

**DRAFTER'S NOTE**  
**FROM THE**  
**LEGISLATIVE REFERENCE BUREAU**

LRB-2537/1dn  
RJM:cjs:cph

May 9, 2003

Senator Hansen:

Attached is the draft you requested establishing a new legislative and congressional redistricting procedure for Wisconsin. As you review the draft, please note the following issues:

1. As requested, this draft is based upon Iowa law. However, it is important to note that Wisconsin's demographics may make the draft much more difficult to implement. Iowa does not have an African-American or Hispanic population similar to that in Milwaukee County. Under the federal Voting Rights Act, Wisconsin must not discriminate against these populations when redistricting. Whereas redistricting in Iowa can be based almost predominantly on population, in Wisconsin redistricting must also take into account the effect of redistricting on these populations of racial and ethnic minorities. To account for this special circumstance, this draft specifically requires the redistricting plans to comply with the Voting Rights Act.
2. Traditionally, the legislature has used municipal wards as the building blocks for redistricting plans. The statutes reflect this tradition, by establishing a procedure for municipalities to re-draw their ward plans after each federal decennial census and file their plans with the state. This draft maintains this tradition. Another option would be to have the legislature redistrict first, then have the municipalities draw ward plans to fit within the legislative districts. However, the timing of this option is less practical, because it could require the legislature to redistrict during budget deliberations (spring of the year following the census).
3. Proposed ss. 4.003 and 4.04 (1) are taken from the current ss. 4.001 (1) and 4.003, stats., respectively.
4. Proposed s. 4.01 (3) requires the LRB, after receiving census data, to prepare and publish an analysis describing the population of current legislative and congressional districts and the extent to which the districts may violate equal population and other redistricting standards. The Iowa law does not have a similar requirement. The LRB traditionally prepares this type of analysis to inform legislators concerning the population changes over the decade in their districts. Please let me know if this requirement is not consistent with your intent. Also, depending upon the population changes over the decade, it is conceivable that redistricting may not be legally required. Please let me know if you would like to include a mechanism whereby JCLO

or some other committee or group of legislators could direct the LRB not to prepare a redistricting plan because no plan is legally required.

5. Proposed s. 4.02 governs the internal proceedings of the legislature. As such, it is not legally enforceable. If this bill is enacted, the legislature would be free to decide to follow a different procedure without first amending the statutes.

6. The Iowa law is somewhat ambiguous with regard to population equality. The Iowa law requires legislative districts to be “as nearly equal as practicable.” This is the same language as applies to congressional districts under federal law and has been interpreted to require population variances of less than 1%. However, the Iowa law also says that the population variance among like legislative districts may not be more than 5%. In addition, the Iowa law says that the legislature has the burden of justifying any variance greater than 1%, if a plan is challenged based on unequal population. I eliminated this ambiguity by maintaining the 5% standard from Iowa law (applicable to legislative districts only) and adjusting the provision concerning the burden of proof accordingly.

7. I recommend that you consider one change with regard to the population equality standards established in proposed s. 4.03 (2). Under current law, legislative districts are generally permitted to vary in population by as much as 10%. This “slush” can be useful in fostering compromises in the redistricting process and in meeting other legal requirements, such as compliance with the Voting Rights Act. It would be helpful to the LRB and the Redistricting Advisory Commission, as the agencies required to draw the redistricting plan, to permit the legislative districts to take full advantage of this permissible level of variance. Although it is unlikely that the LRB would draw a plan with a 10% overall variance (recent redistricting plans in Wisconsin have had variations of 1% or less), a plan with more than a 5% variance would be plausible. This change would not affect congressional districts which, under the U.S. Constitution, must be as nearly equal in population as is practicable. Please let me know if you would like to make this suggested change.

7. The two measures of compactness in s. 4.03 (6) are taken directly from Iowa. There are other methods to measure compactness which we could use. The U.S. Supreme Court has not yet specified a preferred method of measuring compactness. If you would like to discuss other methods that we could implement, please feel free to call.

8. I added requirements from article IV, sections 2, 4, and 5 of the Wisconsin Constitution to proposed s. 4.03 (8).

9. I significantly simplified the language describing when a redistricting plan first applies. See proposed s. 4.04 (2).

10. Please note that I included a few clarifications to chs. 3 and 4, which deal with legislative and congressional districts. The primary clarifications involve the definition of “ward” in proposed ss. 3.004 (2) and 4.001 (6) and the specifications in proposed ss. 3.002 and 4.002 concerning political subdivision boundaries. Together, these clarifications coordinate ch. 4 with s. 5.15 (1) (b), stats., which requires municipal ward plans to include all territory that is part of the municipality as of August 1 of the year following the federal decennial census.

11. For purposes of appointing members to the temporary Redistricting Advisory Commission, this bill gives the speaker of the assembly, rather than the majority leader, authority to appoint one member. This change seemed appropriate, given the powers typically exercised by the speaker and the majority leader in the assembly.

12. Please note that Wisconsin has traditionally tried to keep the district numbers as close as possible to those of the previous decade. This bill would prohibit the LRB from considering this factor in drawing a redistricting plan. Similarly, the bill would prohibit the LRB from considering existing district boundaries. From a citizen's point of view, minimal change may be a very good thing. Of course, it also tends to favor incumbents. Please let me know if you desire any changes to the draft based upon these considerations.

Please feel free to call if you have any questions or desire any changes to the bill.

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