

Legislative Redistricting Commissions

Justification.

Consistent with the purpose of the Charter Revision Commission established in its authorizing legislation to “study the operations of the County of Erie in their full scope” and determine whether the County Charter and Code shall be amended to improve its functions, the Administration and Legislature Committee reviewed Section 210 of the Charter, the Advisory Committee on reapportionment.

Current condition

The Legislature currently controls the reapportionment process. Section 210 establishes an advisory panel to recommend, “whether and how the county legislature should be reapportioned consistent with federal and state law.” The majority of this committee are appointed by the Legislature’s majority party, and its work is advisory in nature. In practice, the Legislature’s majority party drives the reapportionment process.

Partisan battles characterized the last reapportionment process. The Republican County Executive vetoed the initial reapportionment plan, developed by majority Democrats. Following a period of gridlock, a judge established a weighted voting system that helped establish a functional majority for the Republicans on the Legislature. This functional majority proceeded to design a new plan that included the elimination of two seats held by Democrats, while “protecting” the seats of most members of the functional majority. The plan was criticized for dividing some communities, including Cheektowaga and the Elmwood Village, while minimizing minority representation on the Legislature. Nonetheless voters approved it in 2002. This process spanned more than two years. Perhaps ironically, the districts created from this Republican-dominated process did not ultimately guarantee Republican control.

The most recent reapportionment process highlighted several problems with the current charter arrangement:

- Section 210 proved to be irrelevant to the process.
- The process was dominated by partisan political concerns.
- The representation of some geographic, political and possibly ethnic communities is disproportionate to their populations within Erie County.

Alternate models of redistricting

Redistricting is a hot issue among the states, including New York State. Several states employ a non-partisan redistricting method. Many such methods have been established within the last decade, while other proposals have recently been defeated or have stalled.

At essence, the newer redistricting systems have been created to address three recurring problems:

- Redistricting that favors a political party.
- Redistricting that favors incumbents.
- Redistricting that favors some other group or groups – such as a geographic or ethnic group. The Supreme Court largely addressed this third type of problem in the 1960s. More recent reforms appear to focus on the first two problems.

Most government reform groups with opinions on the matter have endorsed non-partisan or bipartisan redistricting mechanisms, such as the creation of independent redistricting commissions. In many cases these commissions would function in accordance with guidelines designed to preserve established communities and ensure proportionate representation among minority groups.

Attempts to reform have met with mixed results. Recent ballot measures in California and Ohio were defeated, according to press reports because voters perceived the reforms to benefit one or the other political party. Several bills have been proposed in the New York State legislature; however none has passed both houses. In other states, such as Arizona, recent reforms have passed into law while others have more long-standing bipartisan or non-partisan mechanisms for drawing district lines.

The following are criteria for non-partisan redistricting commissions as outlined by the good-government organization, Common Cause:

While much of the discussion has focused on state policies, the principals can apply to the county process.

“In all instances, commissions should be made up of an odd number of members. Commissions should be structured so that if membership includes representatives from political parties that: no political party interests can advance a plan without support from other political parties; and, so that the two major political parties cannot collude to create a plan without support from other members not affiliated with either major political party. Approval of redistricting plans shall require approval by a super-majority of the members or by consensus of the members of the Independent Redistricting Commission. Independent Redistricting Commissions shall reflect the geographic, racial, ethnic, gender, and age diversity of the state.”

Several states employ some sort of non-partisan or bi-partisan redistricting commission rather than the Legislature itself. The following are actual examples of alternative systems:

Arizona

(See <http://azredistricting.org/?page=prop106>)

Arizona voters approved Proposition 106 in 2000, creating a five member redistricting commission. The majority and minority parties of each house of the Legislature (one appointee each, which works out to be two Democrats and two Republicans) select four of the members. The fifth member may not be a member of either of the two major parties and is selected to be chair by the other four members.¹

The law establishes a strict set of criteria with which the commission works to draw district lines such as, “District boundaries shall respect communities of interest to the extent practicable;” “To the extent practicable, district lines shall use visible geographic features, city, town and county boundaries, and undivided census tracts” and “to the extent practicable, competitive districts should be favored where to do so would create no significant detriment to the other goals.”

The criteria have proven to be as important in the redistricting process as the commission membership. A judge voided the initial district lines generated following the 2000 census under the new system on the premise that not enough were competitive.² Critics argued that the judge’s preference for the competitive district criteria conflicted with other criteria established by the law, such as “creating contiguous and compact districts of equal size.”

The exact impact of this court decision is not clear. The partisan ratio shifted slightly following the 2004 elections, from a 39-20 Republican majority in the House (with one vacancy) and a 17 to 13 Republican majority in the Senate to Republican majorities of 39-21 and 18-12 respectively. Statewide, Republicans have a five point enrollment advantage over Democrats, and as recently as 2000 the Senate was equally divided.

Iowa

(See <http://www.legis.state.ia.us/Central/LSB/Guides/redist.htm#pt5>)

Iowa has a similar process as Arizona, however its distinct differences, especially having to do with prohibiting the use of certain demographic data in drawing district lines may be responsible for an entirely different result – much more competitive districts.

As with Arizona, the Iowa law requires districts to meet certain standards having to do with compactness, contiguity and respect for political subdivisions. The law also specifically prohibits certain considerations such as partisan or incumbent advantage. This prohibition actually bans the use of certain demographic information, such as party enrollment, and incumbent addresses from being used to draw district lines. This latter prohibition is unique to Iowa and may be what truly distinguishes this method from others.

¹ This mechanism might not work in New York State due to the prevalence of minor parties that are closely associated with the major parties.

² See, Davenport, Paul, Judge orders use of new Arizona redistricting maps, Associated Press, April 17, 2004, http://www.zwire.com/site/news.cfm?newsid=11339115&BRD=1817&PAG=461&dept_id=68561&rfi=6

The method of selecting Iowa's five-member redistricting commission differs from that of Arizona's in a few small but potentially significant ways. The majority and minority legislative *leaders* (specifically leaders) select one member each. The other four again selects the fifth member, who serves as chair, however three out of four are enough to approve this fifth member. Commission members may not hold "political office or political party office or be related to or employed by a member of the United States Congress or the Iowa Legislature or be employed by the Congress or Iowa Legislature itself." The law also provides that the Chief Judge of the Court of Appeals makes the final appointment in the event of deadlock.

The Iowa Legislature does get final approval of the redistricting plan, but only an up-or-down vote is permitted. The Legislature rejected the first plan submitted to it by the redistricting commission in 2001, but approved the second. The effect of this method on the 2002 redistricting was to create several competitive seats despite single-party control of the Legislature – 25 of 50 state senators were placed in the same districts while three majority party members of Congress were placed in highly competitive districts.³

Iowa enacted the current system into law in 1981.

New York: Assembly Bill 6287

(See <http://www.fairvote.org/?page=775>)

A.6287 of 2006, sponsored by Assemblyman Michael Gianaris is probably the most widely-reported reform plan currently before the State Legislature. Similar to the above plans, this would create a redistricting commission that does not favor one party or the other, which operates within the confines of specific standards. This plan has several unique features:

- The eventual apportionment commission comprises eleven members, including two appointees each of legislative majority and minority leaders. The other three are appointed from within.
- A second eight-member commission determines the pool of potential appointees. This commission is comprised of appointees of the legislative leaders but also the governor, attorney general, comptroller and presiding judge of the court of appeals. This screening committee, as well as restrictions on the ultimate appointment of current or former lobbyists, legislators or political figures, is designed as one of several firewalls between the commission and the interests of the Legislature.
- The Legislature and Governor must ultimately approve the redistricting plan however the proposal allows only up to three plans to be rejected. If the Legislature rejects the third plan, the Court of Appeals picks among the three plans submitted by the Commission.

³ Clymer, Adam, "Why Iowa Has So Many Hot Seats," *The New York Times*, October 27, 2002

This bill has received much attention, but has not yet passed into law.

Erie County as it relates to the states

Despite the problems of the post-2000 redistricting process, Erie County does not share many of the problems associated with redistricting in several states:

- Despite popular perception, Erie County does not retain entrenched incumbents.
- Partisan control of the Legislature has remained competitive through at least the last two redistricting processes.

No current county legislator survived two redistricting processes. A majority was not in office prior to the last redistricting process, and of those four who remain, two faced highly competitive races since redistricting.⁴ In the years between the 1991 redistricting, which was “controlled” by the Democrats, and the 2002 redistricting which the Republicans ultimately controlled, partisan control of the legislature swung in the opposite direction both times. Moreover, while individual incumbents may or may not have either prospered or suffered from the current process, there is little evidence of systemic incumbent protection.

Competitive races are indeed commonplace in Erie County, and turnover is even more commonplace. Famously, only 6 of 15 incumbents returned to the Legislature after the 2005 elections. No legislator elected in 1991, and only one elected in 1993 currently serves (that one, George Holt, himself defeated an incumbent in 1993, and faced very stiff opposition in 2005).

The election of 1991 is significant because it followed a redistricting process. That year the Democratic majority shrank from 11-6 to 9-8. Of 17 races, three were won by extremely close margins while two others were considered competitive despite ultimately solid margins of victory for the winners.⁵

Recommendations

The Iowa model contains several elements to address the charter problems associated with Erie County’s redistricting process, as described on the first page of this report:

- The specific standards and detailed procedures of operation would grant the redistricting commission relevance not currently associated with the commission created in Section 210 – especially the requirement of an up-or-down vote by the Legislature.

⁴ Those who remain are Weinstein, Ranzenhoffer, Marinelli, and Holt. Marinelli faced a competitive general election in 2003 and a competitive primary in 2005. Holt faced a competitive primary in 2005.

⁵ The close races were Villarini v. Desmond, Wirth v. Pigeon, Pauly v. Ward. The two other competitive races were Lenihan v. Calabrese and Bozer v. Fiorella. See Linstedt, Sharon, “Desmond, Pigeon Lose; Republicans Narrow Democrats' Control Of Legislature To 9 –8,” *The Buffalo News*, November 6, 1991.

- The standards pertaining to respecting political subdivisions and communities should prohibit the type of fractured representation experienced by Cheektowaga and the Elmwood Village.
- The prohibitions on the use of certain demographic data including party enrollment and incumbent addresses should deter the type of partisan shenanigans that were so evident in the last process, despite the ultimate result of creating districts that did not actually favor the party in power.
- The establishment of a bipartisan commission along the lines of Iowa's should further support the remedy, however this in itself may ultimately be less important than the other features of a new system. This is both because Erie County districts do not favor the party in power in the same way say, New York State Senate districts do, and because states simply with bipartisan commissions (such as Arizona) – without the prohibition of the use of certain demographic data and without an effective “tiebreaker” do not necessarily have competitive districts.

The feature of the Gianaris bill pertaining to deadlock – the requirement that the redistricting commission present up to three proposals to the Legislature before a judge picks among them according to the criteria established in the law, should prevent both the kind of protracted process and unusual weighted voted arrangement of the last redistricting process.