

# Senate Fiscal Agency



NOVEMBER  
2018  
BALLOT PROPOSAL  
18-2

An Overview

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On November 6, 2018, Michigan electors will have the opportunity to vote on Proposal 18-2, which would amend Article IV, Sections 1 through 6; Article V, Sections 1, 2, and 4; and Article VI, Sections 1 and 4 of the Michigan Constitution to establish a citizen commission that would be responsible for drawing the State's congressional and legislative districts.

Proposal 18-2 is the result of an initiative petition circulated among electors for qualifying signatures, and will appear on the ballot as follows:

### **PROPOSAL 18-2**

**A proposed constitutional amendment to establish a commission of citizens with exclusive authority to adopt district boundaries for the Michigan Senate, Michigan House of Representatives and U.S. Congress, every 10 years.**

This proposed constitutional amendment would:

- Create a commission of 13 registered voters randomly selected by the Secretary of State:
  - 4 each who self-identify as affiliated with the 2 major political parties; and
  - 5 who self-identify as unaffiliated with major political parties.
- Prohibit partisan officeholders and candidates, their employees, certain relatives, and lobbyists from serving as commissioners.
- Establish new redistricting criteria including geographically compact and contiguous districts of equal population, reflecting Michigan's diverse population and communities of interest. Districts shall not provide disproportionate advantage to political parties or candidates.
- Require an appropriation of funds for commission operations and commissioner compensation.

Should this proposal be adopted?

**YES [ ]**  
**NO [ ]**

If a majority of the electors vote "yes" on Proposal 18-2, the State Constitution will be amended.

### **Summary of the Issue**

Every 10 years, the United States Census Bureau conducts a census to determine the number of people living in the United States. The census is mandated by Article I, Section 2 of the U.S. Constitution, which provides the following:

*Representatives and direct Taxes shall be apportioned among the several States which may be included within this Union, according to their respective Numbers...The 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.*

The reason for conducting the decennial census is to reapportion the 435 seats in the U.S. House of Representatives among the 50 states based on the population data collected during the census. Redistricting is the process of redrawing state legislative and congressional district boundaries following the decennial census. In most states, the legislature draws the district maps, which the governor can veto. Some states use special commissions that assist those states' legislatures in drawing the maps, or that draw the maps in the absence of a legislative

agreement. In other states, an independent commission has primary responsibility for drawing legislative and congressional districts.

The Michigan Constitution calls for 110 State House districts and 38 State Senate districts, and prescribes certain apportionment factors and rules for drawing the districts. Districts must be appointed under a weighted formula based on land area and population. The Constitution also established a bipartisan commission responsible for the apportionment of State Senate and State House districts.

However, on three separate occasions - 1964, 1972, and 1982 - the Commission was unable to adopt a redistricting plan, and on each occasion the matter had to be resolved by the Michigan Supreme Court.<sup>1</sup> In its 1982 decision, the Court examined whether the Commission's authority should continue in light of the U.S. Supreme Court's decision in *Reynolds v. Sims*,<sup>2</sup> in which it found that weighted land area/population formulae rules were unconstitutional under the Equal Protection Clause of the U.S. Constitution. The Michigan Supreme Court ruled that all the reapportionment provisions of the Michigan Constitution were invalid, abolished the redistricting commission, and ordered the Legislature to draw its own redistricting plan that met certain criteria prescribed by the Court.<sup>3</sup> Additionally, the Court directed Bernard Apol, the former director of the Michigan Bureau of Elections, to draw maps in the event that the Legislature was unable to do so by a specified date. The Legislature failed to adopt a plan prior to the Court's cutoff date, so the Court adopted Apol's plan, with certain modifications.

Following the 1990 census, the Michigan Supreme Court again directed the Legislature to adopt a redistricting plan before a certain date. When the Legislature failed to do so, the Court appointed a special panel of three judges to draw the State's legislative and congressional districts. Some people believed that the Supreme Court's redistricting criteria should be codified in statute to guide the redistricting process following the 2000 census. Public Act 463 of 1996 established a process and prescribed guidelines for drawing redistricting plans for State Senate and House districts. Also, the Act authorizes the Michigan Supreme Court to hear controversies involving a redistricting plan, and to prepare its own plan, if the Legislature fails to enact one. Following the 2000 and 2010 censuses, the governor's office and both houses of the Legislature were under unified control, and redistricting plans were adopted without court involvement.

The Michigan Constitution does not prescribe any procedures or standards for congressional redistricting so the Legislature has been free to adopt redistricting plans in any manner it chose.<sup>4</sup> Public Act 221 of 1999 (the Congressional Redistricting Act) requires the Legislature, every 10 years, to enact a redistricting plan for congressional districts apportioned to Michigan, and prescribes guidelines that must be used to enact a redistricting plan, including, in order of priority, single-member districts, compliance with the Voting Rights Act, contiguity, preserving political boundaries, compactness, and numbering districts.

## **Proposed Constitutional Amendments**

### Independent Redistricting Commission

Article 4, Section 6 of the Michigan Constitution establishes a Commission on Legislative Apportionment, a bipartisan commission responsible for drawing the State Senate and House

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<sup>1</sup> See *In re Apportionment of State Legislature*, 373 Mich 250 (1964); *In re Apportionment of State Legislature*, 387 Mich 442 (1972); and *In re Apportionment of State Legislature*, 413 Mich 146 (1982).

<sup>2</sup> 377 US 533 (1964).

<sup>3</sup> *In re Apportionment* - 1982 at 141.

<sup>4</sup> *LeRoux v. Secretary of State*, 465 Mich 594, 598 (2002).

of Representatives districts following each decennial census. Article 4, Section 6 also prescribes certain appointment rules and factors for drawing the State Senate and House districts.

Proposal 18-2 would delete these existing constitutional provisions and, instead, would establish an Independent Citizens Redistricting Commission that would be responsible for proposing and adopting the State's legislative and congressional districts. The Commission would consist of the following 13 members selected at random by the Secretary of State: four Democratic-affiliated, four Republican-affiliated, and five members with no affiliation with either major party.

Any Michigan resident who was registered and eligible to vote could apply to be a commissioner. However, in the past six years, a commissioner could not have been any of the following: 1) a declared candidate or elected official for partisan Federal, state, or local office; 2) a member or officer of a governing body of a national, state, or local political party; 3) a paid consultant or employee of an elected official, political candidate's campaign, or political action committee; 4) an employee of the State Legislature; 5) a registered lobbyist, or his or her employee; or 6) an unclassified State employee who was exempt from classification in State Civil Service, except for employees of courts of record or State institutions of higher education, and individuals in the Michigan armed forces.

Additionally, a commissioner could not be a parent, stepparent, child, stepchild, or spouse of any individual prohibited from serving as a Commission member, as specified above.

The commissioners' terms would expire once the Commission had completed its obligations for the census cycle.

### Commissioner Selection

Under Proposal 18-2, by January 1 of the year of the decennial census, the Secretary of State would have to make applications for commissioner available to the public, and would have to circulate the applications around the State. The Secretary of State would have to mail 10,000 applications for commissioner to Michigan residents at random, and continue mailing until 30 qualifying applicants that affiliated with each of the two major parties had submitted applications and 40 qualified applicants that identified that they did not affiliate with either major party had submitted applications.

By July 1 of the year of the decennial census, the Secretary of State would have to randomly select 60 applicants from each pool of applicants affiliating with the two major parties and 80 from the pool of nonaffiliating applicants, and submit the randomly-selected applicants to the Senate Majority and Minority Leaders, the Speaker of the House, and the House Minority Leader. By August 1 of the year of the decennial census, each of these individuals would be allowed to strike five applicants from any pool or pools. By September 1 of the year of the decennial census, the Secretary of State would have to randomly draw the names of four applicants from the pool of remaining Republican-affiliated applicants, four applicants from the pool of remaining Democratic-affiliated applicants, and five from the pool of remaining nonaffiliating applicants.

The Secretary of State, by October 15 in the year of the census, would have to convene the Commission, and by no later than November 1 in the year immediately following the census, the Commission would have to adopt a redistricting plan for State Senate districts, State House districts, and congressional districts.

## Redistricting Plan Proposal and Adoption

Proposal 18-2 requires the Commission, before drafting any plan, to hold at least 10 public hearings for the purpose of informing the public about the redistricting process, and to solicit information from the public about potential plans.

The Commission would have to draft at least one plan for the State Senate districts, State House districts, and congressional districts.

Proposal 18-2 would require the Commission to consider certain criteria in proposing and adopting each redistricting plan. In order of priority, districts should:

- Be of equal population as mandated by the U.S. Constitution, and comply with the Voting Rights Act and other Federal laws.
- Be geographically contiguous.
- Reflect the State's diverse population and communities of interest.
- Not provide a disproportionate advantage to any political party.
- Not favor or disfavor an incumbent.
- Reflect county, city, and township boundaries.
- Be reasonably compact.

(Communities of interest could include populations that share cultural or historical characteristics or economic interests. They would not include relationships with political parties, incumbents, or political candidates.)

Once a redistricting plan was proposed, the Commission would have to allow 45 days for public comment, and would have to hold at least five public hearings throughout the State for public comment.

In order for a plan to be adopted, a majority of the Commission, including two Democrats, two Republicans, and two members who did not affiliate with either major party, would be required. If no plan received a majority vote, each Commissioner could submit one proposed plan to the full Commission for consideration, and then each Commissioner would rank the submitted plans by preference (each plan would be assigned a point value inverse to its ranking among the other choices). The Commission would have to adopt the plan with the highest total points. If plans were tied for the highest point total, the Secretary of State would select the final plan randomly from the submitted plans.

Within 30 days after adopting a plan, the Commission would have to publish the plan and the material reports, reference materials, and data used to draw it. An adopted redistricting plan would become law 60 days after its publication.

## **Views on Proposal 18-2**

Proponents of Proposal 18-2 argue that Michigan's legislative districts generally are gerrymandered in favor of one or the other party's political candidates. (Gerrymandering is the practice of drawing districts to give one political party an advantage over an opposing party. There are two main methods of gerrymandering: "packing" and "cracking". Packing refers to concentrating voters of a particular party into as few of districts as possible. Cracking refers to distributing like-minded voters across several districts to dilute their voting power so that they do not constitute a majority. Districts also may be drawn to put two candidates of the same party in the same district, or to move a candidate who might otherwise reside

out of the district into the district.) They contend that the current process of drawing districts allows legislators to pick their voters, instead of voters being able to choose their legislators.

Opponents, however, argue that the independent commission would be comprised of people with little or no knowledge of the redistricting process and how to draw district boundaries, and that the Secretary of State, a partisan elected position, would have too much power in deciding who would serve on the Commission. They also have raised concerns that commissioners would self-report their partisan preferences.

### **Fiscal Impact**

Adoption of Proposal 18-2 would result in an estimated cost to the State of at least \$4.6 million for each year the Commission operates. The proposal would require the Legislature to appropriate funds to the Commission equal to at least 25% of the General Fund/General Purpose (GF/GP) budget for the Department of State. The fiscal year (FY) 2018-19 budget for the Department of State appropriates \$18.5 million in GF/GP funding; therefore, the minimum appropriation for the Commission would have to be at least \$4.6 million. These funds would be used by the Commission for costs associated with carrying out its duties which could include procurement, contracting, consultants, or legal representation, as well as any costs associated with holding the required meetings and public hearings. Proposal 18-2 also would require the Legislature to appropriate funds sufficient to enable the Commission to carry out its functions. Accordingly, if the initial appropriation were insufficient, additional appropriations would be required.

Initially, the Department of State would incur costs to make the applications for commissioner readily available to the public and to mail applications to randomly-selected Michigan-registered voters until the pool of candidates was filled, from which the Commission then would be selected. The Department of State estimates that the cost of each mailing would be between \$0.55 and \$1. Thus the cost of the mailings would depend on the number of letters and the cost per parcel mailed.

Proposal 18-2 would require the commissioners to receive compensation equal to at least 25% of the governor's annual salary. The FY 2018-19 salary for the governor is \$159,300. Thus, compensation for all 13 commissioners would total \$517,800, or \$39,825 for each of the thirteen commissioners. The commissioners' compensation would be paid from the required estimated minimum appropriation of \$4.6 million. Article IV, Section 12 of the Michigan Constitution requires the State Officers Compensation Commission to meet biennially to determine the salary of the governor, which could affect compensation for the commissioners. Should the salary for the commissioners not be sufficient, Proposal 18-2 also would require the State of Michigan to indemnify each commissioner for all incurred costs.