

Approved: May 6, 2011
Date

MINUTES OF THE SENATE REAPPORTIONMENT COMMITTEE

The meeting was called to order by Chairman Tim Owens at 8:30 A.M. on April 28, 2011, in Room 144-S of the Capitol.

All members of the committee were present.

Committee staff present:

Corey Carnahan, Kansas Legislative Research Department
Craig Callahan, Kansas Legislative Research Department
Dorothy Noblit, Kansas Legislative Research Department
Reed Holwegner, Kansas Legislative Research Department
Theresa Kiernan, Committee Assistant

Others attending:

See attached list.

The members of the committee introduced themselves and the Chairman introduced the members of the staff.

Corey Carnahan, Kansas Legislative Research Department, presented an overview of the redistricting (reapportionment) process in Kansas (Attachment 1). Mr. Carnahan noted that Court decisions concerning deviations in population from the ideal-sized Congressional District required any deviation to be as close to zero as possible. Mr. Carnahan told the committee that the state will maintain its current four Congressional seats, but the federal census data showed that the state's population has continued the shift from rural to urban areas of the state.

Mr. Carnahan explained that town hall meetings would be held throughout the state this summer, but that only the Chairman, Vice-Chairman and Ranking Minority Member would be compensated for all meetings at which they are in attendance. Other members of the Committee would be compensated for attendance at one day of meetings; the site of such meeting must be in or near the member's district. Members of the the Committee raised concerns regarding compensation for attendance at only one meeting. Senator Vratil noted that the Redistricting budget currently was being negotiated and that the cost of providing compensation for attendance at additional meetings needs to be determined quickly.

Mr. Carnahan directed the Committee's attention to a memorandum prepared by Jason Long, Office of the Revisor of Statutes, *A Brief Overview of the Law on Redistricting* (Attachment 2).

The Chairman directed the Committee's attention to the proposed Redistricting Rules/Guidelines that had been distributed to the Committee prior to the meeting (Attachment 3) and noted that the proposed Rules are identical to the Rules used in the 2002 redistricting process.

Following discussion, Senator Teichman moved that the proposed rules be adopted. Senator Umbarger seconded the motion. The motion was adopted.

The Chairman directed the Committee's attention to the proposed list of town hall meeting sites suggested by the Redistricting Advisory Group (Attachment 4). In order to accommodate members' schedules, Senator Owens requested each member to provide staff with dates on which the member could not be in attendance at a town hall meeting.

The Committee began discussion of the proposed town hall meeting sites. In response to questions regarding notice of town hall meetings, staff stated that notice of a meeting will be provided through a press release. Senator Owens suggested that notice also be specifically provided to the governing bodies of the local units of government in the area in which the meeting will be held.

Senator Vratil noted that the list of the proposed town hall meeting sites includes six meetings within a sixty-mile radius of Newton. Senator Vratil suggested that consideration be given to the holding of town hall meetings at sites located in Northeastern, Northwestern and Southwestern Kansas in lieu of three sites in Central Kansas. Senator Ostmeyer concurred in the suggestion of adding a site in Northwestern Kansas at either Hays or Colby. There was no objection to a suggestion by Senator Owens to consolidate meetings on the proposed list in order to accommodate the suggestion of adding sites over a broader area of the state.

Following further discussion of the issue of compensation of members for attendance at town hall meetings, there was a consensus agreement to request compensation for attendance at additional meetings, preferably five, but not less than three meetings.

Senator Ostmeyer requested that staff provide maps showing the current Congressional, Legislative and State Board of Education Districts.

Senator Owens noted that the drawing of the Congressional Districts would be the first priority of the Committee.

The next meeting may be scheduled during the week of May 2, 2011.

Meeting adjourned at 9:15 A.M.

Senate Reapportionment Comm.
April 28, 2011

No Guest List

KANSAS LEGISLATIVE RESEARCH DEPARTMENT

68-West-Statehouse, 300 SW 10th Ave.
Topeka, Kansas 66612-1504
(785) 296-3181 • FAX (785) 296-3824

kslegres@klrd.ks.gov

<http://www.kslegislature.org/klrd>

April 28, 2011

REDISTRICTING IN KANSAS

The following is an overview of the redistricting process in Kansas. Detailed information on any topic discussed below is available upon request.

Frequently Asked Questions

- Why does the Kansas redraw congressional, legislative districts, and State Board of Education districts?
- Who is responsible for redrawing districts?
- What population data is used to redraw districts? *48 use census, KS (1002) who don't*
- When do the new districts, redrawn in 2012, go into effect?
- How does the public provide input on the redistricting process and potential district plans?

Timeline (Completed Activities)

- December 2009 Redistricting Advisory Group begins meeting to prepare the 2012 round of redistricting
- April 2010 Census Day
- December 2010 U.S. Census Bureau announces overall population count and which states will gain/lose congressional representation
Senate Committee on Reapportionment is appointed
- March 2011 Census data is provided to the Kansas Legislature

Timeline (Anticipated Activities)

- June/July 2011 Town Hall meetings likely held throughout Kansas
- July 2011 Secretary of State releases adjusted population data (military and students)
- August 2011 Joint (Special) Committee likely meets in Topeka to begin redrawing districts
- December 2011 Special Committee on Redistricting releases report to the 2012 Legislature
- January 2012 Individual House and Senate committees meet to adopt plans
- August 2012 Primary elections using new districts (June 2012 filing deadline)
- November 2012 General elections using new districts

Population Information

- 2000 Census: 2,688,418
- 2010 Census: 2,853,118 (6.13% increase over 2000)
- From 2000 to 2010, 77 counties lost population, while 28 counties gained residents.

Ideal District Sizes

- Congress: 713,280
- State Senate: 71,328
- State House: 22,825
- District Size Deviation: For congressional districts, as close to zero as possible. The courts, in some cases, allow legislative districts to be drawn with a deviation of +/- 5%.

Redistricting Guidelines

In addition to population equality and other provisions of federal and state law, the Redistricting Advisory Group recommended adoption of multiple guidelines to be used when redrawing districts. The following is a sample of the additional guidelines:

- "Redistricting plans will have neither the purpose nor the effect of diluting minority voting strength."
- Districts should be compact and contiguous.
- Preserve existing political subdivisions when drawing districts.
- Recognize similarities of interest (legislative) and communities of interest (congressional).
- Avoid contests between incumbents.

Contact Information

Corey Carnahan
Research Analyst
corey.carnahan@klrd.ks.gov
(785) 296-3181

MARY ANN TORRENCE, ATTORNEY
REVISOR OF STATUTES
JAMES A. WILSON III, ATTORNEY
FIRST ASSISTANT REVISOR
GORDON L. SELF, ATTORNEY
FIRST ASSISTANT REVISOR



OFFICE OF REVISOR OF STATUTES
KANSAS LEGISLATURE

Legal Consultation—
Legislative Committees and Legislators
Legislative Bill Drafting
Legislative Committee Staff
Secretary—
Legislative Coordinating Council
Kansas Commission on
Interstate Cooperation
Kansas Statutes Annotated
Editing and Publication
Legislative Information System

A Brief Overview of the Law On Redistricting

Jason B. Long
Senior Assistant Revisor
Office of Revisor of Statutes

April 29, 2011

The Census

Section 2 of article 1 of the United States Constitution requires that a census be conducted every ten years to determine the number of persons in the United States. Congress has delegated the duty of conducting the decennial census to the Bureau of Census, which is within the U.S. Department of Commerce. The U.S. Secretary of Commerce is required by law to prepare a report on the population of the United States and present this report to the President by December 31st of the census year. The census numbers are then reported to the states during the first months of the following year. The majority of states use the decennial census numbers tabulated by the Bureau as the basis for redrawing the representative districts within the state.

Kansas also uses the decennial census numbers, but makes an additional calculation. Section 1 of article 10 of the Kansas Constitution provides that the census numbers tabulated by the Bureau must be adjusted to: “(1) *exclude* nonresident military personnel stationed within the state and nonresident students attending colleges and universities within the state; and (2) *include* military personnel stationed within the state who are residents of the state and students attending colleges and universities within the state who are residents of the state in the district of their permanent residence.” (emphasis added) K.S.A. 11-301 requires the Secretary of State to

use the federal census numbers and then perform the adjustments in accordance with section 1 of article 10. The Kansas congressional and state legislative districts are then redrawn based on the adjusted population numbers.

Reapportionment of Legislative Seats

Section 2 of article 1 of the U.S. Constitution also mandates that the seats in the U.S. House of Representatives be apportioned among the states according to the number of persons residing in the state. The apportionment requirement for Kansas state representative and senatorial districts is found in K.S.A. 4-3,731, which establishes 125 single member representative districts and mandates reapportionment in accordance with section 1 of article 10 of the Kansas Constitution, and in K.S.A. 4-4,451, which establishes 40 single member senatorial districts and provides the same reapportionment mandate.

Redistricting plans for both congressional seats and state legislative seats must be validated pursuant to section 1 of article 10 of the Kansas Constitution. First, a redistricting plan is enacted the same as any other act. Then the attorney general has 15 days to petition the Kansas Supreme Court requesting the court's approval of the plan. If the court determines the plan is invalid, then the legislature must enact a new plan within 15 days after the court's judgment. This subsequent plan is again presented to the court by the attorney general for approval. Only after the court rules that the plan is valid does it become final and effective.

Equality Standards

One of the primary issues in drawing representative districts is whether the districts are equal in terms of the population included in each district. This issue is often litigated and the courts have developed two standards for determining equality depending on the type of district being drawn.

First, if the district is a congressional representative district, courts use a strict standard in measuring equality. The U.S. Supreme Court has held that the U.S. Constitution requires near absolute equality between the congressional districts within a state. Any deviation from exact equality must be justified by the state. A state may justify deviations from absolute equality if such deviations were due to the state adhering to one or more of the following policies in

drawing district boundaries: making districts compact; maintaining political subdivision boundaries; preserving the cores of prior districts; or avoiding contests between incumbents.

To successfully defend a congressional redistricting plan that deviates from absolute equality a state must show that each deviation is specifically tied to one of the above policies. In other words, the state must have a specific legitimate policy reason for *each* particular deviation. In determining the validity of a deviation the court also considers the size of the deviation, the state's interest in the stated policy, the consistency with which the policy is applied and possible alternative plans that may achieve more equality while still promoting the stated policy.

The second type of district is the state and local representative district. The courts have typically applied a less stringent standard to the equality of these types of districts. The U.S. Supreme Court has generally followed a 10% rule when determining the validity of these types of districts. If the total deviation between the largest and the smallest districts is less than 10% then the party challenging the validity of the plan must demonstrate some other reason why the plan is invalid, such as discriminatory intent. If the total deviation is above 10% then the state must justify the deviation. The same policies that may justify congressional district plans may also be used by a state to justify a state legislative district plan.

The Voting Rights Act

The other major legal concern when redrawing representative districts is the Voting Rights Act (VRA). This act, originally passed in the 1960s, is intended to prevent minority discrimination and underrepresentation through racially biased district gerrymandering. Section 2 of the act applies to all states and political subdivisions and prohibits discriminatory voting procedures and practices. Section 5 is only applicable to certain states with a history of discriminatory voting practices and requires those entities to obtain preclearance by the U.S. Justice Department or the U.S. District Court for the District of Columbia before any changes to voting laws or practices may become effective. Kansas is not subject to section 5; thus this memorandum will focus primarily on section 2 of the VRA.

A violation of section 2 occurs when

based on a totality of the circumstances, it is shown that the political processes leading to nomination or election in the State or political subdivision are not

equally open to participation by members of . . . [a racial, color, or language minority class] . . . in that its members have less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice. the extent to which members of a protected class have been elected . . . is one circumstance which may be considered: Provided, That nothing in this section establishes a right to have members of a protected class elected in numbers equal to their proportion in the population. 42 U.S.C. §1973.

Violations typically occur through the use of vote dilution practices, such as the use of multimember districts, packing of minorities into a single district, or fracturing minorities into several districts. Each of these practices can have the effect of diluting the vote of the minority group so that the group has less of an opportunity to participate in the political process.

A plaintiff challenging a proposed redistricting plan under a section 2 claim must demonstrate that the plan will have a discriminatory effect or result. The U.S. Supreme Court has articulated a three-part test a plaintiff must satisfy to prove a section 2 violation. The plaintiff must show that: (1) the minority population is relatively compact in size and geography; (2) the minority population is politically cohesive; and (3) the majority population usually votes as a bloc to defeat the minority group's preferred candidate.

In determining whether a plaintiff has met the test courts must look at the "totality of the circumstances" surrounding the drawing of the plan. This involves looking at the following factors which can assist the court in identifying the characteristics of the minority group in question and the voting history of the subject district:

1. The extent of the history of official discrimination touching on the minority group participation;
2. Racially polarized voting;
3. The extent to which the state or political subdivision has used unusually large election districts, majority vote requirements, antisingle-shot provisions, or other voting practices that enhance the opportunity for discrimination;
4. Denial of access to the candidate slating process for members of the class;
5. The extent to which the members of the minority group bear the effects of discrimination in areas such as education, employment and health that hinder effective participation;

6. Whether political campaigns have been characterized by racial appeals;
7. The extent to which members of the protected class have been elected;
8. Whether there is a significant lack of responsiveness by elected officials to the particular needs of the group; and
9. Whether the policy underlying the use of the voting qualification, standard, practice or procedure is tenuous. *Thornburg v. Gingles*, 478 U.S. 30, 36-37 (1986).

To avoid a section 2 claim states generally rely on applying the many race-neutral policies available when drawing district boundaries, such as the contiguity and compactness of districts, and keeping political subdivisions and communities of interest together. Adherence to these and similar policies often negates the legal argument that race was the primary factor in drawing district boundaries and makes it difficult to prove a section 2 claim.

**GUIDELINES AND CRITERIA FOR 2012
KANSAS CONGRESSIONAL AND LEGISLATIVE REDISTRICTING**

**Adopted by the House Select Committee on Redistricting
Adopted by the Senate Committee on Reapportionment**

Legislative Redistricting

1. The basis for legislative redistricting is the 2010 U.S. Decennial Census as recalculated by the Kansas Secretary of State pursuant to Article 10, Section 1 of the *Constitution of the State of Kansas* and KSA 11-301 *et seq.*
2. Districts should be numerically as equal in population as practical within the limitations of Census geography and application of guidelines set out below. Deviations should not exceed plus or minus 5 percent of the ideal population of (waiting for data) for each House district and (waiting for data) for each Senate district, except in unusual circumstances. (The range of deviation for House districts could be plus or minus X persons, for districts that could range in population from X to X. The overall deviation for House districts could be X persons. The range of deviation for Senate districts could be plus or minus X persons, for districts that could range in population from X to X. The overall deviation for Senate districts could be X persons.)
3. Redistricting plans will have neither the purpose nor the effect of diluting minority voting strength.
4. Subject to the requirement of guideline No. 2:
 - a. The "building blocks" to be used for drawing district boundaries shall be voting districts (VTDs) as described on official 2010 Redistricting U.S. Census maps.
 - b. Districts should be as compact as possible and contiguous.
 - c. The integrity and priority of existing political subdivisions should be preserved to the extent possible.
 - d. There should be recognition of similarities of interest. Social, cultural, racial, ethnic, and economic interests common to the population of the area, which are probable subjects of legislation (generally termed "communities of interest"), should be considered. While some communities of interest lend themselves more readily than others to being embodied in legislative districts, the Committee will attempt to accommodate interests articulated by residents.
 - e. Contests between incumbent members of the Legislature or the State Board of Education will be avoided whenever possible.
 - f. Districts should be easily identifiable and understandable by voters.

Congressional Redistricting

1. The basis for congressional redistricting is the 2010 U.S. Decennial Census as published by the U.S. Department of Commerce, Bureau of the Census. The "building blocks" to be used for drawing district boundaries shall be Kansas counties and voting districts (VTDs) as their population is reported in the 2010 U.S. Decennial Census.
2. Districts are to be as nearly equal to 713,280 population as practicable.
3. Redistricting plans will have neither the purpose nor the effect of diluting minority voting strength.
4. Districts should attempt to recognize "community of interests" when that can be done in compliance with the requirement of guideline No. 2.
 - a. Social, cultural, racial, ethnic, and economic interests common to the population of the area, which are probable subjects of legislation (generally termed "communities of interest"), should be considered.
 - b. If possible, preserving the core of the existing districts should be undertaken when considering the "community of interests" in establishing districts.
 - c. Whole counties should be in the same congressional district to the extent possible while achieving population equality among districts. County lines are meaningful in Kansas and Kansas counties historically have been significant political units. Many officials are elected on a countywide basis, and political parties have been organized in county units. Election of the Kansas members of Congress is a political process requiring political organizations which in Kansas are developed in county units. To a considerable degree most counties in Kansas are economic, social, and cultural units, or parts of a larger socioeconomic unit. These interests common to the population of the area, generally termed "community of interests" should be considered during the creation of congressional districts.
5. Districts should be as compact as possible and contiguous, subject to the requirement of guideline No. 2.

2011 Town Hall Meeting Locations as Recommended by the Redistricting Advisory Group

- Garden City
- Great Bend
- Hutchinson
- Independence
- Kansas City and Overland Park
- Lawrence
- Manhattan
- Parsons
- Salina
- Wichita and Newton

Additionally, the Advisory Group recommended the following:

- Meetings be conducted during July and August, with some potential carryover into September.
- The chairpersons, vice-chairpersons, and ranking minority members be compensated for attending each town hall meeting.
- All other members of the house and senate redistricting committees be compensated for attending one meeting near their district.