

## **BILL ANALYSIS**

Senate Research Center

S.J.R. 41  
By: Wentworth  
Committee of the Whole Senate  
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As Filed

### **DIGEST**

Currently, the Texas Constitution directs the legislature to apportion the state into senate and representative districts at the legislature's first regular session after the publication of the United States decennial census. If the legislature fails to do so, then the Legislative Redistricting Board (LRB) is to do so. LRB does not have authority to redistrict congressional districts if the legislature fails to do so.

LRB members are the Lieutenant Governor, Speaker of the House of Representatives, Attorney General, Comptroller of Public Accounts, and the Commissioner of the General Land Office. If the legislature fails to redistrict during that regular session, then LRB is to meet within 90 days of the final adjournment of regular session. LRB has 60 days after assembling to reapportion the state into senate and house districts. This constitutional provision was added to the constitution after the legislature failed to redistrict house and senate districts during the 1930s and 1940s.

An additional failure to redistrict occurred at the beginning of the century. In 1911, the governor vetoed the senate districts legislature, so the senate districts used during the first decade of the century were also used during the second through the 1922 election.

The legislature has never reapportioned state district courts. The Texas Constitution was amended in 1985 to direct the legislature to reapportion district courts in 1993 and every ten years after. The constitution also creates the Judicial Districts Board, which is given the duty to reapportion district courts if the legislature fails to do so. The Judicial Districts Board is required to complete its work by August 31, otherwise LRB has 150 days to do so. The district court plan of the Judicial Districts Board must be approved by the legislature; the district court plan of LRB does not have to be approved.

The current redistricting standards in the Texas Constitution applicable to senate districts require the state to be divided into a contiguous territory according to the number of qualified electors, as nearly as may be. The districts are to be single-member districts, and no single county shall be entitled to more than one senator.

The state constitutional standards applicable to house districts require the districts to be apportioned among the counties according to the population in each and that the counties in the districts be contiguous. In addition, the standards provide the county-line rule to avoid unnecessary splitting of county line. Section 26a of Article III prohibits counties from having more than seven state house districts unless the population exceeds 700,000, in which case a county is entitled to one additional house district for each additional 100,000 of population.

### **PURPOSE**

As proposed, S.J.R. 41 completely eliminates the authority of the legislature to redistrict state legislative and congressional districts and gives the authority to the Texas Redistricting Commission (commission). The Democratic and Republican caucuses of the senate and house would each appoint a member. The fifth members presides but does not vote and would be appointed by three of the other members. Any vacancy not filled within 20 days would be filled by the Texas Supreme Court (supreme court).

The commission has until Jul1 to redistrict unless the census is delivered after May 1, in which case

the commissioner has 90 days to redistrict. If the commission does not redistrict by that time, the supreme court is required to adopt a plan by September 1 or 60 days after the commission's deadline if the census is delivered after May 1. The commission may reconvene if the supreme court does not adopt a plan. The commission is then authorized to reconvene on the motion of at least two of its voting members if an initial plan becomes unenforceable by court order or other authority (the U.S. Department of Justice), or if the plan is subject to legal challenge in a court proceeding. The commission's plan and the supreme court's plan are not subject to gubernatorial veto.

This bill also directs the legislature to enact law providing for the implementation of the plan. The laws may include additional standards applicable to redistricting plan. The legislature is also directed to appropriate funds for the commission.

Each district is to contain a population "as nearly as practicable" to the population of other districts. The committee suggests that this would probably have the effect of greatly diminishing the population deviation used in drawing legislative districts. The plan enacted by the 72nd Legislature for senate and house districts had deviations of less than 10 percent, in contrast to the zero deviation for congressional districts. These population figures are to exclude nonresident military personnel, as is currently the case. To the extent reasonable, districts are to be contiguous, compact, convenient, and to use natural geographic barriers, artificial barriers, or political subdivision boundaries.

This bill also provides that the commission's plan shall not be drawn purposely to favor or discriminate against any political party or group. A party would be allowed to sue in state court and possibly win a partisan gerrymandering suit.

Gives the supreme court original jurisdiction to hear and decide cases involving congressional and state legislative redistricting, including cases involving a plan adopted by the supreme court. This would apparently have the effect of authorizing the supreme court to make determinations of fact as well as law, instead of just law as exists now.

Authorizes the commission to redistrict judicial districts in place of the Legislative Redistricting Board in case the legislature and Judicial Districts Board fail to do so.

### **RULEMAKING AUTHORITY**

This bill does not grant any additional rulemaking authority to a state officer, institution, or agency.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Section 28, Article III, Texas Constitution, as follows:

Sec. 28. (a) Provides that the Texas Redistricting Commission (commission) exercises the legislative authority of this state to adopt redistricting plans for the election of the Texas House of Representatives, Texas Senate, and the members of the United States House of Representatives elected from this state. Prohibits districts for those legislative bodies from being established or changed except as provided by this section.

(b) Sets forth the composition of the commission.

(c) Provides that the member appointed under Subsection (b)(5) of this section is a nonvoting member and serves as presiding officer of the commission.

(d) Requires each member of the commission to be a resident of this state. Provides that a person is not eligible to serve on the commission if the person meets certain criteria.

(e) Sets forth the term of a member of the commission. Sets forth procedures for filling a vacancy on the commission.

(f) Prohibits a member of the commission from being a candidate in an election for the Texas Senate or Texas House of Representatives before the second anniversary of the last

date the commission adopted a plan or modification of a plan for that body during the person's service on the commission.

(g) Provides that a redistricting plan or modification of a redistricting plan is adopted by a vote of not less than three members of the commission.

(h) Sets forth deadlines for appointing members to the commission.

(i) Sets forth required meeting time for the commission and deadlines for adopting a redistricting plan.

(j) Provides that if the commission does not adopt a plan within the time required by Subsection (i) of this section, the commission's authority to adopt a plan is suspended. Requires the supreme court to adopt a plan for the applicable legislative body within a certain time period if the commission's authority is suspended under this subsection.

(k) Sets forth procedures for modification of a redistricting plan.

(l) Authorizes the commission to reconvene to adopt a redistricting plan if the supreme court does not adopt a plan for the applicable body in the time provided in Subsection (j) of this section, if the supreme court is required to adopt a plan for that body because the commission did not adopt an initial plan for that body as required by Subsection (i) of this section.

(m) Provides that in a redistricting plan or modification of a plan adopted under this section each district must meet certain criteria.

(n) Prohibits the commission or supreme court from drawing a redistricting plan purposely to favor or discriminate against any political party or group.

(o) Requires the legislature to enact laws consistent with this section to implement this section. Authorizes the laws to include additional qualifications for commission members and additional standards applicable to redistricting plans.

(p) Requires the legislature to appropriate funds to enable the commission to carry out its duties.

(q) Provides that the supreme court has original jurisdiction to hear and decide cases involving congressional or state legislative redistricting, including a case involving a redistricting plan adopted by the supreme court under this section. Provides that a member of the court is not disqualified from participating in a redistricting case because the member has participated or may participate in the adoption of a redistricting plan, but authorizes the member to recuse himself or herself from the case.

(r) Requires the commission to convene for the first time on the first business day after January 31, 2001. Prohibits the commission from exercising any power under this section before that date. Provides that this subsection expires January 1, 2002. Deletes existing text regarding the Legislative Redistricting Board of Texas.

SECTION 2. Amends Subsections (e) and (i), Section 7a, Article V, Texas Constitution, to requires the Texas Redistricting Commission to convene on September 1 of the same year to make a statewide reapportionment of the judicial district, if the Judicial Districts Board fails to make a statewide apportionment by a certain date, not later than the 90th day, rather than 150th day, after the final day for the Judicial Districts Board to make the reapportionment. Makes conforming changes.

(i) Makes conforming changes.

SECTION 3. Repealer: Section 26a, Article III, Texas Constitution (Counties with more than seven Representatives).

SECTION 4. Requires this proposed constitutional amendment to be submitted to the voters at an election to be held November 4, 1997. Sets forth the required language for the ballot.