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## FISCAL IMPACT REPORT

<b>SPONSOR</b> <u>SRC</u>	<b>ORIGINAL DATE</b> 03/05/21		<b>LAST UPDATED</b> <u>03/14/21</u>	<b>HB</b>	
<b>SHORT TITLE</b> <u>Redistricting Committee</u>				<b>SB</b>	<u>15&amp;199/SRCS/aSFI#1/ aHJC/ec</u>
				<b>ANALYST</b>	<u>Gaussoin</u>

### ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY21	FY22	FY23	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
<b>Total</b>	See Fiscal Implications					

(Parenthesis ( ) Indicate Expenditure Decreases)

Conflicts with House Bill 211. Relates to Senate Bills 4, 304, and 389 and House Bills 79 and 290.

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Attorney General (NMAG)

Secretary of State (SOS)

State Ethics Commission (SEC)

Administrative Office of the Courts (AOC)

### SUMMARY

#### Synopsis of HJC Amendment

The House Judiciary Committee amendment to the Senate Rule Committee substitute for Senate Bills 15 and 199 as amended incorporates the title and text of Senate Bill 4, concerning the redrawing the precinct boundaries, and adds provisions and language to the proposed Redistricting Act affecting tribal participation, redistricting committee membership, and the degree to which the populations of districts can be unequal.

Senate Bill 4. As described in the fiscal impact report on Senate Bill 4, the purpose of the legislation is primarily to amend the Precinct Boundary Adjustment Act to adjust the timeline for the delay in the receipt of federal decennial census data; however, SB4 also adds language to the act to recognize the boundaries of Native American nations, tribes, and pueblos as part of its existing consideration of geo-political boundaries.

Changes to the Proposed Redistricting Act. The House Judiciary Committee amendment also

adjusts the SB15/SRCS by

- Requiring that appointments to the Citizen Redistricting Committee be made with “due regard” to cultural and geographic diversity and that the committee hold at least one of its mandatory six meetings on tribal land;
- Allowing the use of other reliable data, approved by a majority of the redistricting committee, for determining the population of a district, a reflection of concerns the census might have undercounted tribal and certain other populations;
- Adding employees of the state executive to the list of people who cannot serve on the redistricting committee;
- Clarifying the use of virtual meetings in case of a public health emergency;
- Clarifying timeline dates to reflect the federal delay in census information; and
- Doubling the allowance for deviation in the population of each district from 5 percent to 10 percent.

#### Synopsis of SFI#1 Amendment

The Senate Floor #1 amendment to the Senate Rules Committee substitute for Senate Bills 15 and 199 pushes back the deadline for appointing members to the 2021 redistricting committee to June. The date in the unamended substitute bill was April.

#### Synopsis of Original Bill

The Senate Rules Committee substitute for Senate Bills 15 and 199 (SB15/SRCS) would create the Redistricting Act and a seven-member Citizen Redistricting Committee tasked with proposing plans for redistricting congressional and legislative voting districts and the voting districts of other state offices requiring redistricting. The committee would present three plans for each to the Legislature with written evaluations by October 30, 2021, or as soon as practicable, and the Legislature would consider the plans “in the same manner as for legislation recommended by interim committees.”

The majority and minority leadership in the House and the Senate would appoint four of the committee members, and the State Ethics Commission would appoint two members, who could not be members of the Democratic or Republican parties, and the chair, who must be a retired justice of the New Mexico Supreme Court or a retired judge of the New Mexico Court of Appeals. No more than three committee members can be from the same political party, and no member can have changed party registration while serving or in the two years prior to appointment “in such a manner that the member's prior party registration would cause one political party to have more than three members.” Members must be voters and cannot be a public official while serving or in the two years prior to appointment, a political candidate, lobbyist, political party office holder, or an employee or relative of a member of Congress, the Legislature, or state office to be redistricted.

The substitute bill provides for the appointment of committee members by April 1 with terms ending after the committee provides its plans to the Legislature. It further provides that future committee members will be appointed by August 1 of years ending with the number zero to provide for future redistricting efforts, which follow the decennial U.S. census, and their terms would end after redistricting plans are complete by September 1 of each year ending with the number one.

The committee would be required to draw districts that are as equal in population as possible, contiguous, and “reasonably compact”; that preserve “communities of interest” when possible; that are consistent with “traditional districting principles”; that reflect political and geographic boundaries; and that may “preserve the core of existing districts” to the extent possible. The districts must comply with the Voting Rights Act of 1965 and could not be drawn to dilute minority voting strength.

The committee would be required to hold no fewer than six open meetings, either virtually or in various regions of the state, before publishing its district plans for public comment.

This bill contains an emergency clause and would become effective immediately on signature by the governor.

### **FISCAL IMPLICATIONS**

The Senate Rules Committee substitute for SB15 and SB199 contains no appropriation for the significant cost of organizing and holding open meetings with the public; compiling, indexing, maintaining, and providing public access to the committee’s record; compiling public comment; providing per diem and mileage for members; and hiring or contracting for any necessary technical or legal services – all required or permitted in the bill. Senate Bill 389 appropriates \$300 thousand from the general fund to the “state redistricting commission” for expenditure in FY22 and FY23 contingent on passage of SB199 or House Bill 211, identical until Senate Bill 199 was substituted. While that contingency possibly would be met with passage of the substitute, it is unclear if the appropriation would still apply because SB199 no longer creates a state redistricting commission.

In addition, unlike other redistricting legislation under consideration, SB15/SRCS does not constrain legislative action on any redistricting proposals, specifically saying the plans will be treated like any other legislation, subject to amendment or replacement. Both in 2001 and 2011, redistricting bills introduced in the Legislature failed or were vetoed and redistricting became a matter for the courts at a reported total cost close to \$10 million.<sup>1,2</sup>

The Administrative Office of the Courts anticipates “a minimal administrative cost for statewide update, distribution, and documentation of statutory changes” but notes, “Any additional fiscal impact on the judiciary would be proportional to the enforcement of this law and any necessary participation of the Supreme Court should redistricting plans that move through the Legislature fail to pass or plans passed by the Legislature be vetoed by the governor.”

The State Ethics Commission anticipates minimal fiscal impact from its involvement with the committee, and the Secretary of State states the impact of its office “is difficult to estimate.”

### **SIGNIFICANT ISSUES**

Nationally and locally, redistricting efforts have been criticized for being partisan and opaque and the last two efforts in New Mexico, in 2001 and 2011, resulted in legal challenges. The

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<sup>1</sup> [www.nmlegis.gov/Redistricting/](http://www.nmlegis.gov/Redistricting/)

<sup>2</sup> <https://www.abqjournal.com/1537176/commission-would-ensure-1-person-1-vote.html>

Secretary of State notes the committee and public meetings created in SB15/SRCS should bring greater transparency to the process. However, the Administrative Office of the Courts, while stating SB15/SRCS creates a redistricting process that might prevent litigation, notes any resulting redistricting plans could still be open to legal challenges.

Notably, the House Judiciary Committee amendments do not address concerns with SB15/SRCS raised by advocates of competing redistricting proposals that redistricting should specifically exclude consideration of incumbency or political party membership. The HJC amendments leave in place language that specifically allows consideration of “partisan fairness” and preservation of “the core of existing districts” in the redrawing of district lines.

In addition, while SB15/SRCS creates a nonpartisan redistricting committee, that committee has no authority over the final plans. The original SB199 attempted to address the politicization of redistricting by limiting the Legislature to either accepting or rejecting a selection of plans proposed by an independent commission and by allowing the commission to select a plan if the Legislature could not come to an agreement. Supporters of the original SB15, described as a “status quo” bill, contend that provision in practice would have usurped the Legislature’s constitutional obligation to vote on all legislation. Notably, the New Mexico Constitution states the Legislature “may” reapportion its membership and it is presumed the Legislature is responsible for reapportionment generally, but as a practical matter, the courts have reapportioned voting districts for two decades.

In its analysis of the original SB199, AOC<sup>3</sup> addresses concerns with the constraints that were in the original SB199 in comments that might be relevant in consideration of the substitute:

It could be argued that the original SB199’s Redistricting Act’s judicial review process violates the separation of powers doctrine outlined in Article III, Section 1 of the Constitution of New Mexico, ceding to the courts what is a basic legislative function of redistricting. Under SB199, however, the Supreme Court is required to either affirm or annul the district plan appealed from and is prohibited from modifying the plan. At the same time, the Supreme Court is permitted, in its discretion, to stay or suspend adoption by the legislature of any district plan subject to appeal.

Likewise, it could be argued that the original SB199’s requirement that the legislature adopt the plan the commission has identified as best satisfying a set of criteria when the legislature does not select one of the plans proposed by the commission, also usurps the legislature’s constitutional obligation to vote on all legislation. Importantly, the substitute bill removes the judicial review process and does not require the Legislature to adopt the plan identified by the commission as the best plan, in the event the Legislature does not select one of the plans proposed by the commission.

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<sup>3</sup> AOC suggests additional readings on redistricting reform from the Brennan Center, which is “working with states to make sure the redistricting process is guided by transparency, bipartisanship and public input – so that maps reflect the will of voters, allow for competitive races, and fairly represent communities of color” – <https://www.brennancenter.org/issues/gerrymandering-fair-representation/redistricting> and <https://www.brennancenter.org/issues/gerrymandering-fair-representation/redistricting/redistricting-reform>. The office also recommends redistricting research compiled by the National Conference of State Legislatures at <https://www.ncsl.org/research/redistricting.aspx> and the NCSL’s article on U.S. Supreme Court decisions, <https://www.ncsl.org/research/redistricting/redistricting-and-the-supreme-court-the-most-significant-cases.aspx>.

## **PERFORMANCE IMPLICATIONS**

AOC reports the substitute bill might impact its performance measures on cases disposed of as a percent of cases filed and percent change in case filings by case type.

## **ADMINISTRATIVE IMPLICATIONS**

The Secretary of State suggests the administrative burden of implementing redistricting could be eased if final data files are delivered to the SOS in an electronic, geographic information system format.

## **CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP**

As amended, the Senate Rules Committee substitute for SB15 and SB199 now includes the provisions of Senate Bill 4, setting precinct boundaries.

The substitute conflicts with HB211, which was a duplicate of the original SB199 and would create an independent, nonpartisan redistricting commission with greater authority and more extensive parameters on the creation of voting districts.

SB15/SRCS also relates to SB304, requiring geographic information system be provided to voting districts; HB79, allowing independent voters to vote in primaries; and HB290, creating a committee to study how to purge invalid voters from voter rolls.

## **TECHNICAL ISSUES**

Senate Bill 389 appropriates \$300 thousand from the general fund to a “state redistricting commission” for expenditure in FY22 and FY23 contingent on passage of SB199 or House Bill 211. It is unclear if the appropriation would still apply because SB199 no longer creates a state redistricting commission.

## **WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL**

Without passage of some authorization of a redistricting process, it is unclear how redistricting will occur. The Attorney General, referencing *Reynolds v. Simms*, 377U.S. 533, 579 (1964), points out the purpose of redistricting is to ensure substantially equal representation based on population across voting districts. “Failure to redistrict may result in legislative districts that do not adhere to one-person, one-vote standards.”

HG/sb/rl/al