



North Dakota Legislative Council

Prepared for the Redistricting Committee
LC# 23.9158.01000
September 2021

IMPACT OF REDISTRICTING ON LEGISLATIVE ELECTION SCHEDULES

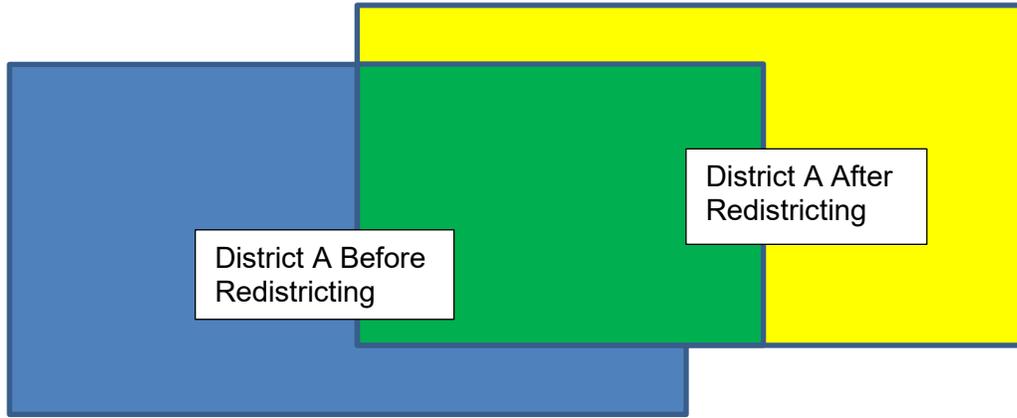
POST-REDISTRICTING ELECTION SCHEDULES IN NORTH DAKOTA

Members of the Legislative Assembly are elected for 4-year terms. To provide for staggering of the members' terms, one-half of the members are elected every 2 years. Members from odd-numbered districts were elected in 2018, and members from even-numbered districts were elected in 2020. After redistricting, residents of newly drawn, odd-numbered districts will elect their representatives and senators in the general election in November 2022. However, residents of newly drawn, even-numbered districts normally would not vote for representatives and senators until the general election in November 2024.

North Dakota Century Code Section 54-03-01.13, which was enacted as part of the 2011 redistricting plan, provided a formula for determining whether a legislator's term would expire early as a result of redistricting. The section addressed the terms of legislators from odd-numbered districts which were not scheduled to expire until 2014 and who were placed in even-numbered districts. The section states:

1. A senator and two representatives must be elected from each even-numbered district in 2012 for a term of four years.
2. A senator and two representatives must be elected from each odd-numbered district in 2014 for a term of four years. However, a senator and two representatives from district seven must be elected in 2012 for a term of two years.
3. Except as provided in subsection 4, the term of office of a member of the legislative assembly elected in an odd-numbered district in 2010 for a term of four years and who as a result of legislative redistricting is placed in an even-numbered district terminates December 1, 2012.
4. A member of the legislative assembly who was elected from an odd-numbered district in 2010 for a term of four years and who as a result of legislative redistricting is placed in an even-numbered district may continue to serve the remainder of the term for which the member was elected beyond December 1, 2012, if the member changes the member's place of residence to a location in the odd-numbered district which is within the geographic area of the odd-numbered district from which the member was elected by March 15, 2012, and certifies in writing to the secretary of state and the chairman of the legislative management that the member has established a new residence in that district as determined by section 54-01-26. If the member does not establish residency within the district from which the member was elected by March 15, 2012, the term of office of that member terminates on December 1, 2012.
5. The term of office of a member of the legislative assembly in an odd-numbered district with new geographic area that was not in that member's district for the 2010 election and which new geographic area has a 2010 population that is more than twenty-five percent of the ideal district population terminates on December 1, 2012.

To apply the formula under subsection 5, first the new geographic area added to a district is identified, and then the population of the new geographic area is counted. If the population of the new geographic area is more than 25 percent of the ideal population size for a district, the terms of the district's legislators end on the specified date. The diagram below illustrates the formula if the dates in Section 54-03-01.13 were updated from 2010 and 2012 to 2020 and 2022.



- The blue area plus the green area is an even-numbered district (District A) before redistricting.
- The yellow area plus the green area is District A after redistricting.
- The 2020 ideal district population size is 16,576. Twenty-five percent of 16,576 is 4,144.
- If the 2020 population in the yellow area (but not including the green area) is more than 4,144, the term of office for the representatives and senators for District A would end on December 1, 2022.

Another issue to consider is the handling of even-numbered districts if additional incumbents are placed in the district. In the 2001 redistricting legislation, the Legislative Assembly enacted Section 54-03-01.10 and amended Section 54-03-01.8 ([appendix](#)) (both repealed in 2011), which set forth several scenarios with respect to the staggering of terms of representatives and senators.

The 2001 plan for staggering of senators' terms was challenged and the North Dakota Supreme Court held the provision allowing a senator to file a statement indicating there would be no need for an election in a district with multiple incumbent senators was unconstitutional as an impermissible delegation of legislative power.¹

LEGAL ISSUES RAISED BY POST-REDISTRICTING ELECTION SCHEDULES

States use various means to resolve issues arising from redistricting residents into districts with different election cycles. Some states do not change the election dates for districts, while other states have legislative elections for all districts following redistricting. Some states, like North Dakota, reduce term lengths for some legislators. Post-redistricting election schedules may be dictated by states' constitutions or statutes.

Residents of some states have filed lawsuits over schedules for post-redistricting elections when the schedules prolonged the periods during which the residents were unable to vote for their legislators. Although the legislators in these cases served their standard terms, redistricting resulted in the residents being unable to vote for legislators for a longer period of time. For example, this can happen when a resident lives in a district that voted for legislators with 4-year terms in 2018 and then is redistricted in 2021 into a different district that voted for legislators in 2020. The resident would not have the opportunity to vote for legislators for the 6 years between 2018 and 2024 even though the legislators serve for 4 years. Courts have held these prolonged election cycles may be justified by the needs of redistricting. The Colorado Supreme Court stated in 1982:

Although reapportionment and election scheduling should preserve wherever possible the opportunity of all citizens to vote for a state senator every four years, the complexities of the reapportionment process may result occasionally in a six-year delay of the opportunity of some persons to vote for a senator. Where this result is absolutely necessary, it does not constitute a constitutional deprivation unless the change is shown to be the result of an invidious discrimination.²

However, certain consequences of a prolonged election cycle may be impermissible. Even though the Colorado Supreme Court stated prolonged election cycles are allowed, the court struck down one such cycle because it would have resulted in a district having no resident senator for 2 years after the incumbent senator's residence was included in a different district.³ Another court struck down a prolonged election cycle when it would have resulted

¹Kelsh v. Jaeger, 2002 ND 53 (N.D. 2002).

²In re Reapportionment of Colorado Gen. Assembly, 647 P.2d 191, 198 (Colo. 1982). See also Ferrell v. Hall, 339 F. Supp. 73 (D.C. Okla. 1972) aff'd mem. 406 U.S. 939 (1972).

³In re Reapportionment of Colorado Gen. Assembly, supra 1.

in some residents being "grossly overrepresented," others being underrepresented, and still others having no representatives for a period of time.⁴

Legislators have challenged other methods for scheduling post-redistricting elections because the methods truncated the legislators' terms of office. In 2002 the North Dakota Supreme Court upheld the ability of the Legislative Assembly to truncate the terms of some legislators after redistricting.⁵ In *Kelsh v. Jaeger*, a legislator asserted Section 4 of Article IV of the Constitution of North Dakota, which states "[s]enators and representatives must be elected for terms of four years," prohibits reducing legislators' terms. The Supreme Court disagreed. According to the Supreme Court, truncating a legislator's term is permissible if doing so furthers some constitutional mandate or directive such as the "constitutional mandate to stagger senate terms in establishing a redistricting plan to ensure that the senate maintains one-half of its number as experienced members."⁶ The court further stated:

When reapportionment results in a substantial constituency change, the constitutional requirement that a senator be elected from a district may justify truncating an incumbent senator's term to give the electorate in the newly drawn district an opportunity to select a senator from that district.⁷

The Supreme Court declined to establish a minimum percentage change in constituents required to justify the truncation.

Reducing a legislator's term of office by statute also seems permissible under federal law. A review of case law resulted in finding no cases in which federal law prohibited a state from truncating legislators' terms to accommodate redistricting. Additionally, several cases have shown legislators do not have a 14th Amendment property right to the full terms of their elected offices.⁸

ATTACH:1

⁴Schaefer v. Thomson, 251 F. Supp. 450 (D. Wyo. 1965) aff'd mem. 383 U.S. 269 (1969).

⁵Kelsh v. Jaeger, 2002 ND 53 (N.D. 2002).

⁶Kelsh v. Jaeger, at para. 24. However, the Supreme Court struck down the part of the statute allowing a senator to decide whether the early election was necessary because that part of the statute was an unconstitutional delegation of legislative authority.

⁷Kelsh v. Jaeger, at para. 29.

⁸E.g., Durham v. Eley, 507 F. Supp. 3d 956, 965 (M.D. Tenn. 2020), reconsideration denied, (M.D. Tenn. Jan. 21, 2021); and In re Apportionment L. Appearing as Senate Joint Resol. 1 E, 1982 Special Apportionment Session; Constitutionality Vel Non, 414 So. 2d 1040, 1046 (Fla. 1982).