

**First Regular Session
Seventy-third General Assembly
STATE OF COLORADO**

REVISED

*This Version Includes All Amendments Adopted
on Second Reading in the Second House*

LLS NO. 21-0774.03 Megan Waples x4348

SENATE BILL 21-247

SENATE SPONSORSHIP

Fenberg and Holbert, Garcia, Bridges, Buckner, Cooke, Gonzales, Hansen, Jaquez Lewis, Kirkmeyer, Lee, Liston, Moreno, Priola, Rankin, Scott, Simpson, Sonnenberg, Woodward

HOUSE SPONSORSHIP

Esgar and McKean, Garnett

Senate Committees

State, Veterans, & Military Affairs
Appropriations

House Committees

State, Civic, Military, & Veterans Affairs

A BILL FOR AN ACT

101 **CONCERNING THE PROCEDURES OF THE INDEPENDENT REDISTRICTING**
102 **COMMISSIONS.**

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://leg.colorado.gov/>.)

Executive Committee of the Legislative Council. The COVID-19 pandemic has caused a delay in the ability of the United States Census Bureau (Census Bureau) to deliver to the state the population and demographic data necessary to redraw election districts. The Census Bureau has indicated that the final census data will not be available for at least 6 months after the deadline contemplated in federal law. Under the

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
*Capital letters or bold & italic numbers indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.*

HOUSE
Amended 2nd Reading
May 4, 2021

SENATE
3rd Reading Unamended
April 26, 2021

SENATE
Amended 2nd Reading
April 23, 2021

current definition of "necessary census data" contained in state law, this delay prevents the independent congressional redistricting commission and the independent legislative redistricting commission (commissions) from completing their work by the deadlines in the constitution. An extended delay in finalizing the commissions' redistricting plans will make it impossible to complete all of the steps in the 2022 election procedures in time for the general election.

For the commissions convened in 2021 only, the bill amends the definition of "necessary census data" to allow the preliminary and staff plans to be developed using the data on the total population by state that will be released by the Census Bureau on April 30, 2021, and other population and demographic data from federal or state sources that are approved by the commissions. Once final census data is released by the Census Bureau, the nonpartisan staff of the commission must complete adjustments for incarcerated populations required by current law within 5 days. All staff plans presented to the commissions or submitted to the Colorado supreme court after that date must use the final data as adjusted. A plan approved by the Colorado supreme court must be based on the final data as adjusted.

1 *Be it enacted by the General Assembly of the State of Colorado:*

2 **SECTION 1. Legislative declaration.** (1) The general assembly
3 finds and declares that:

4 (a) Due to the COVID-19 pandemic, the United States Census
5 Bureau has been delayed in collecting the information for the census due
6 to stay-at-home orders and an inability to conduct in-person visits to
7 residences that did not reply to requests to respond to the census questions
8 either online, telephonically, or through mailed paper responses. While
9 the Census Bureau was to have completed its collection of the answers to
10 the census by July 31, 2020, the Census Bureau finally ended its
11 collection efforts on October 15, 2020.

12 (b) Pursuant to 13 U.S.C. sec. 141 (b), the Census Bureau was to
13 have released the reapportionment data, which data is the total population
14 figures at the state level necessary to reapportion the 435 seats in congress

1 among the states, by December 31, 2020, but has not yet been able to
2 release those figures. After completing its collection efforts, due in part
3 to the pandemic, the Census Bureau has found anomalies in the data and
4 needs additional time to deliver accurate reapportionment data. The
5 Census Bureau now intends to release this data by April 30, 2021, four
6 months after its statutory deadline.

7 (c) Pursuant to 13 U.S.C. sec. 141 (c), the Census Bureau was to
8 have released the redistricting data, which is the population and
9 demographic data at the census block level, by March 31, 2021. However,
10 in an attempt to get the reapportionment data finalized as quickly as
11 possible, the Census Bureau "decoupled" some of the work on the final
12 redistricting data so the redistricting data will now take longer to finalize
13 after the reapportionment data is finalized.

14 (d) In light of the difficulties the delays are causing for the states,
15 the Census Bureau has indicated it will release a legacy format summary
16 redistricting data file to the states by mid to late August 2021; and

17 (e) The Census Bureau has not been able to inform the states as
18 to when the redistricting data in its final format will be released, except
19 to say that it will not be before September 30, 2021. Again, this means
20 that the earliest the state will receive the final redistricting data will be six
21 months after March 31, 2021, which is the statutory deadline to release
22 the redistricting data to the states pursuant to 13 U.S.C. sec. 141.

23 (2) The general assembly further finds and declares that:

24 (a) In 2018, the voters in Colorado approved two amendments to
25 the state constitution on redistricting, specifically:

26 (I) Amendment Y that changed the entity responsible for
27 redrawing the boundaries of Colorado's congressional districts from the

1 general assembly to a new independent congressional redistricting
2 commission created pursuant to sections 44 to 44.6 of article V of the
3 state constitution (congressional commission); and

4 (II) Amendment Z that changed the entity responsible for
5 redrawing the boundaries of the state senate and state house of
6 representative districts from a reapportionment commission to a new
7 independent legislative redistricting commission created pursuant to
8 sections 46 to 48.4 of article V of the state constitution (legislative
9 commission);

10 (b) Amendments Y and Z both contained specific requirements for
11 increased public participation in the redistricting process, including:

12 (I) Sections 44.2 (3)(a) and 48 (3)(a) of article V of the state
13 constitution, allowing any Colorado resident to present proposed
14 redistricting maps or written comments to the commissions, and sections
15 44.2 (3)(c) and 48 (3)(c) of article V of the state constitution, requiring
16 the commissions to maintain a website through which the public submits
17 maps or comments;

18 (II) Sections 44.4 (1) and 48 (1) of article V of the state
19 constitution, authorizing any member of the public to submit written
20 comments to nonpartisan staff concerning the creation of the preliminary
21 plans and communities of interest that require representation and require
22 nonpartisan staff to consider the written comments in preparing the
23 preliminary plan and later staff plans;

24 (III) Sections 44.2 (3)(b) and 48 (3)(b) of article V of the state
25 constitution, requiring the commissions to hold at least three public
26 meetings in each of the seven congressional districts on the preliminary
27 plans created by nonpartisan staff prior to approving any plan;

1 (IV) Sections 44.4 (3) and 48.2 (3) of article V of the state
2 constitution, requiring nonpartisan staff, after the hearings on the
3 preliminary plans, to present to the commissions up to three staff plans
4 that must be posted online prior to being presented and requiring the
5 presentation of each staff plan to be separated by at least ten days; and

6 (V) Finally, sections 44.2 (2) and 48 (2) of article V of the state
7 constitution, prohibiting each of the commissions from voting on a plan
8 presented to the commission or amended at a meeting of the commission
9 for at least seventy-two hours after the meeting unless the commission
10 unanimously waives this requirement;

11 (c) Under sections 44.4 (1) and 48.2 (1) of article V of the state
12 constitution, nonpartisan staff for the commissions are required to create
13 preliminary plans and present the plans to the respective commissions
14 between thirty and forty-five days after the commissions convene or the
15 necessary census data are available, whichever is later;

16 (d) While amendments Y and Z establish certain deadlines by
17 which the commissions are required to complete certain steps in the
18 redistricting process, sections 44.4 (5) and 48.2 (5) of article V of the
19 state constitution give the commissions authority to adjust those dates if
20 conditions outside of the commissions' control make it impossible for
21 them to meet those deadlines. The six-month delay in receiving the
22 redistricting data qualifies as a condition outside of the commissions'
23 control, requiring adjustment of the dates.

24 (e) Section 44.5 (4)(a) of article V of the state constitution
25 requires that, by November 1, the Colorado supreme court must either
26 approve the congressional plan or return the congressional plan with the
27 reasons why it is not approved, and section 48.3 (4)(a) of article V of the

1 state constitution requires that, by November 15, the Colorado supreme
2 court must either approve the legislative plans or return the legislative
3 plans with the reasons why either is not approved;

4 (f) Section 44.5 (5) of article V of the state constitution requires
5 the Colorado supreme court to give final approval to a congressional plan
6 by December 15, 2021, and section 48.3 (5) of article V of the state
7 constitution requires the Colorado supreme court to give final approval
8 to legislative plans by December 29, 2021; and

9 (g) If the commissions are required to wait to begin their work
10 until the final redistricting data is released by the Census Bureau on
11 September 30, 2021, the deadlines in the state constitution for the
12 Colorado supreme court's consideration and approval of the plans cannot
13 be met.

14 (3) The general assembly also finds that:

15 (a) Delays in receiving final approval of the plans of the
16 commissions would severely impact the election calendar of 2022. After
17 the commission plans are approved, section 2-1-104 (1)(a), C.R.S.,
18 requires county clerks to redraw precincts so that each precinct contains
19 only one congressional, one state senate, and one state house of
20 representatives district and to have their county commissioners approve
21 the changes. Section 1-5-103 (1), C.R.S., requires that this be done at
22 least twenty-nine days before precinct caucuses are held. Section 1-3-102
23 (1)(a)(I), C.R.S., provides that precinct caucuses are to be held on March
24 1, 2022, meaning that counties must have redrawn precincts approved by
25 January 29, 2022. The remainder of the election calendar is based on
26 when the precinct caucuses occur.

27 (b) While the general assembly can change these dates by bill, any

1 significant delay in holding the precinct caucuses adversely affects all
2 other aspects of the election calendar, including limiting the ability of
3 candidates to petition onto the ballot and to campaign and limiting the
4 ability of the electors to be informed of the positions of candidates.

5 (4) The general assembly finds that, in light of the delay by the
6 Census Bureau in delivering the population and demographic data
7 necessary to redraw election districts and the impossibility of complying
8 with the constitutional deadlines, to effectuate the intent of the voters in
9 approving amendments Y and Z, and to cause minimum disruption to the
10 2022 election calendar, it is in the best interest of the state to:

11 (a) Define the necessary census data for the purposes of drawing
12 preliminary plans ___ to include the tabulation of the total population by
13 state published by the Census Bureau for the state by April 30, 2021,
14 along with additional state or federal data sources as approved by the
15 commissions in order to allow the commission to begin their work and
16 seek public input on a more timely basis; and

17 (b) Require that all plans developed after the final redistricting
18 data is released, including the final plan approved by the Colorado
19 supreme court, must be based on the final redistricting data.

20 **SECTION 2.** In Colorado Revised Statutes, 2-2-902, **amend**
21 (1)(c), (4), (5)(a), (5)(b) introductory portion, and (6); and **add** (1)(c.5),
22 (1)(e), and (6.5) as follows:

23 **2-2-902. Accurate census data - electronic record of prisoner**
24 **home address - adjustment of census data - definitions - repeal.**

25 (1) As used in this section, unless the context otherwise requires:

26 (c) (I) "~~Necessary~~ FINAL census data" means the federal decennial
27 Pub.L. 94-171 data published for the state by the United States census

1 bureau and adjusted by the general assembly's nonpartisan staff to reflect
2 the changes pursuant to subsections (5) and (6) of this section IN
3 ACCORDANCE WITH 13 U.S.C. SEC. 141 (c).

4 (II) (A) FOR THE 2021 REDISTRICTING YEAR, "FINAL CENSUS DATA"
5 ALSO INCLUDES A LEGACY FORMAT SUMMARY REDISTRICTING DATA FILE
6 == THAT NONPARTISAN STAFF CAN USE TO TABULATE THE REDISTRICTING
7 DATA.

8 (B) THIS SUBSECTION (1)(c)(II) IS REPEALED, EFFECTIVE JULY 1,
9 2023.

10 (c.5) (I) "NECESSARY CENSUS DATA" MEANS FINAL CENSUS DATA
11 AS ADJUSTED BY THE GENERAL ASSEMBLY'S NONPARTISAN STAFF TO
12 REFLECT THE CHANGES PURSUANT TO SUBSECTIONS (5) AND (6) OF THIS
13 SECTION, EXCEPT AS PROVIDED IN SUBSECTION (1)(c.5)(II) OF THIS
14 SECTION.

15 (II) (A) FOR THE 2021 REDISTRICTING YEAR ONLY, IN LIGHT OF THE
16 DELAYS CAUSED BY THE COVID-19 PANDEMIC AND FOR PURPOSES OF
17 ALLOWING TIMELY PUBLIC INPUT AND CONSIDERATION OF PRELIMINARY ==
18 PLANS FOR CONGRESSIONAL, STATE SENATORIAL, AND STATE
19 REPRESENTATIVE DISTRICTS, "NECESSARY CENSUS DATA" MEANS THE
20 TABULATION OF THE TOTAL POPULATION BY STATE PUBLISHED IN 2021 FOR
21 THE STATE BY THE UNITED STATES CENSUS BUREAU IN ACCORDANCE WITH
22 13 U.S.C. SEC. 141 (b) AND SUCH OTHER TOTAL POPULATION AND
23 DEMOGRAPHIC DATA FROM FEDERAL OR STATE SOURCES AS ARE APPROVED
24 BY EITHER THE INDEPENDENT CONGRESSIONAL REDISTRICTING
25 COMMISSION OR THE INDEPENDENT LEGISLATIVE REDISTRICTING
26 COMMISSION TO FACILITATE THE DEVELOPMENT OF PRELIMINARY == PLANS
27 UNDER SECTION 44.4 OR 48.2 OF ARTICLE V OF THE STATE CONSTITUTION,

1 AS APPLICABLE.

2 (B) THIS SUBSECTION (1)(c.5)(II) IS REPEALED, EFFECTIVE JULY 1,
3 2023.

4 (e) "REDISTRICTING YEAR" MEANS THE YEAR FOLLOWING THE
5 YEAR IN WHICH THE FEDERAL DECENNIAL CENSUS IS TAKEN.

6 (4) Pursuant to subsection (5) of this section, nonpartisan staff
7 shall prepare redistricting population data to reflect incarcerated persons
8 at their residential addresses in this state rather than their place of
9 incarceration. EXCEPT AS PROVIDED IN SUBSECTIONS (1)(c.5)(II) AND (6.5)
10 OF THIS SECTION, this data prepared by nonpartisan staff is the necessary
11 census data provided to and to be used by the independent legislative and
12 congressional redistricting commissions established pursuant to sections
13 44 and 46 of article V of the state constitution. The data is the population
14 basis of congressional districts, state house of representative districts, and
15 state senate districts. Nonpartisan staff shall make this census data
16 available to the independent legislative and congressional redistricting
17 commissions and to members of the public and any county or local
18 governmental entity of Colorado upon request.

19 (5) (a) For each person included in a report received pursuant to
20 subsections (2)(b) and (3) of this section, nonpartisan staff shall
21 determine the geographic units for which population counts are reported
22 in the ~~federal decennial~~ FINAL CENSUS DATA that contain the facility of
23 incarceration and the legal residence in this state as listed in the report.

24 (b) For each person included in a report received pursuant to
25 subsections (2)(b) and (3) of this section, if the legal residence is known
26 and in this state, nonpartisan staff shall ADJUST THE FINAL CENSUS DATA
27 TO:

1 (6) (a) EXCEPT AS PROVIDED IN SUBSECTION (6)(b) OF THIS
2 SECTION, the data prepared by nonpartisan staff pursuant to this section
3 must be completed and published no later than thirty days after the date
4 that ~~federal decennial Pub.L. 94-171~~ FINAL CENSUS data for the state is
5 delivered to the state.

6 (b) (I) FOR THE 2021 REDISTRICTING YEAR ONLY, THE DATA
7 PREPARED BY NONPARTISAN STAFF PURSUANT TO THIS SECTION MUST BE
8 COMPLETED AND PUBLISHED AS SOON AS PRACTICABLE BUT NO LATER
9 THAN TEN DAYS AFTER THE DATE THAT ANY FINAL CENSUS DATA FOR THE
10 STATE IS DELIVERED TO THE STATE.

11 (II) THIS SUBSECTION (6)(b) IS REPEALED, EFFECTIVE JULY 1, 2023.

12 (6.5) FOR THE 2021 REDISTRICTING YEAR ONLY:

13 (a) NONPARTISAN STAFF SHALL USE NECESSARY CENSUS DATA AS
14 DEFINED IN SUBSECTION (1)(c.5)(II) OF THIS SECTION TO PREPARE
15 PRELIMINARY PLANS AS REQUIRED BY SECTIONS 44.4 (1) AND 48.2 (1) OF
16 ARTICLE V OF THE STATE CONSTITUTION.

17 (b) NONPARTISAN STAFF SHALL USE FINAL CENSUS DATA AS
18 ADJUSTED PURSUANT TO SUBSECTIONS (5) AND (6)(b) OF THIS SECTION TO
19 PREPARE STAFF PLANS AS REQUIRED BY SECTIONS 44.4 (3) AND 48.2 (3) OF
20 ARTICLE V OF THE STATE CONSTITUTION.

21 (c) THE INDEPENDENT CONGRESSIONAL REDISTRICTING
22 COMMISSION AND THE INDEPENDENT LEGISLATIVE REDISTRICTING
23 COMMISSION SHALL NOT APPROVE A FINAL PLAN TO BE SUBMITTED TO THE
24 COLORADO SUPREME COURT UNLESS THE COMMISSION HAS HELD AT LEAST
25 ONE PUBLIC HEARING GIVING THE PUBLIC AN OPPORTUNITY TO COMMENT
26 ON A PLAN PRESENTED TO THE COMMISSION THAT WAS DEVELOPED USING
27 THE FINAL CENSUS DATA, AS ADJUSTED IF SUCH ADJUSTMENT IS REQUIRED

1 PURSUANT TO THIS SECTION.

2 (d) THIS SUBSECTION (6.5) IS REPEALED, EFFECTIVE JULY 1, 2023.

3 SECTION 3. In Colorado Revised Statutes, add 2-2-903 as
4 follows:

5 2-2-903. Redistricting deadlines - legislative declaration.

6 (1) THE GENERAL ASSEMBLY FINDS THAT:

7 (a) GIVEN THE EXTENSIVE DELAYS IN RECEIVING THE CENSUS
8 DATA, THE INDEPENDENT CONGRESSIONAL REDISTRICTING COMMISSION
9 AND THE INDEPENDENT LEGISLATIVE REDISTRICTING COMMISSION WILL
10 LIKELY BE UNABLE TO ADOPT FINAL PLANS BY THE DEADLINES SET FORTH
11 IN SECTIONS 44.4 (5)(b) AND 48.2 (5)(b) OF ARTICLE V OF THE STATE
12 CONSTITUTION. IN TURN, THE COLORADO SUPREME COURT WILL LIKELY BE
13 PREVENTED FROM APPROVING OR DISAPPROVING SUCH MAPS BY
14 NOVEMBER 1 AND NOVEMBER 15, AS REQUIRED BY SECTIONS 44.5 AND
15 48.3 OF ARTICLE V OF THE STATE CONSTITUTION.

16 (b) COLORADO COURTS AND ELECTION STATUTES COMMONLY
17 APPLY A SUBSTANTIAL COMPLIANCE STANDARD TO ELECTION MATTERS.
18 COLORADO COURTS ALSO INTERPRET ELECTION REQUIREMENTS TO AVOID
19 ABSURD RESULTS THAT WOULD BE PRODUCED BY AN OVERLY TECHNICAL
20 APPLICATION OF A STATUTORY OR CONSTITUTIONAL REQUIREMENT.

21 (c) THE SUPREME COURT HAS INHERENT AUTHORITY OVER ITS OWN
22 PROCEDURES AND IS AUTHORIZED BY SECTIONS 44.5 AND 48.3 OF ARTICLE
23 V OF THE STATE CONSTITUTION TO DEVELOP THE RULES FOR JUDICIAL
24 REVIEW OF REDISTRICTING PLANS.

25 (2) IN ANY LEGAL PROCEEDING CHALLENGING COMPLIANCE BY THE
26 COMMISSIONS, THE COLORADO SUPREME COURT, OR NONPARTISAN STAFF
27 WITH THE TECHNICAL RATHER THAN SUBSTANTIVE PROVISIONS THAT

1 IMPLEMENT THE REDISTRICTING PROCESSES ESTABLISHED IN THE
2 COLORADO CONSTITUTION AND RELATED STATUTES, A COURT SHALL
3 ADJUDICATE SUCH DISPUTE WITH A VIEW TO ASCERTAINING WHETHER
4 THERE WAS SUBSTANTIAL COMPLIANCE WITH THE REQUIREMENTS OF SUCH
5 CONSTITUTIONAL OR STATUTORY PROVISIONS.

6 **SECTION 4. Safety clause.** The general assembly hereby finds,
7 determines, and declares that this act is necessary for the immediate
8 preservation of the public peace, health, or safety.