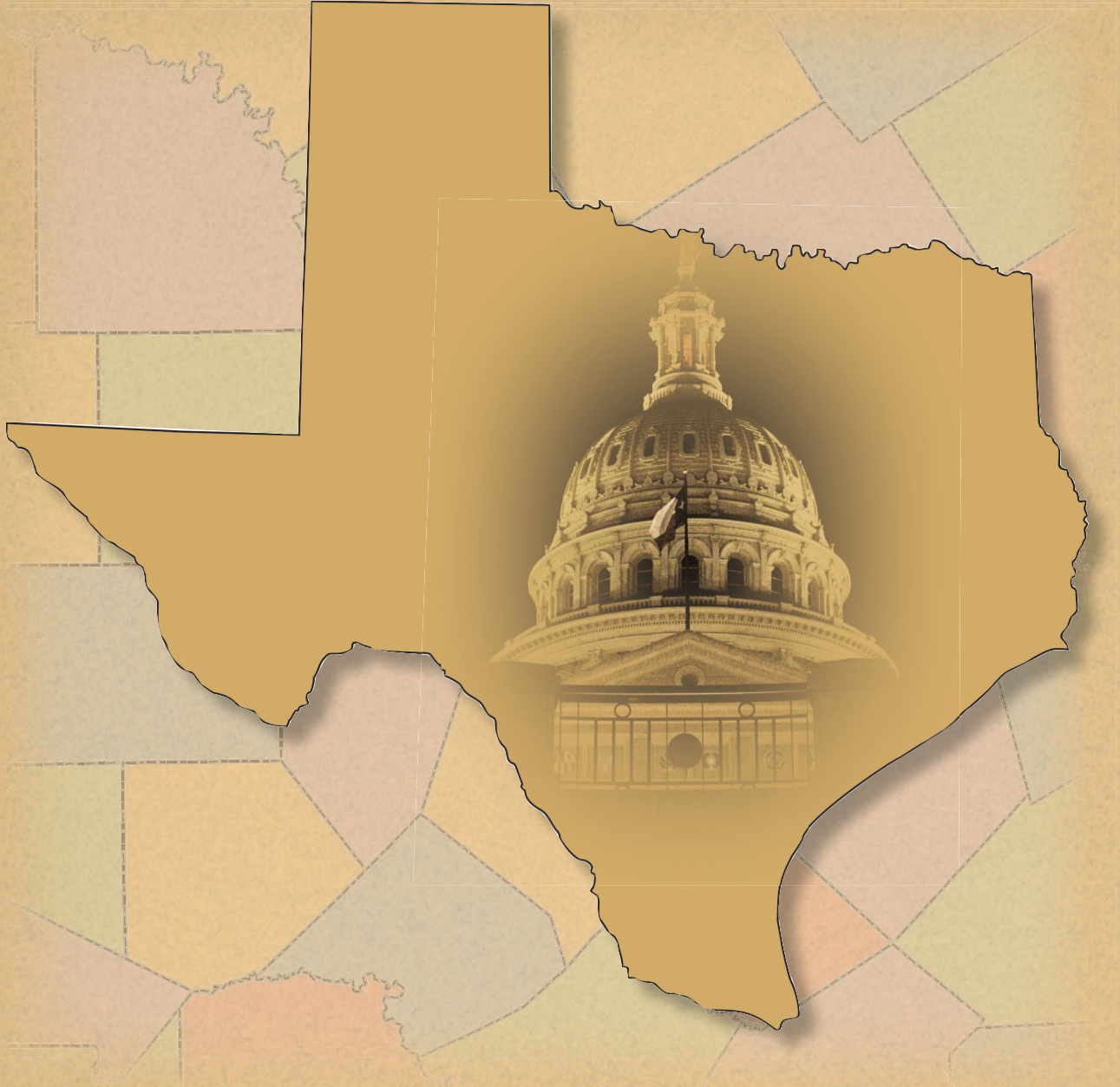


Guide to 2011 Redistricting



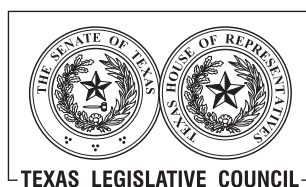
Texas Legislative Council

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Guide to 2011 Redistricting

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Preface

The *Guide to 2011 Redistricting* was prepared to provide members of the legislature and other interested persons with an introduction to the issues and constraints that will affect redistricting in Texas following the 2010 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, explains the redistricting process in Texas, and discusses the timetable for accomplishing the possible steps in the process. It reviews the data, computer programs, maps and reports, and information resources that will be available to legislators in 2011 to facilitate the redistricting process.

For more information concerning redistricting, visit the Texas Redistricting website (<http://www.tlc.state.tx.us/redist/redist.html>) or contact the Texas Legislative Council at (512) 463-6622.

Introduction

The Texas Legislature is required to redistrict state senate and house districts in the first regular session following publication of the United States decennial census. Though no Texas constitutional or statutory provisions govern congressional and State Board of Education (SBOE) redistricting, as a practical matter the 82nd Legislature also must draw districts for the congressional seats apportioned to Texas and for the SBOE before the candidates' filing period opens for the primary elections held in 2012. Redistricting cannot begin until the block-level total and voting age population counts by race and ethnicity are provided by the U.S. Census Bureau on or before April 1, 2011.

If new boundaries for the Texas senate or house districts are not enacted in the regular session of the 82nd Legislature or if a plan is overturned by court challenge within the 90-day period in which the Legislative Redistricting Board (LRB) is given redistricting authority, the state constitution requires the five-member LRB to meet and adopt a new redistricting plan. 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. If no special session is called, then the issue may be taken up in state or federal district court.

In order to accomplish its task in the very limited time available, the legislature must have access to a large amount of information and the tools to analyze the information quickly and efficiently. In 2011, Texas legislators will have access to an enhanced version of the RedAppl system that will run on members' desktop and laptop computers. Online viewing of current districts and proposed public plans will be available to members and to the public over the Internet using another council application, DistrictViewer.

Redistricting Requirements

The federal constitution calls for reapportionment of congressional seats according to population from a decennial census (Section 2, Article I). Reapportionment is the division of a set number of districts among established units of government. For example, 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 congressional districts are then redrawn by state legislatures in accordance with state and federal law.

Redistricting is the revision or replacement of existing 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 census indicates an increase or decrease in or shift of population.

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, State Board of Education 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 all redistricting decisions in the state. First, districts of a given type (senate, house, congressional, SBOE) must have equal or nearly equal populations, and 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 could mean only one thing—one person, one vote.” *Gray v. Sanders*, 372 U.S. 368 (1963).

The first question that must be answered about redistricting is exactly how equal the populations of districts must 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. Under that standard, 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. Exceptions to the 10 percent deviation limitation have been allowed if based on consistent application of rational state policy such as the preservation of whole counties. In some cases, 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. (See the Congressional District Requirements section.)

The federal constitutional and statutory provisions on redistricting, the differing provisions of the Texas Constitution relating to legislative districts, and numerous federal and state court cases on the issue 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 to the Legislative Redistricting Board.

House District Requirements

Section 26, Article III, of the Texas Constitution requires that house districts be apportioned among the counties according to the federal census population and the following rules:

(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 these rules to the extent necessary to draw a plan that complies with the one-person, one-vote requirement.

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 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 governor does not call a special session, the districts may be drawn by a state or federal district court.

Federal law allows 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 State Board of Education. In 1984, the 68th Legislature, 2nd Called Session, set the number of districts at 15.

No state statute requires redistricting of the SBOE districts at a particular time, although the statutes governing the board assume the districts will be redrawn after each federal decennial census. See Sec. 7.104, Education Code.

Redistricting Process

Every decade presents different challenges and reflects the wills of the various players involved during that period. The history of the redistricting process during the 1980s, 1990s, and 2000s illustrates some of the different courses decennial redistricting can take. The timing and legal requirements, however, dictate that the basic process will likely take the following course, which is described in more detail in the associated sections.

During 2010, the legislative committees with redistricting jurisdiction may hold public hearings around the state. The April 1, 2010, census population data will be delivered to the legislature no later than April 1, 2011, and perhaps as much as six weeks earlier. As soon as the data is loaded in the computer systems, the members of the legislature, their designees, and other interested parties will begin drawing plans. Bills to enact new redistricting plans will follow the same path through the legislature as other legislation.

If the Texas senate or house districts are not enacted during the 82nd Legislature, Regular Session, the Texas Constitution requires that the Legislative Redistricting Board meet and adopt its own plan. Any legislative or LRB plan must be submitted to the U.S. Department of Justice or the U.S. District Court for the District of Columbia for preclearance under Section 5 of the Voting Rights Act of 1965.

If the congressional or State Board of Education districts are not enacted during the regular session, the governor may call a special session to consider the matter. If the governor does not call a special session, then a state or federal district court likely will draw the plan.

A suit against an adopted redistricting plan may be brought at any time under the federal or state constitution or federal law. Note that plans drawn by a federal court do not need to obtain Section 5 preclearance, while plans drawn by a state court do require preclearance.

The filing deadline for the 2012 primary elections allows approximately 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 obtaining preclearance under Section 5 of the Voting Rights Act, for court action, and for counties to make necessary changes in county election precincts.

Public Hearings

Under federal regulations for the administration of the Voting Rights Act of 1965, a state seeking preclearance of a redistricting plan from the U.S. Department of Justice is required to submit to the department materials that document the legislature's consideration of public sentiment in its redistricting decisions and that show that recognized racial and language minority groups had a reasonable opportunity to participate in the process.

In order to address these considerations and to gather information that will aid the Texas Legislature in making redistricting decisions, legislative committees generally hold public hearings in the months leading up to the redistricting session. While no official census population data are available until after the session begins, the hearings provide 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 are also held during the legislative session on redistricting bills under consideration.

Redistricting Bills

The Census Bureau delivers state population data to the president by December 31 of the census year, at which time the number of congressional seats for each state is computed. The detailed population data necessary for redistricting must be delivered to the states by the following April 1. This gives the Texas Legislature as little as 60 days to draw and adopt legislative district boundaries before the regular session ends. After the legislature receives the census data, it takes several days to load the data into the redistricting computer system, verify the integrity of the data, and ensure that the system is functioning correctly. House and senate rules setting end-of-session procedures place further limitations on the time available to pass redistricting bills.

Redistricting bills follow the same path through the legislature as other legislation. Congressional and SBOE district bills may be introduced in either or both houses; senate and house redistricting bills traditionally originate only in their respective houses. Following final adoption by both houses, 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 cannot be overridden by the legislature, the LRB is required to meet. If the congressional or SBOE bill is vetoed and cannot be overridden, the governor may call a special session to consider the matter, or the matter may be taken up in state or federal district court.

Enacted redistricting plans or those adopted by the LRB are filed with the Texas secretary of state and are subject to federal preclearance under the Voting Rights Act of 1965. The plans adopted, in most cases, become effective for the following primary and general elections, pending preclearance and judicial review.

Legislative Redistricting Board

The Legislative Redistricting Board, composed of the lieutenant governor, speaker of the house, attorney general, comptroller, and land commissioner, was created by constitutional amendment in 1951, at least in part 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 board to meet within 90 days of the end of that regular session and, within 60 days of convening, to adopt its own house or senate plan.

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. As a result, if the legislature's plan is vetoed by the governor and the veto cannot be 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.

Voting Rights Act Submission

For states covered by Section 5 of the federal Voting Rights Act of 1965, including Texas, a change in law affecting elections must be evaluated to determine that it 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. Because of this requirement, redistricting plans passed by the Texas Legislature,

the LRB, or a state district court must be submitted to the U.S. Department of Justice or the U.S. District Court for the District of Columbia for preclearance. The state may not implement a new redistricting plan until the plan has been precleared under Section 5 of the Voting Rights Act.

If a plan is submitted to the justice department, the department has 60 days to review the plan; if department officials request additional information, another 60-day review period begins on the date the supplementary material is received. If the justice department objects to all or parts of any plan, either the legislature or the LRB, if it still has jurisdiction, must make revisions, which would again be subject to preclearance, or the plan may be submitted to the U.S. District Court for the District of Columbia for preclearance.

Judicial Review

A suit against an adopted redistricting plan may be brought at any time 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.

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. These county precinct boundary changes are also subject to preclearance under the Voting Rights Act of 1965.

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

2011 Redistricting Timetable

The January 2, 2012, filing deadline for the primary elections allows approximately 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 obtaining preclearance under Section 5 of the Voting Rights Act, for judicial review, and for counties to make changes in county election precincts. The following timetable illustrates the challenge of accomplishing all steps in the redistricting process between the release of the 2010 census data for redistricting and the 2012 election cycle.

2010	
April 1, 2010	Census Day
Summer-Fall 2010	Regional outreach hearings in selected cities may be held
December 31, 2010	Deadline for delivery of state total population data
2011	
January 10, 2011	Deadline for announcement of number of congressional seats apportioned to the states
January 11, 2011	82nd Legislature convenes
February 15, 2011	Earliest likely delivery of census population data
April 1, 2011	Deadline for delivery of census population data
May 12, 2011	Last day to pass house bills under current rules (rules may change)
May 30, 2011	82nd Legislature adjourns; deadline for enactment of state senate and house districts
May 31-August 27, 2011	Legislative Redistricting Board convenes if legislature fails to adopt a senate or house plan
Summer-Fall 2011	Special session on congressional and State Board of Education plans could be called, if necessary
October 26, 2011	Last day Legislative Redistricting Board may adopt a plan
Fall 2011	All plans drawn by the legislature, the Legislative Redistricting Board, or a state district court must obtain Department of Justice preclearance under Section 5 of the Voting Rights Act
June-December 2011	Possible court challenges to redistricting plans
2012	
January 2, 2012	Filing deadline for 2012 elections
March 6, 2012	Primary elections

To further understand the complexities and the challenge facing the legislature, the reader may refer to the histories of redistricting in the previous three decades, which are summarized on the Texas Redistricting website (<http://www.tlc.state.tx.us/redist/redist.html>).

Technical Support for Redistricting

Because of the federal constitutional requirement that districts of a given type have equal or nearly equal population (one person, one vote), redistricting plans must include information about the total population of each district. To satisfy other legal requirements, plans must include information about the race/ethnicity of the total and the voting age populations of the districts. Additionally, the Voting Rights Act and subsequent court cases establish the need for election data for analyzing minority participation in elections and partisan voting patterns in existing and proposed districts. Finally, 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 political data are required for the task of redistricting.

Data

Population data provided by the U.S. Census Bureau is the foundation of a redistricting plan; it is reported by census geography, and redistricting plans are drawn on census geography. A statewide election database compiled by council staff provides precinct boundaries, the results of primary, run-off, and general elections, and voter registration information by precinct for all counties.

Because of differences between voting precinct geography and census geography, the legislative council has overlaid every voting precinct in the state on census block maps. Where voting precinct lines do not follow census block boundaries (the smallest unit for which population data is reported), the precinct boundaries have been approximated to the closest block boundary. These approximated precincts are called voting tabulation districts (VTDs). In many cases, VTDs match precincts exactly; often where the two do not match, the differences are minor and do not involve population. More rarely, the changes made by the approximations are substantial and the reliability of election data reported for these VTDs is diminished accordingly. However, because districts cover large areas and incorporate many precincts, the problems presented by areas where approximations are substantial are not very significant since only VTDs that serve as a district boundary are of concern.

District Modeling Software

The centerpiece of the council's redistricting services is the RedAppl district modeling software. RedAppl was first written by council programmers in 1990 and has been updated and enhanced many times since then.

RedAppl 2011 features a significant increase in the amount of data it can process and has all the election data contained in the council's database from the past five election cycles, including primary, run-off, general, and selected local elections. An important new feature is the capability to work online or off-line. Members can take their council laptops and work on plans away from their Capitol Complex offices, or can disconnect from the Capitol network and work off-line in their offices.

Maps and Reports

Maps and reports summarizing data are critical to the redistricting process. Some plan maps and reports can be viewed and printed from RedAppl. Standard redistricting plan maps and reports may be requested from the council's document distribution section or easily downloaded from another web resource, DistrictViewer. Other maps and reports may be requested through the council's mapping and redistricting section.

Information Resources

The larger and more detailed geographic data files are available from the council's redistricting FTP server (<ftp://ftpgis1.tlc.state.tx.us>), including files that relate precincts and ZIP Codes to districts and shapefiles of counties, tracts, block groups, blocks, precincts, VTDs, and school districts. All geographic data will be based on 2000 Census TIGER data until the 2010 Census MAF/TIGER data is available and the systems have been updated in late 2010 or early 2011. Election returns and voter registration and turnout data are available by precinct from 1984 to 2008, and 2010 election data will be available as soon as it is collected, processed, and verified.

DistrictViewer (<http://gis1.tlc.state.tx.us>) is an Internet application that displays interactive maps and demographic and election reports for current state senate, state house, Texas congressional, and State Board of Education districts, as well as selected redistricting proposals. All redistricting proposals that have been made public in the legislative process are available while they are under consideration. Users of the system will be able to overlay one plan on another to compare the two and to display cities and election precincts, with or without districts. Maps and reports of all current and proposed redistricting plans can be viewed and printed from DistrictViewer, and shapefiles can also be downloaded for use in GIS applications.

The Texas Redistricting website (<http://www.tlc.state.tx.us/redist/redist.html>) serves as a guide to Texas redistricting by providing an overview of the requirements and process of redistricting, news and legislative activity for the current redistricting cycle, and historical information.

Who Represents Me? (<http://www.fyi.legis.state.tx.us>) provides information about current districts and members of the Texas Senate, Texas House of Representatives, the Texas delegation to the U.S. Senate and House of Representatives, and the State Board of Education.

Council staff also prepare publications and handouts on a variety of redistricting topics. These are available on the Texas Redistricting website or from the council's document distribution office.