

- SUBJECT:** Adopting the court-drawn map for the Texas Senate
- COMMITTEE:** Redistricting, Select — favorable, without amendment
- VOTE:** 15 ayes — Darby, Y. Davis, Clardy, Creighton, Deshotel, Gonzales, Huberty, Hunter, Keffer, Morrison, Orr, Pickett, Price, Raymond, Villalba
- 1 nay — S. Thompson
- 3 absent — Harper-Brown, Martinez Fischer, Oliveira
- SENATE VOTE:** On final passage, June 14 — 27-0
- WITNESSES:** *(On House companion, HB 2 by Darby:)*
For — Susan Pintchovski, National Organization of Jewish Women - Texas State Advocacy Policy Network; B R "SKIPPER" Wallace, Texas Republican County Chairs Association; and nine individuals; *(Registered, but did not testify: Omar Narvaez, Stonewall Dallas; Kara Sands, Hispanic Republicans of Nueces County; Joseph Tijerina, Precinct Chair 0026 Harris County; and 10 individuals)*
- Against — Stephanie Collier, Communication Workers of America District 6; George Korb, LULAC National; John Patrick, Texas AFL CIO; Shawn Stevens, Democratic Party of Collin County; and 10 individuals *(Registered, but did not testify: JC Dufresne, Common Cause Texas; Matt Simpson, ACLU of Texas; Daniel Williams, Equality Texas; and nine individuals)*
- On — Yannis Banks, Texas NAACP; David R. Hanna, Texas Legislative Council; Nina Perales, MALDEF, Mexican American Legal Defense and Educational Fund; *(Registered, but did not testify: Tim Arndt; Ashley Fischer, Texas Secretary of State; Barbara Harless; Keith Ingram, Texas Secretary of State, Elections Division)*
- BACKGROUND:** In 2011, the 82nd Legislature enacted SB 31 by Seliger, revising political boundaries for the state's senatorial districts following the 2010 Census, as required under Texas Const., Art. 3, sec. 28.

Legislative redistricting in 2011 was followed by legal challenges to the new maps. Those legal challenges are ongoing in federal district court in San Antonio. A separate federal district court in Washington, D.C. denied preclearance of the maps, finding that the state had not met its burden, as required under federal law, to show that the maps had not been enacted with discriminatory intent.

Preclearance. Sec. 5 of the Voting Rights Act (42 U.S.C., sec. 1973c) requires certain states, including Texas, with histories of low turnout and discrimination against certain racial and ethnic minorities to submit for preclearance any proposed policy changes affecting elections to the U.S. Department of Justice or to the U.S. District Court for the District of Columbia. Under sec. 5, state and local governments bear the burden of proving that a proposed change is neither intended to nor has the effect of denying or abridging voting rights on account of race, color, or membership in a language-minority group.

The federal district court in Washington, D.C. in 2012 denied preclearance, finding that Texas had not met its burden under sec. 5 to show that the maps, including the map for senatorial districts, were not enacted with a discriminatory intent. The decision of the D.C. district court denying preclearance of the Texas maps under sec. 5 is on appeal to the U.S. Supreme Court.

The Supreme Court also is considering a challenge to the constitutionality of sec. 5 of the Voting Rights Act in *Shelby Co. v. Holder*, 679 F.3d 848 (D.C. Cir 2012) *cert. granted* (U.S. Nov. 9, 2012) (No. 12-96). A decision in the *Shelby* case is anticipated soon.

Interim map. With the approach of the 2012 primaries, the federal district court in San Antonio, based on constitutional and Voting Rights Act challenges ongoing in that court, redrew the maps that had been enacted by the Legislature. On an appeal by the state of these findings, the U.S. Supreme Court in *Perry v. Perez*, 565 U.S. __ (2012), granted a request from the state for a stay of the court-drawn maps. After hearing oral arguments, the Supreme Court remanded the case to the district court in San Antonio. The Supreme Court said in its opinion that the district court should defer to the legislatively enacted state plan, except where there was a “likelihood of success” on a challenge under the Constitution or sec. 2 of the Voting Rights Act or where aspects of the state plan stand a “reasonable probability of failing to gain sec. 5 preclearance.” Section 2

prohibits voting practices that discriminate on the basis of race, color, or membership in a language minority group and provides a legal avenue for those who wish to challenge voting practices on the grounds that they are discriminatory.

Following the remand by the Supreme Court, the federal district court in San Antonio ordered an interim Senate plan (Plan S172), which was implemented for the 2012 elections.

Outstanding challenges regarding sec. 2 violations in the maps originally enacted by the Legislature remain before the district court in San Antonio, which held hearings in May to receive updates from the parties and to evaluate how it should consider the findings of the D.C. district court.

Dividing counties. Under Texas Const., Art. 3, sec. 25, the state must be divided into single-member senatorial districts of contiguous territory. Unlike House districts (Art. 3, sec. 26), senatorial districts may divide counties without limit.

Senate terms. Under Art. 3, sec. 3, when a new Senate redistricting plan is adopted, the entire Senate is up for election. When the new Senate is elected, districts are divided by lot so that half receive initial two-year terms and half receive four-year terms. In subsequent elections, all senators are elected to staggered, four-year terms until the next redistricting.

In *Armbrister v. Morales*, 943 SW 2d 202, the Texas Third Court of Appeals ruled in 1997 that when a Legislature does nothing more than “memorialize the apportionment already applied in the previous election,” it does not count as a new apportionment requiring all senators to run again for their seats.

DIGEST:

SB 2 would adopt Plan S172, the interim map drawn by the federal district court in San Antonio. The plan would apply starting with the primary and general elections in 2014 for Senate seats in 2015.

SB 2 would create 31 districts. Under the bill, the mean average size of a Senate district would be 811,147, which is also the ideal size of a Senate district based on the 2010 Census. The population range between the largest and smallest districts would be 65,226 or 8.04 percent.

Senate District (SD) 3 in East Texas would be the largest district. With a population of 843,567, it would be 32,420, or 4 percent, greater than the mean average. SD 28 in West Texas would be the smallest district. With a population of 778,341, it would be 32,806, or 4.04 percent, less than the mean average.

The bill would repeal the Senate district plan enacted by the Legislature in 2011.

This bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect on the 91st day after the last day of the first called session.

NOTES:

District population data, demographic information, and other data on Plan S172 are available at <http://gis1.tlc.state.tx.us/?PlanHeader=PLANS172> and in the table on the following page.

Chairman Darby intends to offer a floor substitute of SB 2 containing textual descriptions of the geography of the court-ordered Senate district map.

SB 2 Senate District Demographics

Ideal Population Deviations and Racial / Ethnic Breakdown

	Population	# Deviation from Ideal*	% Deviation from Ideal*	----- Percentage -----				
				Anglo	Black	Hisp	B + H**	Other
DISTRICT 1	819,976	8,829	1.09	66.8	18.2	13.2	31.1	2.1
DISTRICT 2	808,524	-2,623	-0.32	57.1	13.3	26.6	39.4	3.5
DISTRICT 3	843,567	32,420	4.00	72.5	13.0	12.9	25.7	1.8
DISTRICT 4	815,995	4,848	0.60	62.8	14.5	19.3	33.4	3.8
DISTRICT 5	827,039	15,892	1.96	62.4	11.0	21.9	32.4	5.2
DISTRICT 6	812,881	1,734	0.21	12.4	12.3	73.8	85.3	2.3
DISTRICT 7	809,277	-1,870	-0.23	51.8	13.3	26.3	38.9	9.3
DISTRICT 8	794,900	-16,247	-2.00	58.8	10.9	16.2	26.7	14.4
DISTRICT 9	815,389	4,242	0.52	48.1	12.5	32.7	44.6	7.3
DISTRICT 10	834,267	23,120	2.85	47.6	19.2	28.9	47.5	4.9
DISTRICT 11	791,770	-19,377	-2.39	55.8	11.6	26.1	37.2	7.0
DISTRICT 12	818,893	7,746	0.95	64.5	8.7	19.8	28.1	7.5
DISTRICT 13	808,680	-2,467	-0.30	10.5	44.0	38.2	81.0	8.5
DISTRICT 14	834,750	23,603	2.91	52.8	10.3	30.0	39.6	7.6
DISTRICT 15	793,108	-18,039	-2.22	27.8	24.7	42.9	66.7	5.6
DISTRICT 16	816,670	5,523	0.68	48.3	11.8	30.0	41.3	10.4
DISTRICT 17	804,162	-6,985	-0.86	49.3	13.8	22.5	35.8	15.0
DISTRICT 18	809,726	-1,421	-0.18	50.6	12.8	30.1	42.2	7.2
DISTRICT 19	800,501	-10,646	-1.31	24.4	7.5	66.7	73.4	2.3
DISTRICT 20	833,339	22,192	2.74	18.6	2.4	77.5	79.4	2.0
DISTRICT 21	807,460	-3,687	-0.45	22.9	3.9	72.3	75.7	1.4
DISTRICT 22	809,840	-1,307	-0.16	63.1	12.4	21.5	33.5	3.4
DISTRICT 23	813,699	2,552	0.31	14.8	40.4	43.5	83.2	2.0
DISTRICT 24	798,189	-12,958	-1.60	65.3	12.7	19.0	30.7	3.9
DISTRICT 25	815,771	4,624	0.57	61.7	5.0	29.6	34.1	4.3
DISTRICT 26	802,046	-9,101	-1.12	21.2	8.1	68.4	75.5	3.3
DISTRICT 27	786,946	-24,201	-2.98	9.6	0.8	89.1	89.5	0.8
DISTRICT 28	778,341	-32,806	-4.04	57.1	6.5	34.9	40.8	2.1
DISTRICT 29	816,681	5,534	0.68	13.3	3.6	82.0	84.9	1.8
DISTRICT 30	829,574	18,427	2.27	76.0	5.8	15.3	20.9	3.2
DISTRICT 31	793,600	-17,547	-2.16	54.8	5.4	37.6	42.6	2.7

* Ideal district population is 811,147

** Total number of persons who identify as racially black, ethnically Hispanic, or both