

GUIDE TO 2021 REDISTRICTING



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PREFACE

The *Guide to 2021 Redistricting* has been prepared to provide members of the legislature and other interested persons with an introduction to the issues and constraints that will affect statewide redistricting in Texas following the 2020 decennial census and to describe the services provided by the Texas Legislative Council to support the state's redistricting effort. The guide briefly outlines requirements of a redistricting plan and explains the redistricting process in Texas. It reviews the data, computer programs, and information resources that will be available to legislators in 2021 to facilitate the redistricting process.

This edition of the guide is preliminary; the publication will be updated as more specific information about data releases and timelines becomes available.

For more information concerning redistricting, visit the Texas Redistricting website (<https://redistricting.capitol.texas.gov>) or contact the Texas Legislative Council at (512) 463-6622.

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INTRODUCTION

The Texas Legislature has the responsibility to redistrict Texas senate, Texas house, Texas congressional, and State Board of Education (SBOE) districts following publication of the 2020 United States decennial census. Redistricting can only begin after the block-level total and voting age population counts by race and ethnicity are provided by the U.S. Census Bureau. Federal law requires that data to be delivered to the states not later than March 31, 2021.

If the census data is delivered before the end of the 87th Legislature's regular session in 2021 and new boundaries for the Texas senate or house districts are not enacted in the regular session, or if a plan enacted during that session is vetoed or is overturned by court challenge within 90 days of the end of the session, the Legislative Redistricting Board (LRB) is given redistricting authority for those state legislative districts. If new boundaries for congressional or SBOE districts are not enacted during the regular session, the issue may be taken up in a special legislative session.

Texas legislators have access to a special Texas redistricting computer system (RedAppl), which provides the extensive data and graphic mapping capability necessary to redraw districts. Current districts and proposed legislative plans and amendments will be available for viewing by legislators and others on the public DistrictViewer website (<https://dvr.capitol.texas.gov>).

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REDISTRICTING REQUIREMENTS

The following is a brief discussion of basic legal requirements relating to legislative redistricting.

The federal constitution calls for reapportionment of congressional seats according to population from a decennial census (Section 2, Article I). Reapportionment is the allocation of a set number of districts among established units of government. The 435 congressional seats are reapportioned among the 50 states after each decennial census according to the method of equal proportions. The boundaries of the individual congressional districts within each state are then redrawn by the state legislature or, in some states, by a redistricting commission, in accordance with state and federal law.

Redistricting is the revision or replacement of existing electoral districts, resulting in new districts with different geographical boundaries. The basic purpose of decennial redistricting is to equalize population among electoral districts after publication of the United States decennial census indicates population has increased or decreased over the last decade.

The Texas Constitution requires the legislature to redistrict Texas house and senate seats during its first regular session following publication of each United States decennial census (Section 28, Article III). After each census, SBOE seats also must be redistricted to bring them into compliance with the one-person, one-vote requirement.

GENERAL REQUIREMENTS FOR REDISTRICTING PLANS

Two primary requirements govern redistricting. First, representative districts of a given type (senate, house, congressional, and SBOE, as well as local government single-member districts) must have equal or nearly equal populations. Second, districts must be drawn in a manner that neither has the purpose nor will have the effect of denying or abridging the right to vote on the basis of race, color, or language group. These requirements are based in the Fourteenth Amendment to the U.S. Constitution (the Equal Protection Clause), the Fifteenth Amendment (prohibiting voting discrimination based on race), the federal Voting Rights Act of 1965, and, for congressional districts, Section 2, Article I, of the U.S. Constitution. As U.S. Supreme Court Justice William O. Douglas wrote in 1963, “The conception of political equality from the Declaration of Independence, to Lincoln’s Gettysburg Address, to the Fifteenth, Seventeenth, and Nineteenth Amendments can mean only one thing—one person, one vote” (*Gray v. Sanders*, 372 U.S. 368 (1963)).

Exactly how equal must the populations of districts be? A Texas case that reached the U.S. Supreme Court in the 1970s (*White v. Regester*, 412 U.S. 755 (1973)) set the basic standard for the maximum acceptable population deviation for state legislative districts: the combined deviation of the most populous district and the least populous district from the ideal district population may not exceed 10 percent, and all the other district populations must fall within that narrow range. “Ideal district population” is the population a district would have if all districts in a plan have equal populations, and it is determined by dividing the total state population by the number of districts in the plan. The courts have allowed limited exceptions to the 10 percent deviation limitation if based on consistent application of rational state policy such as the preservation of whole counties. In some cases, even plans with districts within the 10 percent limitation have been held invalid if the population deviations show a pattern of discrimination. The same standard applies to districts for the SBOE. A stricter one-person, one-vote standard applies to congressional redistricting.

Traditionally, states have equalized total census populations to comply with the one-person, one-vote requirement. The federal courts have left open the question of whether a state may equalize eligible voter populations among districts to satisfy that requirement.

The application of the Voting Rights Act and federal constitutional prohibitions against redistricting that has the purpose or effect of discriminating on the basis of race, color, or language group has been developed primarily through case law and has been the subject of extensive litigation. In drawing new districts, the legislature must carefully consider how those districts affect the ability of racial, ethnic, and language group voters to elect candidates of their choice.

While the principal federal constitutional and statutory provisions governing redistricting are the same for all redistricting plans, the specific provisions of the Texas Constitution relating to Texas house and senate districts, and certain provisions of the federal constitution governing congressional districts, result in somewhat different requirements for different types of districts. The following sections briefly describe redistricting requirements specific to each type of district for which the Texas Legislature is primarily responsible.

SENATE DISTRICT REQUIREMENTS

Section 25, Article III, of the Texas Constitution requires the Texas Senate to be elected from single-member districts and each senate district to be composed of contiguous territory.

Section 28, Article III, of the Texas Constitution requires the legislature to redistrict state senate districts during the first regular session following publication of the decennial census. If the legislature fails to do so, the redistricting task falls temporarily to the LRB.

HOUSE DISTRICT REQUIREMENTS

Often referred to as the “county line rule,” Section 26, Article III, of the Texas Constitution, as modified by the federal courts to comply with the one-person, one-vote standard mandated by the Fourteenth Amendment, requires that house districts be apportioned among the counties according to the most recent federal decennial census population, subject to the following:

- (1) a county with sufficient population for exactly one district must be formed into a single district;
- (2) a county with a population smaller than the population needed for a whole district must be kept whole and combined with one or more contiguous counties to form a district;
- (3) a county that has sufficient population for two or more whole districts must be divided into that number of districts, with no district extending into another county; and
- (4) each county with a population sufficient for one or more whole districts plus a fraction of another district must be divided into that many whole districts, with the excess population added to one or more contiguous counties to form an additional district.

In practice, it is sometimes impossible to draw a statewide plan that completely satisfies these rules while maintaining districts with equal populations. The Texas courts have allowed a house plan to violate the county line rule to the limited extent necessary to draw a plan that complies with the federal one-person, one-vote requirement. For example, a county with less than the population needed for a single house district may be split between districts when no other option is available to create equally populated house districts. Section 28, Article III, of the Texas Constitution requires the legislature to redistrict state house districts during the first regular session following publication of the decennial census. If the legislature fails to do so, the redistricting task falls temporarily to the LRB.

CONGRESSIONAL DISTRICT REQUIREMENTS

The number of seats in the U.S. House of Representatives apportioned to each state is determined after each decennial census by a mathematical formula set by federal law. Unless a state’s constitution provides

otherwise, each legislature has the authority to draw its state's congressional district boundaries. No Texas constitutional or statutory provisions address congressional redistricting. As a practical matter, the legislature must draw districts for the congressional seats apportioned to Texas before the candidates' filing period for the first general election following the decennial census. Unlike legislative redistricting, congressional redistricting does not come within the authority of the LRB if the legislature fails to enact a valid plan during the regular session that is meeting when the decennial census is published. The issue may be taken up in a subsequent special session of the legislature or, if the legislature fails to enact a congressional plan or the governor does not call a special session, the districts may ultimately be drawn by a state or federal district court.

Federal law allows substantially less population deviation for congressional districts than for legislative districts, requiring congressional districts to be as equal in population as practicable. In congressional districts, each deviation from the ideal district size must be justified on the basis of a rational state policy or be found to be unavoidable despite a good faith effort to draw districts with equal population (*Karcher v. Daggett*, 462 U.S. 725 (1983)). As a result, congressional districts are usually drawn to be almost exactly the same in population.

STATE BOARD OF EDUCATION DISTRICT REQUIREMENTS

Section 7.101, Education Code, establishes the composition of the SBOE. The board currently consists of 15 members elected from districts.

No state statute requires redistricting of the SBOE districts at a particular time. The statutes governing the board provide for the election of a new board with staggered four-year terms after any decennial reapportionment of the districts. See Section 7.104, Education Code. As a practical matter, the legislature must redistrict the SBOE districts after the decennial census to bring the districts into compliance with the one-person, one-vote requirement.

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REDISTRICTING PROCESS

The timing of the publication of the federal decennial census and legal requirements relating to redistricting in Texas dictate the basic process that redistricting follows in the Texas Legislature. A potential delay in the publication of the 2020 Census may affect the 2021 redistricting process in Texas substantially. This guide will be updated as more specific information becomes available.

The December 2021 filing deadline for the 2022 primary elections allows less than seven months from the end of the 2021 regular legislative session for the governor to act on any redistricting legislation passed, for the LRB to meet if necessary, for any special session called to consider redistricting if necessary, for court action, and for counties split by district boundaries to redraw county election precincts to follow new district boundaries.

PUBLIC HEARINGS

In order to obtain information that will aid the Texas Legislature in making redistricting decisions, legislative committees generally gather public comments prior to the redistricting session, providing an opportunity for citizens to present relevant testimony concerning local preferences, communities of interest, local voting patterns, and other issues that the legislature may consider when redrawing district lines.

Public hearings on redistricting bills under consideration by legislative committees are also held once census data become available and redistricting proposals are being considered by the legislature.

REDISTRICTING DATA

Federal law requires the U.S. Census Bureau to deliver state population totals to the president by December 31 of the census year (2020), at which time the number of congressional seats for each state is computed. The detailed census data needed to draw districts is required by federal law to be delivered to the states not later than March 31, 2021. Due to changes in census operations during 2020 because of the COVID-19 pandemic, the time frame in which the 2020 census data needed for Texas redistricting will become available is uncertain at this time.

REDISTRICTING BILLS

Redistricting bills follow the same path through the legislature as other legislation, and house and senate rules setting end-of-session procedures for the consideration of bills also apply. Congressional and SBOE redistricting bills may be introduced in either or both chambers; senate and house redistricting bills traditionally originate only in their respective chambers. Following final adoption by both chambers, each redistricting bill is presented to the governor for approval. The governor may sign the bill into law, allow it to take effect without a signature, or veto it. If the house or senate redistricting bill is vetoed and the veto is not overridden by the legislature, the LRB is required to meet. If a congressional or SBOE redistricting bill is vetoed and the veto is not overridden, the governor may call a special session to consider the matter. If no redistricting plan is enacted by the legislature or LRB for a particular body, the matter is likely to be taken up in state or federal district court, where an interim plan may be ordered by the court in the absence of an enacted plan.

LEGISLATIVE REDISTRICTING BOARD

The LRB, composed of the lieutenant governor, speaker of the house of representatives, attorney general, comptroller, and land commissioner, was created by Texas constitutional amendment approved by the voters in 1948 to provide legislators with an incentive to redistrict after each federal decennial census. If the legislature fails to redistrict house or senate districts during the first regular session following release of the decennial census, Section 28, Article III, of the Texas Constitution requires the LRB to meet within 90 days of the end of that regular session and to adopt its own house or senate plan within 60 days of convening.

In *Mauzy v. Legislative Redistricting Board*, 471 S.W.2d 570 (Tex. 1971), the Texas Supreme Court interpreted the LRB's authority to arise not only when the legislature literally fails to act, but also when legislative redistricting plans are found invalid by the courts. As a result, if the legislature's plan is vetoed by the governor and the veto is not overridden by the legislature, or if the plan is overturned by a court challenge within the 90-day period in which the LRB is given redistricting authority, redistricting becomes the responsibility of the LRB.

JUDICIAL REVIEW

A suit against an adopted redistricting plan may be brought by a person with proper standing under the federal or state constitution or federal law. A suit alleging that a plan does not meet Texas constitutional requirements is ordinarily filed in state court. A suit alleging that a plan violates federal law is ordinarily filed in federal district court but may be brought in state court instead. A suit in federal court alleging that a congressional or legislative redistricting plan violates the federal constitution is tried before a three-judge district court.

ELECTIONS UNDER NEW DISTRICTS

Before elections are held under the new districts, counties that are split by district boundaries must change their voting precinct boundaries to conform with the new district lines since, under state law, a county voting precinct may not include portions of more than one congressional, legislative, or SBOE district.

The state constitution requires a candidate for state legislative office to have resided in the district the candidate seeks to represent for at least one year before the general election.

2021 REDISTRICTING TIMETABLE

The December 2021 candidate filing deadline for the primary elections allows less than seven months from the end of the regular legislative session for the governor to act on any redistricting legislation passed, for the LRB to meet if necessary, for any special session called to consider redistricting if necessary, for court action if a legal challenge is brought or it becomes necessary for the courts to implement a plan, and for counties to make changes in county election precincts. A timetable illustrating all steps in the redistricting process, between the release of the 2020 census data for redistricting and the 2022 election cycle, will be added to this guide when information about the release of the 2020 census redistricting data becomes available.

To further understand the complexities and the challenge facing the legislature, the reader may refer to the histories of redistricting in the previous four decades, which are summarized on the Texas Redistricting website (<https://redistricting.capitol.texas.gov>).

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TECHNICAL SUPPORT FOR REDISTRICTING

Because of the federal constitutional requirement that districts of a given type have equal or nearly equal population, redistricting plans must take into account information about the total population of each district. To satisfy other legal requirements, including compliance with the Voting Rights Act, plans must take into account information about the race and ethnicity of the voting age populations of the districts as well as election data for analyzing minority participation and voting strength in existing and proposed districts. Since districts are defined in terms of geographic territory, geographic features such as census units (tracts, block groups, and blocks) and political units (counties, cities, and voting precincts) that are correlated to the demographic and election data are required for the task of redistricting. The legislature collects and maintains this data for use in carrying out its redistricting obligations and makes the data available to the public through its redistricting websites.

DATA

Population data provided by the U.S. Census Bureau is the foundation of a redistricting plan; population is reported by units of census geography, including by county, tract, block group, and block. Redistricting plans are typically drawn using these units of census geography.

Because election information is also required for analyzing a redistricting plan, a statewide election database compiled by legislative council staff provides county voting precinct boundaries, the results of statewide and many local primary, run-off, and general elections, and voter registration information by precinct for all counties. This election data is allocated to each census block within each voting precinct to allow for election data to be estimated for any district.

Because county voting precinct lines do not always follow census lines, in the redistricting system the precinct boundaries have been approximated to the closest census block boundary. These approximated precincts are called voting tabulation districts (VTDs). In most cases, VTDs match county election precincts exactly or the differences are minor and do not affect the accuracy of the precinct election data assigned to the VTD and the blocks within the VTD. Occasionally, the differences between a county voting precinct that does not follow census geography and the corresponding VTD are somewhat substantial and may affect the reliability of election data allocated to that VTD and the blocks within it. However, because districts cover large areas and consist primarily of whole voting precincts, the imperfect allocation of election precinct data to some VTDs is not likely to have a significant effect on the total election data reported for each district.

REDAPPL

The centerpiece of the technology that supports redistricting in Texas is the RedAppl district modeling system. RedAppl, which was first developed in 1990 and has been updated and enhanced periodically since then, pulls together all the census and election data to allow the generation of maps and reports showing district boundaries and associated demographic and election information. RedAppl 2021 has data for statewide and select local elections held from 2012 through 2020, including primary, run-off, and general elections.

An important feature of RedAppl 2021 is the capability to work online or off-line. Legislators and staff can use their council laptops to work on plans away from Capitol Complex offices and can disconnect from the Capitol network and work off-line in their offices or other convenient locations.

DISTRICTVIEWER

DistrictViewer (<https://dvr.capitol.texas.gov>) is the legislature's public website that displays maps and associated demographic and election reports for current and proposed state senate, state house, Texas congressional, and SBOE districts. All redistricting proposals that are made public during the legislative process are made available in DistrictViewer as soon as possible after becoming public, such as by the filing of a redistricting bill or the offer of an amendment in committee or during floor consideration of a redistricting bill. Users of the DistrictViewer may overlay one plan on another to compare the two; DistrictViewer also allows the user to zoom in to view the details of a proposed plan, such as street names, cities, and election precincts, with or without districts.

WHO REPRESENTS ME?

Who Represents Me? (<https://wrm.capitol.texas.gov>) is a web tool that links any address in Texas to *current* districts to allow the user to identify the current members of the Texas Senate, Texas House of Representatives, U.S. Senate and House of Representatives, and the SBOE who represent that address location. Who Represents Me? also provides contact information for those representatives. The site will be updated to reflect new districts after the 2022 elections.

CAPITOL DATA PORTAL

All the redistricting data maintained by the legislature is available from the Capitol Data Portal (<https://data.capitol.texas.gov>), which can be accessed from the Texas Redistricting website. Data include files that relate precincts and zip codes to districts and shapefiles of counties, tracts, block groups, blocks, precincts, VTDs, and school districts. Election returns and voter registration and turnout data are available by VTD, and additional records are added as soon as data from a new election is collected, processed, and verified.

TEXAS REDISTRICTING

The Texas Redistricting website (<https://redistricting.capitol.texas.gov>) serves as a guide to redistricting activities carried out by the Texas Legislature. It provides an extensive overview of the requirements and procedures relating to redistricting in Texas and has an extensive history section that includes legislative and court action concerning Texas districts from the past four decades.

The website is updated regularly throughout the redistricting process with information such as meeting dates, census deadlines, redistricting plan maps and reports, and news about major activities affecting redistricting taking place after the legislature adjourns.