

HOUSE BILL 211

55TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2021

INTRODUCED BY

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This document may incorporate amendments proposed by a committee, but not yet adopted, as well as amendments that have been adopted during the current legislative session. The document is a tool to show amendments in context and cannot be used for the purpose of adding amendments to legislation.

AN ACT

RELATING TO REDISTRICTING; ENACTING THE REDISTRICTING ACT;
CREATING THE STATE REDISTRICTING COMMISSION; DIRECTING THE
COMMISSION TO DEVELOP DISTRICT PLANS FOR APPROVAL BY THE
LEGISLATURE AND GOVERNOR; PROVIDING DUTIES; ESTABLISHING
REQUIREMENTS FOR CREATING DISTRICT PLANS AND PUBLIC
PARTICIPATION IN THE PROCESS; PROVIDING PROCEDURES TO APPEAL A
SELECTED PLAN; HJC→~~DECLARING AN EMERGENCY~~←HJC HJC→**AUTHORIZING**
THE LEGISLATURE TO REDISTRICT IN THE YEAR AFTER RECEIVING THE
RESULTS OF THE FEDERAL DECENNIAL CENSUS IF THE CENSUS RESULTS

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ARE NOT RECEIVED BY JULY 1; MAKING CONFORMING TECHNICAL
CHANGES; REPEALING LAWS 2020, CHAPTER 9, SECTION 1 ←HJC .

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. [NEW MATERIAL] SHORT TITLE.--This act may be cited as the "Redistricting Act".

SECTION 2. [NEW MATERIAL] DEFINITIONS.--As used in the Redistricting Act:

A. "commission" means the state redistricting commission;

B. "community of interest" means a contiguous population that shares common economic, social or cultural interests;

C. "district plan" means an entire plan of single-member districts for electing members to the United States house of representatives, the state house of representatives, the senate or HJC → ~~the public education commission~~ ←HJC HJC → any other state districts requiring redistricting ←HJC ;

D. "length-width compactness" means the absolute value of the difference between the length and the width of the district, as measured by the distance from the northernmost point or portion of the boundary of a district to the southernmost point or portion of the boundary of the same district and the distance from the westernmost point or portion

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of the boundary of the district to the easternmost point or portion of the boundary of the same district;

E. "lobbyist" means a person who is required to register as a lobbyist pursuant to the provisions of the Lobbyist Regulation Act;

F. "perimeter compactness" means the distance needed to traverse the perimeter boundary of a district;

G. "political party" means a political party that has been qualified in accordance with the provisions of the Election Code; and

H. "public official" means a person elected to an office of the executive or legislative branch of the state.

SECTION 3. [NEW MATERIAL] STATE REDISTRICTING COMMISSION CREATED--MEMBERSHIP--TERMS.--

A. The "state redistricting commission" is created.

B. The commission is comprised of seven members, appointed as follows:

(1) one commissioner appointed by the speaker of the house of representatives;

(2) one commissioner appointed by the minority floor leader of the house of representatives;

(3) one commissioner appointed by the president pro tempore of the senate;

(4) one commissioner appointed by the minority floor leader of the senate;

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(5) two commissioners appointed by the state ethics commission, who shall not HJC→be←HJC HJC→have been←HJC members of the largest or second largest political parties in the state HJC→at any time in the two years preceding appointment←HJC ; and

(6) one commissioner appointed by the state ethics commission, who shall be a retired justice of the New Mexico supreme court, or a retired judge of the New Mexico court of appeals, and who shall chair the commission.

HJC→C. The appointing authorities shall give due consideration to the cultural diversity of the state and to achieving geographical representation across the state in making appointments to the commission.←HJC

HJC→G.←HJC HJC→D.←HJC Commissioners shall be appointed not later than HJC→April←HJC HJC→July←HJC 1, 2021 and August 1 of each year ending in the number zero thereafter and shall serve until a district plan for each of New Mexico's congressional districts, the house of representatives, the senate and HJC→the public education commission←HJC HJC→any other state districts requiring redistricting←HJC is passed by the legislature and approved by the governor and legal challenges to the district plans, including appeals, if any, have been resolved.

HJC→D.←HJC HJC→E.←HJC When any member of the commission dies, resigns or no longer has the qualifications

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required for the commissioner's original appointment, the commissioner's position on the commission becomes vacant and the chair shall notify the original appointing authority of the vacant position. The vacancy shall be filled by appointment by the original appointing authority no later than fifteen days following notification of the vacancy.

HJC→E.←HJC HJC→F.←HJC The commission shall meet as necessary to carry out its duties pursuant to the Redistricting Act.

HJC→F.←HJC HJC→G.←HJC Commissioners are entitled to receive per diem and mileage as provided in the Per Diem and Mileage Act and shall receive no other compensation, perquisite or allowance.

SECTION 4. [NEW MATERIAL] COMMISSIONERS--QUALIFICATIONS--LIMITATIONS.--

A. To qualify for appointment to the commission, a person shall:

- (1) be a qualified elector of New Mexico; and
- (2) not be, or in the two years prior to appointment have been, in New Mexico, any of the following:
 - (a) a public official;
 - (b) a candidate for public office;
 - (c) a lobbyist;
 - (d) an office holder in a political party at the state or federal level;

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(e) a relative in the first degree of consanguinity of a member of congress, the house of representatives, the senate or HJC→~~the public education commission~~←HJC HJC→any other state districts requiring redistricting←HJC ; or

(f) an employee of congress, the legislative HJC→or executive←HJC branch of government or the public education commission.

B. Before entering upon the duties of the office of commissioner, a commissioner shall review the Redistricting Act and take the oath of office as provided in Article 20, Section 1 of the constitution of New Mexico.

SECTION 5. [NEW MATERIAL] COMMISSION--POWERS AND DUTIES.--

A. Beginning HJC→April←HJC HJC→July←HJC 1, 2021, and every August 1 of each year ending in the number zero thereafter, the commission shall:

(1) no later than HJC→~~October 15, 2021, and every September 1 of each year ending in the number one thereafter,~~←HJC HJC→one hundred fifty days after the state receives the results of the federal decennial census,←HJC adopt three to five district plans for each of:

(a) New Mexico's congressional districts;

(b) the house of representatives;

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(c) the senate; and

(d) HJC→~~the public education~~

~~commission~~←HJC HJC→any other state districts requiring
redistricting←HJC ;

(2) adopt the district plans as rules in accordance with the provisions of the State Rules Act;

(3) hold no fewer than six public meetings either virtually HJC→, if required by law,←HJC or in various regions of the state before issuing the district plans as proposed rules for public comment;

(4) hold no fewer than six public rule hearings, either virtually HJC→, if required by law,←HJC or in various regions of the state, for the purpose of adopting district plans;

(5) conduct all meetings pursuant to the requirements of the Open Meetings Act;

(6) contract for legal and technical assistance in the creation of alternative district plans; and

(7) compile, index, maintain and provide public access to the commission's record for each district plan it adopts.

B. Beginning HJC→April←HJC HJC→July←HJC 1, 2021, and every August 1 of each year ending in the number zero thereafter, the commission may:

(1) develop, adopt and promulgate the rules

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for public hearings; and

(2) hire staff and enter into contracts and any interagency agreements as necessary to accomplish the duties set forth in this section.

SECTION 6. [NEW MATERIAL] COMMISSION MEETINGS BEFORE PROPOSING DISTRICT PLANS.--

A. Before the commission issues proposed district plans for public comment, the commission shall hold no fewer than six public meetings at which the commission shall receive testimony, documents and information regarding the identification of communities of interest and other testimony, documents and information regarding the creation of district plans. The commission shall provide the public with notice not later than thirty days before these meetings, and the notice shall include information about how the public may participate and submit testimony, documents and information. The commission shall hold meetings either virtually or in various regions across the state, including in central New Mexico and in each of the four geographic quadrants of the state.

B. The commission shall compile, index, maintain and provide public access to all testimony, documents and information received in the meetings conducted before issuing proposed district plans for public comment.

C. The proposed district plans that the commission issues for public comment shall be based, in part, on the

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testimony, documents and information received.

SECTION 7. [NEW MATERIAL] DISTRICT PLANS--REQUIREMENTS AND PROHIBITIONS.--

A. When proposing or adopting district plans, the commission shall:

- (1) create district plans composed of single-member districts;
- (2) create district plans composed of contiguous territory; provided that districts that meet only at the points of adjoining corners are not contiguous;

HJC→and←HJC

- (3) comply with all applicable federal laws

HJC→;

- (4) create district plans that preserve communities of interest;

- (5) create district plans that consider tribal governments and tribal boundaries; and

- (6) create district plans that preserve cores of existing districts; provided that all other redistricting criteria are able to be met←HJC .

B. When proposing or adopting district plans, the commission may:

- (1) use, rely upon or reference precincts and HJC→may use, rely upon or reference←HJC units of population that are smaller than precincts HJC→when necessary to comply

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with federal law or to preserve communities of interest←HJC ;

and

(2) use, rely upon or reference the most recent federal decennial census data provided by the United States census bureau as well as other reliable sources of demographic data, as determined by a majority of the commission.

C. When proposing or adopting district plans, the commission shall not:

(1) propose or adopt district plans to favor a political party or incumbent;

(2) use, rely upon or reference partisan data, such as voting history or party registration data; provided that voting history in elections may be considered to ensure that the district plan complies with applicable federal law;

HJC→or←HJC

(3) create district plans HJC→to intentionally←HJC HJC→that←HJC dilute the representation of communities of interest HJC→; or

~~(4) create district plans to intentionally preserve the cores of existing districts; provided, however, that district plans may intentionally preserve the cores of existing districts so long as the district plan meets all other requirements provided by this section←HJC .~~

D. When proposing or adopting district plans for

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New Mexico's congressional districts, the commission shall ensure that congressional districts are as equal in population as practicable.

E. When proposing or adopting district plans for the house of representatives, the senate and HJC→~~the public education commission~~←HJC HJC→**any other state districts requiring redistricting**←HJC , the commission shall create districts that are as close to equal in population as possible; provided that any deviation from equal population across districts shall not exceed plus or minus five percent and shall be based on:

- (1) compliance with applicable federal law;
- (2) consideration of tribal government;
- (3) the avoidance of diluting the representation of communities of interest;
- (4) the avoidance of fragmenting governmental subdivisions; or
- (5) the preservation of the core of existing districts, provided that the district plan meets all other requirements provided by this section.

F. When a district plan satisfies all of the requirements provided by Subsections A through E of this section, the commission shall adopt those district plans that are most compact, as determined by a measure of length-width compactness or perimeter compactness. The absolute compactness

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values computed for individual districts may be cumulated for all districts in a plan to compare the overall compactness of two or more alternative redistricting plans for the state or for a portion of the state. The total perimeter distance computed for individual districts may be cumulated for all districts in a plan to compare the overall compactness of two or more alternative redistricting plans for the state or for a portion of the state.

G. Based on length-width compactness, a district shall be most compact when the length of the district and the width of the district are equal.

SECTION 8. [NEW MATERIAL] COMMISSION ADOPTION OF DISTRICT PLANS.--The commission shall adopt three to five district plans for each of New Mexico's congressional districts, the house of representatives, the senate and HJC→~~the public education~~ commission←HJC HJC→any other state districts requiring redistricting←HJC at an open meeting. After the commission adopts the district plans, the commission shall:

A. provide written evaluations of each district plan that address the satisfaction of the requirements set forth in the Redistricting Act, the ability of racial and language minorities to elect candidates of their choice, a measure of partisan fairness and the preservation of communities of interest; and

B. indicate which district plan for each of New

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Mexico's congressional districts, the house of representatives, the senate and HJC→~~the public education commission~~←HJC HJC→any other state districts requiring redistricting←HJC best satisfies the requirements of Section 7 of the Redistricting Act. The commission shall explain its indication for each indicated district plan in the written evaluation accompanying the indicated district plan.

HJC→~~SECTION 9. [NEW MATERIAL] LEGISLATIVE SELECTION OF DISTRICT PLANS.--~~

~~A. The commission shall deliver its adopted district plans for New Mexico's congressional districts, the house of representatives, the senate and the public education commission, all accompanying written evaluations and all accompanying concise explanatory statements to the chief clerk of the senate and the chief clerk of the house by October 15, 2021, and every September 1 of each year ending in the number one thereafter.~~

~~B. The legislature may select one district plan from each set of district plans and pass the selected district plans without amendment and present the plans to the governor for approval.~~

~~C. If the legislature does not select one district plan from any one set of district plans pursuant to Subsection B of this section, then the legislature shall select, pass without amendment and present to the governor for approval the~~

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~~district plan for that set that the commission indicated best satisfies the requirements of Section 7 of the Redistricting Act.~~ ←HJC

HJC → SECTION 9. [NEW MATERIAL] LEGISLATIVE SELECTION OF DISTRICT PLANS.--

A. The commission shall deliver its adopted district plans and accompanying written evaluations and all accompanying concise explanatory statements to the legislature by October 30, 2021, or as soon thereafter as practicable, and September 1 of each year ending in the number one thereafter.

B. The legislature shall receive the adopted district plans for consideration in the same manner as for legislation recommended by interim legislative committees. ←HJC

SECTION 10. [NEW MATERIAL] JUDICIAL REVIEW.--

A. A person who submitted data, views or arguments orally or in writing at a public hearing conducted by the commission may file a notice of appeal in the supreme court asking for a review of any district plan adopted by the commission. A notice of appeal shall be filed within HJC → thirty ←HJC HJC → eleven ←HJC days after the commission adopts the district plan being appealed. The notice of appeal shall name the commission as appellee and shall identify the district plan from which the appeal is taken. A person who submitted data, views or arguments orally or in writing at a public rule hearing conducted by the commission and whose

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rights may be directly affected by the appeal may appear and become a party, or the supreme court may, upon proper notice, order any person to be joined as a party.

B. Upon the filing of a notice of appeal, the appellant shall cause a copy of the notice of appeal to be served upon the commission in the manner prescribed by the rules of appellate procedure. Within HJC→thirty←HJC HJC→eleven←HJC days after service of the notice of appeal or such further time as the supreme court may specify, the commission shall certify to the supreme court the complete commission rulemaking record; provided that the parties and the commission may stipulate that only a specified portion of the commission rulemaking record shall be certified to the supreme court for review on appeal.

C. The appeal shall be heard on the commission rulemaking record, and the supreme court shall not permit the introduction of new evidence addressed to any of the issues presented at the hearing before the commission.

D. The burden shall be on the appellant to show that the district plan appealed from violates applicable law, is arbitrary or capricious or is not supported by substantial evidence.

E. The supreme court shall have no power to modify the district plan appealed from, but shall either affirm or annul and vacate the same. If the supreme court either affirms

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or annuls a district plan, the supreme court may remand the matter to the commission for any further necessary administrative proceedings. Proceedings in the supreme court shall be governed by the provisions of the Redistricting Act and by the rules of appellate procedure.

F. During the pendency of an appeal, the supreme court in its discretion may stay or suspend adoption by the legislature of any district plan subject to appeal.

G. The supreme court shall not award fees to the prevailing party unless required by federal law.

HJC→H. The district courts shall not have jurisdiction over matters related to any district plan adopted by the commission.←HJC

HJC→~~SECTION 11. EMERGENCY.--It is necessary for the public peace, health and safety that this act take effect immediately.~~←HJC

HJC→SECTION 11. Section 1-3-12 NMSA 1978 (being Laws 1984 (1st S.S.), Chapter 3, Section 4, as amended) is amended to read:

"1-3-12. ADJUSTING PRECINCT BOUNDARIES.--

A. Before each federal decennial census, every precinct shall comply with the requirements of Section 1-3-1 NMSA 1978, and if necessary its boundary shall be adjusted to coincide with a feature or a boundary that is:

(1) shown on the standard base maps developed

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pursuant to Subsection B of this section;

(2) a designated census block boundary on the proposed federal PL 94-171 2020 census block maps; or

(3) approved by the secretary of state and the United States bureau of the census.

B. Prior to commencement of the federal decennial census, the secretary of state shall have prepared and shall furnish to each county clerk standard base maps of the county. The standard base map for urban and nonurban areas of the county shall, as nearly as practical, show:

(1) all state and federal highways;

(2) all numbered and named county roads that have been certified to the department of transportation;

(3) all military installation boundaries and federal and state prison boundaries;

(4) all major railroad lines;

(5) federal, state and county political boundaries, municipal boundaries and school district boundaries;

(6) all streets within urban areas; and

(7) other major terrain features, such as flowing rivers and streams, arroyos, power lines, pipelines, roads, trails and ridgelines and other acceptable census block boundaries.

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C. The board of county commissioners, upon receipt of the standard base maps from the secretary of state and upon the recommendation of the county clerk, shall:

(1) adjust all precinct boundaries to coincide with numbered or named street boundaries or suitable visible terrain features shown on the standard base map; provided that the precincts shall be composed of contiguous and compact areas, and state, county, municipal, school district and other special district or political boundary lines shall serve as precinct boundaries whenever possible; and

(2) upon the completion of the precinct boundary adjustments as required in this section, indicate on the standard base maps the boundaries for both urban and nonurban precincts and, together with a written description of the precincts, shall send an electronic copy to the secretary of state for approval.

D. The precincts shown upon the standard base maps submitted pursuant to the provisions of this section and as revised and approved by the secretary of state pursuant to the Precinct Boundary Adjustment Act shall become the official precincts of each county for the 2021 redistricting. For the 2022 and subsequent statewide elections, changes in precincts shall be made in accordance with the provisions of Chapter 1, Article 3 NMSA 1978.

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E. In the same calendar year in which the state receives the results of a federal decennial census, the state legislature shall redistrict federal representative districts, each chamber of the legislature [~~public regulation commission districts, public education commission districts~~] and any other state districts requiring redistricting; provided that if the state does not receive the results of a federal decennial census by July 1 in a calendar year ending in one, the legislature may redistrict in the calendar year ending in two.

F. In the calendar year following the receipt of the results of a federal decennial census, each local public body subject to districting shall create or redraw districts for the local public body. A local public body, when creating or redrawing districts, shall not split a precinct into two or more districts for any elected office unless necessary to comply with federal law or to preserve communities of interest."

SECTION 12. REPEAL.--Laws 2020, Chapter 9, Section 1 is repealed.←HJC