Treatise
Senate Counsel & Research

Senate
State of Minnesota

Enacting a Redistricting Plan

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1. Introduction

This paper reviews the procedures states have used to enact legislative and congressional redistricting plans. A major question considered is whether to write into the law a metes and bounds description of the districts or instead list in the law the census tracts and blocks in each portion of a city or town that is split. A third possibility considered is to enact maps instead of either a legal description or a list of census units.

2. What Other States Have Done

a. Enacting Plans

Most states that have enacted plans show evidence of technical problems, in that they have had to amend their laws once, twice, or three times to make various corrections. The states that have avoided amending their redistricting laws are those that never enacted them--states where the plan was drawn by a commission or court and never appeared in the statutes. Eleven states(1) are using legislative plans drawn by a commission. In these states, when the commission has agreed upon a plan, it files the plan, in the form of maps and a table of census units in each district, with the secretary of state or other chief election officer, who proceeds to implement it. Twelve states(2) are using plans drawn by a court. When a court draws a plan it issues an order adopting the plan, consisting of maps and a table of census units, and orders the chief election officer to implement it. Courts frequently must amend their orders, but those amendments don't appear in the statutes.

One procedural step required of the Pennsylvania commission, and followed by the Minnesota and California state courts, is to issue a preliminary plan and allow interested parties to comment on it. The Pennsylvania Constitution requires a comment period of at least 30 days before the plan becomes final. (3)

Arkansas, Iowa, and West Virginia enacted congressional plans based on whole counties.(4) Their plans take less than a page of statutory language. Kansas used whole counties except one, which was split only down to the town level.(5) That plan likewise takes only a page. Ten states(6) used whole precincts, listing whole counties, whole cities and towns, and the precincts in cities that were split. In order to be able to use whole precincts, some of those states(7) allowed their local governments to redraw precinct boundaries before drawing legislative and congressional boundaries.

Seventeen[8] of the legislatures that enacted legislative or congressional plans for the 1990s did so by listing the census units in each district, rather than by drawing a metes and bounds description. Extreme examples of this are Texas and Utah, which list for each district only the county, census tract, and block numbers, without showing the city, town, or precinct name--just pages and pages of block numbers.[9] Virginia avoided the problem of describing split cities and towns by describing them in the law only as "part" and filing with the Clerk of the Senate (for senate districts) and the Clerk of the House (for house districts) a statistical report showing the blocks assigned to each district.[10] Oklahoma enacted a house plan listing the census tracts and blocks in each district, but also instructed the state Department of Transportation to publish maps and a metes and bounds description of the districts and provide them to the State Election Board.[11]

Finally, 13 state legislatures[12] enacted plans by listing the whole counties, cities, and towns in a district and drawing a metes and bounds description of the line splitting a city or town.

b. Making Technical Corrections

States that enacted redistricting plans often had to correct them with subsequent statutory amendments. But they also enacted a variety of statutory procedures to allow administrative corrections of technical problems. For example, several states have language in their statutes that assigns duplicate or omitted territory to the smallest contiguous district. California, in 1982, specifically authorized the Secretary of State to "undertake necessary measures to insure compliance with" the assignment of duplicate or omitted territory.[13]

Indiana addresses the problem of "islands" by saying that any part of the state that is entirely surrounded by a district is incorporated into the district that surrounds it.[14]

New York and Mississippi specifically authorize their secretary of state (or equivalent chief election officer) to correct technical errors that go beyond duplicate, omitted, or noncontiguous territory. They include:

> . . . erroneous nomenclature; lack of adequate maps or descriptions of political subdivisions, wards, or other divisions thereof, or of their boundary line; street closings, changes in names of streets, or other changes of public places; alteration of the boundary or courses of waters or waterways, filling in or lands under water; accretion or other changes in shorelines; or alteration of courses, rights of way, or lines of public utilities or other conditions . . . .[15]

New York grants this authority to make corrections "at the request of any person aggrieved thereby, or any candidate affected thereby."[16] Mississippi limits it to occasions where there is a "request of the standing joint legislative committee on reapportionment."[17]

California, in 1982, authorized maps that had been prepared by the Legislature or a legislative committee in connection with the enactment of a plan to be deposited with the Secretary of State in order to illustrate the boundary lines set forth in the law, and authorized the Secretary of State and county clerks to use the maps to assist them in interpreting the law and conducting elections.[18] In 1983, the Legislature and Secretary of State used this authority to make sufficient corrections to the

congressional redistricting plan to save it from constitutional attack.(19)

Maine gives its secretary of state broad authority to "resolve ambiguities concerning the location of election district lines consistent with the intent of these provisions."(20)

New York further directs that the statutes be revised in accordance with the corrections made by the State Board of Elections.(21)

3. The Minnesota Solution

Based on this review, I have recommended a number of steps to speed the process of enacting a redistricting plan, reduce the number of technical errors in it, and provide a procedure for correcting those that do arise, without the need for court action.

I believe that the most efficient way to publish the precise content of a redistricting plan is still a legal description of the counties, cities, and towns in each district and any lines that split a city or town. That description can be amended faster than new maps and tables can be produced, copied faster than maps and tables can be copied, applied to a wide variety of maps prepared by commercial vendors and political subdivisions, and permanently recorded with more certainty than a compact electronic file and bulky maps and tables. The process of preparing the legal description takes more time, but it also tends to uncover errors in the plan that are not otherwise noticed when reviewing maps and tables.

It is important to get the major outlines of a plan set early in the process. The best way to do that is to focus on the maps, for they can put the whole state into perspective and permit the members to deal with those larger problems first. Only when the major features of the plan are set is it appropriate to work on polishing the details. And those details, down to the location of the lines that split cities and towns, can't always be worked out in the short time between April 1 and adjournment of the legislative session in the year ending in one. If there is not time to prepare those legal descriptions and properly review them before adjournment, it may be better to delay their drafting until the interim between sessions.

Rather than attempting to enact a hastily-drafted legal description, and rather than enacting a list of census tracts and blocks that no one comprehends, I think it would be better to enact the plan by reference to whatever published maps and tables the members have relied upon in making their decisions to approve it. Those maps and tables could then be deposited with the Secretary of State and used as the basis for whatever additional materials would be needed to inform the county auditors and city clerks of the precise boundaries of each district. The Revisor of Statutes could prepare the legal description for distribution as soon as it is done and for publication in Minnesota Statutes. Any additional refinements found necessary could be presented in bill form to the next Legislature.

I assume that there will be at least one lawsuit in state court relating to redistricting after the 2000 census and that the Secretary of State will be a nominal defendant. Any disputes over technical corrections could be resolved by the court as part of that lawsuit, but corrections that were not controversial could be made administratively, without the need for a court order.

Minn. Stat. § 2.91 implements these suggestions. It provides for filing a legislative or congressional redistricting plan with the Secretary of State and disseminating it to local election officials. It also gives the Secretary of State authority to make administrative corrections to the plan.

Appendix A

A bill for an act

relating to elections; adopting a legislative redistricting plan for use in 2002 and thereafter; repealing Minnesota Statutes 2000, sections 2.043 to 2.703.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

Section 1. [PLAN ADOPTED.]

The legislative redistricting plan H . . . ., on file with the geographic information systems office of the legislative coordinating commission and published on its Web site on . . . . . ., 2001, at . . . . .m., is adopted as the legislative redistricting plan for this state. Each senate district is composed of the two house districts, A and B, of the same number. In accordance with Minnesota Statutes, section 2.91, the revisor of statutes shall code a metes and bounds description of the districts in Minnesota Statutes.

Sec. 2. [REPEALER.]

Minnesota Statutes 2000, sections 2.043; 2.053; 2.063; 2.073; (etc.) are repealed.

Sec. 3. [EFFECTIVE DATE.]

This act is effective for the state primary election in 2002 and thereafter.

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1. Arkansas, Colorado, Connecticut, Hawaii, Illinois, Missouri, Montana, New Jersey, Ohio, Pennsylvania, and Washington.

2. Alabama (congressional plan), Alaska (legislative plan), Arizona (congressional plan), California, Florida (congressional plan), Illinois (congressional plan), Michigan, Minnesota (congressional plan), Missouri (house plan), Pennsylvania (congressional plan), South Carolina, and Wisconsin (legislative plan).

3. Pa. Const. art. 2, § 17 (Purdon 1969).

4. Ark. Stat. Ann. §§ 7-2-102 to 37-2-105 (Supp. 1993); Ia. Code Ann. § 40.1 (West 1991); W. Va. Code § 1-2-3 (Supp. 1993).

5. Kan. Stat. Ann. § 4-135 (Supp. 1992).

6. Alabama, Georgia, Indiana (legislative), Kansas (legislative), Louisiana, Mississippi (congressional), New Hampshire, New Mexico, Wisconsin (congressional), Tennessee (senate).

7. Louisiana, Mississippi, and Wisconsin.

8. Colorado (congressional), Florida (legislative), Indiana (congressional), Kentucky, Maryland (legislative), Massachusetts (congressional), Missouri (congressional), Nevada, North Carolina, Texas, Oregon (congressional), Oklahoma, Rhode Island, Tennessee (congressional, house), Utah, West Virginia, and Wyoming.

9. Tex. Rev. Civ. Stat. Ann. § 193c (senate), § 195a-ll (house), § 197h (congress)(Vernon Supp. 1993); Utah Code Ann. § 36-1-1 (senate), § 36-1-4 (house)(Supp. 1993).

10. Va. Code § 24.2-302 (senate), § 24.2-303 (house)(1993).

11. Okla. Stat. Ann. tit. 14, § 124 (West Supp. 1994).

12. Delaware, Idaho, Iowa (legislative), Maine, Maryland (congressional), Massachusetts (legislative), Minnesota (legislative), Mississippi (legislative), Nebraska (legislative), New York, North Dakota, South Dakota, and Vermont.

13. Cal. Election Code § 30010 (West 1989). Rhode Island uses similar language but omits "necessary."' R.I. Gen. Laws § 22-1-2 (Supp. 1992).

14. Ind. Code Ann. § 2-1-7-3 (Burns 1993).

15. N.Y. State Law § 128 (McKinney Supp. 1993).

16. *Id.*

17. Miss. Code Ann. § 5-1-1 (1991).

18. Cal. Election Code § 30000 (West 1989).

19. *See Badham v. U.S. Dist. Ct. for N.D. of Cal.*, 721 F.2d 1170, 1178-79 (9th. Cir. 1983).

20. Me. Rev. Stat. Ann. tit. 21A, § 1201 (1993).

21. N.Y. State Law § 128 (McKinney Supp. 1993).