

SENATE BILL 199

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; DECLARING AN EMERGENCY.

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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 the public education commission;
- 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 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;

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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;

(5) two commissioners appointed by the state ethics commission, who shall not be members of the largest or second largest political parties in the state; and

(6) one commissioner appointed by the state ethics commission, who shall be a retired justice of the New

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Mexico supreme court, or a retired judge of the New Mexico court of appeals, and who shall chair the commission.

C. Commissioners shall be appointed not later than Sfll→April←Sfll Sfll→June←Sfll 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 the public education commission is passed by the legislature and approved by the governor and legal challenges to the district plans, including appeals, if any, have been resolved.

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

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

F. 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.--

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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;  
(e) a relative in the first degree of consanguinity of a member of congress, the house of representatives, the senate or the public education commission;  
or

(f) an employee of congress, the legislative 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 April 1, 2021, and every August 1 of each year ending in the number zero thereafter, the commission

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shall:

(1) no later than October 15, 2021, and every September 1 of each year ending in the number one thereafter, adopt three to five district plans for each of:

- (a) New Mexico's congressional districts;
- (b) the house of representatives;
- (c) the senate; and
- (d) the public education commission;

(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 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 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.

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B. Beginning April 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 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

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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 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; and
- (3) comply with all applicable federal laws.

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

- (1) use, rely upon or reference precincts and units of population that are smaller than precincts; 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

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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;

(3) create district plans to intentionally dilute the representation of communities of interest; 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.

D. When proposing or adopting district plans for 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 the public education commission, 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;

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- (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 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**

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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 the public education commission 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 Mexico's congressional districts, the house of representatives, the senate and the public education commission 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.

**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

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

**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 thirty 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

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conducted by the commission and whose 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 thirty 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.

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