

1 SENATE BILL 199

2 **55TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2021**

3 INTRODUCED BY

4 Gerald Ortiz y Pino and Mark Moores

5  
6  
7  
8  
9  
10 AN ACT

11 RELATING TO REDISTRICTING; ENACTING THE REDISTRICTING ACT;  
12 CREATING THE STATE REDISTRICTING COMMISSION; DIRECTING THE  
13 COMMISSION TO DEVELOP DISTRICT PLANS FOR APPROVAL BY THE  
14 LEGISLATURE AND GOVERNOR; PROVIDING DUTIES; ESTABLISHING  
15 REQUIREMENTS FOR CREATING DISTRICT PLANS AND PUBLIC  
16 PARTICIPATION IN THE PROCESS; PROVIDING PROCEDURES TO APPEAL A  
17 SELECTED PLAN; DECLARING AN EMERGENCY.

18  
19 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

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

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

24 A. "commission" means the state redistricting  
25 commission;

.218835.1

underscored material = new  
[bracketed material] = delete

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

4           C. "district plan" means an entire plan of  
5 single-member districts for electing members to the United  
6 States house of representatives, the state house of  
7 representatives, the senate or the public education commission;

8           D. "length-width compactness" means the absolute  
9 value of the difference between the length and the width of the  
10 district, as measured by the distance from the northernmost  
11 point or portion of the boundary of a district to the  
12 southernmost point or portion of the boundary of the same  
13 district and the distance from the westernmost point or portion  
14 of the boundary of the district to the easternmost point or  
15 portion of the boundary of the same district;

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

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

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

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

underscored material = new  
[bracketed material] = delete

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

3           A.   The "state redistricting commission" is created.

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

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

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

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

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

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

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

21           C.   Commissioners shall be appointed not later than  
22   April 1, 2021 and August 1 of each year ending in the number  
23   zero thereafter and shall serve until a district plan for each  
24   of New Mexico's congressional districts, the house of  
25   representatives, the senate and the public education commission

.218835.1

underscored material = new  
[bracketed material] = delete

1 is passed by the legislature and approved by the governor and  
2 legal challenges to the district plans, including appeals, if  
3 any, have been resolved.

4 D. When any member of the commission dies, resigns  
5 or no longer has the qualifications required for the  
6 commissioner's original appointment, the commissioner's  
7 position on the commission becomes vacant and the chair shall  
8 notify the original appointing authority of the vacant  
9 position. The vacancy shall be filled by appointment by the  
10 original appointing authority no later than fifteen days  
11 following notification of the vacancy.

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

14 F. Commissioners are entitled to receive per diem  
15 and mileage as provided in the Per Diem and Mileage Act and  
16 shall receive no other compensation, perquisite or allowance.

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

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

- 21 (1) be a qualified elector of New Mexico; and  
22 (2) not be, or in the two years prior to  
23 appointment have been, in New Mexico, any of the following:  
24 (a) a public official;  
25 (b) a candidate for public office;

.218835.1

underscored material = new  
[bracketed material] = delete

1 (c) a lobbyist;

2 (d) an office holder in a political  
3 party at the state or federal level;

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

8 (f) an employee of congress, the  
9 legislative branch of government or the public education  
10 commission.

11 B. Before entering upon the duties of the office of  
12 commissioner, a commissioner shall review the Redistricting Act  
13 and take the oath of office as provided in Article 20, Section  
14 1 of the constitution of New Mexico.

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

17 A. Beginning April 1, 2021, and every August 1 of  
18 each year ending in the number zero thereafter, the commission  
19 shall:

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

23 (a) New Mexico's congressional  
24 districts;

25 (b) the house of representatives;

.218835.1

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

- (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.

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

underscored material = new  
[bracketed material] = delete

1 duties set forth in this section.

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

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

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

21 C. The proposed district plans that the commission  
22 issues for public comment shall be based, in part, on the  
23 testimony, documents and information received.

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

.218835.1

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

3                   (1) create district plans composed of  
4 single-member districts;

5                   (2) create district plans composed of  
6 contiguous territory; provided that districts that meet only at  
7 the points of adjoining corners are not contiguous; and

8                   (3) comply with all applicable federal laws.

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

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

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

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

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

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



1 (3) create district plans to intentionally  
2 dilute the representation of communities of interest; or

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

8 D. When proposing or adopting district plans for  
9 New Mexico's congressional districts, the commission shall  
10 ensure that congressional districts are as equal in population  
11 as practicable.

12 E. When proposing or adopting district plans for  
13 the house of representatives, the senate and the public  
14 education commission, the commission shall create districts  
15 that are as close to equal in population as possible; provided  
16 that any deviation from equal population across districts shall  
17 not exceed plus or minus five percent and shall be based on:

- 18 (1) compliance with applicable federal law;  
19 (2) consideration of tribal government;  
20 (3) the avoidance of diluting the  
21 representation of communities of interest;  
22 (4) the avoidance of fragmenting governmental  
23 subdivisions; or  
24 (5) the preservation of the core of existing  
25 districts, provided that the district plan meets all other

underscored material = new  
[bracketed material] = delete

1 requirements provided by this section.

2 F. When a district plan satisfies all of the  
3 requirements provided by Subsections A through E of this  
4 section, the commission shall adopt those district plans that  
5 are most compact, as determined by a measure of length-width  
6 compactness or perimeter compactness. The absolute compactness  
7 values computed for individual districts may be cumulated for  
8 all districts in a plan to compare the overall compactness of  
9 two or more alternative redistricting plans for the state or  
10 for a portion of the state. The total perimeter distance  
11 computed for individual districts may be cumulated for all  
12 districts in a plan to compare the overall compactness of two  
13 or more alternative redistricting plans for the state or for a  
14 portion of the state.

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

18 SECTION 8. [NEW MATERIAL] COMMISSION ADOPTION OF DISTRICT  
19 PLANS.--The commission shall adopt three to five district plans  
20 for each of New Mexico's congressional districts, the house of  
21 representatives, the senate and the public education commission  
22 at an open meeting. After the commission adopts the district  
23 plans, the commission shall:

24 A. provide written evaluations of each district  
25 plan that address the satisfaction of the requirements set

.218835.1

underscoring material = new  
~~[bracketed material] = delete~~

1     forth in the Redistricting Act, the ability of racial and  
2     language minorities to elect candidates of their choice, a  
3     measure of partisan fairness and the preservation of  
4     communities of interest; and

5             B.    indicate which district plan for each of New  
6     Mexico's congressional districts, the house of representatives,  
7     the senate and the public education commission best satisfies  
8     the requirements of Section 7 of the Redistricting Act.  The  
9     commission shall explain its indication for each indicated  
10    district plan in the written evaluation accompanying the  
11    indicated district plan.

12             SECTION 9.  [NEW MATERIAL] LEGISLATIVE SELECTION OF  
13    DISTRICT PLANS.--

14             A.  The commission shall deliver its adopted  
15    district plans for New Mexico's congressional districts, the  
16    house of representatives, the senate and the public education  
17    commission, all accompanying written evaluations and all  
18    accompanying concise explanatory statements to the chief clerk  
19    of the senate and the chief clerk of the house by October 15,  
20    2021, and every September 1 of each year ending in the number  
21    one thereafter.

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

.218835.1

underscoring material = new  
~~[bracketed material]~~ = delete

1           C. If the legislature does not select one district  
2 plan from any one set of district plans pursuant to Subsection  
3 B of this section, then the legislature shall select, pass  
4 without amendment and present to the governor for approval the  
5 district plan for that set that the commission indicated best  
6 satisfies the requirements of Section 7 of the Redistricting  
7 Act.

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

9           A. A person who submitted data, views or arguments  
10 orally or in writing at a public hearing conducted by the  
11 commission may file a notice of appeal in the supreme court  
12 asking for a review of any district plan adopted by the  
13 commission. A notice of appeal shall be filed within thirty  
14 days after the commission adopts the district plan being  
15 appealed. The notice of appeal shall name the commission as  
16 appellee and shall identify the district plan from which the  
17 appeal is taken. A person who submitted data, views or  
18 arguments orally or in writing at a public rule hearing  
19 conducted by the commission and whose rights may be directly  
20 affected by the appeal may appear and become a party, or the  
21 supreme court may, upon proper notice, order any person to be  
22 joined as a party.

23           B. Upon the filing of a notice of appeal, the  
24 appellant shall cause a copy of the notice of appeal to be  
25 served upon the commission in the manner prescribed by the

.218835.1

underscoring material = new  
~~[bracketed material] = delete~~

1 rules of appellate procedure. Within thirty days after service  
2 of the notice of appeal or such further time as the supreme  
3 court may specify, the commission shall certify to the supreme  
4 court the complete commission rulemaking record; provided that  
5 the parties and the commission may stipulate that only a  
6 specified portion of the commission rulemaking record shall be  
7 certified to the supreme court for review on appeal.

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

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

16 E. The supreme court shall have no power to modify  
17 the district plan appealed from, but shall either affirm or  
18 annul and vacate the same. If the supreme court either affirms  
19 or annuls a district plan, the supreme court may remand the  
20 matter to the commission for any further necessary  
21 administrative proceedings. Proceedings in the supreme court  
22 shall be governed by the provisions of the Redistricting Act  
23 and by the rules of appellate procedure.

24 F. During the pendency of an appeal, the supreme  
25 court in its discretion may stay or suspend adoption by the

.218835.1

underscoring material = new  
~~[bracketed material] = delete~~

1 legislature of any district plan subject to appeal.

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

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

6 - 14 -

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25