

MINUTES

Senate Legislative Redistricting Committee



Senator Mary Duvall, Chair
Senator Jim Bolin, Vice Chair

Fourth Meeting, 2021 Interim
Thursday, September 30, 2021

Room 414 – State Capitol
Pierre, South Dakota

The fourth interim meeting of the Senate Legislative Redistricting Committee and 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), Jon Hansen, Liz May, Kent Peterson (Vice Chair, via Teams), and Bethany Soye; and Senators Jim Bolin (Vice Chair), Casey Crabtree, Michael Diedrich, 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 on the LRC website at sdlegislature.gov.*

Approval of Minutes

Representative Gosch moved, seconded by Representative Hansen, to approve the minutes of the September 9, 2021, Senate Legislative Redistricting Committee and House Legislative Redistricting Committee meeting. The motion prevailed on a voice vote.

Opening Remarks

Senator Duvall stated that the committees are undertaking the work of redistricting because they took an oath to uphold the Constitution which says that the legislature shall redistrict every ten years. Senator Duvall pointed out that the Constitution is clear that the committees shall use the Census data, and that South Dakota is one of twenty-one states that explicitly requires this. Senator Duvall reviewed the requirements of state law and the decisions the committees have made in previous meetings, and then asked members of the Redistricting subcommittees to share their feedback from the public hearings.

Reports from Subcommittees

The Rapid City subcommittee shared their public hearing feedback during the September 9, 2021 Redistricting meeting. Senator Diedrich said that the subcommittee has continued to look at the input they received and are evaluating it based on the guidelines set up by the committees. Senator Diedrich added that the Rapid City subcommittee had proposals related to the conurbation area layout and the districts within the conurbation area, as well as suggestions for other surrounding districts.

Senator Bolin thanked the staff at Southeast Technical College for hosting the Sioux Falls subcommittee meeting. He said the subcommittee had a good turn out with a wide range of different perspectives on the Sioux Falls

conurbation area. Senator Bolin said the main theme addressed was that there be a clear separation between urban and rural areas.

Representative Hansen pointed out the subcommittee report ([Document 1](#)) put together by the LRC and said the report was a good summary of the meeting. Representative Hansen said no area of consensus stood out and the subcommittee heard about many issues such as keeping rural areas rural, urban areas urban, broadband issues, and the public's desire that the districts be fairly drawn.

Representative Soye added that the constituents they heard from either wanted the conurbation area to be large to keep Minnehaha County whole, or they wanted the conurbation area to be small and just follow the Sioux Falls city limits.

Senator Schoenfish commented on the number of constituents who testified in support of having urban areas represented by urban legislators and rural areas represented by rural legislators.

Senator Crabtree said a number of current and former legislators were present at the meeting and advocated for the least amount of change possible, but many of the public members asked for clean district lines.

Senator Heinert said the Tribal Areas subcommittee heard from representatives from the Rosebud, Lower Brule, Oglala Lakota, Crow Creek, and Yankton Sioux tribes, and a large majority testified to the troubles with the federal Census on reservation land. Senator Heinert said the subcommittee was asked to keep the predominately Native Districts 26, 27, and 28 as close as possible to what they currently are. He added that about 50% of the tribal membership is under the voting age of 18 and asked the committees to keep that in mind going forward.

Senator Heinert pointed out that the 5% deviation range previously voted on by the committees presents obstacles in the predominately Native districts and dilutes the Native American vote in such a fashion that it might create legal trouble in the future. Senator Heinert asked the committees to consider changing the population deviation.

Mr. Matt Frame, Legislative Attorney, LRC, reminded the committees that the deviation range encompasses the map as a whole and the district with the lowest deviation and the district with the highest deviation are added together to create the overall deviation for the state. If that number is over 10%, the courts would consider the map to be presumptively unconstitutional unless there is a justifiable reason for surpassing the 10% deviation.

Representative Cwach reminded the committees of the additional criteria they have to follow and said the 5% deviation is the most arbitrary piece of the criteria. Representative Cwach encouraged the committees to table the 5% deviation, draw good district maps, and then change them as needed to make sure they are constitutional.

Senator Bolin asked if freezing the current Districts 26, 27, and 28 as they are without any adjustments would be favorable. Senator Heinert said the tribal leaders would prefer if Districts 26, 27, and 28 stayed as they are and encouraged the committees to respect the wishes of the people who live in those areas and consider freezing the districts.

Senator Duvall pointed out that if the current districts stayed as they are, District 26 would have a -8.94% deviation, District 27 would have approximately a -12% deviation, and District 28 a -5.7% deviation.

Representative Soye voiced her concern over the -12% deviation in District 27 when the courts consider anything over a 10% deviation to be unconstitutional.

Senator Heinert moved, seconded by Representative Cwach, that the committees freeze Districts 26, 27, and 28 at their current boundaries. The motion failed on a roll call vote with 2 members voting AYE, and 13 members voting NAY. House committee members voting AYE: Cwach. House committee members voting NAY: Dennert, Derby, Hansen, May, Soye, Peterson and Gosch. Senate committee members voting AYE: Heinert. Senate committee members voting NAY: Crabtree, Diedrich, Duhamel, Schoenfish, Bolin, and Duvall.

The committees continued their discussion on changing the 5% population deviation.

Representative Soye said it was too early for the committees to decide to change the deviation range, and that they should see how Districts 26, 27, and 28 fit into the state-wide map and if that would present a justifiable reason for the districts to have substantial population deviations.

Senator Diedrich echoed Representative Soye's comments but said changing the deviation is a valid point to think about as the committees work through the process of deliberating how to comply with the Constitution and the applicable federal law.

Senator Heinert moved, seconded by Representative Cwach, that Districts 26, 27, and 28 have a deviation range from 8% below to 2% above. The motion failed on roll call vote with 2 voting AYE and 13 voting NAY. House committee members voting AYE: Cwach. House committee members voting NAY: Dennert, Derby, Hansen, May, Soye, Peterson, and Gosch. Senate committee members voting AYE: Heinert. Senate committee members voting NAY: Crabtree, Diedrich, Duhamel, Schoenfish, Bolin, and Duvall.

Northwest South Dakota (Current Districts 28 & 29)

Representative Gosch suggested the committees start with District 28 and stated that it was one of the easy districts to draw because all of the counties within its boundaries are alike. He recommended that District 28 include the counties of Harding, Perkins, Butte, Corson, Dewey, and Ziebach as doing so would respect the county boundaries and the population numbers would work with the deviation range.

Representative Soye said the population deviation would be 2.41%.

Representative Dennert asked if the intention was to divide District 28 into a 28A single legislative district and a 28B single legislative district at a later date. Representative Gosch said that would be a decision for the committees to make after they have an opportunity to hear feedback from the public on the Legislative Redistricting tour.

Senator Diedrich supported drawing District 28 as described because it would cover the Standing Rock and Cheyenne River Reservations, keep Butte County whole, and would have a good population deviance.

Representative Gosch moved, seconded by Senator Bolin, that District 28 encompass the counties of Harding, Perkins, Butte, Corson, Dewey, and Ziebach in their entirety. The motion prevailed on a roll call vote with 14 voting AYE and 1 voting NAY. 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 members voting NAY: Heinert.

Representative Gosch moved, seconded by Senator Bolin, that District 29 encompass all of Meade County outside of the Rapid City conurbation area as one district. The motion prevailed on a voice vote with 15 voting AYE. House committee members voting AYE: Cwach, Dennert, Derby, Hansen, May, Soye, Peterson, and Gosch. Senate committee members voting AYE: Crabtree, Diedrich, Duhamel, Heinert, Schoenfish, Bolin, and Duvall.

Public Testimony

Representative Ernie Otten, District 6, Tea, spoke on the growth of Lincoln County and the differences between people moving into the growing urban hub of Sioux Falls and those moving into the smaller communities of Tea, Harrisburg, and Lennox. He said it is important to keep the northern end of the area one district and keep the heavily urban area for the Sioux Falls district.

Representative Lana Greenfield, District 2, Doland, said she wanted to create an awareness for the Hutterite citizens in her district and within the state. Representative Greenfield pointed out their rural and individual culture and customs, and their participation in South Dakota's industry and government proceedings. She asked the committees to keep their culture, voices, and votes represented and not break their communities up into different districts.

Mr. John Claussen, self, Sioux Falls, said the public hearing in Sioux Falls had a good crowd, and one thing he noticed was that the current and former legislators and the business community wanted the status quo, while the average citizen was requesting urban and rural areas be separate and given their own identities. Mr. Claussen said he also noticed the desire to keep things simple for the county auditors and the media but, Mr. Claussen said, the elections should be about the voters. Mr. Claussen spoke on the RV vote and urged the committees to make sure overweight does not occur in legislative districts due to those votes.

Mr. Mike Wiese, Brown County Commissioner, read a resolution created and adopted by the Brown County Commission for the record ([Document 2](#)).

Former Representative Nancy Rasmussen, District 17, Hurley, asked the committees to support a map that keeps Turner County whole.

Mr. Bret Healy, on behalf of Mr. OJ Semans and Four Directions Native Vote, spoke on court cases revolving around population deviations that exceeded the 10% range, and the risk the Legislature may face if a dilution in Native American votes occurs. Mr. Healy encouraged collaboration and cooperation with the nine tribes in South Dakota as the map is drawn going forward.

Mr. Kellen Returns From Scout, Financial Officer, Great Plains Tribal Chairman's Association, talked about the single member House district he proposed for north Rapid City. Mr. Returns From Scout said that historically his community in north Rapid City has experienced underrepresentation, misrepresentation, and non-representation. He requested that his community of interest be considered with respect to the House district he proposed at the Rapid City subcommittee hearing. Mr. Returns From Scout also asked the committee members to listen and take compelling arguments for communities of interest into account when constructing the maps.

Sioux Falls Conurbation Areas

Senator Bolin spoke on his conurbation area proposal ([Document 2](#)). He said the target population for his 10-district conurbation area would be very close to achieving the population goal of 25,333, three rural or small-town districts can be created within the boundaries, as well as seven legislative districts within Sioux Falls city limits, and it would allow the three growing communities of Tea, Harrisburg, and Lennox to be kept together as they are today.

Representative Soye said a lot of people at the Sioux Falls subcommittee meeting spoke about Representative Dennert's proposal ([Document 3](#)) and asked Senator Bolin how that proposal differed from his. Senator Bolin said Representative Dennert's proposal fits within the boundaries of his proposal, but he moved precinct 4-11 into the conurbation area and removed precinct 3-17.

Senator Bolin moved, seconded by Representative Hansen, to adopt the 10-district conurbation area referred to as Split Rock Creek.

Senator Diedrich made a substitution motion, seconded by Senator Schoenfish, that the Senate Legislative Redistricting Committee adopt the Crabtree Sioux Falls conurbation area proposal.

Senator Crabtree said his proposal ([Document 4](#)) encompasses Sioux Falls and the surrounding communities of Brandon, Harrisburg, and Tea. Senator Crabtree reminded the committees that change is going to happen and the public showed at the Sioux Falls committee meeting that they are accepting of that change and they wanted a clear line between urban and rural areas. Senator Crabtree touched on District 25 and said the committees should not make the same mistake that was made ten years ago with that district.

Senator Bolin asked which of the two proposals is closer to the exact number for a conurbation area. Senator Crabtree said his proposal has a 1.5% deviation.

Representative Gosch expressed his objection to the motion being made as a Senate motion before both committees were able to vote on it.

Representative Hansen said the committees should continue to vote together as they have been and making the motion as only a Senate motion did more to divide the committees than to unite them in the goal of working together to create one map to present to the Legislature.

Senator Diedrich said the committees could still move forward together with public input. He said that if the Senate committee has proposals and the House committee has proposals, the committees would have multiple options on which to receive public feedback.

Representative Gosch said the difficulty with moving forward with individual House committee proposals and individual Senate committee proposals creates parameters in which the committees are unable to work with.

Senator Duvall asked that the committees keep in mind that they are developing proposals to present to the public to accommodate public input.

Action on Senator Diedrich's previous substitute motion. The motion prevailed on a roll call vote with 6 voting AYE and 1 voting NAY. Voting AYE: Crabtree, Diedrich, Duhamel, Heinert, Schoenfish, and Duvall. Voting NAY: Bolin.

Committee discussion moved to the House committee for proposals they wanted to present.

Representative Dennert discussed his proposal and said it would create seven districts within the limits of Sioux Falls and allow for a lot of flexibility outside of Sioux Falls in the northern and southern Minnehaha County areas.

Representative Soye supported the proposal and said it follows the city limits of Sioux Falls, separates the urban and rural areas, and provides a lot of flexibility.

Representative Dennert moved, seconded by Representative Soye, to adopt the Dennert Sioux Falls Proposal #3. The motion prevailed on a roll call vote with 7 voting AYE and 1 voting NAY. Voting AYE: Cwach, Dennert, Hansen, May, Soye, Peterson, and Gosch. Voting NAY: Derby.

Senator Schoenfish moved, seconded by Senator Crabtree, that the Senate Legislative Redistricting Committee adopt the Crabtree state-wide map proposal for the purpose of obtaining public input.

Representative Gosch rose to a point of order. Representative Gosch said the idea behind the committee was transparency and openness, and as the discussion of a state-wide map was not on the agenda, no amendments to the agenda were made at the start of the meeting, and the map had not been released, the process was not transparent or open. Representative Gosch said that if the Senate adopted the state-wide map, he would entertain a motion that the House committee be adjourned.

Senator Crabtree said the state-wide map proposal was only a proposal to release for the public to start providing feedback to the committees.

Senator Bolin asked if other maps developed by the committee could still be released as proposals.

Senator Diedrich said the state-wide map proposal provides a platform for utilization as the committees travel through the state on the redistricting tour. He said voting on it should not prevent alternative proposals from being presented and released because the committees need to have a platform to work from and modify based on the feedback they receive on the tour.

Senator Heinert agreed that action needed to be taken on a map so the committees have something to work from. Senator Heinert said other maps can be released, but the maps should be condensed into one working map to avoid confusion in the future.

Senator Schoenfish said the Crabtree state-wide map proposal would be a working draft proposal, not an official Senate map proposal, and would provide a good starting point for the committees to work from.

Representative Dennert suggested the committees create a platform for the LRC to publish committee member sponsored maps on the LRC website for the public to view and provide feedback on.

Representative Hansen said he was disappointed in how the proposal process was happening and said it demonstrated that things need to be placed on the agenda so that committee members had notice and the opportunity to be heard. Representative Hansen said the committee members were not aware that a state-wide map discussion was going to take place, and therefore, did not have the opportunity to prepare state-wide proposals of their own for release to the committees and the public.

Action on Senator Schoenfish's previous motion. The motion prevailed on a roll call vote with 6 voting AYE and 1 voting NAY. Voting AYE: Crabtree, Diedrich, Duhamel, Heinert, Schoenfish, and Duvall. Voting NAY: Bolin.

House Committee Adjournment

Representative Gosch was given the gavel and said he would entertain a motion for the House Committee to adjourn.

Representative Hansen moved, seconded by Representative Dennert, that the House Legislative Redistricting Committee be adjourned. The motion prevailed on a voice vote.

The House Legislative Redistricting Committee adjourned at 3:55 p.m.

Senate Committee Discussion and Adjournment

Senator Duvall asked if the committee wanted to clarify the process for posting map proposals for the purpose of obtaining public input.

Senator Heinert said the map proposals should not be limited by a 5% deviation rule.

Senator Diedrich agreed and said that the 5% deviation rule is something the committee can address and amend in the future if the need arises.

Senator Bolin moved, seconded by Senator Schoenfish, that any Senate Redistricting Committee member may submit a map to be posted to the LRC website for the public to look at. The motion prevailed on a roll call vote with 7 voting AYE. Voting AYE: Crabtree, Diedrich, Duhamel, Heinert, Schoenfish, Bolin, and Duvall.

Senator Duhamel asked if the committee wanted to set the boundaries for the Rapid City conurbation area. Senator Duhamel discussed the Rapid City conurbation area and the work the Rapid City subcommittee did on the district lines within the area to accommodate public feedback received.

Senator Heinert cautioned the committee on making official recommendations on Districts 27 & 30 because there are a lot of considerations still in motion and anything that happens with District 27 will change what happens with District 30.

Senator Duhamel moved, seconded by Senator Diedrich, to approve, within the Rapid City conurbation area on the Washington map proposal, boundaries for Districts 32, 33, 34, and 35. The motion prevailed on roll call vote with 6 voting AYE and 1 voting NAY. Voting AYE: Crabtree, Diedrich, Duhamel, Schoenfish, Bolin, and Duvall. Voting NAY: Heinert.

Senator Diedrich moved, seconded by Senator Schoenfish, that the Senate Legislative Redistricting Committee be adjourned. The motion prevailed on a voice vote.

The Senate Legislative Redistricting Committee adjourned at 4:11 p.m.