



**House
Legislative
Analysis
Section**

Olds Plaza Building, 10th Floor
Lansing, Michigan 48909
Phone: 517/373-6466

LEGISLATIVE REDISTRICTING

**House Bill 5275 as enrolled
Public Act 463 of 1996
Second Analysis (1-2-97)**

**Sponsor: Rep. Robert Brackenridge
House Committee: Local Government
Senate Committee: Government
Operations (Discharged)**

THE APPARENT PROBLEM:

In 1982 and 1992, the Michigan Supreme Court drew new boundaries for state legislative districts, a task known as redistricting or reapportionment. Redistricting is required following each decennial census. The last two redistricting efforts were carried out by special masters appointed by the supreme court employing guidelines established by the court in 1982. According to knowledgeable sources, the court has carried out the redistricting ever since the adoption of the new state constitution in 1963. The constitution provided for a special 8-member Commission on Legislative Apportionment. The bi-partisan commission was unable to arrive at a majority decision in 1964, 1972, and 1982, and the court drew the boundaries. The commission was declared unconstitutional in 1982, and the redistricting task became once again a legislative responsibility. (The reapportionment language in the state constitution was determined to violate U.S. Supreme Court one person-one vote decisions.) The legislature did not produce a plan in 1992, so the court again carried out the legislative redistricting.

Some people believe the supreme court's redistricting criteria should be put into statute to guide the next round of redistricting after the census of 2000. Proponents say putting the criteria and a timetable into statute in advance will provide institutional memory that otherwise will be lacking, particularly since the advent of term limits means that no one in the state House now will be serving there when the next redistricting plan will be developed.

THE CONTENT OF THE BILL:

The bill would create a new act to establish a process for drawing up redistricting plans for the state House of Representatives and state Senate and to provide guidelines for redistricting plans. Generally, the bill calls for the legislature to enact a redistricting plan by November 1, beginning in 2001. If that plan was sent for review to the Michigan Supreme Court or if the court developed a plan

because the legislature had not enacted one, the court's plan would have to be provided by April 1.

Redistricting Process. Under the bill, the legislature would have to enact a redistricting plan by November 1, 2001 and every 10 years thereafter. Upon the application of an elector filed not later than 60 days after the enactment of a plan, the supreme court, exercising original jurisdiction provided under Section 6 of Article IV of the state constitution, could review the legislative plan and could modify the plan or remand it to a special master for further action, if it failed to meet specified guidelines.

If a legislatively developed plan for the House and Senate was not approved by the deadline, a number of parties could file a petition or other pleadings or papers requesting that the supreme court prepare a plan. Those who could file a petition would be: a political party, the Speaker of the House of Representatives, the Minority Leader of the House of Representatives, the Majority Leader of the Senate, or the Minority Leader of the Senate.

If the petition for review was filed with the court, the court would have to:

- undertake the preparation of a redistricting plan;
- appoint and utilize a special master or masters as the court considers necessary;
- provide, by order, for the submission of proposed redistricting plans by political parties and other interested persons who have been allowed to intervene. (Political parties would be granted intervention as of right.)
- after hearing oral argument or appointing special masters, propose one plan for the consideration of the parties and the public and make the plan available for

House Bill 5275 (1-2-97)

public inspection at least 30 days in advance of the time set for a hearing on the proposed plan;

-- prescribe, by order or otherwise, the procedure for and deadlines pertaining to filing objections and rebuttal to the proposed plan in advance of the hearing;

-- hold a hearing on the proposed plan no later than March 10 immediately following the November 1 deadline for the plan; and

-- order a redistricting plan not later than April 1 (in order to provide for the orderly election process and for candidates to meet statutory deadlines for filing and residency).

Guidelines for Redistricting Plans. Except as otherwise required by federal law, the redistricting plan would have to be enacted using only the following guidelines.

-- Districts would have to contain populations not exceeding 105 percent and not less than 95 percent of the ideal district size unless and until the United States Supreme Court established a different range of allowable population divergence.

-- Districts would preserve county lines with the least cost to the principle of equality of population.

-- If it was necessary to break county lines to stay within the range of allowable population divergence, the fewest whole cities or whole townships necessary would be shifted. Between two cities or townships, both of which would bring the districts into compliance, the one with the lesser population would have to be shifted.

-- Within counties to which there was apportioned more than one Senate district or House district, district lines would be drawn on city or township lines with least cost to the principle of equality of population between election districts consistent with the maximum preservation of city and township lines and without exceeding the range of allowable divergence.

-- If it was necessary to break city or township lines to stay within the range of allowable divergence, the number of people necessary to achieve population equality would be shifted between the two districts affected, except that in lieu of absolute equality, the lines could be drawn along the closest street or comparable boundary.

-- Within a city or township to which there was apportioned more than one House or Senate district, district lines would be drawn to achieve the maximum compactness possible within a range of 98 percent to 102 percent of absolute equality between districts within the city or township.

-- Compactness would be determined by circumscribing each district with a circle of minimum radius and measuring the area (not part of the Great Lakes and not part of another state) inside the circle but not inside the district.

-- If a discontinuous township island existed within an incorporated city or discontinuous portions of townships were split by an incorporated city, the splitting of the township would not be considered a split if: 1) the city must be split to stay within the range of allowable divergence and it is practicable to keep the township together within one district; 2) a township island was contained within a whole city and a split of the city would be required to keep the township intact; or 3) the discontinuous portion of a township cannot be included in the same district with another portion of the same township without creating a noncontiguous district.

-- Districts could not violate the precedents established in Miller v Johnson, Bush v Vera, and Shaw v Hunt.

The bill specifies that if any portion of the act or application of any portion of the act to any person or circumstance was found to be invalid by a court, the invalidity would not affect the remaining portions or applications that could be given effect without the invalid portions or application, if the remaining portions were not determined by the court to be inoperable. The bill says, "to this end this act is declared to be severable."

FISCAL IMPLICATIONS:

There is no information at present.

ARGUMENTS:

For:

The bill, for the most part, codifies the current Michigan Supreme Court criteria for legislative redistricting and provide a rational process for the development of new legislative districts following the 2000 census. It is sensible to get these guidelines in place well in advance. In part, this is because most of the legislators in office today will not be serving when redistricting needs to be carried out. The guidelines were developed taking into account court decisions on the subject, and the bill permits modification of the criteria if new decisions are handed down regarding population divergences. The criteria have been described as politically neutral and proponents say they have been supported in the past by both major political parties. Basing redistricting or reapportionment on these criteria makes developing a plan more mechanistic and formulaic and offers less opportunity for the majority party to impose an unfair

plan on the minority party. Such criteria make it more likely the legislature can successfully redistrict itself.

Against:

The aim of the bill ought to be to put into statute the guidelines used to develop the most recent legislative redistricting plans. Tinkering with the criteria should be avoided. Thus, the bill should contain language permitting a 16.4 percent population divergence unless and until the U.S. Supreme Court establishes a different range of allowable population divergence for state legislative districts. Under current rulings, plans with districts that have a divergence between 10 percent and 16.4 percent must show that there is some compelling state policy to justify the divergence, such as, in Michigan, the desire to maintain municipal boundary lines.

Response:

While some would urge that districts should all be exactly equal in population (as congressional districts are required to be) the deviation should at least not exceed 10 percent. That, experts say, is the level of population divergence that allows a plan to be presumptively valid, following court decisions. (Those who argue for districts of equal or nearly equal population point out that it is possible for the combination of large deviations and very different growth rates around the state to produce dramatic, and unjust, differences in district populations in the decade between one redistricting plan and another.)

Against:

Some people have objected that there is no need to pass this legislation at this time with legislative redistricting not due to take place for another five years or so. Legislation of such import should not be enacted in a partisan fashion at the last minute in a lame-duck legislative session. It needs more study. Moreover, most of the guidelines in the bill are already in place. The most recent redistricting took place without any legislation. So, what is the need for the bill at the current time? The process in the bill requires the legislature to draw up a plan using the mandated criteria and then allows virtually anyone to instigate a state supreme court review, which can result in the altering or complete rewriting of the plan. How does putting this into statute constitute an improvement over current practice?

Analyst. C. Couch

■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.