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FISCAL IMPACT REPORT

SPONSOR Ortiz y Pino/Moores **ORIGINAL DATE** 02/15/21
LAST UPDATED _____ **HB** _____
SHORT TITLE Redistricting Act **SB** 199/ec
ANALYST Glenn

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY21	FY22	FY23	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total	See Fiscal Implications					

(Parenthesis () Indicate Expenditure Decreases)

Duplicates HB211
Relates to SB4

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 Bill

Senate Bill 199 enacts the Redistricting Act. The bill creates the state redistricting commission, comprised of seven commissioners. The majority and minority leadership in the House and the Senate respectively appoints 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 that the commission indicated best satisfies the requirements of the Redistrict Act.

The Redistricting Act requires the redistricting 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 (i) three to five districts plans for each of the four separate elected bodies; (ii) indicates its preferred four plans; and (iii) 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 comprised 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, and other district plans may deviate from equal population across districts by plus or minus five 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 upon 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 rulemaking 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 upon signature by the governor.

FISCAL IMPLICATIONS

AOC states that 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 that 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.

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 2021 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 upon 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/. 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 SB199 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 17th, 2021 Op-Ed in the *Albuquerque Journal* Retired Chief Justice of the NM Supreme Court Edward Chavez and Roderick Kennedy, Retired Chief Judge of the NM 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. SB199 reflects the recommendations of the task force.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

Relates to SB4, which amends provisions of the Precinct Boundary Adjustment Act, and duplicates HB211.

BG/rl