

# REDISTRICTING NEW JERSEY

## AFTER THE

# CENSUS OF 2010



DR. ERNEST C. REOCK, JR.

March 2008

CENTER FOR GOVERNMENT SERVICES  
Rutgers, The State University of New Jersey

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Edward J. Bloustein School  
of Planning and Public Policy

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## EXECUTIVE SUMMARY

The Census of 2010 has the potential for changing New Jersey's 13 Congressional districts, 40 state Legislative districts, freeholder districts in three counties, municipal wards in more than 60 municipalities, membership on 70 regional boards of education, and election districts throughout the state.

New Jersey has taken major steps over the past four decades to expedite the process of redistricting and reducing the likelihood of partisan political gerrymandering by providing that redistricting in most cases will be carried out by bipartisan boards that include some mechanism for breaking a stalemate. In fact, New Jersey may have gone further than any other state in attempting to level the political playing field.

While the state has a fairly good chance of retaining its 13 seats in the House of Representatives, the Congressional districts in urban areas are growing slowly, and they will have to be expanded. Congressional districts in Central and South Jersey are too large, and their borders will have to be contracted.

State Legislative districts are similarly affected, with the possibility that North Jersey will lose a district to Central or South Jersey.

Changes in county freeholder districts and municipal wards will depend upon relative population growth rates within those jurisdictions.

The apportionment of seats on regional school district boards of education also will depend upon relative population growth rates within each district, but here the prospects are complicated by recent decisions declaring the current statute unconstitutional in some cases.

Finally, after all of the other districts have been re-drawn, local election districts will have to be conformed to the new boundaries established.

This paper is an update of an Occasional Paper, *Redistricting New Jersey After the Census of 2000*, issued in 1998.

## INTRODUCTION

It probably is no exaggeration to say that the Census of 2010 will change the political map of New Jersey significantly. The boundaries of the 13 Congressional districts and the 40 state Legislative districts almost certainly must be re-drawn to make them more equal in population. County freeholder districts in three counties and municipal wards in over 60 communities must be re-examined and revised if necessary for equal representation. In addition, the distribution of seats on 70 regional boards of education may have to be revised and, ultimately, the local election districts throughout the state will have to be re-drawn to conform to all of the other new boundary lines so that elections can be run efficiently.

Historically, it has been the practice to have most of these revisions carried out by a partisan elected body—usually the state Legislature. In many states over the years this practice has led to intense partisan gerrymandering and, sometimes, to complete stalemate. New Jersey may well have gone beyond any other state in relieving partisan elected bodies of this responsibility. At almost every level of representation, the districting process in this state now has been placed in the hands of appointed commissions with an effort being made to balance the strength of the major political parties so that a fair and expeditious result can be obtained.

The purposes of this paper are to describe the processes for districting the state and its subdivisions and to estimate broadly the changes that may be anticipated. Much of the statistical data included have been drawn from the *2007 New Jersey Legislative District Data Book*.<sup>1</sup>

## STATE LEGISLATIVE DISTRICTS

State Legislative districts were the first of the districting responsibilities to be taken from a partisan elected body. Convened as the result of a court case in which the composition of the state Legislature was declared unconstitutional<sup>2</sup>, a state constitutional convention in 1966 recommended,

and the people approved in a referendum, the transfer of this task from the state Legislature to a bipartisan State Apportionment Commission.<sup>3</sup>

The State Apportionment Commission consists initially of 10 members, with five appointed by the state chairperson of each of the major parties as shown by the results of the last gubernatorial election. The appointments must be made by November 15 of the year in which the census is taken and certified by the New Jersey Secretary of State by December 1 of that year. Each party chair is admonished by the Constitution to take into account representation of the various geographical regions of the state.

The Commission is directed to complete its work and certify the new Legislative districts within one month of the receipt by the Governor of the official decennial census results, or by February 1 of the year following the census year, whichever date is later. If the Commission does not meet this deadline or if, before the deadline, it determines that it will be unable to do so, the Chief Justice of the New Jersey Supreme Court is directed to appoint an eleventh member, and the Commission then has one more month to complete its work. In practice, the original Commission in recent years has always resulted in a five-five partisan deadlock, and the eleventh member has been appointed.<sup>4</sup> Meetings of the Commission are specifically exempted from the requirements of the Open Public Meetings Act.<sup>5</sup>

The pattern of Legislative representation originally established by the Constitutional Convention provided for the State Senate to be composed of 40 members and the General Assembly of 80 members.<sup>6</sup> In a compromise reached at the Convention, senators were to be elected at large from multi-member districts, while Assembly members were to be elected from two-member districts within the Senate districts. Senate districts were to be formed, if possible, of a single county; otherwise, they would consist of several whole, contiguous counties. Senators would be apportioned among the districts in proportion to their population. Each Senate district was to be divided into as many Assembly districts as it had senators, and two members of the General Assembly were

to be elected from each Assembly district. If a Senate district was composed of two or more counties and two senators were apportioned to that district, one senator would be elected from each Assembly district.

This plan, while still included in the state's Constitution, has been modified substantially by a series of New Jersey Supreme Court decisions in the eight years following the Convention.<sup>7</sup> The Court despaired of achieving substantially equal district populations under the original constitutional language and directed that 40 Legislative districts be created, with each electing one senator and two members of the General Assembly. This pattern of districts has been used ever since. Although invited by the Court in 1974 to revise the Constitutional language, the Legislature has never taken such action, and this part of the State Constitution is largely obsolete.

Delegates to the Convention hoped that creation of a bipartisan State Apportionment Commission would greatly reduce the partisan gerrymandering that might otherwise occur in the districting process. They went further, however, and included several provisions in the Constitution to limit the partisan drawing of Legislative boundaries<sup>8</sup>:

- (1) Districts must be formed of contiguous territory. This is a traditional requirement for districts, and it would seem rather obvious that a geographic constituency would have to be composed of adjoining territory.
- (2) Districts are to be as nearly compact as possible. Compactness is another traditional standard of districting, but there seldom has been any consensus on how to measure it.
- (3) Districts should be as nearly equal as possible in the number of their inhabitants. The Convention went further in defining the outer limits of population equality: no Assembly district should have more than 120% or less than 80% of the average district population.

Two other standards were only in the form of admonishments:

unless necessary to meet the above requirements:

(4) No county or municipality should be divided between Assembly districts unless it has more than 1/40 of the state's population.

(5) No county or municipality should be divided into more parts than one plus the whole number obtained by dividing its population by 1/40 of the state's population.

These anti-gerrymandering provisions have had a mixed reception. Equal population among the districts has been considered by the New Jersey Supreme Court as the preeminent requirement. The Convention's rule permitting districts up to 20% above and 20% below the average size, for a range of 40%, was found by the Court to be far too generous. While specific limits have never been stated, the Court has referred favorably to a United States Supreme Court decision permitting a 9.9% range of variation. New Jersey deviations of 20.8% and 26.2% have been cause for invalidating districts. A range of 10% would appear to be the outer limit that would be acceptable. In recent years, the State Apportionment Commission has been even more precise. After the Census of 1980 the state Legislative districts had a range of 7.7%, after 1990 the range was only 4.6%, and in 2000 it was 7.8%.

In order to achieve the necessary degree of population equality, the New Jersey Court ruled out the use of multi-member Senate districts composed of whole counties and directed that one state senator should be elected from each of the two-member Assembly districts. As a result, the districts have now come to be called Legislative districts. In fact, in order to make the districts acceptably equal, all of the Constitutional provisions intended to preserve the integrity of county boundaries were discarded by the Court. On the other hand, the Court approved of using complete municipalities as the "building blocks" of Legislative districts, so long as the municipalities with populations too large for a single district are divided. Actually, Newark and Jersey City, the two



communities in question, have been split three ways in recent years in violation of the rule limiting the number of municipal fragments that might be created in the largest municipalities, and the New Jersey Supreme Court in 2001 accepted the view that this requirement could be ignored.<sup>9</sup>

The Court approved of the requirement for forming districts of contiguous territory. No districts have been found to be formed of non-contiguous territory, although questions have been raised on occasion when large bodies of water intervene between separated land masses.

Numerous districts have been criticized as non-compact, but the Court has considered this to be a low priority standard compared with population equality. In fact, the Court accepted the creation of “shoestring” or “horseshoe” districts to attain “political balance,” while saying that this would not be tolerated if done for “partisan advantage.” The court also said that providing protection to incumbent legislators was a legitimate factor that might be considered in drawing districts.

### **Prospects for 2010**

Recent population estimates show that the Legislative districts have grown at varying rates. As of 2006, the estimated populations extended from a low of 202,304 people in the 34th District in Essex and Passaic Counties to a high of 241,889 in the 30th District in Burlington, Mercer, Monmouth, and Ocean Counties.<sup>10</sup> This constitutes a range of 18.1%, far exceeding the 10% level that appears to be acceptable. By the year 2010 the actual range undoubtedly will be much greater.

In general, the Legislative districts in the urban areas of northeast New Jersey (the 27th, 29th, and 34th in Essex, Union, and Passaic Counties; the 31st, 32nd, and 33rd in Hudson County; and the 15th in Mercer County) are both small and slow growing. They will need to have their areas expanded. In contrast, the fastest-growing Legislative districts are found in outlying areas. In addition to the 30th District, the 9th in Atlantic, Burlington, and Ocean Counties; the 23rd in the northwestern part of the state; and the 2nd in Atlantic probably will be well above the population of

the average district by 2010 and will require downsizing. As these changes are made there probably will be a “domino effect” resulting in changes even in those districts that are very near the average size.

Newark and Jersey City probably will still have at least 1/40 of the state’s population, requiring them to be divided by Legislative district lines.

A critical factor in re-drawing the state’s Legislative districts is the short time available between the receipt of final census data—which at best probably will happen in early February 2011—and the statutory date when the county clerks must be notified of the offices to be filled in the legislative elections of 2011 (60 days before the primary election).<sup>11</sup> If the data are not delivered promptly by the Bureau of the Census, or if the State Apportionment Commission takes its full time allotment and then deadlocks, it will be very difficult to complete the districting process within the legal time period.

## **MUNICIPAL WARDS**

The second of the changes to bipartisan districting commissions dealt with municipal wards. As of January 1, 2006, 64 of New Jersey’s 566 municipalities use forms of local government in which some or all of their governing body members are elected from wards into which the community has been divided.<sup>12</sup>

In 1981 the Legislature eliminated various procedures used earlier for the drawing of municipal ward boundaries and provided a uniform process for all municipalities.<sup>13</sup> After every census the municipal wards will be re-drawn, if necessary, by a board of ward commissioners consisting of the members of the county board of election plus the municipal clerk. The county board of election is made up of four members (two from each party); all are commissioned by the Governor upon nomination by the leaderships of the two major political parties in the county.<sup>14</sup>

If a political deadlock occurs, the person with the deciding vote is the municipal clerk. In

earlier years, the municipal clerk often was a highly political official, in many cases holding this position as a partisan elective office. This has changed drastically. Today, municipal clerks in New Jersey are appointed officials. They must complete an extensive training program and pass a state examination to hold their office. After a brief period of time, they attain tenure and may be removed only for cause.<sup>15</sup> While political factors may tinge an original appointment, most clerks now are in a position to perform their duties without political obligation or favoritism.

The board of ward commissioners is required by law to meet within three months of the promulgation by the Governor of the federal decennial census, and it has 30 days to complete its work. The law requires that wards be formed of compact and contiguous territory. The most precise requirement is that the population of the largest ward may not exceed the population of the smallest ward by more than 10% of the mean average population of the wards. This provision, in essence, specifies the same standard of population equality that the New Jersey Supreme Court has implied is appropriate for state Legislative districts.

### **Prospects for 2010**

A key statutory date in the revision of municipal wards is the action of the Governor in “promulgating” the official census figures for New Jersey. “Promulgation” of the census is defined by law as the action of the Governor in filing with the Secretary of State any bulletin issued by the director of the Bureau of the Census showing the population of the state.<sup>16</sup>

Although the first detailed report of the census should be received by early February, the Governor has often delayed filing it with the Secretary of State. For the last three censuses the official filing dates have been:

Census of 1980 – Filed January 18, 1982

Census of 1990 – Filed February 4, 1998

Census of 2000 – Filed April 12, 2001

Based on this record, the official “promulgation” of the census of 2010 probably should not be anticipated before April 1, 2011. In this event, it would be possible for new wards to be adopted in time for elections in 2011 if the board of ward commissioners were to act very rapidly. However, the three-month “grace” period permitted before a board of ward commissioners must meet will probably lead to most re-drawing of municipal wards taking place later in 2011 for first use in the elections of 2012. Any delay by the Governor in promulgating the census would push the revision of municipal wards even later in the decade.

Data are not available on the current ward populations of New Jersey’s municipalities. In many cases, if the wards were drawn appropriately in the past, and if the population change within a municipality has been fairly uniform since then, the existing wards may be acceptable for use after 2010. Every municipality using wards, however, must re-examine those wards when the new population figures become available, and this means that the county boards of election in most counties also must become involved.

It should be noted that there are a number of older municipalities in the state that have replaced a form of government requiring the election of municipal governing body members from wards with an at-large plan of representation. The wards established in earlier years may still be used as the names of neighborhoods or as convenient subdivisions for reporting election results. However, since no public officials are elected from these old wards, there is no necessity for their boundaries to be revised on the basis of new census data.

## **COUNTY FREEHOLDER DISTRICTS**

County freeholder districts were the third kind of representative districts to be placed in the hands of a bipartisan districting commission. In 1972, the Legislature enacted an optional county charter law modeled after the Optional Municipal Charter Law of 1950 (OMCL).<sup>17</sup> Among the options available is the possibility of electing the members of the board of chosen freeholders—the

county governing body—either at large from the entire county or from districts into which the county would be divided. The law uses the term “election districts,” but they will be referred to here as “freeholder districts” to avoid confusion with the local election districts that are established in almost every municipality for the purpose of administering all elections.

Six counties have made use of the optional county charter law since 1972, but only three of them have selected an option in which freeholders are chosen from districts. In Atlantic and Essex Counties there are five single-member districts and four freeholders elected at large; Hudson County elects the entire nine-member board from single-member districts.

As the law was originally enacted, the drawing of freeholder districts was performed by a district commission consisting of the four members of the county board of election plus the county clerk. The usual requirements for compact and contiguous territory were included. However, the county law omitted any specific limitation on population inequalities among the districts and merely stated that the districts “...shall be as equal as possible in population.”

In 1992, members of the Legislature realized that the county clerk, who remains an elected official running for office on a partisan ticket, often is a highly partisan public official. The law covering the drawing of freeholder districts was changed so that the composition of the district commission follows the model of the State Apportionment Commission used to draw state Legislative districts.<sup>18</sup> The county district commission is composed initially of four members, with two appointed by each of the county party chairpersons of the two major political parties. Due consideration is to be given to representation of the different geographic areas of the county. The appointments must be made on or before the tenth day following receipt by the Governor of the official federal decennial census figures. The commissioners are to meet within three months following receipt of the census figures, and they have 30 days to complete their work. If they fail to meet that deadline, or if they agree to disagree before that time, the Chief Justice of the Supreme Court is directed to appoint, as a fifth member, “a fair minded and impartial person who shall not have held

elected public or party office in this state” at any time for the prior three years. The commission then has an additional month to certify new district boundaries.

### **Prospects for 2010**

It is not possible at this time to make estimates of how population changes since 2000 will affect the districts. In all likelihood, appointments to the county freeholder districting commissions will have to be made, but whether the districts will need to be revised will depend upon population changes within the county.

As with municipal wards, the county freeholder districts could be revised in time for the 2011 elections, but it is more likely they will not be revised until later in that year, with their first use in the 2012 elections.

### **CONGRESSIONAL DISTRICTS**

Congressional districts are the most recent constituencies to be placed within the responsibility of a bipartisan districting commission, with the state Constitution being amended for this purpose in 1995.<sup>19</sup>

Representation in the United States House of Representatives is determined through a two-part process. First, the seats in the House are apportioned, or distributed, among the states in proportion to their population. According to federal law, within a week after the first regular session of Congress starting after the census, the President is required to transmit to Congress a statement showing the number of seats to which each state will be entitled, starting with the next Congress.<sup>20</sup> The entitlement to seats is calculated by the method of equal proportions. Under this method, one seat is first awarded to each state and the remaining seats in the House are then distributed through the calculation of a priority list based on the populations of the states. The size of the House has

been set at 435 members for many years and will remain at that number unless new action is taken by law to make a change. The Clerk of the House of Representatives is directed to notify the Governor of each state of the number of seats assigned to that state.

After the number of seats assigned to the state has been established, it is up to each state to provide for the creation of single-member Congressional districts. Historically, this has been the responsibility of the state Legislatures. New Jersey's track record has not been very distinguished. The districts established in 1931 remained untouched, although having widely different populations, until the state received an additional seat after the 1960 census. More recently, partisan gerrymandering after the 1980 census resulted in New Jersey's districts being declared unconstitutional by the United States Supreme Court.<sup>21</sup>

The New Jersey Legislature approached redistricting after the 1990 Census with this unhappy history in mind. A substantial revision of the existing districts was indicated, since the number of seats assigned to the state had been reduced from 14 to 13. No action was taken during 1991, but something had to be done early in the next year; otherwise, under the federal law the entire state Congressional delegation would have to be elected at large. While Democrats controlled both the Governor's office and the Legislature in 1991, the elections of that year resulted in Republicans taking control of the Legislature for 1992. The stage was thus set for a bipartisan approach to the districting process.

The result was legislation providing for a bipartisan New Jersey Redistricting Commission consisting of six representatives from each of the two major parties, plus a 13th member chosen by the first 12.<sup>22</sup> Districts drawn by the Commission were required to provide for equality of population among the districts, the preservation of minority voting status, geographical contiguity, and "reasonable protection for districts from decade to decade against disruptive alteration due to redistricting." The Commission took seriously its charge to make the populations of the districts "as

nearly equal as practicable.” Eleven of the 13 districts it drew had populations of 594,630 people, while the other two each had 594,629 residents. This precise result was achieved by dividing 24 municipalities, in some cases three ways. While there was some criticism of this approach and the lack of compactness of some districts, the results stood with no serious challenge. Unfortunately, the law establishing the bipartisan Redistricting Commission was written to expire on January 1, 2001, thus throwing the entire process back into the Legislature.

The success of the temporary Redistricting Commission in 1992 led to a proposal for permanent procedures to draw Congressional districts. A referendum for an amendment to the state Constitution was placed on the ballot in November 1995 and was approved by the voters.<sup>23</sup> It follows fairly closely to the pattern of the temporary commission. The Redistricting Commission will have 13 members. Two each are to be appointed by the President of the Senate, the Speaker of the General Assembly, the minority leader of the Senate, the minority leader of the General Assembly, and by the state chairpersons of each of the two major political parties. Appointments must be made on or before June 15 of each year ending in a 1 and certified to the Secretary of State by July 1. Each party delegation selects one of its members as its own chairperson.

The 13th, or “independent” member—who may not have held public or party office in the state for five years—is to be chosen by the two party delegations by July 15. If they are unable to agree on a person by July 20, they must notify the Supreme Court of the two people receiving the highest number of votes. By August 10, the Supreme Court selects one of them as the 13th member.

The Commission is directed to meet to organize no later than the Wednesday after the first Monday in September of each year ending in a 1, with the independent member serving as chair. It must complete its work by the later of either the third Tuesday in the next year or within three months after receipt of official notification from the Clerk of the House of Representatives regarding the number of House seats apportioned to New Jersey. If the Commission cannot agree on a



plan of districts by this time, the two plans receiving the most votes (but at least five votes) are submitted to the Supreme Court, which selects one of them. The Commission is required to hold at least three public hearings in different parts of the state; but, otherwise, need not meet in public.

In a major change from the statute authorizing the temporary Redistricting Commission, the Constitutional language adopted in 1995 omits any mention of standards for the districts. There is no explicit requirement for population equality, contiguity, compactness or any other desirable quality of the districts created. One explanation for this may be the impact of the federal Voting Rights Act of 1965. Following the Census of 1990, the states coming under the review provisions of that law were subjected to considerable pressure from the U.S. Department of Justice to draw districts that gave little weight to the traditional standards for districts. Instead, the Department interpreted the Act to require that districts be established that would enhance the voting strength of minorities. The resulting districts in many cases had boundary lines and shapes that were considered bizarre by some people, as their architects sought to include sufficient scattered pockets of minority voters in a district to make feasible the election of a minority representative. While this policy had its greatest impact in southern states, it was effective in such northern states as New York and Illinois, and its impact was noted throughout the country. The policy came to at least a partial halt in the mid-1990s when the United States Supreme Court, by a 5-4 vote, invalidated many such districts.<sup>24</sup> The law of the land now appears to be that racial factors must be taken into consideration in drawing districts, but they may not be used as the predominant factor in constructing representative constituencies. Uncertainty about where the Court was headed may well have resulted in the omission of any explicit standards for Congressional districts in the New Jersey Constitution.

### **Prospects for 2010**

The first question to be asked is whether New Jersey will retain 13 seats in the House of Representatives. Since the state apparently is growing less rapidly than the rest of the country, the

loss of a seat is possible. A test apportionment, made for this paper, using Bureau of the Census population projections for the year 2010<sup>25</sup>, shows that the state is in some danger of losing a seat. When the equal proportions priority list is prepared, New Jersey retains its 13th seat at seat 429 among the total of 435.<sup>26</sup> A similar projection made in 1998 for the 2000 census placed New Jersey's 13th seat at seat 419. The validity of this calculation depends upon the accuracy of the Census Bureau's population projections for 2010. Minor changes in growth patterns before 2010 could push New Jersey's claim to a 13th seat beyond the 435-seat cut-off.

Another factor that might impact New Jersey's claim to a 13th seat is the possibility of undercount adjustments to the Census of 2010. When this factor was tested in 1998 for the upcoming Census of 2000, the projected undercount adjustment appeared to reduce the state's chances of retaining a seat from 419th to 422nd place. Whether this sort of impact would take place in 2010 under an undercount adjustment is not known.

A third factor recognized in 1998 was the possibility of statehood for Puerto Rico. At that time, the six seats assigned to the new state would have posed only a modest threat to New Jersey's claim to a 13th seat. Today, statehood for Puerto Rico seems to have receded as an imminent possibility; if it were to reappear, however, it could have a significant impact on New Jersey's level of representation.

Finally, the impact of Hurricane Katrina on the 2010 populations of the states is still unknown. The projection of seats made for this paper is based on population projections for 2010 issued by the Bureau of the Census in 2005, prior to the hurricane.

The New Jersey Congressional districts drawn by the Redistricting Commission in 2001 were almost precisely equal in the 2000 population. In order to do this, 29 municipalities were split between two or more Congressional districts. The same population trends noted for state Legislative districts apply also to Congressional districts, which have grown at significantly different rates. By 2006, population estimates show the 8th District (covering parts of Essex and Passaic Counties)

as the smallest, with a population of 645,449; and the 13th District (including parts of Hudson, Essex, Union, and Middlesex) as the second smallest. Very large districts are the 4th District (in parts of Burlington, Ocean, and Monmouth Counties) with an estimated 694,147 people, and the 12th District (in the central part of the state). The range of variation, while only 7.3% in 2006, undoubtedly will be larger in 2010. The courts have regularly said that populations must be much more nearly equal among Congressional districts than among state and local representative districts. Changes in the boundaries of the largest and smallest districts almost certainly will be needed, and other districts will feel the impact through the “domino effect.” Again, the major impact will be to move district boundaries further out from the highly urban areas of the northeast and into the growing areas of Central and South Jersey.

## **REGIONAL SCHOOL DISTRICTS**

New Jersey has 70 regional school districts in which each covers more than a single municipality. Membership on their boards of education has long been based on the population of the participating municipalities or constituent school districts. In contrast to all of the foregoing districts, however, representation on regional boards of education usually does not involve drawing lines on a map; but, rather, the distribution of seats among constituencies with fixed boundaries. In this sense it is similar to the distribution of seats in the House of Representatives among the states.<sup>27</sup>

State law covering the process is written to meet two different situations.<sup>28</sup> For regional school districts with nine or fewer constituent districts, the law merely states that seats on the board shall be apportioned among the constituent districts “as nearly as may be according to the number of their inhabitants,” except that every district must receive at least one member. In a provision quite different from any other current statute, the term “inhabitants” is defined as excluding patients in or inmates of any State or Federal hospital or prison; or any military personnel stationed at, or civilians residing within the limits of, any U.S. Army, Navy, or Air Force installation. In practice,

the calculation, which is done by the state Department of Education, in recent years has generally followed the method of equal proportions, just as is done for the House of Representatives.

The other situation is much more complicated. Before 1971 the apportionment of seats on regional district boards of education, where there were more than nine constituent districts, consisted of one seat for every constituent district, regardless of its population.<sup>29</sup> This appeared clearly in violation of the “one person-one vote” decisions of the courts that commanded great attention during the 1960s and 1970s. As a result of several court actions culminating in a New Jersey Supreme Court decision in 1977<sup>30</sup>, the statute for large regionals was re-written. As it now stands, the law—which applies only to North Hunterdon/Voorhees Regional—attempts to provide for equal representation while maintaining some identification with local communities through a step-by-step process that may be delegated to an administrative official:

- (1) Very small constituent districts are grouped into larger representative districts depending on their size and common boundaries;
- (2) Seats on the board are distributed by the method of equal proportions for a range of different board sizes;
- (3) The size of the board is set at the point where population equality is greatest;
- (4) Board members are assigned weighted votes depending on the number of people they represent.

In addition, the population used in this part of the statute is the total census population, rather than the modified number of inhabitants used for smaller regional school districts. The New Jersey Supreme Court in a footnote had expressed considerable doubt that the exclusions of population still in the small regional statute were constitutional.

The calculations normally have been made by the state Department of Education or the county superintendent of schools, who represents the Department. No timetable is specified by the law.

## **Prospects for 2010**

The prospects for 2010 are conditioned by the possibility of judicial action. In 1983, a Superior Court case involving Shore Regional resulted in a conclusion that the statutory provisions applying to smaller regionals were unconstitutional on “one person-one vote” grounds, just as the earlier North Hunterdon decision had concluded for large regionals.<sup>31</sup> The judge in a bench opinion directed that an additional seat on the board be given to West Long Branch and that weighted voting be used to correct any remaining under-representation.

More recently, in 1998 a U.S. District Court for the District of New Jersey also found that the statute for small regionals was unconstitutional on the same “one person-one vote” grounds when applied to Freehold Regional.<sup>32</sup> In this case, Marlboro Township, one of the constituent districts, had one seat for a 1990 population of 27,974, while Englishtown Borough had the same representation for a population of 1,268. Again, the solution ordered by the court combined large and small municipalities into representative districts and assigned weighted votes to their representatives on the board of education. Neither of these rulings has been applied to the rest of the smaller regional school districts, although the potential for a more sweeping change remains.

Beyond these cases, the reapportionment of representation on regional boards of education will depend on the population growth in each of the constituent districts.

## **ELECTION DISTRICTS**

The final step in redistricting the state will be an adjustment of the local election districts, often known in other states as voting districts or precincts. These are the smallest geographic areas used for election administration, and each one must fit entirely within any other district from which a representative is elected. Thus, their final determination must await completion of the drawing of state Legislative districts, municipal wards, county freeholder districts, and Congressional districts.

Their principal purpose is to facilitate the conduct of an election, and the overriding requirement is the convenience of the voters.<sup>33</sup>

The county board of election is responsible for establishing the election districts in the county.<sup>34</sup> Election district boundaries may not be changed from a date 75 days before any primary election until the date of the general election in November. Since 2012 is a presidential election year, recent legislation creating a special presidential primary in February of that year will result in a very limited period in November 2011 during which election districts may be changed. In addition, no changes may be made between January 1 of a year ending in a 7 and December 1 of a year ending in a 0, unless approved in advance by the New Jersey Secretary of State. The latter requirement was placed in the law in order to “freeze” the election districts in place for four years prior to a census, since the Bureau of the Census is required by federal law to make an early report of population totals by whatever geographic units the state requests. In the past, this has been done by election districts.<sup>35</sup>

The standards for election districts are fairly flexible. They should be formed of contiguous territory, be compact in area, and use obvious landmarks where possible (such as roads, railroad tracks, rivers, or brooks) as boundaries. In general, they usually should not have more than 750 registered voters (unless additional election machinery is provided) and should not be smaller than 250 voters. However, they may be smaller if this would make them more convenient for the voters.

There is a potential for confusion stemming from the re-drawing of election districts. With the end of the four-year “freeze” on election district boundary changes on December 1, 2010, there may be pressure for immediate revision of the districts if they have grown too large or too small. A problem then may arise because the Bureau of the Census will have reported population data on the basis of the “old” election districts as they existed early in 2010. If the boards charged with re-drawing Legislative districts, Congressional districts, county freeholder districts, and municipal wards in 2011 are not aware of election district changes made since the Census was taken, they

may wind up using boundaries and populations that do not match correctly with the election districts then in use.

## **CONCLUSION**

Political considerations probably will never be completely eliminated from the districting process. Even where bipartisan boards have been established to prevent runaway gerrymandering there is little to prevent partisan elected officials from being appointed to those boards. In some cases, no doubt, elected representatives lobby for their appointment to such a board to protect their own political interests. In other cases, someone may gain a spot on the bipartisan board mainly to protect some interest group, rather than represent the political party. But even with these and other caveats, the removal of the districting responsibility from elected partisan political bodies almost certainly is a step toward providing a more level political playing field.

## ENDNOTES

<sup>1</sup> *2007 New Jersey Legislative District Data Book* (New Brunswick, N.J.: Rutgers University Center for Government Services, in process).

<sup>2</sup> Jackman v. Bodine, 43 N.J. 453 (1964).

<sup>3</sup> Constitution of the State of New Jersey, Art. IV, Sec. III, Par. 1; Ernest C. Reock, Jr., *Unfinished Business: The New Jersey Constitutional Convention of 1966* (New Brunswick, N.J.: CUPR Press, Center for Urban Policy Research, Rutgers University, 2003).

<sup>4</sup> For a detailed description of the State Apportionment Commission's work in 1981 and 1991 see: Donald E. Stokes, *Legislative Redistricting by the New Jersey Plan* (New Brunswick, N.J.: The Fund for New Jersey, 1993).

<sup>5</sup> N.J.S.A. 10: 4-7.

<sup>6</sup> Constitution, Art. IV, Sec. II, Par. 1, 3.

<sup>7</sup> Jackman v. Bodine, 49 N.J. 406 (1967), 50 N.J. 127 (1967), 53 N.J. 585 (1969), 55 N.J. 371 (1970); Scrimminger v. Sherwin, 60 N.J. 483 (1972), 60 N.J. 498 (1972). Davenport v. Apportionment Commission, 63 N.J. 433 (1973), 65 N.J. 125 (1974).

<sup>8</sup> Constitution, Art. IV, Sec. II, Par. 3.

<sup>9</sup> McNeil v. Legislative Apportionment Commission of the State, 177 N.J. 364, 828 A.2d 840 (2003).

<sup>10</sup> *2007 New Jersey Legislative District Data Book*, op. cit.

<sup>11</sup> N.J.S.A. 19:12-1; P.L. 2007, C. 254.

<sup>12</sup> See *2007 New Jersey Legislative District Data Book* for identification of municipalities using wards.

<sup>13</sup> N.J.S.A. 40:44-9 et seq.

<sup>14</sup> N.J.S.A. 19:6-17 et seq.

<sup>15</sup> N.J.S.A. 40A:9-133.1 et seq.

<sup>16</sup> N.J.S.A. 52:4-1.

<sup>17</sup> L. 1972, c. 154; N.J.S.A. 40:41A-1 et seq.



<sup>18</sup> N.J.S.A. 40:41A-118.

<sup>19</sup> Constitution of the State of New Jersey, Art. II, Sec. II.

<sup>20</sup> United States Code 2:2a et seq.

<sup>21</sup> Karcher v. Daggett, 462 U.S. 725 (1982).

<sup>22</sup> L. 1991, c. 510.

<sup>23</sup> Constitution of the State of New Jersey, Art. II, Sec. II.

<sup>24</sup> Shaw v. Reno, 509 U.S. 630 (1993); Miller v. Johnson, 515 U.S. 900 (1995).

<sup>25</sup> U.S. Census Bureau, Population Division, Interim State Population Projections, 2005, Internet Release of April 21, 2005, Table 6.

<sup>26</sup> No adjustment has been made for the fact that the population estimates are for July 1, 2010, while the census will be taken as of April 1.

<sup>27</sup> A full listing of the regional school districts, including their constituent municipalities, may be found in the *2007 New Jersey Legislative District Data Book*, op. cit.

<sup>28</sup> N.J.S.A. 18A:13-8.

<sup>29</sup> Only one regional district was involved: North Hunterdon, then with 11 constituent districts.

<sup>30</sup> Franklin Township v. Board of Education of North Hunterdon Regional High School, 74 N.J. 345 (1977).

<sup>31</sup> Borough of West Long Branch v. Hughes, et al., Docket No. L-9076-82E P.W.

<sup>32</sup> Township of Marlboro v. Board of Education of the Freehold Regional High School, Civil Action No. 97-5401. June 23, 1998.

<sup>33</sup> The only persons elected from election districts are the members of the county political party committees, one male and one female per district; N.J.S.A. 19:5-3.

<sup>34</sup> N.J.S.A. 19:4-10 et seq.

<sup>35</sup> United States Code 13:141.

### **State Legislative Districts**

(Constitution, Art. IV, Sec. III, Par. 1)  
(N.J.S.A. 19:12-1)

Statutory or Constitutional Date	Estimated Actual Conclusion Date	Action
1. 11/15/10	11/15/10	Each State party chairperson names 5 members of State Apportionment Commission.
2. 12/1/10	12/1/10	Secretary of State certifies 10 members of State Apportionment Commission.
3.	2/1/11*	Governor receives official census.
4. The later of 2/1/11 or one month after Governor receives official census results.	3/1/11* or earlier if Commission declares deadlock.	Original 10-member Commission certifies new districts; if no agreement, Chief Justice appoints 11 <sup>th</sup> member.
5. One month after (4)	4/1/11*	Expanded 11-member Commission certifies new districts.
6. No later than 60 days before Primary election.	4/8/11	Secretary of State must notify County Clerks of offices to be contested in Primary election.

\*Date depends on receipt of census data by Governor on 2/1/11.

### **Congressional Districts**

(Constitution, Art. II, Sec. 11)  
(U. S. Code 2:2a et seq.; N.J.S.A. 19:12-1)

Statutory or Constitutional Date	Estimated Actual Conclusion Date	Action
1. Within one week after beginning of first regular session of Congress after census.	1/10/11	President transmits to Congress statement of number of seats apportioned to each state.
2. Within 15 days of (1)	1/25/11	Clerk of House of Representatives notifies Governors of number of seats apportioned.
3.	2/1/11*	Governor receives official census.
4. 6/15/11	6/15/11	State leaders of each party appoint 6 members to Congressional Districting Commission. Each party selects a chairperson.
5. 7/1/11	7/1/11	Appointees certified to Secretary of State.
6. 7/15/11	7/15/11	12-member Commission selects 13 <sup>th</sup> member as chairperson.
7. 7/20/11	7/20/11	If unable to agree on 13 <sup>th</sup> member, 12-member Commission notifies NJSC of 2 candidates receiving most votes.
8. 8/10/11	8/10/11	NJSC selects one of 2 highest candidates as 13 <sup>th</sup> member of Commission.
9. 8/15/11	8/15/11	NJSC certifies 13 <sup>th</sup> member to Secretary of State.
10. No later than Wednesday after first Monday in September in year ending in 1.	9/7/11	Commission meets to organize.
11. The later of either the 3 <sup>rd</sup> Tuesday in a year ending in 2, or 3 months after (3).	1/17/12	Commission agrees on districts. If no agreement, NJSC selects among two plans receiving most votes, but at least five votes.
12. No later than 60 days before Primary election.	4/6/12	Secretary of State must notify County Clerks of offices to be contested in Primary election.

\*Date depends on receipt of census data by Governor on 2/1/11.

### **County Freeholder Districts** (Where used)

(N.J.S.A. 40:41A-117 et seq.)

Statutory or Constitutional Date	Estimated Actual Conclusion Date	Action
1.	2/1/11*	Governor receives official census.
2. Within 10 days after Governor receives official census figures	2/10/11*	Each county party chairperson appoints 2 members of county district commission.
3.	4/1/11*	Governor promulgates census by filing with Secretary of State.
4. Within 3 months after (1)	5/1/11*	County district commission meets.
5. 30 days after (4) or earlier if members agree that no decision is possible.	6/1/11*	Commission certifies new districts; if no agreement, Chief Justice appoints a 5 <sup>th</sup> member.
6. One month after (5)	7/1/11*	Expanded 5-member commission must agree on districts.

\*Date depends on receipt of census data by Governor on 2/1/11 and promulgation by filing with Secretary of State on 4/1/11.

### **Municipal Wards** (Where used)

(N.J.S.A. 40:44-9 et seq.)

Statutory or Constitutional Date	Estimated Actual Conclusion Date	Action
1.	2/1/11*	Governor receives official census.
2.	4/1/11*	Governor promulgates census by filing with Secretary of State.
3. Within 3 months after (2)	7/1/11*	Board of ward commissioners (county board of elections + municipal clerk) meets.
4. Within 30 days after (3)	8/1/11*	Board of ward commissioners certifies new wards.

\*Date depends on receipt of census data by Governor on 2/1/11 and promulgation by filing with Secretary of State on 4/1/11.

### **Election Districts**

(N.J.S.A. 19:4-10)

Statutory or Constitutional Date	Estimated Actual Conclusion Date	Action
1. Anytime <u>except</u> a period from 75 days before a primary election until after the general election, and <u>not</u> between January 1 of a year ending in 7 and December 1 of a year ending in 0.	Election districts may be revised <u>only</u> between: 12/1/10 and 3/24/11 11/8/11 and 11/24/11 11/6/12 and 3/21/13	County board of election changes election districts so that every district fits inside of a ward, a municipality, a county freeholder district, state legislative district, or congressional district.

	Year	Legislative Districts	Congressional Districts	Freeholder Districts	Municipal Wards	Election Districts
November	2010	(1)				
December		(2)				OK
January	2011		(1), (2)			OK
February		(3)	(3)	(1), (2)	(1)	OK
March		(4)				OK
April		(5), (6)		(3)	(2)	
May				(4)		
June			(4)	(5)		
July			(5), (6), (7)	(6)	(3)	
August			(8), (9)		(4)	
September			(10)			
October						
November						OK
December	2011					
January	2012		(11)			
February						
March						
April			(12)			
May						
June						
July						
August						
September						
October						
November						OK
December	2012					OK
January	2013					OK
February						OK
March						OK

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