



House Office Building, 9 South
Lansing, Michigan 48909
Phone: 517/373-6466

REDISTRICTING AND REAPPORTIONMENT

**Senate Bill 810 with House committee
amendments**

Sponsor: Sen. Bill Schuette

Senate Bill 811 as passed by the Senate

Sponsor: Sen. Thaddeus McCotter

**Senate Bill 812 with House committee
amendments**

Sponsor: Sen. Philip Hoffman

**Senate Bill 813 with House committee
amendments**

Sponsor: Sen. Kenneth Sikkema

Senate Bill 814 as passed by the Senate

Sponsor: Sen. Bill Schuette

**House Bill 5075 with committee
amendments**

Sponsor: Rep. Wayne Kuipers

First Analysis (11-10-99)

House Committee: Family and Civil Law

Senate Committee: Reapportionment

THE APPARENT PROBLEM:

In 1982 and 1992, the Michigan Supreme Court drew new boundaries for state legislative districts, a task known as redistricting or reapportionment. Redistricting is required following each decennial census. The last two redistricting efforts were carried out by special masters appointed by the supreme court employing guidelines established by the court in 1982. According to knowledgeable sources, the court has carried out the redistricting ever since the adoption of the new state constitution in 1963. The constitution provided for a special 8-member Commission on Legislative Apportionment. The bi-partisan commission was unable to arrive at a majority decision in 1964, 1972, and 1982, and the court drew the boundaries. The commission was declared unconstitutional in 1982, and the redistricting task became once again a legislative responsibility. (The reapportionment language in the state constitution was

determined to violate U.S. Supreme Court one person-one vote decisions.) The legislature did not produce a plan in 1992, so the court again carried out the legislative redistricting.

Public Act 463 of 1996 established a process for drawing up redistricting plans for the state legislature. The 1996 legislation essentially put into statute the supreme court's redistricting criteria. Now, in addition, it is proposed to place the supreme court's redistricting criteria into statute to guide the next round of redistricting for Congressional districts, county boards of commissioners, the state courts of appeals, and charter commissions, after the census of 2000. Proponents say putting the criteria into statute in advance will help make the next redistricting run more smoothly by providing a mechanistic and formulaic means of setting up the plans.

Senate Bills 810, 811, 812, 813 and 814 and House Bill 5075 (11-10-99)

In a related matter, Congress passed the Decennial Census Improvement Act in 1991 to allow the Secretary of Commerce to contract with the National Academy of Sciences to study how the federal government could achieve the most accurate population count possible. The academy concluded that use of sampling was necessary to achieve a cost effective and accurate count, and the Census Bureau announced that it would use sampling procedures in the 2000 census.

The bureau's announcement of its plan to use statistical sampling in the 2000 census led to a flurry of legislative activity. Congress attempted to amend the Census Act to prohibit the use of any statistical procedure to apportion representatives in Congress among the several states, but it was vetoed by the President. Congress then passed, and the President signed, a bill providing for the creation of a "comprehensive and detailed plan outlining [the bureau's] proposed methodologies for conducting the 2000 Decennial Census and available methods to conduct an actual enumeration of the population," including an explanation of any statistical methodologies that may be used (*1997 Emergency Supplemental Appropriations Act for Recovery From Natural Disasters, and for Overseas Peacekeeping Efforts, Including Those in Bosnia, Tit. VIII, 111 Stat. 217*).

In response to the bill's directive, the U.S. Department of Commerce issued the Census 2000 Report. The publication of the bureau's plan led to two separate legal challenges, *Clinton v. Glavin*, filed on February 12, 1998, and *Department of Commerce et al. v. United States House of Representatives et al.* Both cases sought a determination of the legality and constitutionality of the bureau's proposed sampling procedures. The United States Supreme Court issued its ruling on the two cases on January 25, 1999. (For further explanation of the Court's decision see *BACKGROUND INFORMATION*.)

The Supreme Court did not rule on the constitutionality of the use of statistical sampling as part of the census and only determined that the Census Act prohibited the use of sampling for the apportionment of representatives in Congress among the several states. As a result, it has been suggested that use of statistical sampling should also be prohibited in apportionment and redistricting within the state.

redistricting plan for Congressional districts apportioned to Michigan. A plan would have to be enacted by November 1, 2001, and every 10 years thereafter. Except as otherwise required by federal law for Congressional districts in Michigan, the plan could be enacted using only the guidelines contained in the bill, in the order of priority described below.

The bill specifies that the constitutional guideline would be that each Congressional district would have to achieve precise mathematical equality of population in each district. District boundaries would have to be determined by use of population data from the U. S. Census Bureau identical to those from the actual enumeration conducted by the bureau for the apportionment of the representatives of the U.S. House of Representatives in the U.S. decennial census. The apportionment data for redistricting, however, could not include any population that was not allocated to specific census blocks within the state, such as Americans residing overseas, even if that population were legally included in the apportionment data of this state for the purpose of allocating seats among the states. District boundaries could not be determined by use of Census Bureau population counts derived from any other means, including the use of statistical sampling to add or subtract population by inference. Other governmental census figures of total population could be used if taken after the last decennial U.S. census and the U.S. census figures were not adequate for the bill's purposes. A contract could be entered into with the Census Bureau or any other governmental unit to make any special census if the latest U.S. decennial census figures were not adequate.

The bill specifies that the federal statutory guidelines would require each Congressional district to be entitled to elect a single member, and prohibit each district from violating Section 2 of Title I of the Federal Voting Rights Act, which provides that no voting qualification or prerequisite to voting or standard, practice, or procedure may be imposed or applied by any state or political subdivision in a manner that results in a denial or abridgment of the right of any U.S. citizen to vote on account of race, color, or membership in a language minority group.

THE CONTENT OF THE BILLS:

Senate Bill 810 would create the "Congressional Redistricting Act" to require the legislature to enact a

The bill specifies secondary guidelines, in order of priority, pertaining to contiguous areas, preservation of county lines, breaking city or township lines, compactness, splitting, and numbering.

The provisions of the proposed act would be severable.

Senate Bill 811 would create a new act to specify that the supreme court would have original and exclusive state jurisdiction to hear and decide any case or controversy involving a Congressional redistricting plan.

Upon the application of an elector filed within 60 days after the enactment of a Congressional redistricting plan, the supreme court could review the plan and modify it or remand the plan to a special master for further action if the plan failed to comply with the Congressional Redistricting Act.

Unless legislation enacting a Congressional redistricting plan were approved by the deadline established in the Congressional Redistricting Act, a political party or a member of the U.S. House of Representatives, on or after November 1 immediately following that deadline, could petition the supreme court to prepare a redistricting plan in compliance with that act.

If an application or petition for review were filed, the court would have to:

- Undertake the preparation of a redistricting plan for Congressional districts.
- Appoint and use a special master or masters as the court considered necessary.
- Provide, by order, for the submission of proposed redistricting plans by political parties and other interested persons who had been allowed to intervene. (Political parties would have to be granted intervention as of right.)
- After hearing oral argument or appointing special masters, propose one plan for consideration of the parties and the public, and make that plan available for public inspection at least 30 days before the time set for hearing.
- Prescribe the procedure and deadlines for filing objections and rebuttal to the proposed plan in advance of the hearing.
- Hold a hearing on the proposed plan by March 1 immediately after the deadline established in the Congressional Redistricting Act.

-- After making any revisions to the proposed plan that the court considered necessary, order a Congressional redistricting plan by March 31 immediately after the deadline set in the Congressional Redistricting Act.

Senate Bill 812 would amend Public Act 261 of 1966 (MCL 46.404 and 46.408), which provides for the apportionment of county boards of commissioners, to revise the guidelines that a county apportionment commission must use in apportioning the county into commission districts.

Currently, the act requires that all districts be as nearly of equal population as is practicable. The bill would require, instead, that all districts have a population not less than 94.05 percent or more than 105.95 percent of the ideal district size, unless the U.S. Supreme Court established a different range of allowable population divergence for county commissioner districts.

The bill specifies that “[i]n order to continue the prior practice and not to change or alter the historic method by which county commissioner districts are determined,” the commissioner district boundaries would have to be determined by use of population data from the U.S. Census Bureau identical to those from the actual enumeration conducted by the Census Bureau for the apportionment of the representatives of the U.S. House of Representatives in the U.S. decennial census. However, the apportionment data for redistricting could not include any population that is not allocated to specific census blocks (such as Americans residing overseas) even if those people were legally included in the apportionment data of this state for the purpose of allocating seats among the states. District boundaries could not be determined by use of Census Bureau population counts derived from any other means, including statistical sampling to add or subtract population by inference.

The bill would also remove provisions of act that require the use of the latest official published figures of the United States Census, except that in cases requiring the division of official census units, the provision allows that an “actual population count” may be used. The bill also would delete language that is added in House Bill 5075: allowing the use of other governmental census figures of total population as long as they were taken after the last decennial census and

the United States census figures are not adequate, requiring the secretary of state to provide the county apportionment commissions with the official census figures the within 15 days after publication, and allowing the commissions to enter a contract with the Census Bureau to make a special census if the latest decennial census figures are not adequate.

Finally, the bill would also require the use of the following other guidelines:

- 1) Districts would have to be contiguous, and having areas that meet only at the points of adjoining corners would not be considered contiguous.
- 2) Districts would have to be compact and as nearly square as practicable, depending upon the geography of the area involved. The bill states that “compactness shall be determined by circumscribing each district within a circle of minimum area, not part of the Great Lakes and not part of another county, inside the circle but not inside the district.”
- 3) A township or any part of a township could not be combined with any city or part of a city for a single district, unless needed to meet the population standard. If such a combination were necessary, the fewest number of combinations would be used.
- 4) Townships, villages, and cities could only be divided if necessary to meet the population standard, and in such cases, the fewest number of lines could be broken.
- 5) Precincts would have to be treated in the same fashion as townships, villages, and cities.
- 6) Resident of state institutions who cannot register in the county as electors would be excluded from any consideration of representation.
- 7) Districts could not be drawn to effect partisan political advantage.
- 8) Districts could not violate Section 2 of Title I of the Federal Voting Rights Act, which provides that no voting qualification or prerequisite to voting or standard, practice, or procedure may be imposed or applied by any state or political subdivision in a manner that results in a denial or abridgment of the right of any U.S. citizen to vote on account of race or color or membership in a language minority group (42 USC 1973).

Senate Bill 813 would amend the Revised Judicature Act (MCL 600.302) to require the use of data from the actual

enumeration conducted by the U.S. Census Bureau for the determination of any change in the boundaries court of appeals districts. The bill also provides that, in accordance with Article VI, Section 8 of the state constitution, the court of appeals districts would have to be drawn on county lines and be as nearly as possible of equal population.

Specifically, any change in the judicial districts' boundaries would have to be determined by use of population data from the United States Bureau of the Census identical to those from the actual enumeration conducted by the Census Bureau for the apportionment of the representatives of the U.S. House of Representatives in the U.S. decennial census. The apportionment data for redistricting, however, could not include any population that was not allocated to specific census blocks within the state, such as Americans residing overseas, even if that population were legally included in the apportionment data for this state for the purpose of allocating seats among the states. District boundaries could not be determined by use of Census Bureau population counts derived from any other means, including the use of statistical sampling to add or subtract population by inference. Other governmental census figures of total population could be used if taken after the last decennial U.S. census and the U.S. census figures were not adequate for the purposes of the act. A contract could be entered into with the U.S. Census Bureau or any other governmental unit to make any special census if the latest U.S. decennial census figures were not adequate for the act's purposes.

Senate Bill 814 would amend Public Act 463 of 1996 (MCL 4.261 et al.), which provides for legislative redistricting plans, to require that Senate and House of Representatives district boundaries be determined by use of population data from the U.S. Census Bureau identical to those from the actual enumeration conducted by the Census Bureau for the apportionment of the representatives of the U.S. House of Representatives in the U.S. decennial census. The apportionment data for redistricting, however, could not include any population that was not allocated to specific census blocks within the state, such as Americans residing overseas, even if that population were legally included in the apportionment data for this state for the purpose of allocating seats among the states. District boundaries could not be determined by

use of Census Bureau population counts derived from any other means, including the use of statistical sampling to add or subtract population by inference. Other governmental census figures of total population could be used if taken after the last decennial U.S. census and the U.S. census figures were not adequate for the purposes of the act. A contract could be entered into with the U.S. Census Bureau or any other governmental unit to make any special census if the latest U.S. decennial census figures were not adequate for the act's purposes.

The bill also provides that Senate and House districts could not violate Section 2 of Title I of the Federal Voting Rights Act, which provides that no voting qualification or prerequisite to voting or standard, practice, or procedure may be imposed or applied by any state or political subdivision in a manner that results in a denial or abridgment of the right of any U.S. citizen to vote on account of race, color, or membership in a language minority group.

In addition, the bill specifies that the supreme court would have exclusive and original state jurisdiction to hear all cases or controversies involving a redistricting plan under Public Act 463. If an application or petition for review had not been filed under the act, the supreme court could, but would not be required to, hear all or a portion of the procedures described in the act.

House Bill 5075 would amend Public Act 293 of 1966, which establishes charter counties (MCL 45.505), to revise the guidelines that a county apportionment commission must use in apportioning the charter commission districts.

Currently, the act requires that all districts be as nearly of equal population as is practicable. The bill would require, instead, that all districts have a population not less than 94.05 percent or more than 105.95 percent of the ideal district size, unless the U.S. Supreme Court established a different range of allowable population divergence for county commissioner districts. The bill also specifies that "[i]n order to continue the prior practice and not to change or alter the historic method by which county commissioner districts are determined," the commissioner district boundaries would have to be determined by use of population data from the U.S. Census Bureau identical to those from the actual enumeration conducted by the Census Bureau for the apportionment of the representatives of the U.S. House of Representatives in the U.S. decennial census. However, the apportionment data for redistricting could not include any population that is not allocated to specific census blocks (such as Americans residing overseas) even if those people were legally included in the apportionment

data of this state for the purpose of allocating seats among the states. District boundaries could not be determined by use of Census Bureau population counts derived from any other means, including statistical sampling to add or subtract population by inference.

The bill includes the provisions that were removed from Senate Bill 812: allowing the use of other governmental census figures of total population as long as they were taken after the last decennial census and the United States census figures are not adequate, requiring the secretary of state to provide the county apportionment commissions with the official census figures within 15 days after publication, and allowing the commissions to enter a contract with the Census Bureau to make a special census if the latest decennial census figures are not adequate. It would not include the provisions that required the use of the latest official published figures of the United States Census, except where the division of official census units was required.

Finally, the bill would also require the use of the following other guidelines:

- 1) The districts would have to be contiguous, and having areas that meet only at the points of adjoining corners would not be considered contiguous.
- 2) Districts would have to be compact and as nearly square as practicable, depending upon the geography of the area involved. The bill states that "compactness shall be determined by circumscribing each district within a circle of minimum area, not part of the Great Lakes and not part of another county, inside the circle but not inside the district."
- 3) A township or any part of a township could not be combined with any city or part of a city for a single district, unless needed to meet the population standard. If such a combination were necessary, the fewest number of combinations would have to be used.
- 4) Townships, villages, and cities could only be divided if necessary to meet the population standard, and in such cases, the fewest number of lines would be broken.
- 5) Precincts would be treated in the same fashion as townships, villages, and cities.
- 6) Residents of state institutions who cannot register in the county as electors would be excluded from any consideration of representation.

7) Districts could not be drawn to effect partisan political advantage.

8) Districts could not violate Section 2 of Title I of the Federal Voting Rights Act, which provides that no voting qualification or prerequisite to voting or standard, practice, or procedure may be imposed or applied by any state or political subdivision in a manner that results in a denial or abridgment of the right of any U.S. citizen to vote on account of race or color or membership in a language minority group (42 USC 1973).

HOUSE COMMITTEE ACTION:

The House Committee on Family and Civil Law adopted several amendments to various bills in the package.

Senate Bill 810 was amended to list the secondary guidelines in order of priority.

Senate Bill 812 was amended to remove a provision of act that required the use of the latest official published figures of the United States Census, except where the division official census units was required, and specifying that in such cases an “actual population count” could be used. The amendment also deleted language that was added to House Bill 5075: allowing the use of other governmental census figures of total population as long as they were taken after the last decennial census and the United States census figures are not adequate, requiring the secretary of state to provide the county apportionment commissions with the official census figures the within 15 days after publication, and allowing the commissions to enter a contract with the Census Bureau to make a special census if the latest decennial census figures are not adequate.

Technical corrections were made to Senate Bill 813, moving an apostrophe and correcting a reference.

House Bill 5075 was amended to remove a provision of the act that required the use of the latest official published figures of the United States Census, except where the division official census units was required, and specifying that in such cases an “actual population count” could be used.

On January 25, 1999 the United States Supreme Court issued its opinion on two cases concerning the Census Act and the means of counting to be used. The cases were *Department of Commerce et al. v. United States House of Representatives et al.* and *William Jefferson Clinton, President of the United States, et al., v. Matthew Glavin et al.* The court issued a single opinion addressing the two cases.

The majority opinion of the court was written by Justice O’Connor. In relevant part, the opinion agreed with the lower court that the “use of statistical sampling to determine population for purposes of apportioning Congressional seats among the States violates the Act.” The court reached this conclusion through examination of the language of Census Act. The majority opinion noted that the current Census Act was enacted in 1954. Originally, the law required that enumerators collect all census information through personal visits to every household in the nation. In 1957, the act was amended to permit the Census Bureau to use statistical sampling in the gathering of some census information. The change was made in section 195 of the act, which provided that, “except for the determination of population for apportionment purposes, the Secretary may, where he deems it appropriate, authorize the use of the statistical method known as ‘sampling’ in carrying out the provisions of this title” [13 U.S.C. sec. 195 (1970 ed.)]. In 1964, Congress repealed the portion of the Census Act that required each enumerator to obtain every item of information by personal visit to each household. This change permitted the use of a form mailed out and mailed back through the Postal Service. In 1976, the provisions of the Census Act in question took their current form. The Census Act authorizes the secretary to “take a decennial census of population as of the first day of April of such year, which date shall be known as the ‘decennial census date’, in such form and content as he may determine, including the use of sampling procedures and special surveys” [13 U.S.C. sec. 141(a)]. The majority noted that this broad grant of authority was limited by the provisions of section 195, which was amended to state “[e]xcept for the determination of population for purposes of apportionment of Representatives in Congress among the several States, the Secretary shall, if he considers it feasible, authorize the use of the statistical method known as ‘sampling’ in carrying out

BACKGROUND INFORMATION:

the provisions of this title.” The majority opinion noted that this section now required the Secretary to use statistical sampling in assembling the “myriad demographic data that are collected in connection with the decennial census.” The court went on to say, in response to assertions in Justice Stevens’ dissent, that “the amendments served a very important purpose: They changed a provision that *permitted* the use of sampling for purposes other than apportionment into one that required that sampling be used for such purposes if ‘feasible.’”

Justice Scalia wrote a concurring opinion wherein he agreed with the majority opinion except for a section that discussed what was said by individual legislators and committees and went on to discuss his own belief (which justices Thomas, Rehnquist, and Kennedy joined) that “[f]or reasons of text and tradition, fully compatible with a constitutional purpose that is entirely sensible, a strong case can be made that an apportionment census conducted with the use of ‘sampling techniques’ is not the ‘actual Enumeration’ that the Constitution requires.”

Justices Stevens wrote a three part opinion, one portion of which was joined by three other justices (Justices Souter, Ginsburg, and Breyer). That portion discussed the assertion that the use of sampling procedures was barred by Article I of the Constitution. Article I states in relevant part that an “actual enumeration shall be made within three Years after the first Meeting of the Congress of the United States, and within every subsequent term of ten Years, in such Manner as they shall by Law direct.” U.S. Const., Art. 1, section 2, clause 3. The opinion noted that the intent of the census is “to serve ‘the constitutional goal of equal representation.’” It also noted that this goal is best served by the use of a ‘Manner’ that is most likely to be complete and accurate. “As we repeatedly emphasized in our recent decision in *Wisconsin v. City of New York*, 517 U.S. 1,3 [sic] (1996), our construction of that authorization must respect ‘the wide discretion bestowed by the Constitution upon Congress.’” The opinion further pointed out that “[t]he ‘mailout-mailback’ procedure now considered a traditional method of enumeration was itself an innovation of the 1970 census.” The relevant portion of the opinion concluded that “[s]ince it is perfectly clear that the use of sampling will make the census more accurate than an admittedly futile attempt to count every individual by personal inspection, interview, or written interrogatory, the proposed method is a legitimate means of making the ‘actual Enumeration’ that the Constitution commands.”

Thus, there appear to be two equally agreed upon schools of thought regarding the constitutionality of using

statistical sampling: Justices Scalia, Thomas, Rehnquist and Kennedy appear to agree that “an apportionment census conducted with the use of ‘sampling techniques’ is not the ‘actual Enumeration’ that the Constitution requires,” while Justices Stevens, Souter, Ginsburg, and Breyer agree that sampling “is a legitimate means of making the ‘actual Enumeration’ that the Constitution commands.” Justice O’Connor’s opinion passed on the constitutional question, and her vote would appear to be the swing vote should the constitutional question be presented to the court.

FISCAL IMPLICATIONS:

According to the House Fiscal Agency, Senate Bills 810, 812, 813, and 814 would have an indeterminate fiscal impact on state government. Potential costs related to a special census, if a future United States decennial census were determined to be inadequate, would depend upon the scope of the special census. (11-3-99)

ARGUMENTS:

For:

The bills, for the most part, codify the current Michigan Supreme Court criteria for legislative (and other) redistricting and provide a rational process for the development of new districts following the 2000 census. It is sensible to get these guidelines in place well in advance. The guidelines were developed taking into account court decisions on the subject, and the bills permit modification of the criteria if new decisions are handed down regarding population divergences. The criteria have been described as politically neutral and proponents say they have been supported in the past by both major political parties. Basing redistricting or reapportionment on these criteria makes developing a plan more mechanistic and formulaic and offers less opportunity for the majority party to impose an unfair plan on the minority party. The risk of gerrymandering will be limited and an orderly process for challenges to either the absence of a redistricting plan or to an enacted plan will be created.

For:

Many of those who object to the bill’s effect of prohibiting the use of statistical sampling to provide a basis for redistricting and reapportionment within this state point out that the enumeration is inaccurate and that there are other methods of statistical sampling that

could provide a more accurate count. They also suggest that given the purpose of the census – to serve the constitutional goal of equal representation – the best way of meeting that goal is to use the most accurate measure possible. This would, as Justice Scalia points out in his dissent, “prove the point if either (1) *every* estimate is more accurate than a headcount, or (2) Congress could be relied upon to permit *only* those estimates that are more accurate than headcounts. It is metaphysically certain that the first proposition is false, and morally certain that the second is.” Justice Scalia goes on to point out that “To give Congress the power, under the guise of regulating the ‘Manner’ by which the census is taken, to select among various estimation techniques having credible (or even incredible) ‘expert’ support, is to give the party controlling Congress the power to distort representation in its own favor.” These bills would prohibit that sort of partisan manipulation. Rather than focusing on the use of statistical sampling as an imagined cure-all for inaccuracies in the data, it would be better if efforts were made to make certain that everyone was counted. Statistical sampling will simply exacerbate the existing problems with the count – many people fail to be counted through apathy, ignorance, fear, or intention, they are unwilling to be counted, they ignore mailings and avoid census takers. If people come to believe that it doesn’t matter if they respond to census questionnaires because statistical sampling will fix the final count, the count will be even less accurate because even more people will fail to participate. People should not be given reason to think that sampling can fix everything even if they don’t take part.

Statistical adjustments will not correct many of the problems with the current means of census taking. Further, many of the problems that make census taking difficult will also make it difficult to accurately measure the undercount and adjust the data. If it is hard to contact certain groups for the census, it will be equally hard to contact those people in order to get a sample survey to use to adjust the census data. According to the executive summary of the U.S. Census Monitoring Board, “the study undertaken by the Congressional members of the Board demonstrates that statistical adjustment alone has no hope to correct large undercounts at the local level – blocks and neighborhoods.”

Against:

The Census Bureau has always failed to reach--and as a result has failed to count--a portion of the population. Even Thomas Jefferson, who conducted the first census in 1790, noted that there was evidence that suggested some people had not been counted. This shortfall has been labeled the census "undercount." Ever since 1940, post-census research has documented that the census

undercounts a significant portion of the population. Historically, certain minorities, children, and renters have had higher undercount rates than the population as a whole. In 1940, three percent more young men registered for the draft than had been counted. Among the African-American community, 13 percent more men showed up for registration than had been counted during the 1940 census. For the 1990 census, the undercount of African Americans was about 5.7 percent, while the undercount for others was 1.3 percent. This was in spite of specific efforts made in the 1990 census to reach out to historically undercounted groups. In spite of being "better designed and executed than any previous census," the 1990 census was the first census that was less accurate than its predecessor since the bureau began measuring the undercount rate in 1940.

In 1991, bipartisan legislation, the Decennial Census Improvement Act, was passed unanimously by Congress and signed by President Bush. The act directed the National Academy of Sciences to study “the means by which the Government could achieve the most accurate population count possible.” Several academy panels examined the census process and all concluded that an accurate and cost effective census could not be taken without the limited use of sampling

Society is too diverse and too mobile to accurately count those people who do not respond to questionnaires, or those who through apathy, ignorance, fear, or intention are unwilling to be counted. The existence of an undercount has not been disputed; the argument is what should be done. Those members of society who are not counted are usually poor and/or minorities. Because they have not been counted, these people are not equally represented. Unfortunately, the undercounted groups are generally those who are already not well represented in government. According to the Census Bureau, the 1990 census missed 8.4 million people. In Michigan, nearly 70,000 people were missed. The National Academy of Sciences studied the problem of the undercount and concluded that, “it is fruitless to continue trying to count every last person with traditional census methods of physical enumeration” (*The Academy Panel on Census Requirements in the Year 2000 and Beyond*).

These bills would unwisely require the state to rely upon data that almost every expert agrees is inaccurate for apportionment and redistricting. No one believes

that the current census data will be wholly accurate, and it is generally expected that the census undercount will continue to primarily affect minorities, the poor and children. Thus, the argument that what is needed is a more accurate count through traditional methods is a smokescreen. As society increases in size and mobility the possibility of getting an accurate headcount through going door-to-door or even through mailings is increasingly difficult. If an accurate count, as everyone claims, is what is desired (and according to some what is required under the Constitution and federal law), then it is clear that certain means of measuring the population have passed their time and what is required is that new scientific methods be embraced. When it came time to switch from the traditional door-to-door head count to allow for forms to be distributed through the mail in an effort to save both time and money and to increase accuracy, the change was made because accuracy was more important than clinging to "historic methods." Now, at a similar impasse, there are two choices -- allow the undercounting of the poor, minorities, and children to continue and thereby cause the representation they receive to continue to be diluted, or begin to use scientifically sound means of adjusting the census count through statistical sampling to provide for a fair and accurate count so that more people are properly represented in government.

It has been asserted by opponents of the bills that knowingly requiring the use of data that has been shown to undercount minorities could violate the Equal Protection Clause of the Constitution. By failing to embrace more accurate methods of counting, minority votes could be diluted. If a district is supposed to represent 1,000 people who will elect one representative, then each person of that 1,000 will have his or her vote diluted by the number of people who are in that district who were not counted. If the district is in an area that contains large numbers of the poor, minorities, and/or children and they are not accurately counted, each individual's vote can be significantly diluted. Since it is well known that traditional census practices have undercounted minorities, it is argued that requiring the continued use of those practices knowingly deprives them of equal representation.

Finally, opponents also argue that Senate Bill 811 would likely violate the U.S. Constitution because it attempts to provide the state supreme court with original and *exclusive* jurisdiction over legal challenges

to Congressional redistricting. Since redistricting is closely related to voter rights, attempting to make the

state supreme court the final arbiter of challenges to redistricting would likely not pass constitutional muster.

Against:

Some people have objected that there is no need to pass this legislation at this time with legislative redistricting still more than a year away. The census itself doesn't even start until April of next year. Why should the decision be made to reject the adjusted numbers and embrace the raw data before the census has even taken place? Why not wait until the numbers are in and then decide which are more reflective of the actual population of the state?

It is argued that the bills are moving too fast, and that the entire issue needs more study. Given the complicated nature of statistical sampling, there has hardly been sufficient time for legislators to fully understand the issues that are being debated, much less come to a knowledgeable decision about the issues.

Moreover, most of the guidelines in the bills are already in place. The most recent redistricting took place without any legislation. So, what is the need for the bills at the current time? The process in the legislation requires the legislature to draw up a plan using the mandated criteria and then allows virtually anyone to instigate a state supreme court review, which can result in the altering or complete rewriting of the plan. How does putting this into statute constitute an improvement over current practice?

POSITIONS:

The American Civil Liberties Union opposes the bills. (11-9-99)

The Michigan Democratic Party opposes the bills. (11-9-99)

The Michigan AFL-CIO opposes the bills. (11-8-99)

The Mexican American Legal Defense and Education Fund opposes the prohibition against the use of statistical sampling. (11-8-99)

Analyst: W. Flory

■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.