

Fiscal impact reports (FIRs) are prepared by the Legislative Finance Committee (LFC) for standing finance committees of the NM Legislature. The LFC does not assume responsibility for the accuracy of these reports if they are used for other purposes.

Current FIRs (in HTML & Adobe PDF formats) are available on the NM Legislative Website (legis.state.nm.us). Adobe PDF versions include all attachments, whereas HTML versions may not. Previously issued FIRs and attachments may be obtained from the LFC in Suite 101 of the State Capitol Building North.

FISCAL IMPACT REPORT

ORIGINAL DATE 02/25/11

SPONSOR Griego, E. LAST UPDATED _____ HB _____

SHORT TITLE Independent Redistricting Commission Act SB 563

ANALYST Graeser

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY11	FY12		
\$1,500		Nonrecurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

Note: HB 1, the feed bill (Laws 2011, Chapter 1) of this session contains a \$1,500.0 appropriation from the general fund to the legislative council service for expenditure in fiscal years 2011 through 2013 for legal and technical services and other expenses related to redistricting.

SOURCES OF INFORMATION

LFC Files

Responses Received From

SUMMARY

Synopsis of Bill

Senate Bill 563 appropriates \$1,500.0 from the general fund to the legislative council service for the purpose of funding the activities of the independent redistricting commission.

Senate Bill 563 proposes to create an independent redistricting commission and that the members of the independent redistricting commission are required to create redistricting plans for congressional and state legislative districts. Once the plans have been created by the independent redistricting commission, the legislature may approve or disapprove the plans as submitted. While the immediate effect of the bill would be to redistrict based on the 2010 census, the bill is general. This independent redistricting commission would become the method of redistricting following every decennial census. The membership would be selected from among “qualified registered electors who have been continuously registered members of the same political party for five or more years.” Members would be selected as follows:

- Two members selected by the president pro tempore of the senate;
- Two members selected by the speaker of the house of representatives;
- One member selected by the house floor leader;

Senate Bill 563 – page 2

- One member selected by the senate floor leader;
- One member selected by the house minority floor leader;
- One member selected by the senate minority floor leader.

The eight appointed commissioners will elect two co-chairs from the membership. These co-chairs must be of different parties.

The bill provides guidelines for the methods that the commission must adopt to create the various districting plans.

The commissioners are entitled to per diem and mileage at the IRS rate for Santa Fe.

If passed by a 2/3rd majority in both houses, the bill would become effective on signing. Appointments to the commission would be made by June 20, 2011 and the redistricting plans provided to the legislature by September 1, 2011.

FISCAL IMPLICATIONS

The appropriation of \$1,500.0 contained in this bill is a non-recurring expense to the general fund. Any unexpended or unencumbered balance remaining at the end of FY 12 shall revert to the general fund.

This same amount of money has been appropriated for the same purpose in HB 1 (Laws 2011, Chapter 1).

The IRS mileage reimbursement rate for 2011 will be \$0.51 per mile, up from \$0.50 per mile in 2010. The standard (“low”) IRS per diem rate, applicable to Santa Fe will be \$163 (\$111 for lodging and \$52 for M&IE) for 2011. Assuming all eight members spend 30 days in Santa Fe and travel an average of 150 miles roundtrip for ten round trips, the total per diem and mileage cost would be around \$45.0.

The technical, analytical work, which in the past has been contracted to Research and Polling of Albuquerque, would probably exceed \$1 million leaving some margin for challenges and/or paid staff.

SIGNIFICANT ISSUES

The criteria for process, in section 3 of the bill, are as follows:

- 1) Begin with the creation of districts of equal population in a geometric or grid pattern across the state;
- 2) Adjust the grid boundaries to comply with:
 - a. federal constitutional and statutory requirements (i.e. balanced as to race and ethnicity);
 - b. equal populations to the extent practicable;
 - c. contiguous and compact districts to the extent practicable;
 - d. respecting communities of interest;
 - e. use visible geographic features and municipal and county boundaries when practicable;
 - f. districts should not divide precincts;

Senate Bill 563 – page 3

- g. “competitive districts shall be favored where to do so would create no significant detriment to the other criteria;
- 3) Party registration and voting history data will not be included in the data used to form the district plan, but may be used to test districting maps for “competitive districts”. Places of residence of incumbents or candidates shall not be identified or considered.

Establishing an independent redistricting commission is apparently an attempt to keep the adopted plan out of court.

In 2002, the enacted plan for reapportioning congressional districts (1-15-15 NMSA 1978) was declared malapportioned and, therefore, unconstitutional in *Jepsen v. Vigil-Giron*, D-0101-CV-2001-02177 (1st Dist. Ct., filed January 8, 2002).

Because the initial plan was held to be unconstitutional, the 1st district court approved a constitutionally valid plan. This plan is in statute as 1-15-15.1 NMSA 1978.

In 1991, the enacted plan for reapportioning State House of Representative’s districts, contained in Sections 2-7C-1 to 2-7C-78 NMSA 1978, as enacted by Laws 1991 (1st S.S), Chapter 2, was held to be malapportioned and, therefore, unconstitutional in *Jepson v. Vigil-Giron*, D-0101-CV-2001-02177 (1st Dist. Ct., filed January 24, 2002). The court approved and adopted a redistricting plan, which is set out as 2-7D-1 NMSA 1978.

According to the AOC in its comments on HJR-21:

Recently several states have attempted to take the politics out of the redistricting process in order to create congressional and legislative districts that fairly represent the interests of the state’s various communities and minority groups, yet foster a health political environment in races for elective office. Thirteen states have adopted some form of independent redistricting commission, with one of the newest being New Mexico’s neighbor, Arizona. These states believe the reapportionment process in 2011 will strengthen public confidence in government after the publication of the results of the 2010 Census.

The criteria for use in redrawing district lines provided in HJR 21’s Subsection G seem to fulfill the conditions established by the state district court in 2002 in the two *Jepsen v. Vigil-Giron* redistricting cases when finally approving the Legislature’s several plans. Criteria at that time included equalizing population in each district (one person/one vote); districts compact and contiguous; existing county and municipal boundaries maintained to the extent possible; percentages of effective Hispanic and Native American majority districts kept, subject to Voting Rights Act compliance; and partisan fairness and political competition promoted. The court found it inappropriate for a court “to make radical or partisan changes unless the law requires those changes to be made.” (*Jepsen v. Vigil-Giron*, No. D0101 CV 2001 02177, First Judicial District Court, Santa Fe, January 2 and January 24, 2002)

Redistricting and reapportionment stem from Article 1, Sec. 2 of the US Constitution and Sec. 2 of the 14th Amendment requiring that the decennial census provide statistical data for state-drawn congressional district lines. Since 1962, the US Supreme Court has ruled that legislative and congressional redistricting cases are subject to review by the courts; and cases typically involve the population within proposed districts and the dilution of voter strength in minority districts. In New Mexico, the scope has been expended beyond race and color to include members of language minority groups in certain jurisdictions.

Senate Bill 563 – page 4

Redistricting has had a turbulent history in New Mexico, with several constitutional amendments enacted to resolve the problem of drawing boundary lines appropriately. Cases have been litigated in both state and federal court since the 1960s, with the exception of the 1990 redistricting plans.

The US Census Bureau indicates it will release census data to New Mexico on March 23, 2011. By law, redistricting must be completed by the next Congressional election in 2012.

CONFLICTS, DUPLICATES, COMPANIONS

HJR 21 proposes a constitutional amendment to require congressional and state house and senate districts to be proposed by an independent bipartisan commission. The legislature would not have the right to select or approve alternative plans. The CA also requires public hearing and comment.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

The legislature will convene a legislative committee to prepare various plans and maps for congressional districts, house districts and senate districts. Apparently, in past years, the redistricting process has been ad hoc and somewhat chaotic. The independent redistricting commission proposed in this bill might ensure a fairer plan that would pass constitutional muster.

LG/mew