

MINUTES

Senate Legislative Redistricting Committee House Legislative Redistricting Committee



Senator Mary Duvall, Senate Committee Chair
Representative Spencer Gosch, House Committee Chair
Senator Jim Bolin, Senate Committee Vice Chair
Representative Kent Peterson, House Committee Vice Chair

Second Meeting, 2021 Interim
Monday, August 30, 2021

Room 414 – State Capitol
Pierre, South Dakota

The second interim meeting of the Senate Legislative Redistricting Committee and the House Legislative Redistricting Committee was called to order by Senator Mary Duvall at 10:00 a.m. (CST). The committees met together via teleconference and in Room 414 of the State Capitol, Pierre, South Dakota.

A quorum was determined with the following members answering roll call: Representatives Ryan Cwach, Drew Dennert, Mike Derby, Spencer Gosch (Chair, via Teams), Jon Hansen (via Teams), Liz May (via Teams), Kent Peterson (Vice Chair), and Bethany Soye (via Teams); and Senators Jim Bolin (Vice Chair), Casey Crabtree, Michael Diedrich (via Teams), Helene Duhamel (via Teams), Mary Duvall (Chair), Troy Heinert (via Teams), and Kyle Schoenfish.

Staff members present included Matt Frame, Legislative Attorney, and Rachael Person, Administrative Specialist.

NOTE: *For the purpose of continuity, the following minutes are not necessarily in chronological order. Also, all referenced documents distributed at the meeting are attached to the original minutes on file in the Legislative Research Council office. This meeting was webcast live. The archived webcast is available at the LRC website at sdlegislature.gov.*

Approval of Minutes

Representative Peterson moved, seconded by Senator Bolin, to approve the minutes of the June 1, 2021, Senate Legislative Redistricting Committee and House Legislative Redistricting Committee meeting. Motion prevailed on a voice vote.

Opening Remarks

Mr. Reed Holwegner, Director, LRC, introduced the committee staff who will be working with the committees during the redistricting process. Mr. Jeff Mehlhaff, Chief Fiscal Analyst, is working with the greater Sioux Falls legislative districts, Mr. Matt Frame, Legislative Attorney, is working with the greater Rapid City legislative districts, Ms. Anna Madsen, Research Analyst, is working with majority/minority districts, Mr. Randy Stockwell, Network Administrator, will be the technology coordinator, Mr. Justin Goetz, Acting Chief Research & Legal Analyst/Code Counsel, will be providing any legal expertise or analysis needed, and Ms. Rachael Person, who will be supporting the committees and subcommittees in an operational capacity.

Senator Duvall welcomed everyone to the meeting and asked that anyone who would like to submit a map submit it to one of the committee members so the committees can be assured that similar requests are put together and the LRC staff can be utilized to make the most of the time allotted to this process.

National Conference of State Legislatures (NCSL) Redistricting Conference Update

Senator Duvall touched on the NCSL Redistricting Seminar that was held July 11-14, 2021, in Salt Lake City, Utah, and asked Representative Cwach and Senator Schoenfish to provide their feedback from the conference.

Representative Cwach said a topic of interest to him was the differential privacy modeling of the census data. Representative Cwach explained this is an effort by the Census Bureau to keep the data as private as possible, which is accomplished by injecting noise into the data set. Representative Cwach commented that the sections covering the laws were also important and he encouraged everyone to read the Supreme Court case *Thornburg v. Gingles* which lays out the framework for how the committee should be thinking when putting together majority/minority districts.

Senator Schoenfish commented that the conference covered almost every topic imaginable when it comes to redistricting. He highlighted that the committees need to make sure any public meetings or listening sessions are highly promoted to ensure the public know about them and can attend them. Senator Schoenfish said that any situation the committee may face has probably already been faced or talked about by other states, so if any questions or concerns come up, there are multiple resources available for the committees. Senator Schoenfish also emphasized that it is of high importance for the committees to be able to justify everything they do in the redistricting process.

Senator Duvall said her key takeaways were the importance of keeping the public well informed throughout the process, the protection of minority voting rights, establishing a good record for why the committees created the districts the way they did, and not to rely too much on what was done ten years ago.

Senator Duvall also pointed out the quick tab set up on the LRC home page strictly for the redistricting process ([2021 Redistricting](#)).

Report from the Technology Subcommittee

Representatives Dennert and Soye, and Senator Crabtree were appointed to the Technology subcommittee at the June 1, 2021 meeting. Representative Dennert said the subcommittee had a lot of discussion on what they felt was the best way to move forward with the online redistricting software and determined that for the time being it would be best if only the members of the committees have access, and after the committees have more time to determine guidelines and work with the LRC staff, options would be made available for other legislators and members of the public who would like to submit maps for consideration.

Representative Soye added that the decision was based on the limited staffing resources and timeframe the committees have to complete their work.

Senator Bolin emphasized that the committees only have a certain amount of time to complete their work and due to that shortened timeframe limitations should be established for the number of maps the LRC staff can be involved with and the committees can consider. Senator Bolin also reminded everyone of the legal requirements that have to be met and encouraged the committees to establish a framework.

Representative Dennert agreed that the biggest concern for opening the software up to the public would be the time constraints and the burden that could place on the LRC staff. He added that it would be better for individuals wanting to submit maps to create those on a public domain software and then submit those maps to the Redistricting committees rather than the LRC staff.

Senator Duvall and Representative Dennert provided options for public domain software ([davesredistricting.org](#) and [districtr.org](#)).

Representative Hansen said the committees need to keep an open mind going forward, and if they hear from a number of people and members of the Legislature that they want access, the committees should be willing to work to provide them access.

Representative Dennert moved, seconded by Representative Peterson, that the LRC software provided to the committees would only be accessible by the 15 committee members and LRC staff. The motion prevailed on a roll call vote with 10 voting AYE, 3 voting NAY, and 2 EXCUSED. House committee members voting AYE: Dennert, Derby, Hansen, May, Soye, and Peterson. House committee members voting NAY: Cwach. House committee member EXCUSED: Gosch. Senate committee members voting AYE: Crabtree, Duhamel, Bolin, and Duvall. Senate committee members voting NAY: Diedrich and Schoenfish. Senate committee member EXCUSED: Heinert.

Discussion of the Data

Mr. Matt Frame, Legislative Attorney, LRC, provided an overview of the Census data, discussed the Voting Rights Act requirements, and outlined proposals for conurbation areas ([Document 1](#)).

Mr. Frame pointed out that the total population of South Dakota is 886,667 people and reminded everyone that at the June 1, 2021 meeting the committees voted to have 35 legislative districts; therefore, each Senate district needs to have about 25,333 people. Mr. Frame then ran through sample deviation ranges and what the population numbers would need to look like in the districts with the deviation ranges. Mr. Frame highlighted that the Census Bureau has put together several tables and data visualizations that contain helpful information for both the public and members of the committees, including different diversity factors for each county such as race and ethnicity and the voting age population ([census.gov](#)). Mr. Frame said the voting age population for each district is something to keep in mind when drawing the districts. While some counties have high percentages of people who are over 18, several counties have much lower voting age populations. Mr. Frame said that while people under the age of 18 are counted in the census as a person within that county, they aren't eligible to vote because they haven't reached the age of 18, and this is especially important to remember within the majority/minority districts.

Other data points presented by Mr. Frame showed population counts by county, population fluctuations from 2010-2020, counties that experienced the most growth and decline, target populations by district, and deviation ranges. When it comes to the deviation ranges per district, Mr. Frame said it is important to remember that trying to maintain some of the existing districts may not be feasible because the committees have to ensure there is equal population in every district and that minority voting rights are protected.

Mr. Frame then covered the Voting Rights Act, highlighting Section 2, specifically Subsection (b) and its relation to the Supreme Court case of *Thornburg v. Gingles*. On this, Mr. Frame said that even if a minority has a large population within a state, if they're not geographically compact enough that you can draw a district, they are not guaranteed the right of proportionality. What they are guaranteed though, is that these districts, if drawn, are going to be fair based on the totality of circumstances, and also the extent to which members of a protected class are able to elect their candidate of choice in a certain district. Mr. Frame said that may indicate, based on the Voting Rights Act, that the committees may have to maintain certain districts. He added that it also goes the opposite direction; if a district could be drawn in such a way that would allow a protected class to elect their candidate of choice, then potentially the Voting Rights Act would also require the committees to do that. However, Mr. Frame said, there is no clear directive one way or the other. Instead, it is important to gather evidence and other information from the members of the public, the communities of interest, and members of the committees, to determine whether or not those requirements of the Voting Rights Act have been met.

Mr. Frame also covered the Gingles Factors that determine whether a majority/minority district may need to be created, some important notes such as all states and districts are subject to the Voting Rights Act, and though South

Dakota is not currently subject to preclearance under Section 5, retrogression can still apply under Section 2. Mr. Frame emphasized the importance of the committees having evidence and a clear record supporting the reasons why the districts are drawn the way they are.

Mr. Frame then moved on to conurbation areas. Mr. Frame defined a conurbation area as a process where a part of the whole map of South Dakota is taken out, a border is drawn around it so no other districts can intrude on the area and no district within the conurbation area can go outside of it, but work can be done within the conurbation area. Once the maps for the other districts are created, the conurbation area should be able to fit back into the whole map of the districts adopted by the committees. Mr. Frame presented some options for conurbations areas in the greater Sioux Falls and greater Rapid City areas.

Senator Crabtree and Representative Dennert also provided proposals for Sioux Falls ([Document 2](#)) and Rapid City ([Document 3](#)), respectively.

Discussion of the Data

Senator Duvall asked Senator Bolin and Representative Derby to share their experiences from working on past redistricting committees and any advice they had for the current committees.

Senator Bolin said that this year the committees are in for a very compact and intense schedule with just over two months to accomplish the entire process. Ten years ago, the committee had seven months. Senator Bolin advised the committees to plan for more travel to the Native American communities and make it easy for their members to have input in the process. He added that in the last redistricting cycle the members of the committees went out into the public and listened to those requests of the public and of the Native American population and worked to meet their requests. Senator Bolin highlighted that in a year where multiple states across the country experienced lawsuits from their redistricting process, no lawsuit was brought against the state of South Dakota for an unfair map between 2011 and today.

Representative Derby said the process is very different compared to twenty years ago when he served on the Redistricting committee. He encouraged the committees to utilize the case law that has been developed over the last 20 years and glean the lessons they can from them.

Senator Duvall pointed out that during the June 1 meeting the committees voted to have subcommittees for the Sioux Falls, Rapid City, and tribal areas.

Senator Duvall announced her appointments to the Senate subcommittees:

- Sioux Falls – Senators Bolin, Crabtree, and Schoenfish
- Rapid City – Senators Diedrich, Duvall, and Duhamel
- Tribal areas – Senators Bolin, Duvall, and Heinert

Representative Peterson announced his appointments to the House subcommittees:

- Sioux Falls – Representatives Hansen, Peterson, and Soye
- Rapid City – Representatives Dennert, Derby, and May
- Tribal areas – Representatives Cwach, Gosch, and May

Senator Bolin recommended establishing a population deviation range and said maintaining the current 5% deviation range was the most logical and reasonable plan that was the easiest for the public to understand.

Senator Bolin moved, seconded by Senator Crabtree, that the committees adopt a deviation level of no more than 5% above the target margin, and no less than 5% below the target margin, for all of the legislative districts the committees will be fashioning during this process. The motion prevailed on a roll call vote with 13 voting AYE, 1 voting NAY, and 1 EXCUSED. House committee members voting AYE: Dennert, Derby, Hansen, May, Soye, Peterson, and Gosch. House committee member voting NAY: Cwach. Senate committee members voting AYE: Crabtree, Diedrich, Duhamel, Schoenfish, Bolin, and Duvall. Senate committee member EXCUSED: Heinert

Public Testimony

Mr. Kellen Returns From Scout, Financial Officer, Great Plains Tribal Chairman's Association Inc., thanked the committee for the opportunity to speak on behalf of his organization. Mr. Returns From Scout urged the committee that the redistricting cycle have inclusivity for the tribal communities and tribal citizens both on tribal lands and in urban areas, that public hearings be held where they are accessible to all residents and be held on all nine of the reservations, and that the committees and subcommittees engage in meaningful consultation with the public. Mr. Returns From Scout reminded the committees that communities of interest should be protected and that members of minority communities must have an opportunity to elect representatives of their choice.

Mr. Bret Healy, speaking on behalf of Mr. OJ Semans and Four Directions Native Vote, said he is glad the committee is taking the Voting Rights Act as seriously as they are and reminded the committees that all legislators voting on the district maps should do the same. Mr. Healy discussed several lawsuits and voting rights litigation and their importance to the process. Mr. Healy emphasized that subcommittee hearings should be held on all nine reservations as well as in areas where urban native populations reside, and that the committees remember not all citizens have equal access to cast a ballot, and he requested that the software be made available to tribal governments. Mr. Healy also asked that the committees be aware of the digital divide that exists on reservations when promoting public hearings and that they make sure information on the meetings is provided to tribal radio stations, newspapers that cover tribal communities, and other tribal government outlets so the information can be seen by those who may not have online access.

Mr. John Claussen, self, Sioux Falls, reminded the committees of his comments made at the June 1 meeting. Mr. Claussen asked that the rural and urban vote be respected, especially in populated areas where the legislative districts extend into rural areas. Mr. Claussen said that any legislator who represents a rural area should not consent to legislative districts that allow major cities to control rural outcomes, and if there is to be true rural and urban representation, those areas should have their own individual voices. Mr. Claussen also brought up his concerns with the Census counting and the RV voters who vote in South Dakota but only have a PO Box which Mr. Claussen said leads to an overweight of population in some legislative districts where people who aren't getting counted in the Census are getting to influence a legislative district.

Committee Discussion

Senator Bolin suggested the committees establish conurbation areas in Sioux Falls and Rapid City to make the best use of time, as the conurbation areas will influence the way other sections of the state might be drawn in potential maps.

Representative Hansen agreed and said the sooner the committees could establish conurbation areas the better because without them, the committees may end up with too many different maps and ideas and would potentially experience too much divide to come back to consensus when they need to.

Senator Crabtree said he agreed with looking at adopting conurbation areas as part of the overall strategy, but he urged the committee to take more time to study the proposals, gather public input, give the subcommittees time to meet, and then choose the right maps to move forward with rather than rushing into a decision.

Senator Bolin moved, seconded by Representative Dennert, to adopt the principle of a conurbation area for both Sioux Falls and Rapid City. The motion prevailed on a roll call vote with 13 voting AYE, and 2 EXCUSED. House committee members voting AYE: Cwach, Dennert, Derby, Hansen, May, Soye, and Peterson. House committee member EXCUSED: Gosch. Senate committee members voting AYE: Crabtree, Diedrich, Duhamel, Schoenfish, Bolin, and Duvall. Senate committee member EXCUSED: Heinert

Representative Dennert suggested that if the committees were in favor of a conurbation area in one of the metro areas and not the other, a vote could be taken to set one area at the current time, and the next could be voted on during the September 9 meeting.

Representative Gosch moved, seconded by Representative Soye, to adopt the Split Rock Creek Sioux Falls conurbation area.

Mr. Frame shared the Split Rock Creek conurbation area proposal that was included in his [presentation](#), and told the committee this is the current conurbation area for Sioux Falls.

Representative Soye said this map keeps Minnehaha County together and that the map was used in the last Special Session for redistricting and if the committees are going to keep things continuous, they should keep the Spit Rock Creek map unless there was significant reason not to do so.

Senator Bolin said the Split Rock Creek conurbation area was the most legitimate of all the potential conurbation areas for multiple reasons. First, it is very close to the prefect population number at 253,330 with a deviation of only 889 people, which is less than 100 people per potential district. Second, it maintains consistency for the conurbation area for the Sioux Falls. In addition, it maintains the three growing communities in the Sioux Falls area.

Senator Crabtree encouraged the members to hold off on making decisions and allow some time to gather input from the public.

Senator Diedrich echoed Senator Crabtree's comments and said the fact that the proposal was just brought forward, the committees did not have enough information, transparency, or input to set boundary areas at the present time.

Representative Derby made a substitution motion, seconded by Representative Cwach, to defer action on defining conurbation areas for Sioux Falls and Rapid City until the September 9, 2021 Redistricting meeting. The motion failed on a roll call vote with 8 voting AYE, 6 voting NAY, and 1 EXCUSED. House committee members voting AYE: Cwach, Derby, and Peterson. House committee members voting NAY: Dennert, Hansen, May, Soye, and Gosch. Senate committee members voting AYE: Crabtree, Diedrich, Duhamel, Schoenfish, and Duvall. Senate committee member voting NAY: Bolin. Senate committee member EXCUSED: Heinert.

The committee reverted to Representative Gosch's original motion.

Representative Gosch moved, seconded by Representative Soye, to adopt the Split Rock Creek Sioux Falls conurbation area. The motion failed on a roll call vote with 6 voting AYE, 8 voting NAY, and 1 EXCUSED. House committee members voting AYE: Dennert, Hansen, May, Soye, and Gosch. House committee members voting NAY: Cwach, Derby, and Peterson. Senate committee members voting AYE: Bolin. Senate committee members voting NAY: Crabtree, Diedrich, Duhamel, Schoenfish, and Duvall. Senate committee member EXCUSED: Heinert.

Representative Dennert said that given the votes, the committees should wait, gather input, and be ready to cast a vote at the September 9 meeting.

Representative Dennert moved, seconded by Representative Peterson, to defer the decision on conurbation areas until the September 9, 2021 Redistricting meeting. The motion prevailed on a roll call vote with 14 voting AYE and 1 EXCUSED. House committee members voting AYE: Cwach, Dennert, Derby, Hansen, May, Soye, Peterson, and Gosch. Senate committee members voting AYE: Crabtree, Diedrich, Duhamel, Schoenfish, Bolin, and Duvall. Senate committee member EXCUSED: Heinert.

The committee discussed the upcoming dates for the Redistricting committee meetings. Senator Duvall said the subcommittees identified earlier will work at picking dates and places to hold public hearings, and they will release that information to the public as the decisions are made.

Mr. Frame ran through the tentative timetable for the committees. The committees will meet together in Pierre on the following dates: September 9, September 22, September 30, October 18, and October 25. The redistricting tour will run from October 11 – 13, starting in Rapid City and ending in Sioux Falls. The Special Legislative Session for Redistricting will convene in Pierre on November 8, 2021. Mr. Frame said that if everything goes to plan, the Legislature will be able to adopt a map on November 8 which puts the state well ahead of the December 1, 2021 constitutional requirement for the completion of the redistricting process.

Senator Duvall highlighted the resources available on the LRC website for anyone who has questions regarding the Redistricting process. Those resources can be found through the [2021 Redistricting](#) tab on the LRC home page or through the committee web pages ([Senate Committee](#) and [House Committee](#)).

Representative Peterson moved, seconded by Senator Crabtree, that the Senate Legislative Redistricting Committee and the House Legislative Redistricting Committee be adjourned. The motion prevailed on a voice vote.

The committees adjourned at 2:25 p.m.