

NORTH DAKOTA LEGISLATIVE MANAGEMENT

Minutes of the

LEGISLATIVE REDISTRICTING COMMITTEE

Tuesday and Wednesday, October 11-12, 2011
Roughrider Room, State Capitol
Bismarck, North Dakota

Senator Ray Holmberg, Chairman, called the meeting to order at 9:00 a.m.

Members present: Senators Ray Holmberg, Randel Christmann, Dwight Cook, Tony Grindberg, Jerry Klein, Stanley W. Lyson, Ryan M. Taylor, John Warner; Representatives Larry Bellew, Bill Devlin, Richard Holman, Nancy Johnson, Jim Kasper, Jerry Kelsh, David Monson, Mike Nathe

Others present: See [Appendix A](#)

It was moved by Representative Kasper, seconded by Representative Devlin, and carried on a voice vote that the minutes of the September 27, 2011, meeting be approved as distributed.

At the request of Chairman Holmberg, Representative Nathe discussed changes made to the Burleigh County area in revised template A ([PDF map](#) or [Google Earth image](#)). Representative Nathe said the changes included squaring off District 47 around Horizon Middle School and expanding District 7 outside the city limits of Lincoln. He said the changes in the Lincoln area would put all of the Lincoln community in the same district.

Mr. John Bjornson, Committee Counsel, said the changes to District 7 also include a change in a boundary line in the Pioneer Park area.

In response to a question from Senator Taylor, Representative Nathe said the changes addressed some of the concerns expressed by Mr. Kevin Glatt, Auditor, Burleigh County, at the September 16, 2011, meeting regarding the boundaries in the Gateway Mall area and the Lincoln area.

Chairman Holmberg called on Senator Ralph L. Kilzer, District 47, for comments regarding the Bismarck area proposals. Senator Kilzer said he was representing the views of the District 47 legislators--Representatives Lawrence R. Klemin and George J. Keiser and himself--as well as those of Mr. Bob Christman, Chairman, District 47, Republican Party. He said he urged the committee's favorable consideration of the [proposal](#) presented by Representative Klemin at the committee's September 16, 2011, meeting. He said this proposal would make it easier for voters to identify their district and would allow voters to vote with their neighbors. He said this proposal makes more sense and is supported by more constituents. He said the new district in revised template A looks gerrymandered because it starts near Lincoln, wraps around the eastern and northern areas of Bismarck, goes through

a corridor between District 8 and District 47, and finally ends up at the interstate bridge over the Missouri River. He said the plan supported by the District 47 legislators derives its District 47 contribution to the new district from the neighboring precinct across Highway 83 next to the main body of the new district. Senator Kilzer provided written testimony ([Appendix B](#)).

Chairman Holmberg called on Representative Klemin for comments regarding the Bismarck area proposals. Representative Klemin said revised template A is complex and complicated, whereas the plan presented by the District 47 legislators is much simpler. He said the plan takes all of the 4,500 people District 47 must lose from one area. He said some refinement to the plan would be necessary in the southeastern part of District 47 in the Winnipeg Drive area. He said this plan would be beneficial to Burleigh County, would be easily understood by voters, would maintain district integrity, and would only affect District 47 and the new District 7. He encouraged the committee to seriously consider this plan.

Chairman Holmberg called on Representative Bellew for a review of minor changes in the Minot area to revised template A. Representative Bellew said the only change was to return a small area in District 38 to District 5.

Chairman Holmberg called on Mr. Bjornson for a review of changes to revised template A in the Fargo area. Mr. Bjornson said because a boundary in District 11 followed a storm sewer rather than a road, the boundary was modified. He said the area that was added contains only businesses. He said the census data indicate that no one lives in that area.

Senator Grindberg said the change should not be an issue for either district. He said the changes to revised template A in the Fargo area also included changing a boundary between District 21 and District 11 to get the percentage of deviation under 4 percent for both districts. He said there were no concerns about the change from the two senators in those districts.

Chairman Holmberg called on Representative Devlin for a review of changes made to revised template A with regard to the boundary between District 23 and District 14. Representative Devlin said in an effort to keep a township whole, the change was made. He said this change puts the border back to the way it has been for the last 10 years. He said a

change also was made to include the city of Max in District 4 and St. Mary Township in District 8.

Chairman Holmberg called on Mr. Jim Lee, Max, for testimony regarding the plans under consideration. Mr. Lee said for the last 40 years he has been placed in a new district after each round of legislative redistricting. He said geographically large legislative districts require extensive travel and make campaigning, organizing, and lining up election workers difficult. He said the cultural differences between the western and eastern parts of District 8 are extensive. He said he understands that having more legislative districts would cost more money; however, more districts would allow more people to participate in government.

In response to a question from Representative Kelsh, Mr. Lee said his primary concern is the geographic size of the rural districts. He said there were six counties in District 4 when he was a district chairman in that district.

In response to a question from Senator Cook, Mr. Lee said the state should be striving to allow more people to participate in government rather than discouraging it. He said he would prefer having 51, 53, or 54 districts.

Chairman Holmberg said there is agreement on the Minot and Fargo changes. He said those changes can be made to revised template B ([PDF map](#) or [Google Earth image](#)).

At the request of Chairman Holmberg, Mr. Bjornson distributed a memorandum entitled [Population Change in Odd-Numbered Legislative Districts Under Proposed Plan September 27, 2011, Template A](#). He said the memorandum includes those districts tentatively agreed upon under both templates. He said any new district would be required to have a new election. He said the memorandum does not address even-numbered districts because the terms of incumbents in those districts will expire in 2012. With the most recent changes made to District 11, he said, the total population within the new geographic area would be 3,123 rather than 3,033 as indicated in the memorandum.

In response to a question from Chairman Holmberg, Mr. Bjornson said in 1991 and 2001 a threshold was not used to determine whether an election in an odd-numbered district was required due to the total population within a new geographic area. In both 1991 and 2001, he said, that situation was addressed on a case-by-case basis. In 1981, he said, the Legislative Assembly established a threshold of more than 2,000 people within a new geographic area.

In response to a question from Representative Kelsh, Mr. Bjornson said in 1991 and 2001 the committee looked at those situations in which there were multiple incumbents in the same district. In 2001, he said, an issue arose in which two incumbents--one of whom had been in an even-numbered district and one of whom had been in an odd-numbered district--ended up in the same even-

numbered district. He said the procedure that was developed by the Legislative Assembly to allow certain senators to determine who can run in those situations was declared unconstitutional as an unlawful delegation of legislative authority. He said the court held that it should be the decision of the Legislative Assembly and not the individual member to determine if there should be an election. He said the court also has held that the Legislative Assembly can cut short a term due to legislative redistricting.

In response to a question from Representative Nathe, Chairman Holmberg said a current member of the Legislative Assembly would continue to serve until December 2012.

In response to a question from Representative Kasper, Mr. Bjornson said the only constitutional qualification for candidates is that the candidate must be a resident of the district on the day of the election.

Chairman Holmberg called on Representative Devlin to discuss changes to District 12 and District 29. Representative Devlin said to help balance the numbers between these two districts, he put some of Bloom Township back into District 29. He said District 12 does not need the rural area of Bloom Township to make numbers work.

Senator Taylor said he is concerned about the compactness of District 12 in this proposal. He said revised template B created a better plan for keeping communities of interest together in these two districts.

The committee discussed the proposals before the committee with respect to District 47 and the surrounding area.

It was moved by Representative Nathe and seconded by Representative Kasper to accept as part of revised template A ([PDF map](#) or [Google Earth image](#)) the Bismarck plan proposed to the committee by Representative Nathe rather than the plan proposed to the committee by the legislators from District 47.

Senator Taylor said District 7, as proposed in revised template A, is not aesthetically pleasing and does not make sense for the people of Bismarck. He said this proposal is not the best that can be done for Bismarck in terms of compactness.

The motion carried on a roll call vote. Senators Holmberg, Christmann, Cook, Grindberg, Klein, and Lyson and Representatives Bellew, Devlin, Johnson, Kasper, Monson, and Nathe voted "aye." Senators Taylor and Warner and Representatives Holman and Kelsh voted "nay."

It was moved by Senator Warner and seconded by Representative Holman that revised template B ([PDF map](#) or [Google Earth image](#)) be forwarded to the Legislative Management as the committee's recommended plan.

Senator Warner said there are many areas in revised template A and revised template B which are similar, including most of the Red River Valley and the west river area. He said the plans are different in the interface between District 12 and District 29. He said a major difference between the two plans is in

District 1 and District 2. Under revised template B, he said, Burke County would be in District 6. He said the city of Stanley would be in District 2. He said revised template B would have cleaner districts in Bismarck.

Senator Cook said it is important that there is agreement between the two plans in the corners of the state. He said the differences in Burke County create a lack of agreement in the northwest corner of the state. He said Burke County should remain whole and should be in District 2 not District 6.

Senator Lyson said he opposed revised template B. He said Burke County should be in District 2 not District 6. He said residents of Burke County, who tend to do business in Williams County, have more in common with District 2 than District 6.

Chairman Holmberg said both templates have been much more sensitive to county lines than in the past.

Senator Taylor said because there is much more population in District 1 and District 2 than the census shows, having the percentage of deviation in that area on the low side is more acceptable than in other areas of the state. He said revised template B takes into consideration communities of interest and trade corridors.

Representative Holman said there are differences between the two plans in Districts 22, 24, and 26. He said Lisbon is in District 24 on revised template A and in District 26 on revised template B.

The motion failed on a roll call vote. Senators Taylor and Warner and Representatives Holman and Kelsh voted "aye." Senators Holmberg, Christmann, Cook, Grindberg, Klein, and Lyson and Representatives Bellew, Devlin, Johnson, Kasper, Monson, and Nathe voted "nay."

It was moved by Representative Devlin, seconded by Senator Cook, and carried on a roll call vote that the proposed changes to District 12 and District 29 with respect to moving the rural area of Bloom Township back into District 29 be accepted as part of revised template A. Senators Holmberg, Christmann, Cook, Grindberg, Klein, Lyson, Taylor, and Warner and Representatives Bellew, Devlin, Holman, Johnson, Kasper, Kelsh, Monson, and Nathe voted "aye." No negative votes were cast.

The committee reviewed revised template A. Mr. Bjornson said all the changes discussed and agreed upon by the committee had been incorporated into the template. He said revised template A contains an area on the boundary of District 4 and District 8 which contains a census block that does not allow for a straight boundary line to be drawn. He said it may be possible to manually draw a line that would follow the section line.

It was moved by Senator Cook, seconded by Representative Johnson, and carried on a roll call vote that the boundary line in revised template A between District 4 and District 8 be modified to follow the section line in order to create a straight boundary line. Senators Holmberg, Christmann,

Cook, Grindberg, Klein, Lyson, Taylor, and Warner and Representatives Bellew, Devlin, Holman, Johnson, Kasper, Kelsh, Monson, and Nathe voted "aye." No negative votes were cast.

It was moved by Senator Cook and seconded by Representative Kasper that revised template A ([PDF map](#) or [Google Earth image](#)), as modified, be recommended and forwarded to the Legislative Management.

Chairman Holmberg said deviation range in revised template A is District 15 at -4.28 percent and District 16 at +4.10 percent for a total of 8.38 percent.

In response to a question from Chairman Holmberg, Representative Monson said in revised template A, the city of Sarles is split between District 10 and District 15 because the city is located in two counties.

The motion carried on a roll call vote. Senators Holmberg, Christmann, Cook, Grindberg, Klein, and Lyson and Representatives Bellew, Devlin, Johnson, Kasper, Monson, and Nathe voted "aye." Senators Taylor and Warner and Representatives Holman and Kelsh voted "nay."

Chairman Holmberg reviewed the changes in population in the odd-numbered districts. He said under revised template A, the districts with the largest population within a new geographic area in an odd-numbered district would be District 11 at 3,123 and District 19 at 8,232.

It was moved by Representative Holman and seconded by Representative Devlin that the threshold for requiring election in a district be set at 25 percent or 3,577 of total population within a new geographic area in an odd-numbered district.

Representative Holman said at the 25 percent threshold, only District 19 would be affected.

In response to a question from Senator Christmann, Mr. Bjornson said the 20 percent threshold was not challenged in 1981. He said it is not uncommon in other states to require every member to run again.

The motion carried on a roll call vote. Senators Holmberg, Christmann, Cook, Grindberg, Klein, Lyson, Taylor, and Warner and Representatives Bellew, Devlin, Holman, Johnson, Kasper, Kelsh, Monson, and Nathe voted "aye." No negative votes were cast.

Chairman Holmberg said there are several sections that need to be included in the bill draft that is forwarded to the Legislative Management. He said the bill draft must include language similar to 2001 Senate Bill No. 2456 with respect to the authority of the Secretary of State to adopt modified election deadlines and procedures, legislative intent with respect to the terms of incumbent legislators and legislative district boundaries, an effective date, the repeal of the current district descriptions contained in North Dakota Century Code Section 54-03-01.11, and language to address the staggering of terms of members of the Legislative Assembly as a result of redistricting.

In response to a question from Representative Kasper, Mr. Bjornson said the issue of the time period within which a member who, as a result of the redistricting process, is redistricted out of his or her district can move back into the district without losing his or her seat, is a policy decision to be made by the Legislative Assembly.

In response to a question from Senator Cook, Mr. Bjornson said giving a member the authority to decide whether to move back into the district or to announce candidacy in the new district may be interpreted by a court as an unlawful delegation of legislative authority.

Representative Kelsh said February 1 would be a fair date by which a member would have to announce he or she is moving back into that member's old district.

In response to a question from Senator Grindberg, Mr. Bjornson said when setting the cutoff date, it is important to consider other election deadlines. He said it is better to address the situation in the bill draft rather than having the decision made by a court.

At the request of Chairman Holmberg, Mr. Bjornson provided to the committee proposed language ([Appendix C](#)) with respect to the issue of incumbents in odd-numbered districts who, as a result of redistricting, reside in an even-numbered district. He said the proposed language would give a member of the Legislative Assembly who was elected from an odd-numbered district and who, as a result of legislative redistricting is placed in an even-numbered district, until February 1, 2012, to change that member's place of residence to a location in the odd-numbered district from which the member was elected. He said the proposed language would also require the member to certify that intent to relocate to the Secretary of State and to the chairman of the Legislative Management.

In response to a question from Representative Nathe, Mr. Bjornson said under the proposed language, if an odd-numbered district gained more than 3,577 people in the new geographic area of that district, an election would be required.

In response to a question from Senator Christmann, Chairman Holmberg said the language regarding a population of 3,577 should be changed to 25 percent of the ideal district size.

In response to a question from Senator Cook, Mr. Bjornson said the language in subsection 4 of Section 2 could be revised with respect to whether the member must be moved into an even-numbered district or whether the language should refer to any district other than the one to which the member had been elected.

In response to a question from Representative Kelsh, Mr. Bjornson said the reference to Section 54-01-26 in subsection 4 of Section 2 of the proposed language deals with the requirements for establishing residency.

In response to a question from Representative Kasper, Mr. Bjornson said the determination of one's

residency requires both intent and action. He said it is likely that building a home and planning to move into that home would be sufficient intent of residency.

In response to a question from Senator Grindberg, Representative Devlin said a date of April 1, 2012, may be too late to fill a vacancy.

It was moved by Senator Christmann, seconded by Senator Grindberg, and carried on a voice vote to change from February 1, 2012, to March 15, 2012, the date within which a member who was elected from an odd-numbered district and who, as a result of legislative redistricting is placed in an even-numbered district, must change that member's place of residence to a location in the odd-numbered district from which the member was elected.

Mr. Bjornson said Sections 3 and 4 of the proposed language contain the same language that was used in previous legislative redistricting bills. He said Section 3 gives the Secretary of State the authority to adjust deadlines. He said Section 4 addresses city limits and reservation boundary changes. He said this section would provide that even if city limits and reservation boundaries change in the next 10 years, the legislative district boundaries do not change.

Mr. Bjornson said when drafting the district descriptions, it is understood that a description of a township includes the cities within that township. He said the bill draft also will include a repeal of the 2001 redistricting legislation. He said the bill draft also may make reference to the official maps on file. In a discrepancy in the district descriptions, he said, the map would control.

In response to a question from Representative Bellew, Mr. Bjornson said the Fort Berthold Reservation is the only reservation in the state in which the reservation boundary would be a part of the description of the district boundary.

In response to a question from Senator Christmann, Mr. Bjornson said the Legislative Assembly cannot delegate to a local jurisdiction the authority to change district boundaries by changing city limits on which a district boundary is based. He said the language in Section 4 clarifies that intent.

It was moved by Representative Devlin, seconded by Senator Christmann, and carried on a roll call vote to direct to the Legislative Council staff to prepare a bill draft based upon the revised template A and the proposed language agreed upon by the committee with respect to the staggering of terms, the authority of the Secretary of State, the legislative intent, and an effective date of December 1, 2011, and that the bill draft be approved and recommended to the Legislative Management. Senators Holmberg, Christmann, Cook, Grindberg, Klein, Lyson, and Taylor and Representatives Bellew, Devlin, Holman, Johnson, Kasper, Kelsh, Monson, and Nathe voted "aye." No negative votes were cast.

It was moved by Representative Kasper and seconded by Representative Bellew that the Legislative Council staff prepare a bill draft that would require that each legislative district contain at least six precincts and that the bill draft be approved and recommended to the Legislative Management.

Representative Kasper said Cass County is considering having as few as two precincts per district. He said this is especially problematic for political parties to identify where the support for the party is located.

Chairman Holmberg said there may be argument that this issue is not an issue for this committee but rather would more appropriately be handled by a Government and Veterans' Affairs Committee.

Senator Taylor said he would like to receive more information on the current number of precincts per district and the extent to which this is a problem.

Representative Kasper said authority to establish precincts has been delegated to county auditors. He said he was not aware this was happening in Cass County until after the fact.

In response to a question from Representative Kelsh, Representative Kasper said his proposal would apply to a district as a whole and would not apply to the number of precincts within a county.

Representative Holman said the auditor in his county indicated that requiring six precincts per district would cause many problems.

Representative Devlin said this requirement may result in unintended consequences. He said this may be a Cass County issue and not a statewide issue.

Representative Monson said Representative Kasper may want to consider limiting the population per precinct rather than the number of precincts per district.

Chairman Holmberg called on Mr. Glatt for testimony regarding Representative Kasper's proposal. Mr. Glatt said the committee should request input from auditors and the public. He said the public wants convenience in voting. He said the public wants to vote early, by mail, in a central convenient location, and on their way to work. He said Cass County has been quite progressive in the way that county handles elections.

Representative Kasper said his proposal would not affect any convenience options. He said it would only require that there are six precincts within a district. He said it would not affect where or the number of polling places. He said his proposal would help identify the political makeup of a district.

In response to a question from Chairman Holmberg, Representative Kelsh said he would be more comfortable with the idea if the committee had held a public hearing on the issue before proceeding on the issue.

The motion carried on a roll call vote. Senators Christmann, Cook, Grindberg, Klein, Lyson, and Taylor and Representatives Bellew, Holman, Johnson, Kasper, Kelsh, Monson, and Nathe voted "aye." Senator Holmberg and Representative Devlin voted "nay."

It was moved by Representative Johnson, seconded by Representative Monson, and carried on a roll call vote that the chairman and the staff of the Legislative Council be requested to prepare a report and the bill drafts recommended by the committee and to present the report and recommended bill drafts to the Legislative Management. Senators Holmberg, Christmann, Cook, Grindberg, Klein, Lyson, and Taylor and Representatives Bellew, Devlin, Holman, Johnson, Kasper, Kelsh, Monson, and Nathe voted "aye." No negative votes were cast.

Representative Kasper commended Chairman Holmberg for his work as chairman of the committee.

Representative Kelsh commended Representative Holman, Senator Taylor, and Senator Warner for their work on his party's plan.

Chairman Holmberg thanked the committee members for their hard work and attentiveness. He thanked the Legislative Council staff for its assistance. He also thanked the Legislative Council information technology staff for its assistance in dealing with the committee's computer issues.

It was moved by Senator Klein, seconded by Representative Johnson, and carried on a voice vote that the committee be adjourned.

No further business appearing, Chairman Holmberg adjourned the meeting at 10:15 a.m.

John Bjornson
Committee Counsel

Vonette J. Richter
Committee Counsel

ATTACH:3