

# GUIDE TO 2021 REDISTRICTING IN TEXAS



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# GUIDE TO 2021 REDISTRICTING IN TEXAS



Published by the Texas Legislative Council  
UPDATED: September 2021

Texas Legislative Council  
Lieutenant Governor Dan Patrick, Joint Chair  
Speaker Dade Phelan, Joint Chair  
Jeff Archer, Executive Director

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If you have questions or comments regarding this publication, please contact Karen White by phone at (512) 463-1155 or by email at [karen.white@tlc.texas.gov](mailto:karen.white@tlc.texas.gov).

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# PREFACE

The *Guide to 2021 Redistricting in Texas* provides members of the legislature and other interested persons with an introduction to the issues and constraints that will affect statewide redistricting in Texas following the 2020 decennial census and describes the services provided by the Texas Legislative Council to support the state's redistricting effort. The guide briefly outlines requirements of a redistricting plan and explains the redistricting process in Texas. It includes sections on:

- [requirements](#);
- [process](#);
- [data](#); and
- [public participation](#).

This edition of the guide has been updated to reflect the postponed 2020 Census data release and is accurate as of the publication date.

For more information concerning redistricting, visit the [Texas Redistricting website](#).

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# INTRODUCTION

The Texas Legislature has the responsibility to redistrict Texas senate, Texas house, Texas congressional, and State Board of Education (SBOE) districts following publication of each United States decennial census. Redistricting can only begin after the block-level total and voting age population counts by race and ethnicity are provided by the U.S. Census Bureau. Federal law requires that data to be delivered to the states not later than March 31 of the year following the census year.

If the census data is delivered before the end of the legislature's first regular session after release of the census data and new boundaries for the Texas senate or house districts are not enacted in that regular session, or if a plan enacted during that session is vetoed or is overturned by court challenge within 90 days of the end of the session, the Texas Constitution gives the Legislative Redistricting Board (LRB) redistricting authority for those state legislative districts. If new boundaries for congressional or SBOE districts are not enacted during such regular session, those redistricting plans may be taken up in a special legislative session. The COVID-19 pandemic led to a delay in the release of 2020 census data, and because the data were not available before the end of the regular session, the LRB has no authority for redistricting in 2021. Postponement of the release of Census population data also led to other substantial changes to deadlines for the state's 2021 redistricting activities. See the Texas Redistricting website for the 2021 timeline.

Current districts and proposed legislative plans and amendments may be viewed by legislators and others on the public [DistrictViewer website](#). Access to a special Texas redistricting computer system (RedAppl), which provides the extensive data and graphic mapping capability necessary to redraw districts, is also available to legislative offices.

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# REDISTRICTING REQUIREMENTS

The following is a brief discussion of basic legal requirements relating to legislative redistricting.

The federal constitution calls for reapportionment of congressional seats according to population from a decennial census (Section 2, Article I). Reapportionment is the allocation of a set number of districts among established units of government. The 435 congressional seats are reapportioned among the 50 states after each decennial census according to the method of equal proportions. The boundaries of the individual congressional districts within each state are then redrawn by the state legislature or, in some states, by a redistricting commission, in accordance with state and federal law.

Redistricting is the revision or replacement of existing electoral districts, resulting in new districts with different geographical boundaries. The basic purpose of decennial redistricting is to equalize population among electoral districts after publication of the United States decennial census indicates population has increased or decreased over the last decade.

The Texas Constitution requires the legislature to redistrict Texas house and senate seats during its first regular session following publication of each United States decennial census (Section 28, Article III). After each census, SBOE seats also must be redistricted to bring them into compliance with the one-person, one-vote requirement.

## GENERAL REQUIREMENTS FOR REDISTRICTING PLANS

Two primary requirements govern redistricting. First, representative districts of a given type (senate, house, congressional, and SBOE, as well as local government single-member districts) must have equal or nearly equal populations. Second, districts must be drawn in a manner that neither has the purpose nor will have the effect of denying or abridging the right to vote on the basis of race, color, or language group. These requirements are based in the Fourteenth Amendment to the U.S. Constitution (the Equal Protection Clause), the Fifteenth Amendment (prohibiting voting discrimination based on race), the federal Voting Rights Act of 1965, and, for congressional districts, Section 2, Article I, of the U.S. Constitution. As U.S. Supreme Court Justice William O. Douglas wrote in a landmark 1963 decision requiring the states to ensure that their election processes treat voters equally, “[t]he conception of political equality from the Declaration of Independence, to Lincoln’s Gettysburg Address, to the Fifteenth, Seventeenth, and Nineteenth Amendments can mean only one thing—one person, one vote” (*Gray v. Sanders*, 372 U.S. 368 (1963)). Subsequent Supreme Court decisions have applied the principle to require representative districts at all levels of government—congressional, state, and local—to represent equal numbers of voters.

Exactly how equal must the populations of districts be? A Texas case that reached the U.S. Supreme Court in the 1970s (*White v. Regester*, 412 U.S. 755 (1973)) set the basic standard for the maximum acceptable population deviation for state legislative districts: the combined deviation of the most populous district and the least populous district from the ideal district population may not exceed 10 percent, and all the other district populations must fall within that narrow range. “Ideal district population” is the population a district would have if all districts in a plan have equal populations, and it is determined by dividing the total state population by the number of districts in the plan. The courts have allowed limited exceptions to the 10 percent deviation limitation if based on consistent application of rational state policy such as the preservation of whole counties.

In some cases, even plans with districts within the 10 percent limitation have been held invalid if the population deviations show a pattern of discrimination. The same standard applies to districts for the SBOE. A stricter one-person, one-vote standard applies to congressional redistricting.

Traditionally, states have equalized total census populations to comply with the one-person, one-vote requirement. The federal courts have left open the question of whether a state may equalize eligible voter populations among districts to satisfy that requirement.

The application of the Voting Rights Act and federal constitutional prohibitions against redistricting that has the purpose or effect of discriminating on the basis of race, color, or language group has been developed primarily through case law and has been the subject of extensive litigation. In drawing new districts, the legislature must carefully consider how those districts affect the ability of racial, ethnic, and language group voters to elect candidates of their choice and must not use the arrangements of districts to reduce or limit the ability of members of those groups to elect candidates of their choice.

While the principal federal constitutional and statutory provisions governing redistricting are the same for all redistricting plans, the specific provisions of the Texas Constitution relating to Texas house and senate districts, and certain provisions of the federal constitution governing congressional districts, result in somewhat different requirements for different types of districts. The following sections briefly describe redistricting requirements specific to each type of district for which the Texas Legislature is primarily responsible.

## **SENATE DISTRICT REQUIREMENTS**

Section 25, Article III, of the Texas Constitution requires the Texas Senate to be elected from single-member districts and each senate district to be composed of contiguous territory.

Section 28, Article III, of the Texas Constitution requires the legislature to redistrict state senate districts during the first regular session following publication of the decennial census. If the legislature fails to do so, the redistricting task falls temporarily to the LRB.

## **HOUSE DISTRICT REQUIREMENTS**

Often referred to as the “county line rule,” Section 26, Article III, of the Texas Constitution, as modified by the federal courts to comply with the one-person, one-vote standard mandated by the Fourteenth Amendment, requires that house districts be apportioned among the counties according to the most recent federal decennial census population, subject to the following:

- (1) a county with sufficient population for exactly one district must be formed into a single district;
- (2) a county with a population smaller than the population needed for a whole district must be kept whole and combined with one or more contiguous counties to form a district;
- (3) a county that has sufficient population for two or more whole districts must be divided into that number of districts, with no district extending into another county; and
- (4) each county with a population sufficient for one or more whole districts plus a fraction of another district must be divided into that many whole districts, with the excess population added to one or more contiguous counties to form an additional district.

In practice, it is sometimes impossible to draw a statewide plan that completely satisfies these rules while maintaining districts with equal populations. The Texas courts have allowed a house plan to violate the county line rule to the limited extent necessary to draw a plan that complies with the federal one-person, one-vote requirement. For example, a county with less than the population needed for a single house district may be split between districts when no other option is available to create equally populated house districts.

Section 28, Article III, of the Texas Constitution requires the legislature to redistrict state house districts during the first regular session following publication of the decennial census. If the legislature fails to do so, the redistricting task falls temporarily to the LRB.

## **CONGRESSIONAL DISTRICT REQUIREMENTS**

The number of seats in the U.S. House of Representatives apportioned to each state is determined after each decennial census by a mathematical formula set by federal law. Unless a state's constitution provides otherwise, each legislature has the authority to draw its state's congressional district boundaries. No Texas constitutional or statutory provisions address congressional redistricting. As a practical matter, the legislature must draw districts for the congressional seats apportioned to Texas before the candidates' filing period for the first general election following the decennial census. Unlike legislative redistricting, congressional redistricting does not come within the authority of the LRB if the legislature fails to enact a valid plan during the regular session that is meeting when the decennial census is published. The issue may be taken up in a subsequent special session of the legislature or, if the legislature fails to enact a congressional plan or the governor does not call a special session, the districts may ultimately be drawn by a state or federal district court.

Federal law allows substantially less population deviation for congressional districts than for legislative districts, requiring congressional districts to be as equal in population as practicable. In congressional districts, each deviation from the ideal district size must be justified on the basis of a rational state policy or be found to be unavoidable despite a good faith effort to draw districts with equal population (*Karcher v. Daggett*, 462 U.S. 725 (1983)). As a result, congressional districts are usually drawn so that the population in each district is almost exactly the same.

## **STATE BOARD OF EDUCATION DISTRICT REQUIREMENTS**

Section 7.101, Education Code, establishes the composition of the SBOE. The board currently consists of 15 members elected from districts.

No state statute requires redistricting of the SBOE districts at a particular time. The statutes governing the board provide for the election of a new board with staggered four-year terms after any decennial reapportionment of the districts. See Section 7.104, Education Code. As a practical matter, the legislature must redistrict the SBOE districts after the decennial census to bring the districts into compliance with the one-person, one-vote requirement.

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# REDISTRICTING PROCESS

The timing of the publication of the federal decennial census and legal requirements relating to redistricting in Texas dictate the basic process that redistricting follows in the Texas Legislature. Delays in the delivery of the 2020 Census have resulted in substantial changes to the redistricting process. This guide discusses both the typical process of redistricting and the changes to the process in 2021 as a result of those delays.

## **PUBLIC HEARINGS**

In order to obtain information that aids the Texas Legislature in making redistricting decisions, legislative committees generally gather public comments prior to the redistricting session, providing an opportunity for citizens to present testimony concerning local preferences, communities of interest, local voting patterns, and other issues that the legislature may consider relevant when redrawing district lines.

Public hearings on redistricting bills under consideration by legislative committees are also held once census data become available and redistricting proposals begin to be considered by the legislature.

## **REDISTRICTING DATA**

Federal law requires the U.S. Census Bureau to deliver state population totals to the president by December 31 of the census year (2020), at which time the number of congressional seats for each state is computed. The detailed census data needed to draw districts is required by federal law to be delivered to the states not later than March 31, 2021. Due to changes in census operations during 2020 because of the COVID-19 pandemic, the reapportionment of congressional districts among the states was postponed to April and the detailed census data needed for Texas redistricting was delivered in mid-August and became available in the legislature's redistricting computer systems in September.

## **REDISTRICTING BILLS**

Redistricting bills follow the same path through the legislature as other legislation, and house and senate rules setting end-of-session procedures for the consideration of bills also apply. Congressional and SBOE redistricting bills may be introduced in either or both chambers; senate and house redistricting bills traditionally originate only in their respective chambers. Following final adoption by both chambers, each redistricting bill is presented to the governor for approval. The governor may sign the bill into law, allow it to take effect without a signature, or veto it. Under usual circumstances, if a house or senate redistricting bill is considered during the first regular session following publication of the decennial census, the bill is vetoed, and the veto is not overridden by the legislature, the LRB is required to meet. If a congressional or SBOE redistricting bill is vetoed and the veto is not overridden, the governor may call a special session to consider the matter. If no redistricting plan is enacted by the legislature or LRB for a particular body, the matter is likely to be taken up in state or federal district court, where an interim plan may be ordered by the court in the absence of an enacted plan. The legislature may also be called into a special session at a later time to address the absence of a redistricting plan.

## **LEGISLATIVE REDISTRICTING BOARD**

The LRB, composed of the lieutenant governor, speaker of the house of representatives, attorney general, comptroller of public accounts, and land commissioner, was created by Texas constitutional amendment

approved by the voters in 1948 to provide legislators with an incentive to redistrict after each federal decennial census. If the legislature fails to redistrict house or senate districts during the first regular session following release of the decennial census, Section 28, Article III, of the Texas Constitution requires the LRB to meet within 90 days of the end of that regular session and to adopt its own house or senate plan within 60 days of convening.

In *Mauzy v. Legislative Redistricting Board*, 471 S.W.2d 570 (Tex. 1971), the Texas Supreme Court interpreted the LRB's authority to arise not only when the legislature literally fails to act, but also in certain cases when legislative redistricting plans are found invalid by the courts. As a result, if the legislature's plan is vetoed by the governor and the veto is not overridden by the legislature, or if the plan is overturned by a court challenge under state law within the 90-day period in which the LRB is given redistricting authority, redistricting becomes the responsibility of the LRB.

Because the legislature did not receive census data during the 2021 regular session, the LRB has no authority to meet in 2021.

## **JUDICIAL REVIEW**

A suit against an adopted redistricting plan may be brought by a person with proper standing under the federal or state constitution or federal law. A suit alleging that a plan does not meet Texas constitutional requirements is ordinarily filed in state court. A suit alleging that a plan violates federal law is ordinarily filed in federal district court but may be brought in state court instead. A suit in federal court alleging that a congressional or legislative redistricting plan violates the federal constitution is tried before a three-judge district court.

## **ELECTIONS UNDER NEW DISTRICTS**

Before elections are held under the new districts, counties that are split by district boundaries must change their voting precinct boundaries to conform with the new district lines since, under state law, a county voting precinct may not include portions of more than one congressional, legislative, or SBOE district.

The state constitution requires a candidate for state legislative office to have resided in the district the candidate seeks to represent for at least one year before the general election.

## **REDISTRICTING TIMETABLE**

A timetable illustrating all steps in the redistricting process, between the release of the 2020 census data for redistricting and the 2022 election cycle, is posted on the [redistricting website](#) and will be updated as needed.

To further understand the complexities and the challenge facing the legislature, the reader may refer to the histories of redistricting in the previous four decades, which are summarized on the Texas Redistricting website.

# REDISTRICTING DATA

Because of the federal constitutional requirement that districts of a given type have equal or nearly equal population, redistricting plans must take into account information about the total population of each district. To satisfy other legal requirements, including compliance with the Voting Rights Act, plans must take into account information about the race and ethnicity of the voting age populations of the districts as well as election data for analyzing minority participation and voting strength in existing and proposed districts. Since districts are defined in terms of geographic territory, geographic features such as census units (tracts, block groups, and blocks) and political units (counties, cities, and voting precincts) that are correlated to the demographic and election data are required for the task of redistricting. The legislature collects and maintains this data for use in carrying out its redistricting obligations and makes the data available to the public through its redistricting websites.

## **CENSUS DATA**

Population data provided by the U.S. Census Bureau is the foundation of a redistricting plan; population is reported by units of census geography, including by county, tract, block group, and block. Redistricting plans are typically drawn using these units of census geography, and a comprehensive GIS coverage of the state is maintained to allow the legislature to connect population and election data to geography and draw district boundaries.

## **ELECTION DATA**

Because election information is also required for analyzing a redistricting plan, a statewide election database compiled by legislative council staff provides county voting precinct boundaries, the results of statewide and many local primary, runoff, and general elections, and voter registration information by precinct for all counties. This election data is allocated to each census block within each voting precinct to allow for election data to be estimated for any district.

Because county voting precinct lines do not always follow census lines, in the redistricting system the precinct boundaries have been approximated to the closest census block boundary. These approximated precincts are called voting tabulation districts (VTDs). In most cases, VTDs match county election precincts exactly or the differences are minor and do not affect the accuracy of the precinct election data assigned to the VTD and the blocks within the VTD. Occasionally, the differences between a county voting precinct that does not follow census geography and the corresponding VTD are somewhat substantial and may affect the accuracy of election data allocated to that VTD and the blocks within it. However, because districts cover large areas and consist primarily of whole voting precincts, the imperfect allocation of election precinct data to some VTDs will not have a significant effect on the total election data reported for any district.

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# PARTICIPATION IN THE REDISTRICTING PROCESS

Members of the Texas Legislature have the duty to redraw state district boundaries after each decennial census, and comments and proposals from the public about district boundaries are encouraged to facilitate that process. Redistricting legislation follows the same path through the legislature as other bills, and public testimony and comments by interested persons should be made directly to the [Senate Special Committee on Redistricting](#) and to the [House Redistricting Committee](#).

Resources designed to enable the state to handle redistricting tasks include:

- Texas Redistricting—the legislature’s website for current redistricting news, legal issues about the topic, and links to redistricting data, online tools, and other useful sites;
- RedAppl—the core redistricting application created for the Texas Legislature; it provides access to population and election data and allows the legislature to draw district proposals; and
- DistrictViewer—the website that displays maps and associated demographic and election reports for current and proposed state senate, state house, Texas congressional, and SBOE districts, updated in real time as the legislature considers proposals.

The Capitol Data Portal and Who Represents Me? also provide information that may be helpful for citizens interested in participating in the redistricting process. More information about these sites is given below.

## TEXAS REDISTRICTING

The Texas Redistricting website (<https://redistricting.capitol.texas.gov/>) serves as a guide to redistricting activities carried out by the Texas Legislature. It provides an extensive overview of the requirements and procedures relating to redistricting in Texas and has an extensive history section that includes legislative and court action concerning Texas districts from the past four decades and links to redistricting plans from the past.

The 2020s section includes links to committee hearings on redistricting, ideal district population figures, and a timeline and glossary about redistricting.

The website is updated regularly throughout the redistricting process with information including meeting dates, census deadlines, redistricting plan maps and reports, and news about major activities affecting redistricting that take place after the legislature adjourns.

## REDAPPL

The centerpiece of the technology that supports redistricting in Texas is the RedAppl district modeling system. RedAppl, which was first developed in 1990 and has been updated and enhanced periodically since then, pulls together all the census and election data to allow the generation of maps and reports showing district boundaries and associated demographic and election information. RedAppl 2021 has data for statewide and select local elections held from 2012 through 2020, including primary, runoff, and general elections, and selected 2021 special elections for the Texas Legislature and congress.

An important feature of RedAppl 2021 is the capability to work online or off-line. Legislators and staff can use their office laptops to work on plans away from Capitol Complex offices and can disconnect from the Capitol network and work offline in their offices or other locations.

Public access to RedAppl is also made available on a limited basis through remote appointments and a virtual connection to the system during certain periods of legislative redistricting activities. Interested persons should review access policies and procedures, view the [RedAppl training video](#), and then contact the redistricting office (512-463-6622) for more information about establishing a RedAppl account, scheduling appointments and saving proposals, and using RedAppl to provide proposals to redistricting committees.

## **DISTRICTVIEWER**

DistrictViewer (<https://dvr.capitol.texas.gov/>) is the legislature's public website that displays maps and associated demographic and election reports for current and proposed state senate, state house, Texas congressional, and SBOE districts. All redistricting proposals that are made public during the legislative process are made available in DistrictViewer as soon as possible after becoming public, such as by the filing of a redistricting bill or the offer of an amendment in committee or during floor consideration of a redistricting bill. Users of DistrictViewer may overlay one plan on another to compare the two. DistrictViewer allows the user to zoom in to view the details of a proposed plan, such as street names, cities, and election precincts, with or without district boundaries. Users may also search for an address and easily access geographic, election, and demographic data and additional resources related to any public plan.

## **CAPITOL DATA PORTAL**

All the redistricting data maintained by the legislature is available from the Capitol Data Portal (<https://data.capitol.texas.gov/>), which can be accessed from the Texas Redistricting website. Maps and data reports for redistricting plans considered by the legislature are also available. Information for current districts and all plans under consideration during the 2020s redistricting cycle may be found in [Redistricting 2021](#); information for plans considered during the last decade are filed under [Redistricting Archive - 2010s](#).

Data available for each redistricting plan include files that relate precincts and zip codes to districts and shapefiles of counties, tracts, block groups, blocks, precincts, VTDs, and school districts. Detailed census data is reported for each district. Election returns and voter registration and turnout data are available by VTD, and additional records are added as soon as data from a new election is collected, processed, and verified.

The election and geographic data that may be obtained from this site are developed specifically for redistricting in Texas and may be used in any compatible redistricting or GIS applications.

## **WHO REPRESENTS ME?**

Who Represents Me? (<https://wrm.capitol.texas.gov/>) is a web tool that links any address in Texas to current districts to allow the user to identify the current members of the Texas Senate, Texas House of Representatives, U.S. Senate and House of Representatives, and the SBOE who represent that address location. Who Represents Me? also provides contact information for those representatives. The site will be updated to reflect new districts after the 2022 elections but does not include information about proposed districts.

While Who Represents Me? is not a specific redistricting tool, it provides information needed for members of the public to identify and contact their legislators.