

NORTH DAKOTA LEGISLATIVE COUNCIL

Minutes of the

LEGISLATIVE REDISTRICTING COMMITTEE

Thursday, October 4, 2001
Roughrider Room, State Capitol
Bismarck, North Dakota

Representative Mike Timm, Chairman, called the meeting to order at 9:00 a.m.

Members present: Representatives Mike Timm, Ole Aarsvold, Al Carlson, William R. Devlin, Glen Froseth, Pam Gulleon, Lyle Hanson, David Monson; Senators Bill Bowman, Randel Christmann, Layton Freborg, Ray Holmberg, Ed Kringstad, Tim Mathern, Steven W. Tomac

Others present: Jay Johnson, Minot Daily News, Minot

Bruce Kopp, Xcel Energy, Inc., Grand Forks
Dean Peterson, North American Coal Corporation, Bismarck

Renee Pfenning, Bismarck

Allen H. Knudson, Legislative Council, Bismarck

Carol Two Eagles, Mandan

Dick Dever, State Senator, Bismarck

Bob Graveline, Utility Shareholders of North Dakota, Bismarck

Herb Wilson, Bismarck

Janell Cole, The Forum, Bismarck

Brian Kramer, North Dakota Farm Bureau, Bismarck

Jennifer Ring, American Civil Liberties Union of the Dakotas, Fargo

Ron Ness, North Dakota Petroleum Council, Bismarck

Bob Stenehjem, State Senator, Bismarck

Aaron Krauter, State Senator, Regent

Jeff Delzer, State Representative, Underwood

Merle Boucher, State Representative, Rolette

It was moved by Senator Bowman, seconded by Representative Aarsvold, and carried on a voice vote that the minutes of the September 5-6, 2001, meeting be approved as distributed.

Chairman Timm said the committee must reduce the number of proposed redistricting plans that it will further consider. He said the committee has one more meeting scheduled and may need to meet again after the October 16-17 meeting.

At the request of Chairman Timm, committee counsel reviewed a memorandum entitled *Estimated Cost of a Legislative District*. He said the total cost of a legislative district over a 10-year period beginning in December 2001 is approximately \$700,000. He said the cost estimates have not been adjusted for inflation and the estimates are based on a 77-day regular

legislative session and current statutory provisions relating to salary and reimbursement.

Senator Tomac said reducing the Legislative Assembly to 45 districts would save \$2,800,000 over the next decade.

In response to a question from Senator Christmann, Mr. Allen H. Knudson, Assistant Legislative Budget Analyst and Auditor, Legislative Council, said the estimates assumed that each legislator will take health insurance coverage. He said 133 of the 147 current legislators have health coverage through the Legislative Assembly. He said the estimates for mileage and lodging were derived by using the average cost of mileage and lodging and assuming that the legislators are not residents of Bismarck.

Representative Carlson said it is important to understand that the cost of a legislative district is only \$140,000 per biennium.

Representative Devlin said it would cost each person in the state less than 25 cents per year if two legislative districts were added.

At the request of Chairman Timm, Senator Tomac reviewed a 45-district plan he had developed. Senator Tomac said the only difference between the two plans he has prepared is the configuration of the districts in the northeast portion of the state. He said the plans can easily be adjusted to address areas in which there may be concerns. He said he attempted to follow county lines and existing district boundaries to the extent possible and then attempted to recognize regional trade centers. Although it may not be politically feasible, he said, he ignored the residence of incumbents in developing the plan. He said the plan crosses the Missouri River at the Fort Berthold Reservation. He said the 45-district plan would save the state taxpayers almost \$3 million over 10 years by reducing the number of districts by four. He said a 45-district plan would be more in line with the number of legislative districts in neighboring states and with respect to the average district size. However, he said, the average population in districts under a 45-district plan would still be small compared to other states. He said because of the larger number of people in each district, there is greater flexibility in adjusting boundaries between districts.

In response to a question from Senator Holmberg, Senator Tomac said although the Missouri River can

be crossed at Williston, New Town, Washburn, and Bismarck, no one is excited about being required to cross the river for a legislative district.

Senator Holmberg said 47-district and 51-district plans can avoid crossing the Missouri River by creating districts close to the top of the allowable variance. He said a plan with 49 districts must cross the Missouri River.

Senator Tomac presented a second 45-district plan. He said the only significant difference in the plan is in the northeast area of the state.

In response to a question from Senator Holmberg, Senator Tomac said he prefers the first plan because the plan follows more county lines that are the most recognizable boundaries in the state.

At the request of Chairman Timm, Representative Devlin presented a 47-district plan that he had prepared. Representative Devlin said this plan is similar to the 47-district plan he had presented at a previous meeting of the committee. However, he said, this plan is complete in that all of the city districts are established. He said this plan crosses the Missouri River at the Fort Berthold Reservation and creates new districts in Bismarck and Fargo.

Representative Aarsvold said the committee has received significant input from residents of District 20 who are opposed to splitting the district and splitting Traill County among three districts. He said he remains opposed to any plan that will split Traill County and District 20.

In response to a question from Representative Carlson, Representative Aarsvold said although Traill County would have triple the amount of representation if the county were divided into three districts, it would be unlikely that a Traill County resident could be elected from any of the districts because the Traill County residents would be in a minority in all three districts.

Representative Hanson said residents of the city of Jamestown would prefer that the eastern district boundary in Jamestown be along 27th Avenue.

Representative Merle Boucher, Rolette, said splitting Rolette County would likely divide the Native American population in the county because much of the Native American population in the county is outside the boundaries of the reservation. He said there is a significant amount of tribal or trust land outside the reservation boundaries.

Senator Holmberg said it is important to remember that redistricting is on the basis of population and not the ownership of land.

In response to a question from Senator Tomac, Representative Boucher said the Native American population in Rolette County is widely dispersed throughout the county. Therefore, he said, Rolette County should remain as one legislative district under a 47-district or 49-district plan.

Senator Tomac said the 47-district plan divides Morton County among four districts. He said

Districts 31 and 34 could remain as currently configured under a 47-district or a 49-district plan. He said confusion is created for the voters when counties are split to the extent Representative Devlin's plan splits Morton County. If the county must be split, he said, Interstate 94 would provide a better dividing boundary between districts.

Representative Carlson said decisions will have to be made soon. He said people will have to recognize that there has been a tremendous population shift during the past decade and some areas of the state will suffer as a result of that population shift. He said it is important that the committee look at what makes most sense for representation of the people rather than which legislators will be affected.

At the request of Chairman Timm, Senator Christmann presented a 47-district plan that he had prepared. Senator Christmann said a portion of the Fort Berthold Reservation is kept in District 33 because there are not enough people to have a polling place in that portion of the district in Mercer County. He said with some minor exceptions, his plan is similar to Representative Devlin's 47-district plan.

Representative Gulleason said it appears that major trade areas are not observed in either of the 47-district plans.

Representative Aarsvold said in addition to the observation of trade areas and political subdivision boundaries, school district boundaries should be a consideration of the committee in determining where to draw district boundaries.

Representative Froseth said the trade areas have not been observed in the northwest portion of the state under Senator Christmann's plan. He said all traffic and trade from the Gooseneck Area of Ward County flows toward Minot.

At the request of Chairman Timm, Representative Devlin presented a 49-district plan that he had prepared. Representative Devlin said this plan is similar to the 49-district plan he had presented at a previous meeting. He said the plan crosses the Missouri River at the Fort Berthold Reservation, at McKenzie County, and in Bismarck and Mandan.

At the request of Chairman Timm, Senator Holmberg presented a 49-district plan that he had prepared. Senator Holmberg said the plan crosses the Missouri River at the Fort Berthold Reservation and in McKenzie County. He said the plan contains an error in that he intended to put Minnewaukan in District 16.

In response to a question from Representative Timm, Senator Holmberg said he started drafting the plan in the west and provided new district numbers beginning in the northwest. He said the district numbers can easily be changed before finalizing the plan.

At the request of Chairman Timm, Senator Christmann presented a 49-district plan that he had

prepared. Senator Christmann said this plan crosses the Missouri River at the Fort Berthold Reservation and at Bismarck and Mandan. He said there are over 6,000 residents of Bismarck and over 6,000 residents of Mandan in one district.

At the request of Chairman Timm, Senator Mathern presented a 49-district plan that he had prepared. Senator Mathern also distributed a written document summarizing his plan, a copy of which is on file in the Legislative Council office. He said the plan features no new district created wholly within any city and increases the number of districts that have both urban and rural constituencies. Because District 19 was the rural district that lost the greatest percentage of people in the last decade, he said, he created a new District 19 in Cass County while shifting the population of the existing District 19 into surrounding areas. He said the plan maintains a maximum number of present district boundaries and uses natural and civic boundaries to the extent possible. He said the plan has one district that crosses the Missouri River at the Fort Berthold Reservation.

Senator Mathern said House subdistricts are necessary for proper representation and for ongoing support of the two-house system. He said creating House subdistricts in the 10 largest geographical districts would be a first step in providing for subdistricts.

Senator Mathern presented a bill draft which requires the establishment of House subdistricts in every senatorial district having a geographical area of 3,000 square miles or more. The bill draft provides that a representative elected from a subdistrict must be chosen by the qualified electors of the subdistrict and be a resident of the subdistrict. He said the bill draft would also provide that a member of the Legislative Assembly who is a senator from a senatorial district having a geographical area of 3,000 square miles or more is entitled to additional compensation in an amount of up to \$100 per month as determined by the Legislative Council.

Senator Holmberg said the Legislative Council should not be the entity that makes the decision regarding the awarding of additional compensation to senators. He said that decision should be made by the full Legislative Assembly. He said the proposal for subdistricts should be considered independently of the proposal for additional compensation for members of the Legislative Assembly from districts that encompass large geographical areas.

Senator Bob Stenehjerm, Bismarck, said it would be unfair if residents of about 10 districts in the state would have only one representative. He said reduction of representation such as that would present constitutional concerns.

Senator Mathern said he would prefer having subdistricts in every district, but beginning with approximately 10 subdistricts would address the problems presented by the districts having large

geographical areas. He said his concern is making districts in which the representatives are closer to the people.

In response to a question from Senator Mathern, committee counsel said approximately a dozen states have multimember districts in which at least two members are elected at large. He said challenges to multimember districts are generally brought by racial minority groups that are of a sufficient population that if placed in a single-member legislative district the racial group would constitute a majority or a significant minority in the single-member district. He said the United States Supreme Court has generally found that the creation of multimember districts is not unconstitutional per se, but can be shown to be unconstitutional if a minority group demonstrates that the group is sufficiently large and geographically compact to constitute a majority in a single-member district, the minority group is politically cohesive, and the minority group demonstrates that the majority votes sufficiently as a block to enable the majority to usually defeat the preferred candidate of the minority. He said the United States Supreme Court has approved plans that use a combination of multimember and single-member districts.

Senator Holmberg said creating subdistricts in a limited number of districts takes away the decision of the local residents in those districts with respect to determining who their representatives should be. He said the political parties are generally cognizant of where the representatives live and attempt to provide for representation throughout the district.

Senator Tomac said if this committee does not create subdistricts in a plan forwarded by the committee, the committee should draft legislation to require the creation of subdistricts in 10 years.

At the request of Chairman Timm, Representative Devlin presented a 51-district plan that he had prepared. Representative Devlin said this is a completed version of the 51-district plan he had presented to the committee at an earlier meeting. He said 51 districts will bring government closer to the people at a limited cost. He said increasing to 51 districts is a good investment for the people of the state because it keeps a significant number of the existing districts similar to the current configuration.

At the request of Chairman Timm, Senator Christmann presented a 51-district plan that he had prepared. Senator Christmann said he attempted to follow county lines and existing district boundaries to the extent possible.

At the request of Chairman Timm, Senator Christmann presented a 52-district plan that he had prepared. Senator Christmann said this plan is similar to the 51-district plan except that Cass County would have one additional district.

Chairman Timm called on Ms. Jennifer Ring, American Civil Liberties Union (ACLU) of the Dakotas, Fargo, for comments regarding the redistricting

process. Ms. Ring submitted a document prepared by the voting rights project of the ACLU, a copy of which is on file in the Legislative Council office. Ms. Ring also submitted a proposal for a 49-district plan that includes three subdistricts (<http://www.members.tripod.com/fairplan2000/NorthDakota/index.html>). She said the subdistricts would provide the Native American population on the Spirit Lake Reservation, the Standing Rock Reservation, and the Fort Berthold Reservation the opportunity to elect a Native American candidate from a House subdistrict. Ms. Ring said the 1965 federal Voting Rights Act prohibits the dilution of the voting strength of racial and language minorities. She said Section 2 of the Voting Rights Act provides that a voting practice is unlawful if the practice results in discrimination. She said discrimination can be shown if the totality of circumstances provides minorities with less opportunity than other members of the electorate to participate in the political process and elect representatives of their choice. She said the United States Supreme Court has established three factors to be used in determining the constitutionality of a multimember redistricting plan. She said those factors are:

1. Whether the minority group is sufficiently large and geographically compact to constitute a majority in a single-member district;
2. Whether the minority group is politically cohesive; and
3. Whether the majority votes sufficiently as a bloc to enable it to defeat the minority's preferred candidate.

Ms. Ring said although race may not be the predominant factor in establishing legislative districts, there is a strong basis to suggest that subdistricts would be required in this state, at least in areas in which the Native American population would constitute a majority in a single-member district. She said there can be a case made to show that there has been historical discrimination against the Native American population in North Dakota. She said the Native American population is politically cohesive and the reservations have a quasi-sovereign status that would be a good basis for establishing district boundaries similar to using counties or other political subdivisions in creating districts.

In response to a question from Representative Timm, Ms. Ring said it is her belief that the federal Voting Rights Act would require the state to establish House subdistricts where there is a significant minority population. She said under the current multimember scheme, tribal members are not as likely to be elected in an at-large election.

In response to a question from Senator Mathern, Ms. Ring said although the chairmen of the various tribes are aware of her request to establish subdistricts, they were unable to attend this meeting. She said even if the tribal governments do express support for this proposed plan, individual tribal

members could challenge a plan with multimember districts. She said voting rights are for individuals, not tribes.

In response to a question from Representative Timm, Ms. Ring said she suspects the Native American population has had influence in electing candidates in District 4. However, she said, there have been a lack of Native American candidates for legislative office.

In response to a question from Senator Mathern, Ms. Ring said it is too early to say whether the ACLU would bring a legal challenge to a multimember district plan. She said if members of a minority group were interested in bringing such a legal challenge, the ACLU would consider providing assistance.

In response to a question from Representative Timm, Ms. Ring said a legal challenge was brought in South Dakota when the state tried to remove the one subdistrict that had been created in 1991.

In response to a question from Representative Carlson, Ms. Ring said there likely has not been an outcry of opposition to multimember districts in this state because few people understand the process of redistricting. She said once people are aware of their rights, there is support for single-member districts.

In response to a question from Representative Aarsvold, Ms. Ring said the 3,700 non-Indians in District 9 would not likely prevail in a legal challenge to request a subdistrict because they are not a part of a historically discriminated against racial minority.

In response to a question from Senator Tomac, Ms. Ring said there is precedent for having a mixture of single-member and multimember districts in a state. However, she said, the courts have expressed a preference for having all single-member districts.

Senator Stenehjem said the Attorney General issued a letter opinion earlier this year which indicated that it would not be constitutionally permissible to establish subdistricts only in senatorial districts that have Indian reservations.

Ms. Ring said it is important to distinguish between redistricting based on race and redistricting based on a political community such as an Indian reservation.

In response to a question from Representative Timm, committee counsel said Native Americans from the Fort Berthold Reservation filed a complaint in federal district court in 1991 alleging that the redistricting plan adopted in 1991 violated the Voting Rights Act of 1965, the 14th Amendment to the United States Constitution, and the 15th Amendment to the United States Constitution. He said the complaint requested the creation of a House subdistrict for the Fort Berthold Reservation. He said the federal district court dismissed the complaint because the plaintiffs were unable to prove that a sufficient majority/minority district could be created.

Ms. Ring said the Native American population has increased since 1991. Therefore, she said, a minority district could be created.

Chairman Timm said the committee should reduce the number of plans that it will consider at its next meeting.

Representative Devlin said if the committee continues to consider four or five plans, it could have multiple variations of each plan under consideration at the next meeting. He said the committee should select one or two plans to forward for consideration at the next meeting.

It was moved by Representative Gulleison that the committee limit its consideration to plans that consist of 49 or fewer districts. The motion died for lack of a second.

Representative Monson said the committee should consider each plan individually and vote whether to consider it at the next meeting.

It was moved by Senator Tomac, seconded by Representative Gulleison, and carried on a roll call vote that the committee approve the Tomac (1) 45-district plan for consideration at the next meeting. Representatives Timm, Carlson, Gulleison, and Monson and Senators Bowman, Christmann, Holmberg, Mathern, and Tomac voted "aye." Representatives Aarsvold, Devlin, Froseth, and Hanson and Senators Freborg and Kringstad voted "nay."

It was moved by Senator Holmberg, seconded by Senator Tomac, and carried on a voice vote that the Tomac (2) 45-district plan not be further considered.

It was moved by Representative Carlson, seconded by Senator Holmberg, and carried on a voice vote that Representative Devlin's 47-district plan be approved for consideration at the next meeting of the committee. Representatives Timm, Carlson, Devlin, and Monson and Senators Freborg, Holmberg, Kringstad, and Mathern voted "aye." Representatives Aarsvold, Froseth, Gulleison, and Hanson and Senators Bowman, Christmann, and Tomac voted "nay."

It was moved by Senator Christmann, seconded by Representative Aarsvold, and failed on a roll call vote that Senator Christmann's 47-district plan be approved for consideration at the next meeting of the committee. Representatives Aarsvold and Gulleison and Senators Bowman and Christmann voted "aye." Representatives Timm, Carlson, Devlin, Froseth, Hanson, and Monson and Senators Freborg, Holmberg, Kringstad, Mathern, and Tomac voted "nay."

It was moved by Senator Bowman, seconded by Representative Aarsvold, and failed on a roll call vote that Senator Christmann's 49-district plan be approved for consideration at the next meeting of the committee. Representatives Aarsvold and Hanson and Senators Bowman, Christmann, and Freborg voted "aye." Representatives Timm, Carlson, Devlin, Froseth, Gulleison, and Monson and Senators Holmberg, Kringstad, Mathern, and Tomac voted "nay."

It was moved by Representative Gulleison, seconded by Senator Mathern, and failed on a roll call vote that Senator Mathern's 49-district plan be approved for consideration at the next meeting of the committee. Representatives Aarsvold, Gulleison, and Hanson and Senators Bowman and Mathern voted "aye." Representatives Timm, Carlson, Devlin, Froseth, and Monson and Senators Christmann, Freborg, Holmberg, Kringstad, and Tomac voted "nay."

It was moved by Senator Holmberg, seconded by Representative Monson, and failed on a roll call vote that Senator Holmberg's 49-district plan be approved for consideration at the next meeting of the committee. Representatives Aarsvold, Gulleison, Hanson, and Monson and Senators Holmberg and Mathern voted "aye." Representatives Timm, Carlson, Devlin, and Froseth and Senators Bowman, Christmann, Freborg, Kringstad, and Tomac voted "nay."

It was moved by Representative Froseth, seconded by Representative Carlson, and carried on a roll call vote that Representative Devlin's 49-district plan be accepted for consideration at the next meeting of the committee. Representatives Timm, Carlson, Devlin, Froseth, Gulleison, Hanson, and Monson and Senators Freborg and Holmberg voted "aye." Representative Aarsvold and Senators Bowman, Christmann, Kringstad, Mathern, and Tomac voted "nay."

It was moved by Representative Froseth, seconded by Senator Bowman, and carried on a roll call vote that Senator Christmann's 51-district plan be approved for consideration at the next meeting of the committee. Representatives Timm, Aarsvold, Carlson, Devlin, Froseth, and Hanson and Senators Bowman, Christmann, Freborg, and Kringstad voted "aye." Representatives Gulleison and Monson and Senators Holmberg, Mathern, and Tomac voted "nay."

It was moved by Representative Devlin, seconded by Representative Carlson, and carried on a voice vote that Representative Devlin's 51-district plan not be further considered.

It was moved by Senator Christmann, seconded by Senator Holmberg, and carried on a voice vote that Senator Christmann's 52-district plan not be further considered.

In response to a question from Senator Mathern, Chairman Timm said a vote on the plan submitted by Ms. Ring is not needed at this time. He said the proposal to incorporate subdistricts into the three areas specified by Ms. Ring can be incorporated into any plan adopted by the committee if the committee chooses to do so.

Senator Tomac said creating subdistricts at the final meeting of the committee would not be feasible because of the scope of the work. He said if the committee is to adopt a final plan at its next meeting,

the committee should determine if subdistricts will be a part of that plan prior to the meeting.

Representative Carlson said he opposes making a decision regarding subdistricts at this time. He said the decision can be made when a final plan is considered.

Chairman Timm said all issues regarding subdistricts can be discussed at the next meeting.

Representative Devlin requested the Legislative Council staff to provide the committee with additional information regarding subdistricts and the 1991 federal court case.

Representative Gulleason requested the Legislative Council staff to prepare a bill draft to establish an independent redistricting commission similar to the commissions in Montana and Pennsylvania.

Senator Aaron Krauter, Regent, said he is frustrated with the lack of progress made by the committee. He said the decision on the number of districts should have been made at this meeting or at an earlier meeting. In 1991, he said, the decision regarding the number of districts was made early and then the heavy work of establishing district boundaries took some time after that. He said the public has not seen any progress in the work of this committee, and he is concerned that with consideration of four plans on the table for the next meeting the committee will not be able to finish its work.

Chairman Timm said the members of the committee can discuss the four remaining plans with other legislators before the next meeting and attempt to get a consensus on the number of districts that will be in the final plan. He said it is clear that there has been no consensus on the number of districts that will

be the basis for a plan. He said the committee may hold another meeting after the October 16-17 meeting.

Representative Boucher said it appears the point has been reached when there are concerns regarding whether this process can be finished in a timely manner. In addition to the adoption of a plan, he said, other issues must be addressed, such as which legislators will be required to run for reelection in 2002 and how to handle the shortening of incumbents' terms. He said he prefers that every member of the Legislative Assembly be required to run for election in 2002.

Representative Aarsvold said he has assured his constituents that the redistricting process is not a partisan process. However, he said, because the majority party has approximately two-thirds of the seats, he would expect that approximately two-thirds of the majority would be required to face election in 2002.

There being no further business, Chairman Timm adjourned the meeting at 3:40 p.m.

John Bjornson
Committee Counsel

Jay E. Buringrud
Assistant Director