

Meeting Minutes

23.5063.03000

**REDISTRICTING COMMITTEE**

Tuesday, September 28, 2021
 Room 327B, State Capitol
 Bismarck, North Dakota
 Wednesday, September 29, 2021
 Roughrider Room, State Capitol
 Bismarck, North Dakota

Representative Bill Devlin, Chairman, called the meeting to order at 1:00 p.m.

Members present: Representatives Bill Devlin, Larry Bellew, Joshua A. Boschee, Craig Headland, Mike Lefor, David Monson, Mike Nathe, Austen Schauer; Senators Brad Bekkedahl, Randy A. Burckhard, Robert Erbele, Ray Holmberg, Jerry Klein, Erin Oban, Nicole Poolman, Ronald Sorvaag

Members absent: None

Others present: Representatives Terry B. Jones, New Town, Kathy Skroch, Lidgerwood, and Senator Jason G. Heitkamp, Wahpeton

See [Appendix A](#) for additional persons present.

It was moved by Senator Klein, seconded by Senator Poolman, and carried on a voice vote that the minutes of the September 22-23, 2021, meeting be approved as distributed.

COMMITTEE DISCUSSION AND PRESENTATION OF REDISTRICTING MAPS

The Legislative Council staff distributed a [statewide proposal](#) reflecting the district boundaries approved by the committee to date.

Senator Klein presented a [draft map](#) proposing changes to the boundaries of Districts 14 and 15 as previously approved by the committee. He noted the district line was moved to place the entirety of West Bay and Oberon Townships in Benson County in District 15 to better align with the 2010 district boundaries.

It was moved by Senator Klein, seconded by Representative Schauer, and carried on a roll call vote that the proposed changes to Districts 14 and 15, as presented, be approved. Representatives Devlin, Bellew, Boschee, Headland, Lefor, Monson, Nathe, and Schauer and Senators Burckhard, Erbele, Holmberg, Klein, Oban, Poolman, and Sorvaag voted "aye." No negative votes were cast.

Senator Burckhard presented a [draft map](#) proposing changes to the boundaries of District 5 as previously approved by the committee. He noted a portion of the northern boundary of District 5 was adjusted to align with 3rd Avenue Northwest and a portion of the southern boundary of District 5 was adjusted to align with 37th Avenue Southwest.

It was moved by Senator Burckhard, seconded by Representative Bellew, and carried on a roll call vote that the proposed changes to District 5, as presented, be approved. Representatives Devlin, Bellew, Boschee, Headland, Lefor, Monson, Nathe, and Schauer and Senators Burckhard, Erbele, Holmberg, Klein, Oban, Poolman, and Sorvaag voted "aye." No negative votes were cast.

Representative Headland presented a [draft map](#) proposing changes to the boundaries of Districts 12 and 29 as previously approved by the committee. He noted the boundaries of District 12 were modified to replace townships south of Jamestown with townships north of Jamestown in an effort to keep the majority of Jamestown in one district while retaining Senator Wanzek and himself in District 29.

It was moved by Representative Headland, seconded by Representative Nathe, and carried on a roll call vote that the proposed changes to Districts 12 and 29, as presented, be approved. Representatives Devlin, Bellew, Boschee, Headland, Lefor, Monson, Nathe, and Schauer and Senators Burckhard, Erbele, Holmberg, Klein, Oban, Poolman, and Sorvaag voted "aye." No negative votes were cast.

Senator Poolman presented a draft map illustrating possible changes to the boundaries of Districts 8 and 14 as previously approved by the committee. She noted changes were made to the boundaries of Districts 8 and 14 to bring the population deviations for both districts within the allowable limits. She noted the changes represent an option for how the districts could be structured, but she would like additional time to refine the changes and review alternative options.

Senator Oban also requested additional time to consider alternative district boundary options for the Burleigh County area.

DISCUSSION REGARDING THE CREATION OF SUBDISTRICTS

Senator Holmberg noted the committee had numerous discussions regarding the federal Voting Rights Act of 1965 and reservation populations. He noted:

- A lawsuit from a previous redistricting cycle seeking a subdistrict for a Native American population was dismissed because the Native American population did not rise to the threshold of comprising a majority of the ideal subdistrict size to warrant an analysis under the Voting Rights Act.
- The ideal population for a subdistrict is 8,453.
- Based on the 2020 Census, the total population of the Fort Berthold Reservation is 8,350 and the total population of the Turtle Mountain Reservation is 5,113, each of which is sufficient to constitute a majority of the population in a single-member subdistrict.
- While he is not necessarily in favor of creating subdistricts, the committee must recognize the reality of the population statistics and be cognizant of the possibility of the courts redrawing district boundaries.

It was moved by Senator Holmberg and seconded by Representative Monson that the committee subdivide Districts 4 and 9 in accordance with the Voting Rights Act and traditional redistricting principles.

Some committee members expressed:

- Discomfort with drawing subdistrict boundaries based on race.
- A preference for court-directed creation, rather than the voluntary legislative creation of subdistricts.
- Concerns regarding differential treatment if some citizens of the state are allowed to vote for two representatives and one senator while others are allowed to vote only for one representative and one senator.

Other committee members noted:

- The creation of subdistricts might prevent a possible dilution of the Native American vote that could result from the use of a larger district and provide communities of interest an opportunity to select their candidate of choice and receive more direct representation.
- It would be unfortunate to face a court challenge after the committee's efforts to redistrict in an honest and transparent manner.
- A preference for the Legislative Assembly to draw district boundaries, rather than the courts.

In response to a question from a committee member, Senator Holmberg reviewed the impetus behind the creation of two subdistricts in South Dakota.

Representative Terry B. Jones, District 4, testified in opposition to creating subdistricts. He noted:

- Several of his constituents have expressed a desire to vote for two representatives, rather than one.
- Native American candidates have an equal opportunity to win an election in District 4.
- Tribal nations should not receive special treatment.
- He strives to represent all his constituents fairly and equally.

In response to questions from committee members, Representative Jones noted the majority of the constituents contacting him are non-native. He noted tribal representatives have voiced a preference for subdistricts.

In response to a question from a committee member, Ms. Claire Ness, Senior Counsel, Legislative Council, noted the legal staff has not provided a recommendation regarding whether the committee should create subdistricts. She noted the staff have provided the legal analysis the courts have historically applied and population statistics regarding the Native American populations in the state.

In response to a request from a committee member, Ms. Ness agreed to provide the committee additional research regarding the outcome of Voting Rights Act cases in other states.

Committee members requested a delay in addressing the question of creating subdistricts until additional information is received from the Legislative Council staff.

The motion and second were withdrawn.

POST-REDISTRICTING ELECTION SCHEDULES

Ms. Ness presented a memorandum entitled *Population Changes in Even-Numbered Districts*. She noted the information in the memorandum was obtained by comparing the boundaries approved at the committee's prior meeting to the 2011 district boundaries and tallying the population residing in the new geographic area added to each even-numbered district and recording the figure both as a total population count and as a percentage of the ideal district population. She reminded the committee an election was triggered after the previous redistricting cycle if the population residing in the new geographic area in an odd-numbered district exceeded 25 percent of the ideal district population. She noted the statute pertaining to post-redistricting election requirements contains additional provisions the committee might wish to update.

Chairman Devin noted 25 percent of the ideal district population calculated based on the 2020 Census is 4,144.

COMMITTEE DISCUSSION

Ms. Emily L. Thomson, Code Revisor, Legislative Council, addressed administrative matters and verified the committee's intent to split the city of Grandin along county lines and align the western boundary of District 27 with the Horace city limit.

Senator Poolman, proposed changes to the boundaries of Districts 7, 8, 14, and 30. She noted the Burleigh County Auditor informed her a portion of land contained in the proposed District 30 was annexed by the City of Lincoln. She proposed moving the annexed portion from District 30 to District 8 to keep the city of Lincoln whole. She also proposed straightening the eastern boundary of District 7 and moving a portion of the population from District 8 to District 14.

It was moved by Senator Poolman, seconded by Representative Schauer, and carried on a roll call vote that the proposed changes to Districts 7, 8, 14, and 30, as presented, be approved. Representatives Devlin, Bellew, Headland, Lefor, Monson, Nathe, and Schauer and Senators Burckhard, Erbele, Holmberg, Poolman, and Sorvaag voted "aye." Representative Boschae and Senators Klein and Oban voted "nay."

Representative Lefor noted he would work with Legislative Council staff to make edits required to bring the population of District 39 within the allowable deviation.

Chairman Devlin noted an additional item the committee might wish to consider is a modification to the statutory mandate for political parties to reorganize after redistricting. He noted redistricting might not lead to all political parties having to reorganize, so reorganization should be at the discretion of the political parties, rather than mandated by the state.

In response to a question from Representative Nathe, Ms. Ness noted she would provide additional information regarding the results of recent court-ordered redistricting in Wisconsin.

COMMENTS BY INTERESTED PERSONS REGARDING SUBDISTRICTS

Ms. Lisa DeVille, Mandan, Hidatsa, and Arikara Nation, provided testimony ([Appendix B](#)) regarding the rapid growth of the Native American population in the state and her support for the formation of subdistricts. She noted voters should pick their leaders rather than the leaders picking their voters.

The committee received additional written testimony in support of the formation of subdistricts, including proposed subdistrict boundaries, from:

- Mr. Douglas Yankton Sr., Chairman, Spirit Lake Nation ([Appendix C](#));
- Mr. Mark Fox, Chairman, Tribal Business Council, Mandan, Hidatsa, and Arikara Nation ([Appendix D](#)); and
- Mr. Mike Faith, Chairman, Standing Rock Sioux Tribe ([Appendix E](#)).

Representative Jones spoke in opposition to the formation of subdistricts. He noted the people of District 4 have good representation and the Native American population has had every opportunity to participate in the legislative process.

Committee members questioned whether "fairness" would be a factor courts would take into consideration during an analysis of whether subdistricts are required to be created.

In response to a request from Chairman Devlin, Ms. Ness reviewed the information ([Appendix F](#)) regarding Voting Rights Act cases provided in a email to committee members.

In response to questions from committee members, Ms. Ness noted:

- If a lawsuit is successful, a court has discretion regarding the breadth of the revisions made to legislative district boundaries and may order the use of previous legislative district boundaries until new boundaries are established.
- There is potential for lawsuits to be filed on both sides of the subdistricting issue and it is difficult to predict the outcome of a lawsuit.

A committee member noted courts generally disfavor the use of multimember districts and only a handful of states have retained the use of multimember districts.

Some committee members felt the facts demonstrated the first of the two Gingles preconditions had been met but were unsure whether the third precondition had been met.

Chairman Devlin noted any recommendation made by the committee and approved for introduction by the Legislative Management is subject to a vote by the full Legislative Assembly during a reconvened or special session.

It was moved by Senator Holmberg, seconded by Senator Burckhard, and carried on a roll call vote that traditional redistricting principles be applied to create subdistricts in Districts 4 and 9. Representatives Devlin, Boschee, Monson, and Schauer and Senators Bekkedahl, Burckhard, Holmberg, Oban, Poolman, and Sorvaag voted "aye." Representatives Bellew, Headland, Lefor, and Nathe and Senators Erbele and Klein voted "nay."

COMMENTS BY INDIVIDUALS REPRESENTING DISTRICT 26

Representative Kathy Skroch, District 26, provided testimony ([Appendix G](#)) and a [proposed statewide plan](#) drafted by Representative Sebastian Ertelt, District 26. She expressed concern the legislative district boundaries proposed by the committee will disenfranchise the voters of District 26. She noted the statewide plan prepared by Representative Ertelt demonstrates it is not necessary to dissolve District 26.

A committee member questioned whether a voter who could still vote for one senator and two representatives would be considered to be disenfranchised simply because the voter could not vote for the same senator and representatives.

In response to a question from a committee member, Representative Skroch noted the criteria used to draft the proposed plan, in addition to conforming with population requirements, was maintaining existing district boundaries and the boundaries of District 26 to the extent possible.

Some committee members:

- Questioned why the survival of District 26 should be given preference over other districts eliminated by the proposed plan.
- Expressed concerns regarding the timeliness of proposing a revised statewide plan on the last day the committee is meeting.

Senator Jason G. Heitkamp, District 26, provided testimony in favor of Representative Ertelt's proposed statewide plan. He noted the larger a district is geographically, the harder it is for representatives to engage with all the individuals living in the district. He noted an urban/rural balance was attempted in the proposed plan.

Ms. Norma Kjos, Wyndmere, testified in favor of Representative Ertelt's proposed statewide plan and keeping District 26 whole.

Mr. Peter Leedahl, Vice Chairman, District 26 Republican Party, testified in favor of Representative Ertelt's proposed statewide plan. He noted the proposed plan does a better job of keeping common areas of Richland County together and representing the interests and needs of individuals on the western side of Richland County.

COMMITTEE WORK

Representative Lefor presented proposed changes to Districts 39 and Y to shift a small number of individuals from District Y to District 39 to bring the districts within the allowable population deviations. He noted he also received a request from individuals in Bowman and Adams Counties to rename District Y as District 39 because those counties historically have been located in District 39.

Another committee member noted the southeast corner of Bowman County has been located in District 39 since 1909, whereas McKenzie County has been a part of District 39 for a shorter period of time.

It was moved by Representative Lefor, seconded by Representative Schauer, and carried on a roll call vote that the proposed changes to Districts 39 and Y, as presented, be approved and Districts 39 and Y be renumbered as Districts 26 and 39, respectively. Representatives Devlin, Bellew, Boschee, Headland, Lefor, Monson, Nathe, and Schauer and Senators Bekkedahl, Burckhard, Erbele, Holmberg, Klein, Oban, Poolman, and Sorvaag voted "aye." No negative votes were cast.

Chairman Devlin noted he received correspondence from a county commissioner from Eddy County requesting the committee consider keeping Eddy County whole due to election expenses. He noted this change would result in splitting the Spirit Lake Reservation between two districts. He noted he received a similar request from the Sargent County Auditor to keep Sargent County whole, which also would result in splitting the Lake Traverse Reservation between two districts.

Committee members noted the committee repeatedly expressed its intent to keep reservations whole and splitting these two reservations between multiple districts might invite litigation.

It was moved by Senator Erbele, seconded by Senator Klein, and failed on a roll call vote that Sargent County be kept whole by moving that portion of the reservation within Sargent County from District 25 to District 28. Representative Bellew and Senator Erbele voted "aye." Representatives Devlin, Boschee, Headland, Lefor, Monson, Nathe, and Schauer and Senators Bekkedahl, Burckhard, Holmberg, Klein, Oban, Poolman, and Sorvaag voted "nay."

Senator Holmberg presented a draft map of proposed subdistrict boundaries for District 4. He noted subdistrict 4A is comprised of the entirety of the Fort Berthold Reservation and subdistrict 4B is comprised of the remainder of District 4.

It was moved by Senator Holmberg, seconded by Representative Boschee, and carried on a roll call vote that the proposed subdistrict boundaries for Districts 4A and 4B, as presented, be approved. Representatives Devlin, Bellew, Boschee, Headland, Lefor, Monson, Nathe, and Schauer and Senators Bekkedahl, Burckhard, Erbele, Holmberg, Klein, Oban, Poolman, and Sorvaag voted "aye." Representative Bellew voted "nay."

Senator Holmberg presented a draft map containing five alternative options for subdistrict boundaries in District 9. He noted the proposed subdistricts in options A, B, and D pair incumbents, whereas the proposed subdistricts in options C and E do not.

It was moved by Senator Holmberg, seconded by Senator Bekkedahl, and carried on a roll call vote that the proposed subdistrict boundaries for Districts 9A and 9B, as presented in option D, be approved. Representatives Devlin, Headland, Lefor, Monson, Nathe, and Schauer and Senators Bekkedahl, Burckhard, Erbele, Holmberg, Klein, Poolman, and Sorvaag voted "aye." Representatives Bellew and Boschee and Senator Oban voted "nay."

At the request of Chairman Devlin, Ms. Ness presented a bill draft [21.1094.01000] providing for the staggering of terms of members of the Legislative Assembly after redistricting and other administrative matters commonly contained in redistricting legislation. She noted the bill draft triggers an election in:

- Even-numbered districts in which the population in the new geographic area added to a district exceeds 4,144, which is 25 percent of the ideal district size;
- Districts comprised of subdistricts as a result of redistricting; and
- Certain situations in which incumbents are paired in the same district.

She noted the bill draft also:

- Provides the Secretary of State authority to modify the election deadlines and procedures required to accommodate the 2022 primary election should the implementation of new legislative district boundaries be delayed.
- Provides legislative intent regarding legislative district boundaries and the terms of incumbent legislators.
- Repeals the current legislative district descriptions contained in North Dakota Century Code Section 54-03-01.13.
- Provides the legislation is effective on the date it is filed with the Secretary of State.

In response to a question from a committee member, Ms. Ness noted in certain situations in which incumbents are paired in the same district, an election would be triggered regardless of whether one of the incumbents declined to run for reelection.

Ms. Thompson distributed a memorandum entitled Population Changes in Even-Numbered Districts, which illustrated the population in new geography added to even-numbered districts based on the district boundaries most recently revised by the committee and pictured in the committee's final proposed statewide plan. She noted the districts previously numbered as Districts XX, 99, and 10 were renumbered as Districts 10, 23, and 19, respectively, in the final proposed statewide plan based on the committee's earlier discussions, but a motion would be required to formally approve the renumbering of the districts as displayed on the final proposed statewide plan.

It was moved by Senator Bekkedahl, seconded by Senator Burckhard, and carried on a roll call vote that Districts XX, 99, and 10 be renumbered as Districts 10, 23, and 19, respectively. Representatives Devlin, Bellew, Boschee, Headland, Lefor, Monson, Nathe, and Schauer and Senators Bekkedahl, Burckhard, Erbele, Holmberg, Klein, Oban, Poolman, and Sorvaag voted "aye." No negative votes were cast.

FINAL MOTIONS

It was moved by Representative Schauer, seconded by Senator Burckhard, and carried on a roll call vote that the final proposed statewide plan, as distributed, be approved and recommended to the Legislative Management. Representatives Devlin, Boschee, Headland, Lefor, Monson, Nathe, and Schauer and Senators Bekkedahl, Burckhard, Erbele, Holmberg, Klein, Oban, Poolman, and Sorvaag voted "aye." Representative Bellew voted "nay."

It was moved by Representative Monson, seconded by Representative Lefor, and carried on a roll call vote that the bill draft [21.1094.01000] relating to the staggering of terms, the authority of the Secretary of State, and legislative intent be approved and incorporated with the legislative district boundary descriptions and recommended to the Legislative Management. Representatives Devlin, Bellew, Boschee, Headland, Lefor, Monson, Nathe, and Schauer and Senators Bekkedahl, Burckhard, Erbele, Holmberg, Klein, Oban, Poolman, and Sorvaag voted "aye." No negative votes were cast.

Representative Lefor distributed a bill draft [21.1095.01000] regarding requirements for political parties to reorganize after redistricting. He noted he is not seeking action on the bill draft at this time because additional time is needed for review. He noted he might seek introduction of a revised version of the bill draft through the Delayed Bills Committee.

It was moved by Senator Holmberg, seconded by Senator Klein, and carried on a roll call vote that the Chairman and the Legislative Council staff be requested to prepare a report and the bill draft recommended by the committee and to present the report and recommended bill draft to the Legislative Management. Representatives Devlin, Bellew, Boschee, Headland, Lefor, Monson, Nathe, and Schauer and Senators Bekkedahl, Burckhard, Erbele, Holmberg, Klein, Oban, Poolman, and Sorvaag voted "aye." No negative votes were cast.

It was moved by Representative Bellew, seconded by Senator Klein, and carried on a voice vote that the meeting be adjourned.

No further business appearing, Chairman Devlin adjourned the meeting at 1:35 p.m.

Emily L. Thompson
Code Revisor

Samantha E. Kramer
Senior Counsel

Claire Ness
Senior Counsel

ATTACH:7