

Redistricting in the MDN States

Justin Levitt



**MICHIGAN
(HB 5914)**

KEY POINTS:

The proposed statute would not affect congressional districts. For state legislative districts, the proposal would give primary redistricting authority to the Legislative Service Bureau, the nonpartisan agency currently tasked with researching and drafting statutes. The LSB would draw and submit plans, which each legislative chamber would have two opportunities to reject by a supermajority, with explanation but without modification. The LSB would have the chance to either incorporate or reject the feedback in drawing a final plan. Required criteria focus on political boundaries and compactness, with additional restrictions on considering political data unless necessary.

PROCESS:

The proposal would retain the current structure for congressional districts, which are drawn by the state legislature.

State legislative plans would be drawn initially by the Legislative Service Bureau, no later than Sept. 28, 2011; a plan could be rejected within 60 days by a 2/3 supermajority of either legislative chamber, with an explanation of the reasons for rejection (and, presumably, suggested changes). The LSB must respond within 30 days. If it changes the map in accordance with changes suggested by the rejecting chamber(s), that map is adopted; if the LSB makes other changes, the plan returns to the legislature, where either chamber may again reject the plan by a 2/3 supermajority, with explanation. The LSB may choose to ignore or adopt these last changes, yielding a final plan.

Because this bill would change the redistricting process by statute, a succeeding legislature could also repeal the procedural changes by statute — though such a change would have to be approved by the governor, and could entail some political cost.

- **Independence from Legislators:** Redistricting plans would be drawn by an agency nominally independent from the legislature; that agency will be able to receive feedback from the legislative bodies, but may adopt or ignore this feedback.
- **Partisan Balance:** The primary agency that would control the process is nominally nonpartisan, and the 67% supermajority requirement to reject a plan gives some confidence that rejection would require bipartisan consensus. Currently, Democrats control 60% of the State House and Republicans control 58% of the State Senate. In the fifty state legislatures, one party currently controls 67% or more of 12 lower houses and 15 upper houses.
- **Minority Participation:** The process would feature as much diversity as the LSB itself; the body's substantial size makes such diversity relatively more likely.
- **Public Input:** There are no specific provisions for the public to present or comment on plans.
- **Timing:** The proposal has no express binding prohibition on redrawing either state legislative or congressional districts more than once per decade. It is possible that some of the language in the proposal could be interpreted as suggesting such a prohibition for state legislative districts.

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CRITERIA:

As with the establishment of a new redistricting process, because all of Michigan’s redistricting criteria are set by statute, they may also be adjusted by the legislature, subject to the courts’ concern that districts be drawn in keeping with Michigan’s “constitutional history.”

Congressional and state legislative districts must be contiguous, and follow the federal standard of equal population. At present, the Michigan legislature has determined that state legislative districts must also fall within 5% above or below the mean population. The proposal would also prohibit the use of political data.

Congressional districts must preserve whole political units -- counties, cities, and townships, in that order -- where feasible. If there is more than one district within a city or township, those districts must be maximally compact, measured by drawing a circle around the district, and taking the area within the circle but outside the district lines.

The proposal seems to soften these criteria somewhat for state legislative districts. Most of a district would have to fit within a single county if possible, but county lines would not otherwise be sacrosanct; more emphasis would be placed on preserving cities and townships. As with congressional districts, if there is more than one district within a city or township, those districts must be maximally compact, but without a particular definition of compactness, and only to the extent that the compactness does not cause a population deviation beyond 2% above or below the mean population.

- **Population Equality:** The proposal would continue to allow substantial population disparity, with tighter bounds for multiple districts within a city or township; some residents’ votes may be more valuable than others, though the flexibility leaves room to keep municipalities or communities together. On the other hand, the tighter bounds for city districts may limit flexibility to create minority opportunity districts pursuant to the Voting Rights Act. There is also no express provision to determine whether the state must rely on the count conducted by the federal census (which counts incarcerated persons where they are incarcerated rather than in their home communities).
- **Minority Rights:** There are no provisions for minority rights other than federal law. Two Michigan townships (Clyde and Buena Vista) must “preclear” changes to election rules, including district lines within those townships, to ensure that minority rights are not diluted under the Voting Rights Act.
- **Compactness:** The legislature has required that multiple districts within a city or township be reasonably compact; congressional compactness is governed by a specified measure, but the proposal would release state legislative districts from a particular formula. To the extent that real communities of common interest are represented within cities or townships in less compact geographic patterns, the compactness threshold might limit the opportunity to represent those communities, though this is less likely where a particular mathematical formula is not specified.
- **District Competition:** There proposal has no provision encouraging or discouraging competition within a district, though its ban on political information may make it marginally more difficult to create districts that are intentionally competitive or noncompetitive.
- **Statewide Partisan Balance:** The proposal has no provision otherwise encouraging or discouraging statewide partisan balance, though its ban on political information may make it marginally more difficult to draw a plan that intentionally fosters or undermines partisan balance.
- **Preservation of Political Boundaries:** The legislature has emphasized the preservation of political units for congressional districts, and particularly the minimal division of counties, cities, and townships. For state legislative districts, the proposal would relax an equivalent requirement for

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county lines, while preserving an emphasis on municipal and township boundaries. To the extent that communities of interest bridge political boundaries, relaxing the county limitations may increase the opportunity to accommodate such communities.

- **Communities of Interest**: There is no provision expressly concerning communities of interest.
- **Nesting**: There is no provision requiring that House districts be nested in Senate districts.
- **Incumbent Residence**: The proposal would prohibit those drawing the lines from considering the residences of incumbents. This reduces the likelihood of intentional harm (or benefit) to individual legislators, but also poses the potential for unintentional impact on incumbents.