

Redistricting Process, Principles and Support

PW10

Summary

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Overview

This bill would enact a statutory process and principles to govern how redistricting plans are drawn. The principles reflect the [principles adopted by the five-judge state court special redistricting panel](#) that drew congressional and legislative plans in 2011 in *Hippert v. Ritchie*, No. A11-152, as well as districting principles used by courts or adopted by constitutional amendments in other states since that time. The traditional responsibility of the Legislative Coordinating Commission to support the redistricting process would be codified and supplemented with a few new responsibilities.

Section-by-Section Analysis

Section 1. [2.034] REDISTRICTING PROCESS.

Subdivision 1, Public hearings, requires the legislative committees responsible for redistricting to hold at least one public hearing in each current congressional district before proposing the first plans and another hearing in each congressional district after proposing a plan but before it is adopted. Each committee must publish the plan on its website at least two weeks before the hearing and accept comments on the plan for at least two weeks after the hearing and before adopting a final plan. It must make reasonable efforts to allow the public to submit written testimony before a hearing, make copies of that testimony available to all committee members and the public at the hearing, and publish copies of written testimony on its website as soon as practical. All hearings must be video and audio recorded. Each committee must provide access on its website to a video and audio live stream of each hearing and an archive of minutes and recordings of past hearings.

Subdivision 2, Plans submitted to committees, requires each committee to provide a procedure for interested persons to submit plans for consideration by the committee.

Subdivision 3, Public access to records. Records of the legislature related to development, consideration, or adoption of a redistricting plan become public when the plan is posted on the legislature's website.

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Section 2 [2.036] DISTRICTING PRINCIPLES.

This section establishes statutory principles to govern the drawing of congressional and legislative district boundaries. These are in addition to the principles in MINN. CONST. [art. IV](#), § 3, requiring that senators be chosen from single-member districts and that house districts be nested within senate districts, and in Minn. Stat. [§ 2.031](#), subd. 1, requiring that representatives be chosen from single-member districts.

The principles in this bill began with those adopted by the state court special redistricting panel in 2011. See *Hippert v. Ritchie*, [Order Stating Redistricting Principles and Requirements for Plan Submissions](#), No. A11-152 (Minn. Spec. Redis. Panel, Nov. 4, 2011). The derivation of the *Hippert* court’s principles is set forth in Peter S. Wattson, *Districting Principles in Minnesota Courts*,

<https://www.leg.state.mn.us/docs/NonMNpub/oclc1044746779.pdf> (Sept. 19, 2018).

In this bill, the *Hippert* principles have been supplemented and updated to reflect districting principles used by courts or adopted by constitutional amendments in other states since 2011.

Subdivision 1, Application, provides that the principles apply to congressional and legislative redistricting plans.

Subdivision 2, Population equality, sets the degree of population equality required in congressional and legislative plans.

Paragraph (a) requires that congressional districts be “as nearly equal in total population as practicable without dividing a precinct into more than one district.”

The first part of this language, “as nearly equal in population as practicable,” is the same as used by the *Hippert* court, which resulted in all parties proposing plans that had a deviation no greater than one person. The following table shows the degree of population equality actually achieved in congressional plans since 1980.

Overall Range of Minnesota Congressional Plans

Year	Overall Range
2012	1 person
2002	1 person
1994	1 person
1992	1 person
1982	46 persons

The second part, “without dividing a precinct into more than one district,” relaxes the standard for congressional district population equality to permit deviations from mathematical equality if no precincts are divided. This could make drafting congressional plans substantially faster, avoiding the long search for that last block to make each district’s population ideal, as well as deter the gerrymandering that occurs when precincts are divided on racial or partisan lines. A drafter would be free to split a precinct, but would then have to reduce the deviation in all districts to no more than one person.

The addition of “total” population prohibits measuring population equality by some other count, such as voting-age population or citizen voting-age population.

Paragraph (b) requires that legislative districts “be substantially equal in total population” and “not deviate from the ideal by more than one percent, plus or minus, or two percent, if the plan does not split a precinct.”

The *Hippert* court permitted deviations from population equality not to exceed two percent, plus or minus (an overall range of four percent), just as have all other courts since 1972. But, as had the courts before it, the *Hippert* court also said that, “Because a court-ordered redistricting plan must conform to a higher standard of population equality than a plan created by a legislature, de minimis deviation from the ideal district population shall be the goal.” Thus, the courts have always attempted to make the districts as equal in population as possible, while still avoiding the division of counties, cities, and towns. The following table shows the degree of population equality actually achieved in legislative plans since 1950.

Overall Range of Minnesota Legislative Plans

Year	Senate	House
2012	1.42%	1.60%
2002	1.35%	1.56%
1994	3.53%	5.27%
1991	3.42%	5.90%
1982	3.41%	3.97%
1972	3.71%	3.96%
1962	411.49%	672.13%
1952	909.20%	1471.14%

This history shows that, with the advent of improved computer redistricting technology in the 2000s, it has become possible to keep deviations below plus or minus 1% (an overall range of 2%), while still avoiding the division of counties, cities, and towns. This bill sets the limit at that level, but permits a deviation of 2%, if the plan does not split a precinct. Preserving whole precincts is desirable, but may not be possible with a deviation of only 1%.

Subdivision 3, Minority representation, requires that districts “not be drawn with the intent or effect to deny or abridge the equal opportunity of racial or language minorities to participate in the political process or to diminish their ability to elect representatives of their choice.”

The *Hippert* principles required that the districts “not be drawn with either the purpose or effect of denying or abridging the rights of any United States citizen on account of race, ethnicity, or membership in a language minority group and must otherwise comply with the Fourteenth and Fifteenth Amendments to the United States Constitution and the Voting Rights Act of 1965, as amended, 42 U.S.C. §§ 1973-1973aa-6.” *Hippert v. Ritchie*, [Order Stating Redistricting Principles and Requirements for Plan Submissions](#) 5 ¶ 3 (congressional), 8 ¶ 5 (legislative), No. A11-152 (Minn. Spec. Redis. Panel, Nov. 4, 2011).

The *Hippert* language was a necessary paraphrase of the first part of § 2 of the Voting Rights Act of 1965,² which says that, “No voting qualification or prerequisite to voting or standard, practice, or procedure shall be imposed or applied by any State or political subdivision in a manner

² Codified as amended at [52 U.S.C. § 10301](#).

which results in a denial or abridgement of the right of any citizen of the United States to vote on account of race or color [or membership in a language minority group].”

The *Hippert* court’s paraphrase referred to “denial or abridgment of the right of any citizen of the United States on account of race, ethnicity, or membership in a language minority group.” Compared to the language of § 2, the *Hippert* court omitted “to vote” and “or color,” and added “ethnicity.” Omitting “or color” is appropriate, even though it is used in § 2, because it is included in the Census Bureau’s definition of the categories of “race.” Omitting “ethnicity” is appropriate, because the concept of ethnicity is included in the Voting Rights Act’s definition of “language minorities.”³ Also, ethnicity may be the basis of a “community of interest” under subdivision 8.

The *Hippert* court’s principle added that the districts “must otherwise comply with the Fourteenth and Fifteenth Amendments to the United States Constitution and the Voting Rights Act of 1965, as amended, 42 U.S.C. §§ 1973-1973aa-6.” This goes without saying and, unlike the first sentence, it does not paraphrase the constitutional or statutory requirements to make them easier to understand. Therefore, it is omitted from this subdivision.

The language in this subdivision is based on the 2010 Fair Districts Amendments to the Florida Constitution, Art. III, §§ 20(a), 21(a), as interpreted by the Florida Supreme Court in 2012. *In re Senate Joint Resolution of Legislative Apportionment 1176 (Apportionment I)*, No. SC12-1, slip op. at 48-67, 83 So.3d 597, __ (Fla. Mar. 9, 2012). The Court held that language gave minorities protection equivalent to the Voting Rights Act, both § 2 (which applies nationwide whether included in Minnesota’s districting principles or not), and § 5 (which has never applied to Minnesota).

The prohibition “to diminish their ability to elect a representative of their choice” prohibits the commission from adopting a redistricting plan that makes a racial or language minority group less able to elect representatives of their choice than under the previous plan.

Subdivision 4, Convenience and contiguity, requires the districts to “be composed of convenient contiguous territory that allows for easy travel throughout the district. Contiguity by water is sufficient if the water does not pose a serious obstacle to travel within the district. Districts with areas that touch only at a point are not contiguous.”

This is the language used by the *Hippert* court, but adding that a district allow for easy travel throughout the district, as required by Rep. Klevorn’s 2019 [H.F. No. 1605](#) § 2, subdivision 5, and moving the compactness requirement into a separate subdivision, as in her subdivision 10.

³ “The term ‘language minorities’ or ‘language minority group’ means persons who are American Indian, Asian American, Alaskan Natives or of Spanish heritage.” [52 U.S.C. § 10310\(c\)\(3\)](#).

Contiguity is a traditional districting principle. *Shaw v. Reno*, [509 U.S. 630, 647](#) (1993). Contiguity is required in either legislative or congressional plans by all 50 states. NATIONAL CONFERENCE OF STATE LEGISLATURES, *Districting Principles for 2010 and Beyond*, <https://www.ncsl.org/research/redistricting/districting-principles-for-2010-and-beyond.aspx> (last update April 26, 2021) at 1. Minnesota's requirement is in the CONSTITUTION, [art. IV](#), § 3.

Subdivision 5, Political subdivisions, requires that counties, cities, towns, and precincts “not be divided into more than one district except as necessary to meet equal-population requirements or to form districts that are composed of convenient, contiguous, and compact territory. When a county, city, town, or precinct must be divided into more than one district, it must be divided into as few districts as possible.”

The complex derivation of this language is described in [Districting Principles in Minnesota Courts](#) at 9-11. It is based on language from the state court's 2001 principles, because its 2011 principles omitted the references to the political subdivisions that must not be split, the constitutional requirements that might justify a split, and that any division should be into as few districts as possible. The 2011 language was copied from Minn. Stat. § 2.91, [subd. 2](#), which Mr. Wattson had drafted and was enacted in 1994, before he developed the language the court adopted in 2001.

Respecting the boundaries of political subdivisions is a traditional districting principle. *Shaw v. Reno* at [647](#). It is required in either legislative or congressional plans by 44 states. [Districting Principles for 2010 and Beyond](#) at 1.

Subdivision 6, Compactness, requires that districts “be reasonably compact as measured by more than one statistical test that is accepted in political science and statistics literature.” This is a tweak of 2019 [H.F. No. 1605](#) § 2, subd. 10.

Compactness is a traditional districting principle. *Shaw v. Reno*, [509 U.S. 630, 647](#) (1993). It is required in either legislative or congressional plans by 40 states. [Districting Principles for 2010 and Beyond](#) at 1.

Subdivision 7, Indian reservations, prohibits dividing federally recognized American Indian reservations, which are sovereign nations, on terms similar to those for political subdivisions.

Subdivision 8, Communities of interest, begins by urging that the districts “attempt to preserve identifiable communities of interest. A community of interest may include an ethnic or language group or any group with shared experiences and concerns, including but not limited to geographic, governmental, regional, social, cultural, historic, socioeconomic, occupational, trade, or transportation interests.” This part is similar to the *Hippert* court's 2011 principle, deleting *political*, changing *economic* to *socioeconomic*, and adding *governmental, regional, historic, occupational, trade* and *transportation*. The subdivision goes on to exclude “relationships with political parties, incumbents, or political candidates,” as in 2019 [H.F. No. 1605](#) § 2, subd. 7.

Preserving communities of interest is a traditional districting principle. *Bush v. Vera*, [517 U.S. 952, 977](#) (1996). It is required in either legislative or congressional plans by 27 states. [Districting Principles for 2010 and Beyond](#) at 1.

Subdivision 9, Incumbents, requires that the districts “not be drawn with the intent to protect or defeat an incumbent.”

This language is essentially the same as the first sentence of the *Hippert* court’s principles. It omits the second sentence of the *Hippert* principles, which said, “The impact of redistricting on incumbent officeholders is a factor subordinate to all other redistricting criteria that the commission may consider to determine whether a proposed plan results in either undue incumbent protection or excessive incumbent conflicts.”

A common practice, both for the state and federal court panels and for others who have drawn Minnesota plans, has been to draw a plan without knowledge of where incumbents reside, but then review the plan to see whether incumbents have been paired and make small adjustments where deemed necessary. Omission of the *Hippert* court’s second sentence is intended to discourage that practice from continuing.

Avoiding contests between incumbent representatives is a traditional districting principle. *Abrams v. Johnson*, [521 U.S. 74, 84](#) (1997). It is required in either legislative or congressional plans by 12 states. [Districting Principles for 2010 and Beyond](#) at 1. Not favoring an incumbent is required by 16 states. *Id.*

Subdivision 10, Political parties, first requires that districts “not be drawn with the intent or effect to unduly favor or disfavor a political party.” The second sentence urges, but does not require, a plan to “make it more likely than not that the political party whose candidates receive a plurality of the statewide votes for seats in a legislative body will win a plurality of seats in the body.”

Interest in adding a Minnesota principle that districts not favor a political party began in the 2001 legislative session. The 2001 joint resolutions passed by both the Senate and House of Representatives said, “The districts must not be created to unduly favor any political party.” [2001 S.F. No. 1326, Revisor’s Full-Text Side-by-Side](#), Senate ¶ (9), House ¶ (7) (May 2, 2001). The other differences between the Senate and House were not resolved, and the court’s 2001 and 2011 principles were silent on political parties.

With the increase in partisan gerrymandering since the 2010 Census, 17 states now require that a plan not favor or disfavor a political party. See [Districting Principles for 2010 and Beyond](#) at 1,⁴ and *Common Cause v. Lewis*, [No. 18 CVS 014001](#), slip op. at 355 (N.C. Super. Ct.

⁴ NE says “the intention of.” Six states say “for the purpose of”: CA, CO, IA, MT, NY, OR. Washington says “purposely.” Four states say “unduly favor”: DE, HI, OH (congressional only), UT. For legislative plans, OH says “primarily to favor.” ID says, “Counties shall not be divided to protect a particular political party” MI says, “Districts shall not provide a disproportionate advantage to any political party. A disproportionate advantage to a political party shall be determined using accepted measures of partisan fairness.” MO likewise requires “partisan fairness.”

Wake County, Sept. 3, 2019) (“Partisan considerations and election results data *shall not* be used in the drawing of legislative districts in the Remedial Maps.”)

The first sentence is based on the FLORIDA CONSTITUTION, Art. III, §§ [20\(a\)](#), [21\(a\)](#), as added by the Fair Districts Amendments of 2010. It has been interpreted and enforced by the Florida Supreme Court in a series of eight decisions on challenges to the congressional and legislative plans enacted by the Florida Legislature in 2012. *See* National Conference of State Legislatures, *Redistricting Case Summaries | 2010-Present* <https://www.ncsl.org/research/redistricting/redistricting-case-summaries-2010-present.aspx> (last updated Dec. 1, 2020). It was successful in curtailing partisan gerrymanders in both congressional and legislative plans. Mr. Wattson is not aware of a case from a state other than Florida interpreting a similar constitutional or statutory prohibition.

The addition of “unduly” is based on the 2001 joint resolutions, the four other states that include it, and 2019 [H.F. No. 1605](#) § 2, subd. 11.

The second sentence, urging a plan to “make it more likely than not that the political party whose candidates receive a plurality of the statewide votes for seats in a legislative body will win a plurality of seats in the body,” is new. It is based on the observation of Chief Justice Warren that:

Logically, in a society ostensibly grounded on representative government, it would seem reasonable that a majority of the people of a State could elect a majority of that State's legislators. . . . Since legislatures are responsible for enacting laws by which all citizens are to be governed, they should be bodies which are collectively responsive to the popular will.

Reynolds v. Simms, [377 U.S. 533, 565](#) (1964).

In Minnesota, where third parties have sometimes drawn a significant portion of the vote, the winning party may have only achieved a plurality, not a majority. The second sentence accommodates that possibility.

This principle is placed near the end because it has never been adopted by the legislature or a court in this state, it is less commonly accepted than most of the principles above it, and proving the extent to which a plan’s partisan effect is caused by the evil-doing of the plan’s drafters, rather than by the state’s political geography, is more difficult than proving violations of the principles above it.

Subdivision 11, Competition, urges that the districts “be drawn to encourage electoral competition. A district is competitive if the plurality of the winning political party in the territory encompassed by the district, based on statewide state and federal partisan general election results during the last ten years, has historically been no more than eight percent.”

The language in this subdivision is based on WASH. REV. CODE [§ 44.05.090](#). (“The commission shall exercise its powers to provide fair and effective representation and to encourage electoral competition.”)

Interest in adding a Minnesota principle that districts encourage electoral competition began with Governor Jesse Ventura in the 2001 legislative session. The 2001 joint resolutions passed by both the senate and house of representatives had said that, “The districts must not be created to unduly favor any political party.” [2001 S.F. No. 1326, Revisor’s Full-Text Side-by-Side](#), Senate ¶ (9), House ¶ (7) (May 2, 2001). In response to the concern expressed by Governor Ventura that districts be politically competitive, the resolution passed by the Senate also said, “The districts should be politically competitive, where that can be done in compliance with the preceding principles.” *Id.* at Senate ¶ (9). The differences between the senate and house were not resolved, and the court’s 2001 and 2011 principles were silent on both parties and competition.

Increasing competition was recommended by the Mondale-Carlson coalition in their 2008 [Redistricting Reform Report](#). Former Governor Arne Carlson said, “More competition means more leaders and more ideas.” *Id.* at 2. Former Speaker of the House Steve Sviggum said, “Increased competition encourages balance in legislative decisions and helps lawmakers more effectively serve Minnesotans’ interests.” *Id.* And former Senate Majority Leader Roger D. Moe said, “even if just a handful of seats become more competitive, control in the legislature will have shifted, not necessarily right, left, or center, but more towards our constituents. Even a marginally more competitive statehouse and Congress will be forced to refocus its agenda back on more broad-based, bread-and-butter issues and the environment will shift, [increasing] the chances of making progress on these issues.” *Hearing on Redistricting Commission Bills Before the Senate Comm. on State and Local Gov’t Op’s and Oversight*, Minn. Senate, audio recording at 00:41:11, https://www.leg.state.mn.us/senateaudio/2008/cmte_stgov_011108.mp3 (Jan. 11, 2008), Peter S. Wattson transcription, <https://www.leg.state.mn.us/archive/clippings/196717-19976.pdf> (Dec. 21, 2018).

2009 [S.F. No. 182](#), based on the recommendations of the Mondale-Carlson coalition, passed the senate on a bipartisan vote of 39-28 (34 DFL and 5 Republicans in favor, 16 Republicans and 12 DFL opposed) [JOURNAL OF THE SENATE](#) 5773 (MAY 15, 2009). It was never heard in the house. Section 1, subdivision 9, provided that, “The districts must be created to encourage political competitiveness, as defined by the commission”

This bill substitutes “electoral competition,” as used in the Washington statute, for “political competitiveness,” as used in 2009 [S.F. No.182](#), because it seems a bit more positive. It uses the hortatory “should” draw districts to encourage electoral competition rather than the imperative “shall” or “must,” because Minnesota’s political geography does not permit all districts to be competitive. Democrats are so dominant in Minneapolis and St. Paul and their inner-ring suburbs, and Republicans are so dominant in some outer-ring suburbs and areas of Greater Minnesota, that it is impossible to draw competitive districts there without violating the principles of compactness and preserving political subdivisions.

Governor Ventura’s Citizen Advisory Commission on Redistricting defined “competitive” as “if two political parties have a difference of eight percentage points or less in nominal support.” *Redistricting Principles and Standards* at 5 (Apr. 4, 2001), directory 7.1 compressed file, <http://www2.mnhs.org/library/findaids/gr00558.xml#a9>.

On the other hand, the Arizona Independent Redistricting Commission has used a seven percent difference. It says that, “If the expected Democratic vote as a percentage of the two

major political parties falls within the range of 46.5 to 53.5% [the district is] competitive.” Dr. Michael P. McDonald, *Report to the Ariz. Ind. Redistricting Comm’n on Recommended Competitiveness Baseline for State Legislative Districts* at 1 (Feb. 9, 2004), <http://azredistricting.org/2001/2004newlegtests/batch1/20040209%20Competitiveness%20Report.pdf>.

This subdivision uses the Minnesota number and puts it in the statute. **Section 3, subdivision 3**, instructs the legislature’s Geographic Information Services Office, in consultation with the legislative caucus leaders, to develop an index of election results to use in measuring the competitiveness of districts.

Five other states require that legislative or congressional districts, or both, be competitive. [*Districting Principles for 2010 and Beyond*](#) at 1.

Courts in Minnesota have never required, or even urged, that districts be competitive.

But a three-judge federal court in North Carolina found that a lack of competitive districts in the 2016 congressional plan “drove down voter registration, voter turnout, and cross-party political discussion and compromise. Furthermore, the disfavored political party suffered from statewide decreases in fundraising and candidate recruitment, while at the same time incurring increased statewide costs for voter education and recruitment.” *Common Cause v. Rucho*, No. 1:16-cv-1026, [Mem. Op. at 33](#) n.8 (M.D.N.C. Jan. 9, 2018). This violated plaintiffs’ First Amendment right to Freedom of Association. *Id.* at [166-68](#), [on remand](#) (M.D.N.C. Aug. 27, 2018), *vacated & remanded with instructions to dismiss for lack of jurisdiction*, [No. 18-422](#) (U.S. June 27, 2019).

Likewise, a three-judge federal district court in Maryland was unanimous in holding that packing and cracking Republicans in the 2011 congressional plan violated their First Amendment right to associate with each other for political ends. The court found that, where districts were drawn so that Republican candidates either won or lost by large margins, Republican candidates found it difficult to raise money and find volunteers to work on their campaigns, and Republican voters were discouraged from voting because they thought their votes would make no difference in the outcome. *Benisek v. Lamone*, No. 1:13-cv-3233, [Mem. Op. at 65-67](#) (D. Md. Nov. 7, 2018), *vacated & remanded with instructions to dismiss for lack of jurisdiction*, [No. 18-422](#) (U.S. June 27, 2019).

After the U.S. Supreme Court held that federal courts no longer have jurisdiction to consider partisan discrimination claims, *Rucho v. Common Cause*, [No. 18-422](#) (U.S. June 27, 2019), a three-judge North Carolina state court found a lack of competitive districts to be one indication of partisan discrimination in the state’s legislative districts. *Common Cause v. Lewis*, [No. 18 CVS 014001](#), slip op. at 109-238 (N.C. Super. Ct. Wake County Sept. 3, 2019). It struck them down under the state constitution.

The same three-judge state court observed it was likely to strike down the congressional districts for reasons similar to those for which it had struck down the legislative districts, and suggested the general assembly draw a remedial map on its own initiative. *Harper v. Lewis*, [No.](#)

[19 CVS 012667](#) (N.C. Super. Ct. Wake County Oct. 28, 2019). The general assembly did so. [N.C. Sess. Laws 2019-249](#) (Nov. 15, 2019).

Subdivision 12, Numbering, meets the requirement of MINN. CONST. [art. IV](#), § 3, that the districts be numbered in a regular series, setting forth separate systems for congressional and legislative districts. It is the same numbering system as in 2019 [H.F. No. 1605](#) § 2, subd. 12, except that the requirement that counties with more than one whole senate district have them numbered consecutively also applies to cities with more than one whole senate district.

Paragraph (a) requires that congressional district numbers begin with district one in the southeast corner of the state and end with the district with the highest number in the northeast corner of the state.

This is the language from 2009 [S.F. No. 182](#), anticipating that Minnesota might someday lose its eighth seat in Congress. (The *Hippert* court, which knew Minnesota would retain its eighth seat, used “District 8.”) In both the 2010 and 2020 reapportionments, Minnesota was awarded the 435th seat, with very few people to spare. In 2030, we might not be so lucky. This language allows for that possibility.

Paragraph (b) requires that legislative district numbers begin with House District 1A in the northwest corner of the state and proceed across the state from west to east, north to south.

This language changes the *Hippert* court’s numbering scheme by omitting the requirement that district numbers bypass the metropolitan area until the southeast corner has been reached, then number districts in the metropolitan area outside Minneapolis and St. Paul, and end with numbering districts in Minneapolis and St. Paul. That has been the numbering scheme since a three-judge federal court first drew a legislative plan in 1972.

The change in numbering would affect the portion of the state south of St. Cloud, renumbering districts 16 to 67. Those district numbers currently must skip the metropolitan area on their way to the southeast corner. That is why District 28 is in Houston County and District 29 is a third of the state away, in Wright County. A district’s number south of St. Cloud gives little clue to where in the state it might be. Why is our numbering so confusing?

An examination of maps of legislative districts since 1897, available on the legislature’s website at: https://www.gis.leg.mn/html/maps/leg_districts.html, shows that, until the federal court panel drew the legislative plan in 1972, senate districts had been numbered from southeast to northwest, with Hennepin and Ramsey counties each allocated a certain number of consecutively numbered districts. The 1972 plan used the system seen today, starting in the northwest and proceeding to the southeast, but bypassing the metropolitan area until the southeast corner had been reached, then in the metropolitan area outside the cities of Minneapolis and St. Paul, and ending in Minneapolis and St. Paul.

Mr. Wattson’s review of the maps (which he used to draw legal descriptions for the legislature’s 1971 plan vetoed by the governor) suggests that one of the reasons for the separate numbering of those areas was that there were separate paper maps for them available from the

Metropolitan Council,⁵ upon which the court drew its lines. The districts were numbered in accordance with the paper technology then in use.

Mr. Wattson notes that we are no longer constrained by paper technology. He says there is no reason why we could not number the districts consecutively, all the way from the northwest to the southeast. Doing so would give us a better idea, from a district's number, where it might be. That is the proposal in this subdivision.

The subdivision also requires that, in a county or city that includes more than one whole senate district, the whole districts must be numbered consecutively. (The current requirement to skip numbering senate districts in Minneapolis and St. Paul until after the rest of the metro area has been numbered makes that impossible.)

Language deleting the requirement that district numbers end in Minneapolis and St. Paul and requiring that, in a county that includes more than one whole senate district, the districts must be numbered consecutively, was included in the 2017 Omnibus State Government Appropriations bill vetoed by Governor Dayton. See [S.F. No 605](#), art. 2, § 1, subd. 5(a). Applying that requirement to cities with more than one whole senate district would affect only Minneapolis and St. Paul and continue past practice.

Subdivision 13, Priority of principles, provides that, “Where it is not possible to fully comply with the principles in this section, a redistricting plan must give priority to those principles in the order in which they are listed, except to the extent that doing so would violate federal law.”

This language began with a joint resolution passed by the house in 2001 that died in conference committee. See [2001 S.F. No. 1326, Revisor's Full-Text Side-by-Side](#), House ¶ (12) (May 2, 2001). It was included in 2009 [S.F. No. 182](#) § 1, subd. 11, which died in the house. It was included in the 2011 bills vetoed by the governor. See [H.F. No. 1425](#) § 3, subd. 11 (legislative), and [H.F. No. 1426](#) § 3, subd. 11 (congressional). Similar language is in 2019 [H.F. No. 1605](#) § 2, subd. 3.

The current language omits a prohibition against violating state law, since this is state law.

Section 3 [2.038] REDISTRICTING SUPPORT.

This section sets forth the responsibilities of the Legislative Coordinating Commission (LCC) for congressional and legislative redistricting.

Subdivision 1, Administrative support, requires the LCC to provide administrative support to the redistricting process.

Subdivision 2, Database, paragraph (a) requires that the geographic areas and population counts used in maps, tables, and legal descriptions of the districts be those used by the Geographic Information Services (GIS) Office of the Legislative Coordinating Commission. The population

⁵ The maps of the court's plan on the website don't show the Metropolitan Council's logo, but the maps the legislative staff were working on did.

counts must be the block population counts provided to the state under Public Law 94-171 after each decennial census, subject to correction of any errors acknowledged by the Census Bureau.

The language of paragraph (a) is from the 2017 Omnibus State Government Appropriations bill vetoed by Governor Dayton. See [S.F. No 605](#), art. 2, § 1, subd. 10.

Similar language was in the 1991 concurrent resolutions adopted by the senate and house, see [House Con. Res. No. 1 ¶ \(8\)](#) (congressional); [House Con. Res. No. 2 ¶ \(10\)](#) (legislative); the 2001 joint resolutions that died in conference committee, see [2001 S.F. No. 1326, Revisor's Full-Text Side-by-Side](#), Senate ¶ (11), House ¶ (10) (May 2, 2001); and the 2011 congressional and legislative redistricting bills vetoed by the governor. See [H.F. No. 1425](#) § 3, subd. 9 (legislative); [H.F. No. 1426](#) § 3, subd. 9 (congressional).

Paragraph (b) says, “The database used by the legislature to draw plans may include election results used to test the partisan bias of a plan, but must not include data on voter registration or voting history.” It also prohibits the inclusion of campaign finance data on state or federal candidates, or presidential primary political party ballot selection data. It is a rewrite of the prohibitions in 2019 [H.F. No. 1605](#) § 2, subd. 2(b).

Paragraph (c) requires the database to be made available to the public on the GIS Office website, as has been the practice.

Subdivision 3, Partisan index, instructs the GIS Office, in consultation with the legislative caucus leaders, to develop an index of election results to use in measuring the partisanship of a plan.

This language is new, codifying past practice. It describes the method used to reach agreement among the four caucuses on which election results to use in calculating the partisan index used to measure which districts each party is likely to win, how the number of seats likely to be won compares to the party's share of the statewide vote, and which districts are likely to be competitive.

Subdivision 4, Publication; consideration of plans, requires that a congressional or legislative redistricting plan not be considered for adoption by the senate or house of representatives until a block equivalency file showing the district to which each census block has been assigned, in a form prescribed by the GIS Office, has been filed with the office and the plan has been published on the office website. This is a codification of the practice almost always followed in the past for plans considered by the legislature.

Like **subdivision 2**, the language requiring that a plan be filed with the GIS Office is based on the 2017 Omnibus State Government Appropriations bill vetoed by Governor Dayton. See [S.F. No 605](#) art. 2, § 1, subd. 11. Similar language was in the 2001 joint resolutions that died in conference committee, see [2001 S.F. No. 1326, Revisor's Full-Text Side-by-Side](#), Senate ¶ (12), House ¶ (11) (May 2, 2001); and the 2011 congressional and legislative redistricting bills vetoed by the governor. See [H.F. No. 1425](#) § 3, subd. 10 (legislative); [H.F. No. 1426](#) § 3, subd. 10 (congressional).

The language requiring that the plan be published on the office website is from the senate language in the 2001 conference committee. See [2001 S.F. No. 1326, Revisor's Full-Text Side-by-Side](#), Senate ¶ (12(c)).

Since the bill proposing the adoption of a plan does so by reference to the plan as published by the office on a certain date, *see, e.g.*, 2011 [H.F. No. 1425](#) §1, subd. 1(b) (legislative); and 2011 [H.F. No. 1426](#) §1, subd. 1(b) (congressional); and most legislators and members of the public will not be able to see the plan until it has been published, it makes sense to require publication before the plan may be considered.

Subdivision 5, Reports, describes the reports that must accompany a plan when it is submitted to the legislature.

The federal and state court panels that have drawn Minnesota's redistricting plans since 1972 have specified various reports that the parties and amici submitting a plan must file with the court for its use in preparing the court's own plan. The reports required by this subdivision continue that practice with regard to plans considered by the legislature. **Section 1, subdivision 2**, allows each committee to adopt its own standards to govern the format of plans submitted to it. Presumably, each committee will want something similar to the reports in this subdivision.

The report on **Minority Representation**, using voting-age population, has traditionally been published on the GIS Office website, but was not required by the 2011 *Hippert* court or previous Minnesota state or federal courts, perhaps because it was not a standard report in Maptitude for Redistricting. Rather, it was a special report created for the Minnesota Legislature in 2001 by Caliper Corporation, the vendors of Maptitude for Redistricting. "Minority Representation – Voting-Age Population," is one of two reports that can be run by the Minnesota Redistricting Tools included in Maptitude for Redistricting 2020. (The other is "Partisanship.")

The GIS Office has also traditionally published a report on Minority Total Population. Experience with the report since 2001 has shown that challenges to a plan based on its treatment of minority populations are almost always based on the voting-age population, rather than the total population. The Minority Total Population report is thus surplus and has been omitted from the reports required by this bill.

The reports on **Population Equality, Contiguity, Compactness, Political Subdivision Splits, and Plan Components** are essentially the same as those that have been published on the GIS Office website for all plans since 2001, and were required by the 2011 *Hippert* court to accompany the plans submitted to it.

The *Hippert* court's specification for the **contiguity report** refers to "polygons." A polygon is "a plane figure with at least three straight sides and angles." It is a generic term that GIS experts use to describe the areas found in a map. This bill uses the term "areas" rather than "polygons," to be more colloquial. As used to specify the content of the contiguity report, it is referring to the districts created by a plan. If a district has more than one area, it is not composed of contiguous territory, unless the principles permit point contiguity, which this bill does not. If the report shows that any district has more than one area, the plan is invalid. The total number of districts with more than one area is shown at the beginning of the report. If the number is more

than zero, the plan is invalid.

The *Hippert* court required that plans submitted by the parties for its consideration be accompanied by the eight **compactness** measures included in Maptitude for Redistricting 6.0, which was the software used by the legislature, the parties, and the court to draw plans in 2011-12. A ninth measure, Minimum Convex Hull, was added to Maptitude for Redistricting 2017. Those nine are shown in the table below. Two more measures, Alternative Schwartzberg and Cut Edges, were added to Maptitude for Redistricting 2019.

How each measure is computed is explained on pages 143 to 145 of the Maptitude for Redistricting 2020 Supplemental User Guide. The Guide does not say how long each measure takes to run. On Mr. Wattson’s PC in 2020, the times on a Minnesota House plan were as follows:

Higher Number is Better						Lower Number is Better		
Reock	Polsby-Popper	Minimum Convex Hull	Population Polygon	Population Circle	Ehrenburg	Schwartzberg	Perimeter	Length-Width
2 seconds	2 seconds	2 seconds	70 seconds	80 seconds	190 seconds	2 seconds	2 seconds	3 seconds

Running all the reports together took more than 7 minutes. Omitting Population Polygon, Population Circle, and Ehrenburg cut the time to about 4 seconds.

Gary King and his colleagues at Harvard have proposed a new measure that, if it gains acceptance, might be the only measure a person needs. Aaron Kaufman, Gary King, and Mayya Komisarich, forthcoming, *How to Measure Legislative District Compactness if You Only Know It When You See It*, AMERICAN JOURNAL OF POLITICAL SCIENCE, copy at, <https://gking.harvard.edu/files/gking/files/compact.pdf> (Harvard, Dec. 29, 2020).

For a discussion, with pictures, of how these and other compactness measures are calculated and used, see Thomas B. Hofeller, Ph.D., Redistricting Coordinator for the Republican National Committee, National Conference of State Legislatures, National Redistricting Seminar (Austin, Tex. Mar. 28, 2010) (slide presentation), <https://www.ncsl.org/documents/redistricting/Compactness-March-2010Hofeller.pdf>.

In light of the continuing development of these measures, the bill leaves to the GIS Office the decision on which measures to publish on the plans it posts.

The report on **American Indian reservation splits** is separate from the report on **political subdivision splits**, both because a reservation is not a political subdivision and because its digital geography is not part of the Census Bureau’s digital hierarchy for political subdivisions. Even though not previously required by a court or by the legislature, a report on how a plan may or may not split a reservation has been run routinely for the last two decades using the **communities of interest** report.

The report on **communities of interest** is optional, necessary only when the sponsor of the plan asserts that it preserves a community of interest. The Maptitude for Redistricting Communities of Interest report works on a geographic layer in the database. A user of the software

can easily create the layer, so long as the user has a map that clearly identifies the boundaries of the communities. Once those boundaries have been added to the database, the user can run a report showing the district or districts to which each community has been assigned, and whether it has been split. Various community of interest reports showing, for example, the extent to which a plan splits Indian reservations or Minneapolis and St. Paul neighborhoods, have been run by plan drafters for their own use but have not been posted on the GIS Office website or required by the courts.

The 1981 federal court had said that, “To the extent any consideration is given to a community of interest, the data or information upon which the consideration is based shall be identified.” *LaComb v. Growe*, [Order](#) at 2, Civ. No. 4-81-152 (D. Minn. Dec. 29, 1981) (legislative); *LaComb v. Growe*, [Order](#) at 2, Civ. No. 4-81-414 (D. Minn. Dec. 29, 1981) (congressional). That requirement was not repeated by any later court or legislature, and arguments about the virtues of a plan preserving communities of interest have been rather loose.

The requirement that the community of interest be displayed on a map and its preservation analyzed by a report should make arguments about it significantly more rigorous.

The report on **core constituencies** has not been required by Minnesota’s court panels. It has been used by participants in the process to measure the degree to which competing plans have preserved district cores. In addition to details about each district, it must show the average percentage core of a prior district’s voting-age population for all districts in the plan (to see how much of a voting base the average incumbent has retained), and the number of persons moved from one district to another (to see the overall scale of disruption).

The **incumbents** report has not been required by Minnesota’s court panels. It has been posted on the GIS Office website for many plans, but not all. It is required by this bill in order to assist with enforcement of the principle that the districts not be drawn with the intent to protect or defeat an incumbent.

The report on **partisanship** is an expansion of the Political Competitiveness report that Caliper Corporation developed at Mr. Wattson’s direction for the Minnesota Legislature in 2001. The Political Competitiveness report has been run, at the user’s discretion, on all Minnesota plans since then. It has not been required by Minnesota’s court panels, who have avoided considering the partisan impact of a plan, except on incumbents. The language is a tweak of 2019 [H.F. No. 1605](#), § 3, subd 4(8).

The Political Competitiveness report used an index of the historical vote for each of the two largest parties and all other parties and write-in votes (grouped as “third parties”) to determine the number of districts where each party had historically won a plurality, how many districts were competitive, the number of districts where the cumulative vote for each party had been over 54% and over 60%, and the statewide percentage of the cumulative vote for each party.

After the decision in *Whitford v. Gill*, No. 15-cv-421, [Op. & Order](#) (W.D. Wis. Nov. 21, 2016), Mr. Wattson modified the report to include a measure of the “efficiency gap” considered by the court in that case. [Slip op. at 80-83](#). In October 2017, based on a review of the 50 briefs filed with the U.S. Supreme Court in the *Whitford* case, [No. 16-1161](#), proposing various other

measures of partisan fairness, he added several of those accepted in the political science and statistics literature. To encompass the wider scope of the report, he renamed it the Partisanship report.

This bill proposes to use the Partisanship report to measure the degree to which competing plans have achieved partisan fairness by not favoring or disfavoring a political party and by encouraging electoral competition. The GIS Office has contracted with Caliper Corporation to modify the Partisanship report to include the measures required by this bill, and others accepted in the political science and statistics literature. “Partisanship” is one of two reports that can be run by the Minnesota Redistricting Tools included in Maptitude for Redistricting 2020. (The other is “Minority Representation – Voting-Age Population.”)

Section 4 EFFECTIVE DATE.

Section 4 makes the act effective the day following final enactment.