

Meeting Minutes

23.5024.03000

**REDISTRICTING COMMITTEE**

Thursday, August 26, 2021
 Roughrider Room, State Capitol
 Bismarck, North Dakota

Representative Bill Devlin, Chairman, called the meeting to order at 10:00 a.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 Jim Schmidt, Huff; and Kim Koppelman, West Fargo; and Senator Donald Schaible, Mott; members of the Legislative Management
 John Bjornson, Legislative Council, Bismarck
 See [Appendix A](#) for additional persons present.

It was moved by Representative Lefor, seconded by Senator Bekkedahl, and carried on a voice vote that the minutes of the July 29, 2021, meeting be approved as distributed.

Ms. Emily L. Thompson, Code Revisor, Legislative Council, presented a memorandum entitled [Supplementary Rules of Operation and Procedure of the North Dakota Legislative Management](#).

REDISTRICTING OVERVIEW

Mr. Ben Williams, Program Principal, Elections and Redistricting, National Conference of State Legislatures, provided testimony ([Appendix B](#)) regarding redistricting fundamentals, the 2020 Census, legal doctrines that govern redistricting, and redistricting criteria. He noted the National Conference of State Legislatures does not provide specific policy advice, but provides 50-state information that might be helpful to decisionmakers tasked with making policy choices.

In response to questions from committee members, Mr. Williams noted:

- There is not a set threshold regarding the percentage minority population of which a legislative district must be composed for a redistricting plan to be challenged by a minority group that is alleging vote dilution.
- In regard to reservations with larger populations that are seeking the formation of subdistricts, the total population of the reservation in relation to the total population of the legislative district is not the sole determinative factor when analyzing a redistricting plan. Any additional analysis would need to be applied, such as the political cohesion of the minority group.
- Political cohesion can be determined by political scientists when conducting a racial voting block analysis.

In response to a question from a committee member, Mr. Williams indicated he would review cases from other states that have applied subdistricts and provide information regarding the factors the courts used when analyzing redistricting plans that included subdistricts.

In response to a question from a committee member, Mr. Williams noted:

- The use of census block groups versus individual census blocks will result in more accurate data due to the United States Census Bureau's application of differential privacy to the 2020 Census data.

- He would not be surprised if litigation arises regarding the inaccuracy of the 2020 Census data as a result of the application of differential privacy.
- The National Conference of State Legislatures sent letters to the United States Census Bureau and Congress in 2020 highlighting concerns with the use of differential privacy.

Ms. Thompson presented a memorandum entitled Legislative Redistricting - Background Memorandum, which outlined the constitutional and statutory requirements for redistricting in North Dakota, the history of redistricting in North Dakota, and applicable federal law. She also presented a visual illustration (Appendix C) of constitutional and statutory mapping requirements.

In response to a question from a committee member, Ms. Thompson indicated the Legislative Council staff would provide committee members a list of the population of the portion of each reservation in the state.

Ms. Samantha E. Kramer, Senior Counsel, Legislative Council, presented a memorandum entitled 2020 Census - Population Change Summary, which outlined the change in population between the 2010 Census and the 2020 Census for legislative districts, counties, and cities. She reviewed the ideal district size for each of the constitutionally permissible number of legislative districts that may be included in a redistricting plan.

Ms. Claire Ness, Counsel, Legislative Council, presented information (Appendix D) regarding the development and maintenance of redistricting records and the differing levels of legislative privilege that may apply to open records requests versus records requested during the course of litigation.

In response to a question from a committee member, Mr. John Bjornson, Director, Legislative Council, noted the state briefly was engaged in litigation in 1991. He said the plaintiffs to the litigation brought a claim in federal district court seeking to use the river to connect the Standing Rock Reservation and the Fort Berthold Reservation into a single legislative subdistrict. He noted the lawsuit was dismissed.

In response to a question from a committee member, Ms. Ness noted the majority of lawsuits are filed after a plan is adopted; however, a lawsuit may be filed at any point.

Ms. Thompson conducted a brief demonstration of the features of the Maptitude for Redistricting mapping software.

Ms. Ness reviewed the types of reports that can be generated using the software.

Ms. Thompson noted a free online redistricting product known as "Dave's Redistricting" is available to members of the public.

COMMENTS FROM INTERESTED PARTIES

Chairman Devlin called for comments from interested persons regarding redistricting.

The Legislative Council staff distributed testimony (Appendices E and F) submitted by Ms. Karen Ehrens, Secretary, League of Women Voters of North Dakota, and Mr. Rick Gion, Director, North Dakota Voters First.

Mr. Matt Perdue, Lobbyist, North Dakota Farmers Union, provided testimony (Appendix G) encouraging the committee to cross as few county lines as possible, retain communities of common interest within district boundaries, and provide geographical balance to the Legislative Assembly when redrawing legislative district lines. He noted the North Dakota Farmers Union is particularly concerned with the potential loss of rural representation in the Legislative Assembly.

Ms. Collette Brown, Executive Director, Gaming Commission, Spirit Lake Casino and Resort, provided testimony (Appendix H) outlining the recent history of the tribe's fight for voting rights. She noted it is critical for the Legislative Assembly to comply with the Voting Rights Act and encouraged the committee members to draw a plan that moves away from the use of at-large state legislative districts for the House of Representatives to avoid diluting the minority vote. She also encouraged committee members to consider communities of interest when preparing a legislative redistricting plan.

Mr. Nathan Davis, Executive Director, Indian Affairs Commission, noted the interim Tribal and State Relations Committee is meeting with tribal nations to receive feedback on redistricting concerns. He offered the assistance of the Indian Affairs Commission in facilitating communication between the committee and the tribal nations.

Chairman Devlin noted the committee will contact the Indian Affairs Commission to coordinate a time for each tribal nation to address the committee.

COMMITTEE DISCUSSION

It was moved by Senator Holmberg and seconded by Representative Bellew that the committee proceed with a 47-district plan for planning purposes.

Some committee members questioned whether it was premature to settle on the number of districts to be included in a redistricting plan this early in the process. Other committee members noted a decision regarding the number of districts to include in a redistricting plan was determined early during the last redistricting cycle and the committee's abbreviated timeline in which to complete a redistricting plan warrants an expedited decision on the number of districts that should be included in plans submitted to the committee.

At the request of Chairman Devlin, Ms. Thompson reviewed information presented to the 2011 Redistricting Committee, which indicated the cost to add an additional legislative district was estimated at \$1.2 million for a 10-year period.

Chairman Devlin noted the committee will not strictly be precluded from considering plans consisting of other than 47 districts.

The motion carried on a roll call vote. 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 called for committee discussion of future meeting dates and locations.

Some committee members favored traveling to locations other than Bismarck to increase the public's access to the committee. Interest was expressed in traveling to Fargo because Cass County contains a quarter of the state's population. Other committee members noted past Redistricting Committee meetings held in locations other than Bismarck were sparsely attended and the public has the option of livestreaming meetings from any location.

Committee members also discussed the option of providing Teams links to members of the public wishing to provide testimony at future meetings. Some committee members were in favor of providing Teams links to members of the public who provided the committee advanced notice of their intent to provide testimony.

Committee members selected September 8, 2021, for the committee's next meeting, which will be held in Fargo; and September 15-16, 2021, September 22-23, 2021, and September 28-29, 2021, for the committee's remaining meetings, all of which will be held in Bismarck.

Chairman Devlin noted the committee will aim to conclude its work by the end of September.

Committee members were encouraged to keep traditional redistricting principles in mind when completing their redistricting plans in addition to complying with statutory and constitutional requirements.

No further business appearing, Chairman Devlin adjourned the meeting at 2:45 p.m.

Emily L. Thompson
Code Revisor

Samantha E. Kramer
Senior Counsel

Claire Ness
Counsel

ATTACH:8