fewer than 30,000 people. It also requires a census for the purpose of apportioning representatives among states. There is no limit on the size of the House of Representatives in the Constitution. Neither does the original Constitution address the subject of state legislative districting. Not until 1911 did Congress legislate districting criteria for the states to use in drawing Congressional districts. In 1921, the apportionment act dropped the criteria and states were free to draw districts as they wished which often ignored populations. Districting plans that state legislatures drew up for themselves in the first 60 years of this century also ignored, in large part, population.

There were basically two reasons prior to Baker v. Carr in 1962 that state legislatures did not reflect population. The first was state constitutional provisions. These commonly called for counties as the basis for upper house representation--the so-called "little Federal model"--and guaranteed each county at least one seat in lower houses. As noted earlier, the original Nevada constitution had no such provision, instead requiring population as the basis of representation in both houses. The 1950 amendment adopted the "little Federal model."

The other reason that pre-Baker v. Carr state legislatures did not reflect population was a failure by state legislatures to abide by their own constitutions. Even prior to the 1950 amendment to the Nevada constitution, there was no real attempt to comply with the equal population provisions. Many other states had very clear constitutional provisions calling for equal population for legislative districts.

The results are well-known. Examples abound such as the fact that in 1961, eight percent of the population could elect a majority of the Nevada senate. Situations of this nature had become commonplace by 1962. The acerbic H. L. Mencken in 1928 observed:

> The yokels hang on because old apportionments give them unfair advantages. The vote of a malarious peasant on the lower Eastern Shore counts as much as the votes of twelve Baltomoreans. But that can't last. It is not only unjust and undemocratic; it is absurd.[5]

Absurd it may have been, but Mencken died before any appreciable change occurred. That change came from the courts. That most astute observer of 19th Century America, de Tocqueville, said:

> Scarcely any political question arises in the United States that is not resolved, sooner or later, into a judicial question.[6]

The U.S. Supreme Court first dealt directly with reapportionment in 1946 in Colegrove v. Green. A quote from the majority opinion by Justice Frankfurter sums up the court's ruling:

> Courts ought not to enter this political thicket. The remedy for unfairness in districting is to secure state legislators that will apportion properly, or to invoke the ample powers of Congress.[7]

In short, the court said reapportionment was a political question. Justice Clark, 16 years later in Baker v. Carr, summed up the changed view of the court and by implication responded to Frankfurter's 1946 opinion.

> It is well for this Court to practice self-restraint and discipline in constitutional adjudication, but never in history have those principles received sanction where the national rights of so many have been so clearly infringed for so long a period of time.[8]

Colegrove, then, had been a warning largely unheeded by either Congress or the states that the Court recognized the problems and suggested political remedies. When those remedies were not invoked 16 years later, the Court concluded that it, the Court, was the only remedy. Then followed an American political revolution.

III. THE RULES OF THE REAPPORTIONMENT GAME

Robert G. Dixon, Jr., feels that Baker v. Carr will ultimately take its place in importance next to Marbury v. Madison.[9] Whether or not that assessment is justified, Baker is the first of a series of cases, the most recent being in 1980, that set the parameters for reapportionment. Over 18 years after Baker, all of the questions are not answered. No one can conclude with certainty exactly what "one man, one vote" means. Much is known, however, and 18 years of Supreme Court decisions do offer substantial guidelines for reapportionment. There will be no attempt to apply case law to any hypothetical reapportionment scenarios. Rather, this section will review the literature of reapportionment and extract from it the current guidelines under which 1981 reapportionment in Nevada will take place. This review will also rely upon some of the cooperative work done by the National Conference of State Legislatures on the subject.

A. Equal Population

While Baker v. Carr was the landmark case in reapportionment, it is surprising to many to learn that the Court did not spell out any specific standards or criteria in that case. The key element of Baker was the decision that reapportionment was a justiciable subject under the equal protection provision of the 14th Amendment. Neither did the Court say anything about "one man, one vote" in Baker. That came a year later in Gray v. Sanders.

Specific guidance for state legislative redistricting begins with Reynolds v. Sims in 1964. This decision actually covered cases from six states. A couple of points made in that case remain relevant for 1981. Chief Justice Warren said, regarding strict population equality that " * * * mathematical nicety is not a constitutional requisite," but he went on to say, "* * * the overriding objective must be substantial equality of population among the various districts."[10] There have been several cases since 1964 in which the Court has tried to spell out more precisely just how much "mathematical nicety" is required.

In general, the Court has required greater mathematical precision for Congressional districting than for state legislative districting. The practical reason for this is the larger number of state legislative districts than Congressional districts making mathematical equality easier for Congressional districts. Also, the Court has recognized the greater meaning of county and city boundaries to state legislative districts and has allowed greater numerical flexibility as a result.

What, though, is the bottom line? How much mathematical equality is required? Or, put more cynically, how much disparity among districts can a state get away with? In Wesberry v. Sanders, also in 1964, the Court said that districts should be "* * * as nearly as practicable" equal in population.[11] This was a Congressional districting case. A Missouri Congressional districting plan in 1969 with a 6 percent range in size among districts was invalidated as not meeting the "as nearly as practicable" test.[12] In this case, Kirkpatrick v. Preisler, the Court rejected any de minimum variation and said that a state had to show that variances were unavoidable or specifically justify the variances. Attempts by Missouri to justify the variance because of political boundary or compactness considerations were rejected. This discussion of Congressional districting is more than academic since Nevada will get a second Congressional seat in 1982.

Not until 1973 did the Supreme Court distinguish between Congressional reapportionment and state legislative redistricting. In Mahan v. Howell,[13] which was after most states redistricted pursuant to the 1970 census, a number of issues were not considered including allowable population disparity. The Court agreed that certain rational state purposes justified the consideration of county and city boundaries in Virginia in legislative redistricting. The range allowed was 16 percent. It should be kept in mind, however, that the Virginia general assembly has specific constitutional authority to pass special legislation for local governments and this authority helped justify the redistricting plan. Nevada's constitution specifically prohibits most special legislation.

Later in 1973, in Gaffney v. Cummings and White v. Register, the Court further refined the limits of legislative redistricting. In both cases, population variations of just under 10 percent were sustained by the Court which said that such variations did not make a prima facie equal protection violation. To many observers, Gaffney and White at least strongly imply a 10 percent standard. Within 10 percent variation, a plan need not be specifically justified in terms of disparity. Above 10 percent, as in Mahan v. Howell, specific justification appears necessary. Even with justification, the outer limit for disparity seems to be about 16 percent. A federal court plan for North Dakota redistricting was invalidated because of a 20 percent disparity in the state senate.[16] Another federal court plan, for Mississippi, was invalidated in 1977 because of 16.5 and 19.3 percent variations in districts in the two houses.[17] Important in this case, Connor v. Finch, was Justice Stewart's majority opinion which said of the Mississippi disparities:

> [The disparities] substantially exceed the under 10 percent deviations (i.e., overall range) that the court has previously considered to be of prima facie constitutional validity only in the context of legislatively enacted apportionments.[18]

This statement confirms that the 10 percent standard is recognized by the Court and not merely inferred by observers of the Court. There are caveats concerning the 10 percent standard. First, plans with up to 10 percent disparity are not immune to challenge in court but the challenger has the burden of showing an equal protection violation. Also, simply showing that a plan with greater equality could have been devised will not invalidate a plan with under 10 percent disparity. Second, a plan should probably not have an overall high mean deviation. In both Gaffney and White, while there were some districts that pushed the 10 percent standard, the overall mean deviations - that is, the average of all deviations - were under 2 percent.

B. Other Standards

1. Gerrymandering.

The fundamental basis for equal population requirements since 1964 is the equal protection clause of the 14th

Amendment. There are other issues also involving equal protection. Probably the most common charge against a district plan which someone opposes is that it is gerrymandered. There are two basic forms of gerrymandering. Those doing the gerrymandering can either pack their opponents or disperse them. To pack them is to assure your opponents of a win in the district in which they are packed. The packing, however, prevents your opponents from a chance to win in any other district. Dispersal is spreading your opponents over as many districts as possible keeping their proportion below that necessary to have a chance to win.

The effect of gerrymandering, then, is designed to favor a particular party, group or individual. On questions of partisan gerrymandering, the Court has said that a plan might have the effect of favoring a party. In the Gaffney case, the Court upheld, and even seemed to commend, a plan where a bipartisan commission purposely drew districts that reflected overall party strength in the state. The Court made clear in Gaffney, however, that a plan purposely drawn to diminish the strength of a party could be open to an equal protection challenge.

Another form of gerrymandering is that done to protect incumbents or to insure that they do not have to run against one another. In Burns v. Richardson[19] in 1966 and in White v. Weiser[20] in 1973, the Court said that a plan which minimizes election contests between incumbents " * * * does not in and of itself establish invidiousness."[21] It should be kept in mind, however, that such plans can contribute to invidiousness and thereby increase the difficulty of justifying those boundaries in litigation.

2. Multimember Districts.

Racial gerrymandering has been viewed far more seriously by the courts than partisan gerrymandering. Actually, most cases involving racial gerrymandering claims revolve around the permissible use of multimember districts. In 1971 in Whitcomb v. Chavis,[22] the Court upheld the use of multimember districts in Marion County,

Indiana (Indianapolis), saying that multimember districts are not per se unconstitutional. To be unconstitutional, such districts must operate to minimize or cancel out the voting strength of racial or political elements of the population. While few Blacks were elected in Marion County, the Court found no evidence that the multimember district allowed those elected to ignore the minority voters. By contrast, in White v. Regester[23] in 1973, the Court said that Blacks in one county in Texas and Chicanos in another, had definitely had their access to the political process restricted by multimember districts and, therefore, invalidated them.

In April 1980, in City of Mobile v. Bolden,[24] the Court went so far as to say that a multimember plan that had the effect of discriminating against a minority would not be unconstitutional unless there was also the intent to discriminate. Intent being more difficult to prove than effect, the permissibility of multimember districts seems to have been enhanced by this most recent case. Where there is currently minority respresentation through single member districts, however, any attempt to submerge those districts in multimember districts would very likely be viewed as having a discriminatory intent.[25]

Generally, the Court has shown that it doesn't much care for multimember districts but it has not elevated this preference to a matter of law. In cases where courts have drawn districting plans, however, the Supreme Court has insisted on higher standards. This applies to population equality, but it also has meant that lower courts have not been allowed to use multimember districts although legislatures may. The Court was rather severely divided in the Mobile case. In fact, it appears that there were actually five justices who approved the lower court's finding of intentional discrimination. Justice Stevens' concurring majority opinion was arrived at by a different line of reasoning than the basic majority opinion. Since Stevens was the fifth vote, his position on a future multimember case with different facts could be critical. The point is that while Mobile seems to have increased the sustainability of multimember plans, it by no means was the final word.

C. Summary of Reapportionment Standards

The approximate parameters for 1981 redistricting, then, are as follows:

1. Equal population - Disparity between the largest and smallest districts should not exceed 10 percent, assuming average disparity for the whole plan is considerably less than that.

2. Gerrymandering - Cognizance of partisan factors does not invalidate a plan but an overt attempt to minimize a party's strength could be challenged.

   A plan designed to avoid confrontations between incumbents would not be for that reason alone unconstitutional.

3. Multimember districts - They are permissible unless there is the intent in the plan to use such districts to deprive a minority of the political strength its numbers would otherwise have. The extent to which such intent must be proven is far from certain.

IV. STAFF CAPABILITIES FOR REAPPORTIONMENT

Within the legislative counsel bureau, the reasearch division has the primary responsibility to provide staff support for reapportionment. The legal division, of course, will draft the reapportionment legislation. It will also provide the interpretations of case law applicable to specific reapportionment proposals if such interpretation is required.

Staff support through the research division can be viewed in three main areas. First, the division will provide general coordination for all reapportionment activities, doing this primarily through the committee in each house dealing with reapportionment. Second, through a contract with the state's central data processing division (CDP), the division will apply computer technology to census data. Third, the division will provide graphic interpretations of various plans, including maps, charts and tables of data.

Computer Capability

In 1971, the legislature used the state's computer and a computer program called KRON produced under the sponsorship of the National Municipal League. The program is designed to maximize compactness while achieving mathematical equality. The methodology is known as moment of inertia which is a measure of compactness. Each plan produced by the computer will also show the absolute deviation for each district and the absolute mean deviation for all districts.

Research division staff will be trained to input computer requests and they will have the assistance of a computer expert from the state's central data processing division. What will be of great assistance--perhaps a necessity--will be a process for taking requests for developing particular districting ideas. A suggestion for such a process will be included at the conclusion of this report.

V. GENERAL OBSERVATIONS ON THE 1981 REAPPORTIONMENT

A. Possible Sizes of the Nevada Legislature

As noted earlier, the maximum size of the Nevada legislature is set in the constitution at 75. It also says that the assembly may be no less than twice the size of the senate but no larger than three times the senate. That means the senate maximum would be 25 with 50 in the assembly. The senate minimum would be 18 with an assembly of 54 for a total of 72 legislators.

With a state population of 799,184, the following chart shows the ideal district size for each possible composition of the legislature. The theoretical minimum size of the legislature is three. It is assumed that 18 is the minimum practical size of the senate. The assembly could range from 36 to 54 with an 18-member senate.

Senate Size	Ideal District	Assembly Size	Ideal District
18	44,399	36	22,200
19	42,062	38	21,031
20	39,959	40	19,980
21	38,056	42	19,028
22	36,327	44	18,163
23	34,747	46	17,374
24	33,299	48	16,650
25	31,967	50	15,984
		51	15,670
		52	15,369
		53	15,079
		54	14,800

The current composition of the legislature, of course, is 20 senators and 40 assemblymen. The following chart shows the current population for each district, the ideal population and the current deviation. For Washoe and Clark counties and for the assembly districts embracing Carson City and Douglas County, only aggregate figures are provided because no census small area data is yet available.

Senate

District	Current Population	Ideal Population	Deviation
Northern Nevada	32,262	39,959	- 7,697
Central Nevada	27,864	39,959	-12,095
Western Nevada	32,406	39,959	- 7,553
Capital	51,614	39,959	11,655
Clark	462,218	439,549*	22,669
Washoe	193,870	199,795*	- 5,925

*The current number of senators in each county times the ideal population for a single member district. The deviations for Clark and Washoe are also for all the county, not per district.

Assembly

District	Current Population	Ideal Population	Deviation
Clark 1-22	462,218	439,549	22,669
Washoe 23-32	193,870	199,795	- 5,925
33	16,145	19,980	- 3,835
34	16,117	19,980	- 3,863
35	11,881	19,980	- 8,099
36	15,983	19,980	- 3,997
37 and 38	32,406	39,959	- 7,553
39 and 40	51,614	39,959	11,655

A glance at the foregoing charts points to some trends. Most Nevada counties have grown over the past 20 years. Some have grown far faster than others. While the state grew by 71 percent from 1960 to 1970, Clark County grew by 115 percent. From 1970 to 1980, the state has grown another 63 percent. Clark County has grown 69.1 percent. Nevada's small counties, for the most part, have not come close to the overall rate of population growth from 1960 to 1980. The result from an apportionment point of view is a further shifting of seats away from the small counties to Clark County. Added to Clark are Carson City and Douglas County which have grown during the period 1970-1980 by 108 percent and 183 percent respectively. The whole point of decennial reapportionments is to change representation to reflect population shifts. As a general rule in Nevada, that shift continues to be from rural to urban areas except that Washoe County has not quite kept pace with overall state growth.

B. Second Congressional Seat

The most intriguing prospect for Nevada from the 1980 census is the apportionment of a second seat in the House of Representatives for the state. Early stories about "winners and losers" after the 1980 census did not mention Nevada. The Census Bureau was the source of the stories about congressional reapportionment. They have consistently underprojected Nevada's population throughout the 1970's. Their estimates of congressional seats were based on pre-1980 estimates of 1980 state populations. Those showed Nevada at 702,000. The Census Bureau did not issue revised congressional seat estimates until December 31, 1980. The final figures for the state show a population of 799,184. In 1970 with a total national population of 206 million, South Dakota with 666,000 was the smallest state that had two congressmen. If the country grew by 10 percent, and in fact it grew by 11.6 percent, the cutoff figure for a second congressman would be around 732,000. South Dakota is projected to loose its second seat. Montana is projected to retain its second seat. The preliminary state population figure for Montana for 1980 is 783,674, some 15,000 less than Nevada. When it became clear that Montana was not going to lose its second seat, it became certain that Nevada would gain its second.

The actual method for determining that Nevada will get a second seat is called the method of equal proportions. It is a formula adopted by Congress in 1929 and used continuously since then. Under the formula, every state is first assigned one seat without regard to population. The remaining 385 are assigned to states on a rotational basis determined by a weighted score reflecting a state's remaining population after each seat is assigned. The formula cannot be applied, however, until the population for every state is known. When the population figures for all states were reported on December 31, 1980, application of the formula confirmed that Nevada's second seat ranked 397th of 435. In short, no conceivable shift of figures as a result of court cases would so alter the apportionment of seats to affect Nevada's second seat.

The second seat in Congress will be filled at the 1982 election. This would mean that the state must have two congressional districts prior to that election. Federal law requires that congressional districts be single seat.

C. Other Districting in 1981

The 1971 legislature also drew districts for the board of regents and the state board of education. Each has nine members and for each Clark County elects five, Washoe two and the balance of the state two. The regents seats are multimember, the board of education single member. The 1981 legislature will have to determine if these two boards will continue to be elected from districts and, if so, how those districts will be drawn.

VI. STATUS OF THE 1980 CENSUS

A. Litigation and the 1980 Census

There are two major concerns about the 1980 census that have led to litigation and other attempts to block reporting of the census until certain changes are made. One is the contention that illegal aliens were counted and should not have been, and the other is that Blacks and Hispanics that should have been counted were not.

1. Illegal Aliens, Litigation

A group called FAIR (Federation for American Immigration Reform) went to court prior to the taking of the census to attempt to force the Census Bureau to either not count illegal aliens or if they counted them, to do so separately. The point of the FAIR suit was the question of representation in Congress. FAIR contended that it was patently unfair for purposes of apportionment to count anything but citizens since only a citizen can vote. The U.S. Constitution, however, requires a count of all persons and does not distinguish between citizens and aliens. FAIR was unsuccessful in court and the census attempted to count everyone. From a practical point of view, it seems highly unlikely that the census counted very many illegal aliens because, by and large, illegals do not want to be counted. Nevertheless, FAIR tried to block the reporting of the 1980 census until the illegals could be separated. There are two ways of doing this. One is to do the census over and the other is to do sampling and then project the sampling results to the population. The first solution is prohibitive in its cost. The second is not considered statistically defensible by the Census Bureau.

2. Illegal Aliens, Congress

Given FAIR's failure in court, attempts were made in Congress to block the reporting of the census. The "McDade Amendment," introduced by Representative Joseph McDade (R) of Pennsylvania, was attached as a

rider to the General Appropriations Act. It said that no money in the act could be used for the purpose of reporting the census to the President. It passed the House but the appropriations bill did not get out of the "lame duck" session. Instead, the government was being run on a continuing resolution. McDade attempted to attach another version of his amendment to that resolution but failed. The illegal alien issue is not dead but it has experienced a couple of serious setbacks at this point.

3. Undercount

By far the more serious challenge to the normal reporting of the 1980 census is the litigation based on the undercounting of the population in 1980. The first to be heard and decided at the Federal District Court level is Young v. Klutznick in which Detroit charged an undercount, primarily among Blacks, in that city. Judge Horace Gilmore ruled in favor of Detroit and ordered the Census Bureau to produce a statistically defensible way to adjust the undercount. He further issued an order blocking the reporting of the 1980 census until such adjustment for undercount has been made. The Census Bureau appealed. The 6th Circuit in Cincinnati has set a hearing on the appeal for February 1981. The appeals court refused the bureau's request for a stay on Judge Gilmore's order blocking the reporting of the census. The U.S. Justice Department asked the Supreme Court to stay the Gilmore order and in late December 1980, Justice Potter Stewart issued such a stay. Another stay was issued on a New York Federal Court decision similar to the Detroit decision. The Supreme Court action allowed the Census Bureau to make its formal report by the end of 1980 as required by law and to continue on its planned schedule of release of small area data through 1981. This means the Nevada legislature will have the data needed for reapportionment.

4. The Facts About Undercount

The first census in 1790 was conducted by Thomas Jefferson. When he reported it to President Washington, he said there was an undercount but that

it was probably an unavoidable feature of any census in a free country. Every census since has had an undercount and any future one will also. The argument is about how much the undercount can be minimized and whether it is proper to make statistical adjustments for undercount. Such an adjustment was made in 1970 so the question naturally arises; "Why not 1980?" In 1970, the bureau did not go back to check apparent vacancies but rather reported the units as vacant. Using sampling techniques, the bureau devised a statistical method to adjust the vacancy figures and thereby increased the reported population figures. In 1980, census workers went back to vacant units on successive occasions, finally accepting head counts from neighbors as a last resort on units purportedly occupied but for which no personal contact was ever made. Because of this effort, the bureau says there is no valid basis for a further statistical adjustment for undercount. In response to Judge Gilmore's order, however, the bureau is trying to devise a statistical method. Whether they will be successful in this is impossible to predict at this point.

5. The Issues in the Undercount Controversy

Very simply, there are two issues: political power and money. Under current census counts, the older cities of the Northeast and Upper Midwest have lost population since 1970. This means they will have a smaller share of their state's congressional delegation and a smaller share of state legislatures. There is also federal money and, in many states, state money which is based on population. In Nevada, for example, the cigarette tax and the city-county relief tax are distributed on a population basis. In addition, the expenditure limitations enacted in 1979 are population based. The significance of the census in Nevada is noted because it is illustrative of the situation everywhere in the nation.

B. 1981 Reapportionment

The 1981 reapportionment can proceed as census data is released. Small area data for cities, counties, townships enumerations districts, census tracts, block groups and blocks will become available in February on computer tape. Maps should be provided at the same time. If these things happen as scheduled, actual apportionment plans can be generated beginning in March.

VII. RECOMMENDATION TO THE 1981 LEGISLATURE

The most helpful and certainly the most efficient action the legislature could take on reapportionment is to adopt an agreed upon procedure very early in the session that will cover the use of staff resources, both research and legal, in the reapportionment process. It is assumed that one committee in each house will have reapportionment responsibility. It is recommended that those two committees be the focus in their respective houses for the direction of staff resources.

By joint rule the legislature can adopt a process that will be orderly and efficient, yet will assure that the ideas and concerns of every member can be addressed. Legally, a joint rule may not prevent a legislator from requesting a bill on reapportionment be drafted. That is the right of every member. A rule can restrict the research division to working on only those plans directed by the responsible committees. Further, a rule can prevent the introduction of any reapportionment bill not drafted at the direction of the two responsible committees.

If desired, a joint rule could also provide for the introduction of a single reapportionment bill rather than bills from each house.

> It is the recommendation of this staff study that the 1981 legislature adopt a joint rule limiting the direction of the research division on reapportionment matters to the committee in each house charged with reapportionment. Further, the rule should allow the introduction of only those reapportionment bills drafted at the request of the responsible committees. (BDR 655)

VIII. FOOTNOTES

[1]Bushnell, Eleanor, "Reapportionment and Redistricting in Nevada: The Politics of Incumbency," (in a forthcoming publication by the Rose Institute).

[2]Dixon, Robert G., Jr., Democratic Representation: Reapportionment in Law and Politics, Oxford University Press, New York, 1968, p. 23.

[3]Sabine, George, A History of Political Theory, 3rd Ed., Holt, Rinehart and Winston, Inc., New York, 1961, p. 610.

[4]Bagehot, Walter, The English Constitution, Oxford University Press, New York, 1900.

[5]Quoted in McKay, Robert B., Reapportionment: The Law and Politics of Equal Representation, Twentieth Century Fund, New York, 1965, p. 38.

[6]De Tocqueville, Alexis, Democracy in America, Mentor Books, New York, 1961.

[7]Quoted in Hanson, Royce, The Political Thicket, Prentice-Hall, Inc., Englewood Cliffs, N.J., 1966, p. 40.

[8]Ibid.

[9]Dixon, Op Cit., p. 99.

[10]Quoted in "Reapportionment: Law and Technology," National Conference of State Legislatures, Denver, CO, June 1980, p. 10.

[11]Ibid.

[12]Kirkpatrick, v. Preisler, 394 U.S. 526, 530-31 (1969).

[13]Mahan v. Howell, 410 U.S. 315, (1973).

[14]Gaffney v. Cummings, 412 U.S. 735, (1973).

[15]White v. Regester, 412 U.S. 755, (1973).

[16]Chapman v. Meier, 420 U.S. 1, (1975).

[17]Connor v. Finch, 431 U.S. 407, (1977).

[18]Ibid, p. 418.

[19]Burns v. Richardson, 384 U.S. 73, (1966).

[20]White v. Weiser, 412 U.S. 783, (1973).

[21]Ibid.

[22]Whitcomb v. Chavis, 403 U.S. 124, (1971).

[23]White v. Regester, Op. Cit.

[24]City of Mobile v. Bolten, 48 Law Week 4436, (1980).

[25]Speech by Paul Hancock, Head, Voting Rights Section, Civil Rights Division, U.S. Department of Justice, delivered at NCSL Seminar on Reapportionment, December 4, 1980, Salt Lake City, UT.

APPENDIX A

1980 CENSUS OF NEVADA

1980 CENSUS OF NEVADA*

Table 1. Population of County Subdivisions: 1980 and 1970.

[Total population of a place in two or more county subdivisions appears in table 2. County subdivision figures for 1980 do not necessarily add to county totals.]

	1980	1970	Percent Change
State of Nevada	799,184	488,738	63.8
County Subdivisions			
Carson City County	32,114	15,468	107.6
Churchill County	13,873	10,513	31.9
New River Twp	13,873	10,513	31.9
Fallon City	4,235	2,959	43.1
Fallon Station (U)	1,252	1,045	19.8
Clark County	462,218	273,288	69.1
Bunkerville Twp	492	244	101.6
Goodsprings Twp	1,004	314	219.7
Henderson Twp	24,409	16,410	48.7
Henderson City	24,438	16,395	49.0
Las Vegas Twp	349,606	191,260	82.7
East Las Vegas (U)	6,441	6,501	- .9
Las Vegas City	162,960	125,787	29.6
Paradise (U)	84,592	24,477	245.6
Sunrise Manor (U) (Part)	23,044	860	2,579.5
Winchester (U)	19,693	13,981	40.9
Logan Twp	1,082	426	154.0
Mesquite Twp	918	674	36.2
Moapa Twp	709	353	100.8
Nelson Twp	10,104	5,674	78.1
Boulder City City	9,627	5,223	84.3
North Las Vegas Twp	71,526	56,241	27.2
Nellis (U)	7,470	6,449	15.8
North Las Vegas City	42,757	36,216	18.1
Sunrise Manor (U) (Part)	20,856	10,026	108.0
Overton Twp	1,754	1,336	31.3
Searchlight Twp	614	356	72.5
Douglas County	19,500	6,882	183.3
East Fort Twp	14,055	3,867	263.5
Gardnerville-Minden (U)	2,646	1,320	100.5
Tahoe Twp	5,445	3,015	80.6

* Taken from Bureau of Census Report PHC 80-P-30, Preliminary Population and Housing Unit Counts, November 1980. The total figure for the state of 799,184 is the final state figure. The preliminary county figures do not add to the final state figure.

Table 1--Continued

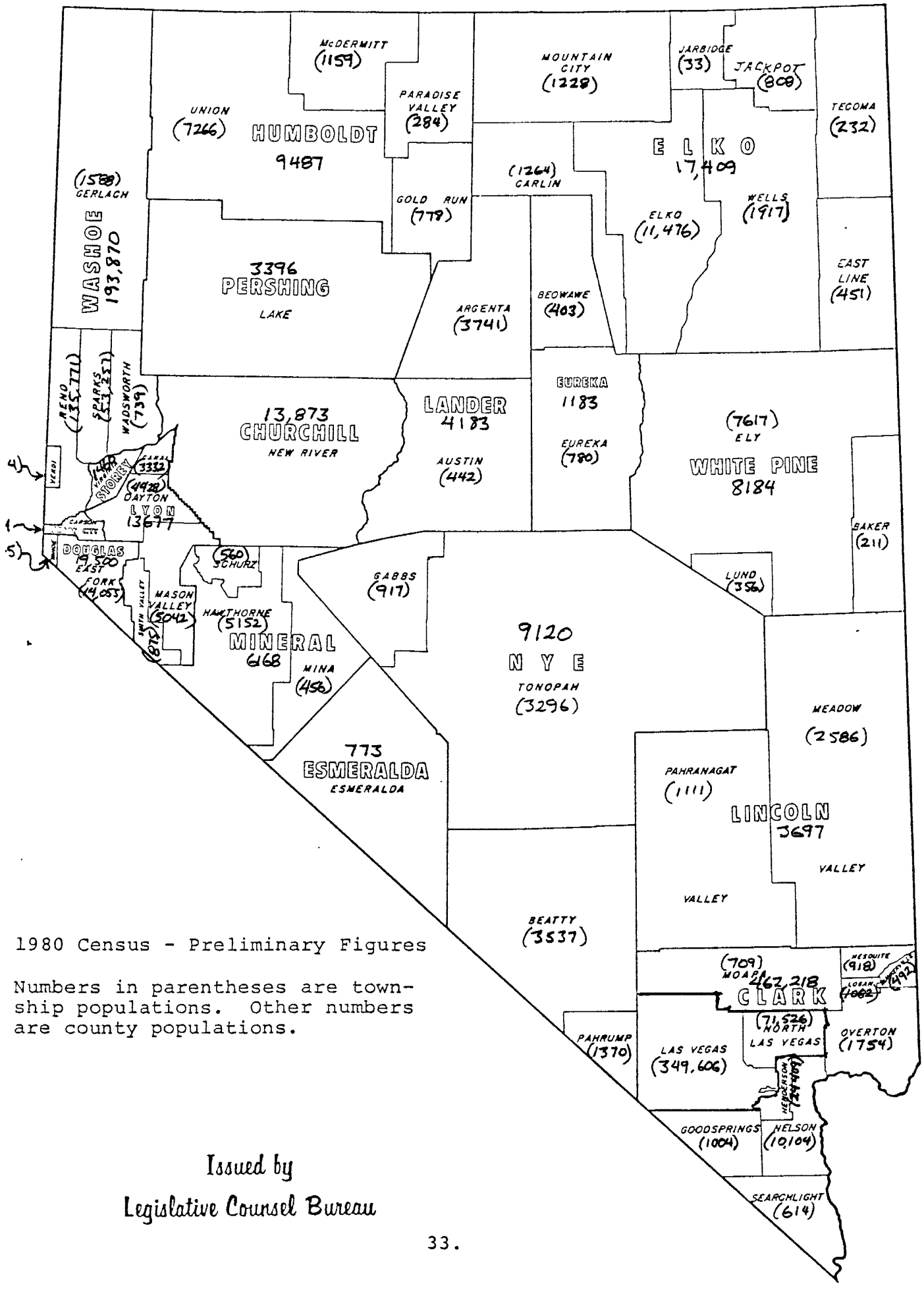
County Subdivisions	1980	1970	Perce Chang
Elko County	17,409	13,958	24.
Carlin Twp	1,264	1,356	- 6.
Carlin Town	1,216	1,313	- 7.
East Line Twp	451	97	365.
Elko Twp	11,476	8,931	28.
Elko City	8,843	7,621	16.
Jackpot Twp	808		
Jarbidge Twp	33	32	3.
Mountain City Twp	1,228	1,125	9.
Tecoma Twp	232	221	5.
Wells Twp	1,917	2,196	- 12.
Wells City	1,222	1,081	13.
Esmeralda County	773	629	22.
Esmeralda Twp	773	629	22.
Eureka County	1,183	948	24.
Beowawe Twp	403	401	1.
Eureka Twp	780	547	43.
Humboldt County	9,487	6,375	48.
Gold Run Twp	778	238	226.
McDermit Twp	1,159	1,086	6.7
Paradise Valley Twp	284	257	10.
Union Twp	7,266	4,794	51.6
Winnemucca City	4,160	3,587	16.
Lander County	4,183	2,666	56.9
Argenta Twp	3,741	2,252	66.1
Battle Mountain (U)	2,753	1,856	48.3
Austin Twp	442	414	6.8
Lincoln County	3,697	2,557	44.6
Pahranagat Valley Twp	1,111	398	179.1
Meadow Valley Twp	2,586	2,159	19.8
Caliente City	968	916	5.7
Lyon County	13,677	8,221	66.4
Canal Twp	3,332	1,470	126.7
Dayton Twp	4,428	826	436.1
Mason Valley Twp	5,042	5,187	- 2.8
Yerington City	2,025	2,010	.7
Smith Valley Twp	875	738	18.6

Table 1--Continued

County Subdivisions	1980	1970	Percent Change
Mineral County	6,168	7,051	- 12.5
Hawthorne Twp	5,152	5,995	- 14.1
Babbitt (U)	983	1,579	- 37.7
Hawthorne (U)	3,690	3,539	4.3
Mina Twp	456	506	- 9.9
Schurz Twp	560	550	1.8
Nye County	9,120	5,599	62.9
Beatty Twp	3,537	1,131	212.7
Gabbs Twp	917	1,000	- 8.3
Gabbs City	809	874	- 7.4
Pahrump Twp	1,370	963	42.3
Round Mountain Twp	623	215	189.8
Tonopah Twp	2,673	2,290	16.7
Tonopah (U)	1,956	1,716	14.0
Pershing County	3,396	2,670	27.2
Lake Twp	3,396	2,670	27.2
Lovelock City	1,683	1,571	7.1
Storey County	1,460	695	110.1
Virginia Twp	1,460	695	110.1
Washoe County	193,870	121,068	60.1
Gerlach Twp	1,588	579	174.3
Reno Twp	135,771	90,502	50.0
Reno City	100,943	72,863	38.5
Sparks Twp	53,257	28,702	85.6
Sparks City	40,915	24,187	69.2
Sun Valley (U)	8,951	2,414	270.8
Verdi Twp	3,254	716	354.5
Wadsworth Twp	739	555	33.2
White Pine County	8,184	10,150	- 19.4
Baker Twp	211	146	44.5
Ely Twp	7,617	9,686	- 21.4
Ely City	4,897	4,176	17.3
McGill (U)	1,417	2,164	- 34.5
Lund Twp	356	318	11.9

Table 2. Population of Places: 1980 and 1970

All Incorporated Places and Unincorporated Places of 1,000 or More	Counties	1980	1970	Percent Change
Babbitt (U)	Mineral	983	1,579	- 37.7
Battle Mountain (U)	Lander	2,753	1,856	48.3
Boulder City City	Clark	9,627	5,223	84.3
Caliente City	Lincoln	968	916	5.7
Carlin Town	Elko	1,216	1,313	- 7.4
Carson City City	Carson City	32,114	15,468	107.6
East Las Vegas (U)	Clark	6,441	6,501	- .9
Elko City	Elko	8,843	7,621	16.0
Ely City	White Pine	4,897	4,176	17.3
Fallon City	Churchill	4,235	2,959	43.1
Fallon Station (U)	Churchill	1,252	1,045	19.8
Gabbs City	Nye	809	874	- 7.4
Gardnerville-Minden (U)	Douglas	2,646	1,320	100.0
Hawthorne (U)	Mineral	3,690	3,539	4.3
Henderson City	Clark	24,438	16,395	49.0
Las Vegas City	Clark	162,960	125,787	29.6
Lovelock City	Pershing	1,683	1,571	7.1
McGill (U)	White Pine	1,417	2,164	- 34.5
Nellis (U)	Clark	7,470	6,449	15.8
North Las Vegas City	Clark	42,757	36,216	18.1
Paradise (U)	Clark	84,592	24,477	246.0
Reno City	Washoe	100,943	72,863	38.5
Sparks City	Washoe	40,915	24,187	69.2
Sunrise Manor (U)	Clark	43,900	10,886	303.3
Sun Valley (U)	Washoe	8,951	2,414	270.8
Tonopah (U)	Nye	1,956	1,716	14.0
Wells City	Elko	1,222	1,081	13.0
Winchester (U)	Clark	19,693	13,981	40.9
Winnemucca City	Humboldt	4,160	3,587	16.0
Yerington City	Lyon	2,025	2,010	.7



1980 Census - Preliminary Figures

Numbers in parentheses are township populations. Other numbers are county populations.

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APPENDIX B

SUGGESTED LEGISLATION

SUMMARY--Adds joint rule limiting research, bill drafting and introduction of bills on reapportionment to certain committees. (BDR 655)

SENATE CONCURRENT RESOLUTION--Adding a joint rule limiting introductions of bills and requests for research and bill drafting on the subject of reapportionment to the committees charged with that responsibility.

RESOLVED BY THE SENATE OF THE STATE OF NEVADA, THE ASSEMBLY CONCURRING, That the joint rules be amended by adding thereto a new joint rule which shall read as follows:

13

REAPPORTIONMENT

No bill concerning the reapportionment of the legislature may be introduced except by the committee in each house which is charged with that responsibility, nor may any research be performed by the research division of the legislative counsel bureau on the subject of reapportionment except at the request of such a committee.