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## FISCAL IMPACT REPORT

**SPONSOR** Dow/Fajardo/Garratt, ORIGINAL DATE 02/05/21  
Figueroa/Louis LAST UPDATED 03/15/21 **HB** 211/aHJC  
**SHORT TITLE** Redistricting Act **SB** \_\_\_\_\_  
**ANALYST** Glenn

### ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY21	FY22	FY23	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
<b>Total</b>	See Fiscal Implications					

(Parenthesis ( ) Indicate Expenditure Decreases)

Relates to, Conflicts with

SB4

SB15&199 (SRC Substitute)

**SOURCES OF INFORMATION**

LFC Files

Responses Received From

State Ethics Commission (SEC)

Administrative Office of the Courts (AOC)

Secretary of State's Office (SOS)

Office of the Attorney General (NMAG)

**SUMMARY**

Synopsis of HJC Amendment

The House Judiciary Committee amendment to House Bill 211 amends provisions of the Redistricting Act by:

- changing the requirements for members of the State Redistricting Commission to provide that SEC appointees shall not have been members of the major political parties during the two years preceding appointment; require that all appointing authorities consider cultural diversity and geographical representation across the state when making appointments; and add individuals who have been employees of the executive branch within the two years preceding appointment to the government employees who may not serve on the commission.

- changing the start date for initial appointments to the commission and the commission's operations from April 1, 2021 to July 1, 2021.
- changing the date by which the commission must adopt district plans from October 15, 2021 to 150 days after the state receives the results of the federal census.
- allowing the public meetings and public hearings held by the commission to be conducted virtually only if required by law.
- adding to the requirements for district plans preservation of communities of interest; consideration of tribal governments and boundaries; and preservation of cores of existing districts, provided all other redistricting criteria can be met, and deletes the prohibition against plans that preserve the cores of existing districts.
- deleting Section 9, which specifies the process for the Legislature's selection of a plan, and replaces it with a new section requiring the commission to deliver its adopted plans to the Legislature by October 30, 2021, or as soon after October 30 as practicable, and requiring the Legislature to consider the plans in the same manner as legislation recommended by interim legislative committees. This amendment addresses concerns that bill's deadline for delivery of redistricting proposals to the Legislature was too short and that the bill improperly constrained legislative action on the commission's redistricting proposals.
- changing the deadline for appealing a district plan from thirty days after the plan is adopted by the commission to eleven days, and adding a provision prohibiting district courts from having jurisdiction over district plans adopted by the commission.

The HJC Amendment also amends Section 1-3-12(E) of the Precinct Boundary Adjustment Act, which requires the Legislature to redistrict in the same calendar year the state receives the results of the federal census, to provide that if the state does not receive the results of a federal decennial census by July 1 in a calendar year ending in one, the Legislature may redistrict in the calendar year ending in two. This amendment would allow the Legislature to delay redistricting until 2022 if the state does not receive the federal census by July 1, 2021.

The HJC Amendment deletes HB211's emergency clause. As a result, HB211 has no express effective date, and it is assumed that the effective date is 90 days following adjournment of the Legislature.

#### Synopsis of Original Bill

House Bill 211 enacts the Redistricting Act. The bill creates the State Redistricting Commission, comprising seven commissioners. The majority and minority leadership in the House and the Senate appoint four commissioners. The State Ethics Commission appoints two commissioners, who must not be members of the Democratic or Republican parties, and the chair, who must be a retired justice of the New Mexico Supreme Court or a retired judge of the New Mexico Court of Appeals. The bill sets out the qualifications for serving on the commission.

The Redistricting Act requires the commission to adopt three to five district plans for four separate elected bodies: New Mexico's congressional districts, the House of Representatives, the

Senate, and the Public Education Commission. The commission must adopt all district plans in accordance with the State Rules Act. For each set of district plans, the commission must indicate which plan best satisfies the requirements of the Redistricting Act. After adopting the plans, the commission delivers its plans to the Legislature. From each set of commission-adopted district plans, the Legislature may select one district plan without amendment and present the selected plans to the governor for approval. If, however, the Legislature does not select a district plan from any one set of plans, then the Legislature must select the plan the commission indicated best satisfies the requirements of the Redistricting Act.

The Redistricting Act requires the commission to hold two sets of six meetings. First, the commission must hold six open meetings to collect information about communities of interest and other information regarding the creation of district plans. After the commission holds these initial meetings, the commission must create proposed district plans and issue the proposed district plans for public comment. Second, the commission must hold six rule-making hearings for the purpose of adopting district plans, at which members of the public can offer testimony and information for the rule-making record. After concluding the rule-making hearings, the commission must hold a final meeting at which the commission adopts (1) three to five districts plans for each of the four separate elected bodies; (2) indicates its preferred four plans; and (3) provides corresponding explanatory statements for its actions.

The Redistricting Act imposes requirements on the redistricting commission's creation of district plans, governing what the commission shall and shall not consider when creating district plans. District plans must be composed of contiguous, single-member districts, and they must comply with all federal constitutional requirements and the federal Voting Rights Act. Congressional district plans must ensure the districts are as equal in population as possible; other district plans may deviate from equal population across districts by plus or minus 5 percent. The commission may not use, rely on, or reference partisan data (such as voting history or partisan registration data) when creating districting plans or create district plans with the purpose of favoring incumbents. When creating district plans, the commission may use, rely on, and reference precincts or units of population that are smaller than precincts. Also, when creating district plans, the commission may use the most recent federal decennial census data, in addition to other reliable sources of demographic data.

The Redistricting Act allows for direct judicial review in the New Mexico Supreme Court of the district plans adopted by the commission before the Legislature selects district plans. A person may notice an appeal of a commission-adopted district plan if and only if that person presented comment at one of the six commission rule-making hearings. The Redistricting Act prohibits the New Mexico Supreme Court from awarding fees to the prevailing party on appeal. But the court may award any fees required by federal law, such as to a party that prevails on a challenge brought under the Voting Rights Act or 42 U.S.C. § 1983.

This bill contains an emergency clause and would become effective immediately on signature by the governor.

### **FISCAL IMPLICATIONS**

AOC states there will be a minimal administrative cost for statewide update, distribution, and documentation of statutory changes. Any additional fiscal impact on the judiciary would be proportional to the enforcement of this law and any necessary participation of the Supreme Court

in the judicial review process outlined in the Redistricting Act. New laws, amendments to existing laws, and new hearings have the potential to increase caseloads in the courts, thus requiring additional resources to handle the increase.

SEC states it is the appointing authority of three members of the Redistricting Commission and, beyond those appointments, has no other role in the commission's work. The State Ethics Commission would appoint the commissioners in an open meeting, after soliciting and receiving applications. The fiscal impact of the State Ethics Commission's role in the proposed redistricting act is negligible.

Senate Bill 389 appropriates \$300 thousand from the general fund to the "state redistricting commission" for expenditure in FY22 and FY23 contingent on passage of HB211 or SB199. As originally introduced, SB199 was a duplicate of HB211, but it was combined with SB15 in the SRC Substitute for both bills and no longer creates a state redistricting commission. Consequently, it is unclear whether the appropriation would still apply to SB199.

## **SIGNIFICANT ISSUES**

SEC notes that for the upcoming 2021 redistricting cycle, the Redistricting Act requires the commissioners to be appointed by April 1, 2021, and to deliver district plans to the Legislature by October 15, 2021. To perform its work, the commission likely will need to make use of the 2020 Census data. According to the National Conference of State Legislatures, the Census Bureau's release of redistricting data to the states will be delayed and is not expected before July 30, 2021. See NCSL "2020 Census Delays and the Impact on Redistricting" (last accessed Jan. 30, 2021). Consequently, the 2021 delivery date to the Legislature should be amended to allow the commission both to issue district plans that make use of the 2020 Census data and to adopt district plans in accordance with the State Rules Act. To allow for these two goals, the October 15, 2021 deadline by which the commission must deliver district plans to the Legislature would need to be amended to November 30, 2021.

AOC states that New Mexico courts have been called on to assist in the state's redistricting efforts when redistricting bills introduced in the Legislature have failed or been vetoed. Both the 2001 and 2011 redistricting plans were decided through litigation. According to LCS, litigation related to the 2001 redistricting efforts cost the state more than \$3.5 million. See LCS, *A Guide to State and Congressional Redistricting in New Mexico* (April 2011), available at [www.nmlegis.gov/Redistricting/](http://www.nmlegis.gov/Redistricting/). It has also been reported that court participation in the 2011 redistricting process resulted in over \$6 million being expended on attorney fees and other costs. See <https://www.abqjournal.com/1537176/commission-would-ensure-1-person-1-vote.html>.

According to AOC, the Redistricting Act's judicial review process might be challenged on the grounds that it violates the separation of powers doctrine outlined in Article III, Section 1, of the state constitution, by ceding to the courts what is a basic legislative function of redistricting. However, AOC explains that HB211 requires the Supreme Court to either affirm or annul the district plan appealed from and prohibits the court from modifying the plan. At the same time, the Supreme Court is permitted, in its discretion, to stay or suspend adoption by the Legislature of any district plan subject to appeal.

AOC notes that, in a January 17, 2021 guest editorial in the *Albuquerque Journal*, retired New Mexico Supreme Court Chief Justice Edward Chavez and Roderick Kennedy, retired chief judge

of the state Court of Appeals, described the process by which the Redistricting Task Force operated “to bring justice, fairness and transparency to the redistricting process beginning in 2021.” The task force’s recommendations can be found at [www.NMFirst.org](http://www.NMFirst.org). HB211 reflects the recommendations of the task force.

**CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP**

HB211 relates to and conflicts with SB4, which also amends Section 1-3-12 of the Precinct Boundary Adjustment Act, and SB15&199 (combined in SRC Substitute), which also enacts the Redistricting Act and creates a nonpartisan redistricting commission.

BG/sb/al