

Legislative Analysis



COUNTY COMMISSIONER REDISTRICTING

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House Bill 6171 as reported from committee

Sponsor: Rep. Phil Skaggs

Committee: Elections

Complete to 12-13-24

Analysis available at
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SUMMARY:

House Bill 6171 would amend 1966 PA 261, which governs county boards of commissioners, to revise the procedures for drawing county commissioner districts.

The act requires county apportionment commissions to apportion each county into between five and 21 commissioner districts of as nearly equal population as is practicable within 60 days after the publication of the latest United States Census Bureau data. House Bill 6171 would retain these provisions but modify the number of districts that a county may be divided into, the county apportionment commission selection process, and the ranked criteria for apportionment. The bill would also establish procedures for judicial review of a county commissioner district apportionment plan.

Number of county commissioner districts

Currently, 1966 PA 261 provides that a county can be divided into the following number of county commissioner districts, based on its population:

- Up to seven, for a county with a population of 5,000 or less.
- Up to ten, for a county with a population between 5,001 and 10,000.
- Up to 15, for a county with a population between 10,001 and 50,000.
- Up to 21, for a county with a population of more than 50,000.

Under House Bill 6171, the number of county commission districts would be as follows:

- Between five and seven, for a county with a population of less than 50,000.
- Between seven and nine, for a county with a population between 50,000 and 100,000.
- Between nine and 13, for a county with a population between 100,001 and 250,000.
- Between 11 and 15, for a county with a population between 250,001 and 500,000.
- Between 15 and 21, for a county with a population of more than 500,001.

County apportionment commission selection

Under current law, each county apportionment commission generally consists of the county clerk, the county treasurer, the county prosecutor, and the county chair of each major political party.¹ (In a county with a population of 1.0 million or more that has adopted an optional unified form of government with an elected county executive, the county apportionment commission is the county board of commissioners.²)

¹ For purposes of the act, *major political party* means each of the two political parties receiving the most votes for the office of secretary of state at the most recent general election.

² This provision, which would be deleted by HB 6171, effectively applies only to Oakland County.

House Bill 6171 would remove county treasurers and prosecutors from each apportionment commission. In their place, each county board of commissioners would choose one member of each major political party from a list of three individuals submitted by the county party chairs. (If a county does not have a statutory chairperson of a major political party, the chair of the party's state central committee would appoint a statutory county chairperson for purposes of the act.)

All business of a county reapportionment commission would have to be conducted at a public meeting held in compliance with the Open Meetings Act, as is currently done. In addition, the bill would require commission meetings to be transcribed or videotaped, with sound and picture and made available to the public, except for a meeting or part of a meeting that is held in closed session. Writings prepared, owned, used, possessed, or retained by the commission or its members, staff, or consultants related to the work of the commission would have to be made available to the public in compliance with the Freedom of Information Act.³

Apportionment criteria

Currently, county apportionment commissions must consider the following when drawing districts, in order of importance:

- Districts must be single-member districts of as nearly equal population as is practical.
- Districts must be contiguous.
- Districts must be compact and of as nearly square shape as is practicable, depending on the area's geography.
- A township or portion of a township can only be combined with a city or portion of a city if necessary to meet the population standard.
- Townships, villages, and cities can only be divided if necessary to meet the population standard.
- Precincts can only be divided if necessary to meet the population standard.
- Residents of state institutions who cannot legally register to vote must be excluded from any consideration of representation.
- Districts cannot be drawn to effect partisan political advantage.

Instead, under the bill, a county apportionment commission would have to abide by the following criteria and order of priority:

- The apportionment plan and all districts must follow all applicable federal laws, such as the Voting Rights Act.
- All districts must be single-member districts contiguous by land. Areas that meet only at adjoining corners are not contiguous. (Island areas would be considered to be contiguous to the city or township of which they are a part, and an island that constitutes its own city or township would be considered contiguous to the nearest city or township.)
- A district's population cannot deviate from the *target population* by more than 5%, and the difference in population between the most and least populous districts cannot exceed 10% of the target population.⁴

³ This provision currently only applies to writings prepared, owned, used, in possession of, or retained by the commission.

⁴ As is current law, the secretary of state would have to provide each county apportionment commission with the latest official Census figures within 15 days after publication.

- Districts cannot disproportionately advantage either major political party. (If the commission determines that it is not possible to apportion the county without providing a *partisan advantage*, then it would have to apportion the districts in such a way as to provide the least degree possible of partisan advantage without violating the higher-ranked criteria.)
- Districts must not favor an incumbent elected official or a candidate.
- Districts can reflect consideration of compactness and of city and township boundaries.

Target population would mean the sum of the individuals counted in the census for the county divided by the total number of districts in that county.

Except as provided below, *partisan advantage* would be determined in the following manner:

- The difference between the actual number of *minority party districts* and the target number of minority party districts cannot exceed 1.⁵
- The proportional number of minority party districts must be determined by multiplying the minority party vote share in the county by the number of districts in the county, rounded to the nearest whole number.
- If at least one member of the county apportionment commission demonstrates that it is possible to draw the proportional number of minority party districts while complying with the higher-ranked criteria, the target number of minority party districts is equal to the proportional number of minority districts. Otherwise, the target number of minority party districts would be the maximum number of demonstrably possible minority party districts that comply with the higher-ranked criteria.

However, if these provisions result in an apportionment plan that gives one party a one- or two-seat majority, *partisan advantage* would have to be determined by the mean-median difference, and the plan resulting in a mean-median difference with an absolute value closest to zero would be the best map under this criterion. The mean-median difference would be calculated as follows:

1. Sum the votes cast for each major political party's candidate⁶ for the state board of education within each district for the two most recent general elections in which county commissioners were elected, excluding special elections for partial terms.
2. Find the district-level vote share in each district by dividing the total votes cast for candidates of one party in the district by the summed votes for both parties in the district.

⁵ *Minority party district* would mean a district in which total number of votes cast for *minority party* candidates for the state board of education in the two most recent general elections in which county commissioners were elected, excluding special elections for partial terms, exceeds the total number of votes cast for the other major political party's candidates in the same elections. *Minority party* would mean the major political party receiving the second-highest number of votes cast for its candidates for the state board of education in the two most recent general elections in which county commissioners were elected, excluding special elections for partial terms.

⁶ This provision refers to a singular candidate for the state board of education, although each political party nominates a slate of two candidates for this office. Other provisions of HB 6171 refer to the sum of the votes cast for both party nominees.

3. Calculate the mean of the district-level vote share by summing the district-level vote shares for all districts in the county and dividing by the number of districts in the county. The district-level vote share would be calculated by sorting the district vote shares from lowest to highest; the median is the vote share of the middle district if the number of districts is odd and the average of the two middle district vote shares if the number of districts is even.⁷
4. Subtract the mean from the median.

A county apportionment commission⁸ could not adopt an apportionment plan at the meeting in which it was proposed, and a proposed plan would have to be published for at least seven days before it could be adopted. In addition, the apportionment commission of a county with a population of 250,000 or more would have to hold at least three public hearings on separate dates and at three different locations before preparing, considering, or adopting an apportionment plan.

If redistricting is not finalized within 60 days, a panel of three judges would have to apportion the county. To select the panel, five judges from the Court of Appeals would be randomly chosen, and the county chair of each major political party would remove one judge from the list. When apportioning a county, the panel would have to follow the guidelines listed above.

Judicial review

The act allows any registered voter of a county to petition the Court of Appeals to review the county's apportionment plan within 30 days after the plan is filed, and the Court of Appeals' findings can be appealed to the Michigan Supreme Court.

House Bill 6171 would require a court reviewing an apportionment plan to review the following actions and decisions de novo (without consideration of a previous decision):

- The county apportionment commission's decisions as to how many districts a county has.
- The commission's compliance with provisions of the act pertaining to commissioner selection and public meetings and plan review.
- The adopted plan's compliance with the ranked apportionment criteria.

The county apportionment commission would bear the burden of proof on the issues under consideration.

Except for federal court decisions concerning questions of federal law, a reviewing court could not use or apply any standard of review, test, or analysis taken from, based on, or derived from a judicial decision made before the bill's effective date.

MCL 46.401 et seq.

BACKGROUND:

Ballot Proposal 2 of 2018 amended the Michigan Constitution to create the Independent Citizens Redistricting Commission (ICRC), which is the body responsible for determining the boundaries of congressional, state Senate, and state House districts after every decennial

⁷ This provision presumably refers to the calculation of the *median* district-level vote share.

⁸ House Bill 6171 refers here to an apportionment "committee."

census.⁹ The ICRC must abide by specific criteria in proposing and adopting redistricting plans, including a requirement that districts must not provide a disproportionate advantage to any political party according to measurements of partisan fairness. Some believe that while Proposal 18-2 ended the practice of gerrymandering—where politicians draw districts that favor their own political party—at the state and congressional level, it is still prevalent in counties because county commission districts are governed by state statute (specifically 1966 PA 261) and not the state constitution.

BRIEF DISCUSSION:

According to committee testimony, gerrymandering has received public attention at the state and federal level, but its impact on local races is often overlooked. Reportedly, the majority of counties in Michigan are one-party counties, where all county commissioners represent a single political party. In 72%—Democratic Washtenaw County, for example, each of the nine county commissioners are Democrats, leaving Republicans with zero representation despite comprising 28% of the county’s voters. Some believe that county-level gerrymandering results in unrepresentative county government, denies minority parties input in the process, disincentivizes voter engagement, and reduces accountability and public trust in democratic systems.

Supporters of House Bill 6171 argue that the bill addresses county-level gerrymandering by making similar reforms as those approved by Michigan voters under Proposal 18-2. By ensuring that partisan fairness is one of the primary criteria that must be considered when drawing districts, partisan minorities would be represented proportionally and county commissions would better reflect the will of the voters. Supporters argue that the bill also addresses courts’ current inability to intervene in county-level gerrymandering claims. In addition, the proposed population cutoffs would make common-sense changes to better reflect today’s county populations.

Opponents of House Bill 6171 raise concerns about removing county treasurers and county prosecutors, who are elected public officials there to represent the needs of the county, from apportionment commissions and replacing them with nominated political activists, and they argue that this change does not align with the intended goal of prohibiting political parties from choosing their voters. Opponents also raise concerns about putting the burden of proof on apportionment commissions during legal challenges to an apportionment plan.

FISCAL IMPACT:

House Bill 6171 would result in additional costs to counties related to changes in the apportionment process and could result in either savings or costs for county commissions, depending on changes in the number of required districts and commissioners representing those districts.

The bill’s revised guidelines for district apportionment may result in increased costs to a county clerk’s office once every 10 years if a county determines new software or contracted services may be needed to assist with the decennial apportionment process and producing maps in full compliance with the new guidelines. Increased costs may be needed for some counties for

⁹ For a full summary of Proposal 18-2, see: https://www.house.mi.gov/hfa/PDF/Alpha/Ballot_Proposal_2018-2_VNP_Redistricting.pdf.

contracted expert assistance or for mapping software. An annual subscription cost for GSI Esri software, a common mapping software tool used for political districting, can be up to \$20,000.

A county may also be liable to new litigation costs from defending apportionment plans that they may not have otherwise been subject to.

Counties with a population greater than 250,000 would likely incur minor additional costs from holding at least three public hearings at three different locations before commencing the apportionment process and having these meetings transcribed or video recorded.

Depending on a county's population and how many districts and county commissioners are currently elected, the revised number of permitted districts per county may either increase or decrease the number of commissioners and related compensation costs. The revisions would be more likely to reduce the number of sitting commissioners than to increase them. The average annual county commissioner compensation cost in Michigan is approximately \$20,000.

The bill also would have an indeterminate fiscal impact on local court systems that would depend on the extent to which provisions of the bill result in additional court reviews. Costs for local courts could increase if there is an increase in court caseloads and related administrative costs. There is no way to determine if there will be additional court reviews, so an estimate of additional costs to local courts cannot be made.

The bill would have no fiscal impact on the state.

POSITIONS:

A representative of Voters Not Politicians testified in support of the bill. (12-10-24)

The following entities indicated support for the bill (12-10-24):

- Michigan Department of State
- Michigan AFL-CIO
- Michigan Laborers District Council
- SEIU Michigan
- United Food and Commercial Workers Local 876

A representative of the Michigan Association of County Clerks testified in opposition to the bill. (12-10-24)

The following entities indicated opposition to the bill (12-10-24):

- Livingston County Clerks
- Michigan Association of Counties
- Pure Integrity for Michigan Elections

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