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SENATE BILL 199

55TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2021

INTRODUCED BY

Gerald Ortiz y Pino

AN ACT

RELATING TO REDISTRICTING; ENACTING THE REDISTRICTING ACT;
CREATING THE STATE REDISTRICTING COMMISSION; DIRECTING THE
COMMISSION TO DEVELOP DISTRICT PLANS FOR APPROVAL BY THE
LEGISLATURE AND GOVERNOR; PROVIDING DUTIES; ESTABLISHING
REQUIREMENTS FOR CREATING DISTRICT PLANS AND PUBLIC
PARTICIPATION IN THE PROCESS; PROVIDING PROCEDURES TO APPEAL A
SELECTED PLAN; DECLARING AN EMERGENCY.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. [NEW MATERIAL] SHORT TITLE.--This act may be
cited as the "Redistricting Act".

SECTION 2. [NEW MATERIAL] DEFINITIONS.--As used in the
Redistricting Act:

A. "commission" means the state redistricting
commission;

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1 B. "community of interest" means a contiguous
2 population that shares common economic, social or cultural
3 interests;

4 C. "district plan" means an entire plan of
5 single-member districts for electing members to the United
6 States house of representatives, the state house of
7 representatives, the senate or the public education commission;

8 D. "length-width compactness" means the absolute
9 value of the difference between the length and the width of the
10 district, as measured by the distance from the northernmost
11 point or portion of the boundary of a district to the
12 southernmost point or portion of the boundary of the same
13 district and the distance from the westernmost point or portion
14 of the boundary of the district to the easternmost point or
15 portion of the boundary of the same district;

16 E. "lobbyist" means a person who is required to
17 register as a lobbyist pursuant to the provisions of the
18 Lobbyist Regulation Act;

19 F. "perimeter compactness" means the distance
20 needed to traverse the perimeter boundary of a district;

21 G. "political party" means a political party that
22 has been qualified in accordance with the provisions of the
23 Election Code; and

24 H. "public official" means a person elected to an
25 office of the executive or legislative branch of the state.

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1 SECTION 3. ~~[NEW MATERIAL]~~ STATE REDISTRICTING COMMISSION
2 CREATED--MEMBERSHIP--TERMS.--

3 A. The "state redistricting commission" is created.

4 B. The commission is comprised of seven members,
5 appointed as follows:

6 (1) one commissioner appointed by the speaker
7 of the house of representatives;

8 (2) one commissioner appointed by the minority
9 floor leader of the house of representatives;

10 (3) one commissioner appointed by the
11 president pro tempore of the senate;

12 (4) one commissioner appointed by the minority
13 floor leader of the senate;

14 (5) two commissioners appointed by the state
15 ethics commission, who shall not be members of the largest or
16 second largest political parties in the state; and

17 (6) one commissioner appointed by the state
18 ethics commission, who shall be a retired justice of the New
19 Mexico supreme court, or a retired judge of the New Mexico
20 court of appeals, and who shall chair the commission.

21 C. Commissioners shall be appointed not later than
22 April 1, 2021 and August 1 of each year ending in the number
23 zero thereafter and shall serve until a district plan for each
24 of New Mexico's congressional districts, the house of
25 representatives, the senate and the public education commission

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1 is passed by the legislature and approved by the governor and
2 legal challenges to the district plans, including appeals, if
3 any, have been resolved.

4 D. When any member of the commission dies, resigns
5 or no longer has the qualifications required for the
6 commissioner's original appointment, the commissioner's
7 position on the commission becomes vacant and the chair shall
8 notify the original appointing authority of the vacant
9 position. The vacancy shall be filled by appointment by the
10 original appointing authority no later than fifteen days
11 following notification of the vacancy.

12 E. The commission shall meet as necessary to carry
13 out its duties pursuant to the Redistricting Act.

14 F. Commissioners are entitled to receive per diem
15 and mileage as provided in the Per Diem and Mileage Act and
16 shall receive no other compensation, perquisite or allowance.

17 SECTION 4. [NEW MATERIAL] COMMISSIONERS--QUALIFICATIONS--
18 LIMITATIONS.--

19 A. To qualify for appointment to the commission, a
20 person shall:

- 21 (1) be a qualified elector of New Mexico; and
22 (2) not be, or in the two years prior to
23 appointment have been, in New Mexico, any of the following:
24 (a) a public official;
25 (b) a candidate for public office;

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1 (c) a lobbyist;

2 (d) an office holder in a political
3 party at the state or federal level;

4 (e) a relative in the first degree of
5 consanguinity of a member of congress, the house of
6 representatives, the senate or the public education commission;
7 or

8 (f) an employee of congress, the
9 legislative branch of government or the public education
10 commission.

11 B. Before entering upon the duties of the office of
12 commissioner, a commissioner shall review the Redistricting Act
13 and take the oath of office as provided in Article 20, Section
14 1 of the constitution of New Mexico.

15 SECTION 5. [NEW MATERIAL] COMMISSION--POWERS AND
16 DUTIES.--

17 A. Beginning April 1, 2021, and every August 1 of
18 each year ending in the number zero thereafter, the commission
19 shall:

20 (1) no later than October 15, 2021, and every
21 September 1 of each year ending in the number one thereafter,
22 adopt three to five district plans for each of:

23 (a) New Mexico's congressional
24 districts;

25 (b) the house of representatives;

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- (c) the senate; and
 - (d) the public education commission;
 - (2) adopt the district plans as rules in accordance with the provisions of the State Rules Act;
 - (3) hold no fewer than six public meetings either virtually or in various regions of the state before issuing the district plans as proposed rules for public comment;
 - (4) hold no fewer than six public rule hearings, either virtually or in various regions of the state, for the purpose of adopting district plans;
 - (5) conduct all meetings pursuant to the requirements of the Open Meetings Act;
 - (6) contract for legal and technical assistance in the creation of alternative district plans; and
 - (7) compile, index, maintain and provide public access to the commission's record for each district plan it adopts.
- B. Beginning April 1, 2021, and every August 1 of each year ending in the number zero thereafter, the commission may:
- (1) develop, adopt and promulgate the rules for public hearings; and
 - (2) hire staff and enter into contracts and any interagency agreements as necessary to accomplish the

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1 duties set forth in this section.

2 SECTION 6. [NEW MATERIAL] COMMISSION MEETINGS BEFORE
3 PROPOSING DISTRICT PLANS.--

4 A. Before the commission issues proposed district
5 plans for public comment, the commission shall hold no fewer
6 than six public meetings at which the commission shall receive
7 testimony, documents and information regarding the
8 identification of communities of interest and other testimony,
9 documents and information regarding the creation of district
10 plans. The commission shall provide the public with notice not
11 later than thirty days before these meetings, and the notice
12 shall include information about how the public may participate
13 and submit testimony, documents and information. The
14 commission shall hold meetings either virtually or in various
15 regions across the state, including in central New Mexico and
16 in each of the four geographic quadrants of the state.

17 B. The commission shall compile, index, maintain
18 and provide public access to all testimony, documents and
19 information received in the meetings conducted before issuing
20 proposed district plans for public comment.

21 C. The proposed district plans that the commission
22 issues for public comment shall be based, in part, on the
23 testimony, documents and information received.

24 SECTION 7. [NEW MATERIAL] DISTRICT PLANS--REQUIREMENTS
25 AND PROHIBITIONS.--

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1 A. When proposing or adopting district plans, the
2 commission shall:

3 (1) create district plans composed of
4 single-member districts;

5 (2) create district plans composed of
6 contiguous territory; provided that districts that meet only at
7 the points of adjoining corners are not contiguous; and

8 (3) comply with all applicable federal laws.

9 B. When proposing or adopting district plans, the
10 commission may:

11 (1) use, rely upon or reference precincts and
12 units of population that are smaller than precincts; and

13 (2) use, rely upon or reference the most
14 recent federal decennial census data provided by the United
15 States census bureau as well as other reliable sources of
16 demographic data, as determined by a majority of the
17 commission.

18 C. When proposing or adopting district plans, the
19 commission shall not:

20 (1) propose or adopt district plans to favor a
21 political party or incumbent;

22 (2) use, rely upon or reference partisan data,
23 such as voting history or party registration data; provided
24 that voting history in elections may be considered to ensure
25 that the district plan complies with applicable federal law;

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1 (3) create district plans to intentionally
2 dilute the representation of communities of interest; or

3 (4) create district plans to intentionally
4 preserve the cores of existing districts; provided, however,
5 that district plans may intentionally preserve the cores of
6 existing districts so long as the district plan meets all other
7 requirements provided by this section.

8 D. When proposing or adopting district plans for
9 New Mexico's congressional districts, the commission shall
10 ensure that congressional districts are as equal in population
11 as practicable.

12 E. When proposing or adopting district plans for
13 the house of representatives, the senate and the public
14 education commission, the commission shall create districts
15 that are as close to equal in population as possible; provided
16 that any deviation from equal population across districts shall
17 not exceed plus or minus five percent and shall be based on:

- 18 (1) compliance with applicable federal law;
19 (2) consideration of tribal government;
20 (3) the avoidance of diluting the
21 representation of communities of interest;
22 (4) the avoidance of fragmenting governmental
23 subdivisions; or
24 (5) the preservation of the core of existing
25 districts, provided that the district plan meets all other

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1 requirements provided by this section.

2 F. When a district plan satisfies all of the
3 requirements provided by Subsections A through E of this
4 section, the commission shall adopt those district plans that
5 are most compact, as determined by a measure of length-width
6 compactness or perimeter compactness. The absolute compactness
7 values computed for individual districts may be cumulated for
8 all districts in a plan to compare the overall compactness of
9 two or more alternative redistricting plans for the state or
10 for a portion of the state. The total perimeter distance
11 computed for individual districts may be cumulated for all
12 districts in a plan to compare the overall compactness of two
13 or more alternative redistricting plans for the state or for a
14 portion of the state.

15 G. Based on length-width compactness, a district
16 shall be most compact when the length of the district and the
17 width of the district are equal.

18 SECTION 8. [NEW MATERIAL] COMMISSION ADOPTION OF DISTRICT
19 PLANS.--The commission shall adopt three to five district plans
20 for each of New Mexico's congressional districts, the house of
21 representatives, the senate and the public education commission
22 at an open meeting. After the commission adopts the district
23 plans, the commission shall:

24 A. provide written evaluations of each district
25 plan that address the satisfaction of the requirements set

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1 forth in the Redistricting Act, the ability of racial and
2 language minorities to elect candidates of their choice, a
3 measure of partisan fairness and the preservation of
4 communities of interest; and

5 B. indicate which district plan for each of New
6 Mexico's congressional districts, the house of representatives,
7 the senate and the public education commission best satisfies
8 the requirements of Section 7 of the Redistricting Act. The
9 commission shall explain its indication for each indicated
10 district plan in the written evaluation accompanying the
11 indicated district plan.

12 SECTION 9. [NEW MATERIAL] LEGISLATIVE SELECTION OF
13 DISTRICT PLANS.--

14 A. The commission shall deliver its adopted
15 district plans for New Mexico's congressional districts, the
16 house of representatives, the senate and the public education
17 commission, all accompanying written evaluations and all
18 accompanying concise explanatory statements to the chief clerk
19 of the senate and the chief clerk of the house by October 15,
20 2021, and every September 1 of each year ending in the number
21 one thereafter.

22 B. The legislature may select one district plan
23 from each set of district plans and pass the selected district
24 plans without amendment and present the plans to the governor
25 for approval.

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1 C. If the legislature does not select one district
2 plan from any one set of district plans pursuant to Subsection
3 B of this section, then the legislature shall select, pass
4 without amendment and present to the governor for approval the
5 district plan for that set that the commission indicated best
6 satisfies the requirements of Section 7 of the Redistricting
7 Act.

8 **SECTION 10. [NEW MATERIAL] JUDICIAL REVIEW.--**

9 A. A person who submitted data, views or arguments
10 orally or in writing at a public hearing conducted by the
11 commission may file a notice of appeal in the supreme court
12 asking for a review of any district plan adopted by the
13 commission. A notice of appeal shall be filed within thirty
14 days after the commission adopts the district plan being
15 appealed. The notice of appeal shall name the commission as
16 appellee and shall identify the district plan from which the
17 appeal is taken. A person who submitted data, views or
18 arguments orally or in writing at a public rule hearing
19 conducted by the commission and whose rights may be directly
20 affected by the appeal may appear and become a party, or the
21 supreme court may, upon proper notice, order any person to be
22 joined as a party.

23 B. Upon the filing of a notice of appeal, the
24 appellant shall cause a copy of the notice of appeal to be
25 served upon the commission in the manner prescribed by the

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1 rules of appellate procedure. Within thirty days after service
2 of the notice of appeal or such further time as the supreme
3 court may specify, the commission shall certify to the supreme
4 court the complete commission rulemaking record; provided that
5 the parties and the commission may stipulate that only a
6 specified portion of the commission rulemaking record shall be
7 certified to the supreme court for review on appeal.

8 C. The appeal shall be heard on the commission
9 rulemaking record, and the supreme court shall not permit the
10 introduction of new evidence addressed to any of the issues
11 presented at the hearing before the commission.

12 D. The burden shall be on the appellant to show
13 that the district plan appealed from violates applicable law,
14 is arbitrary or capricious or is not supported by substantial
15 evidence.

16 E. The supreme court shall have no power to modify
17 the district plan appealed from, but shall either affirm or
18 annul and vacate the same. If the supreme court either affirms
19 or annuls a district plan, the supreme court may remand the
20 matter to the commission for any further necessary
21 administrative proceedings. Proceedings in the supreme court
22 shall be governed by the provisions of the Redistricting Act
23 and by the rules of appellate procedure.

24 F. During the pendency of an appeal, the supreme
25 court in its discretion may stay or suspend adoption by the

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1 legislature of any district plan subject to appeal.

2 G. The supreme court shall not award fees to the
3 prevailing party unless required by federal law.

4 SECTION 11. EMERGENCY.--It is necessary for the public
5 peace, health and safety that this act take effect immediately.

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