

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-1886/P1dn
RAC:jld:md

February 26, 2009

Representative Black:

Article IV, section 3, of the Wisconsin Constitution requires the legislature to “apportion and district anew the members of the senate and assembly, according to the number of inhabitants.” Because this is a duty assigned to the legislature by the constitution, I do not believe it can be delegated to a legislative service agency, such as the Legislative Reference Bureau (LRB). The legislature can certainly direct the LRB to prepare districting plans, but ultimately the legislature must fulfill its duty under the constitution.

I have crafted a procedure that requires the LRB to draft legislative and congressional districting plans in accordance with standards developed by JCLO. You may certainly leave JCLO out of this entirely and instead direct the LRB to develop standards and fashion plans according to these standards, but I thought you might wish to have some legislative involvement in setting the standards that will be used to develop districting plans. Under the draft, the LRB is then required to incorporate the districting plans into bills and submit the bills to the legislature for expeditious consideration. You will note that I have not given the LRB the authority to simply choose a plan if the legislature fails to act on three plans, as I do not believe that that sort of authority can be delegated to a party outside of the legislature. If you wish, I can certainly draft a subsection (5) that would require the LRB to select among the three plans and require the legislature to pass a bill incorporating the plan selected by the LRB, but any such requirement on the part of the legislature to pass this bill, as well as any other specific bill, would be unenforceable in a court of law.

Please review this preliminary draft and let me know how you wish to proceed.

Rick A. Champagne
Senior Legislative Attorney
Phone: (608) 266-9930
E-mail: rick.champagne@legis.wisconsin.gov