



CENSUS DELAYS - POTENTIAL IMPACTS ON FUNDING AND LEGISLATIVE REPRESENTATION

This memorandum provides information regarding the United States Census, recent delays in 2020 Census activities resulting from the novel Coronavirus (COVID-19) pandemic, and the impact of the census on funding and government representation.

OVERVIEW OF THE CENSUS

Section 2 of Article I of the United States Constitution mandates the federal government count all individuals in the United States once every 10 years for purposes of apportioning seats in the United States House of Representatives. The first nationwide census was administered by federal marshals in 1790.¹ Census duties later were assumed by the Department of Commerce beginning in 1903.² In addition to tallying the national population count, census questionnaires also collect information on the characteristics of individuals residing in the United States. This information includes data on the race, sex, age, and ethnicity of individuals counted in the census. Individual census records remain confidential for 72 years.³

Activities related to the 2020 Census commenced as early as 2017 through the compilation of address lists by local governments.⁴ The census questionnaire was updated in 2018, and census field offices opened and began publicizing the upcoming census through events, advertising, and social media in 2019.⁵ Several states also engaged in efforts to support the census and ensure a complete and accurate count in 2020. In North Dakota, the Legislative Assembly appropriated \$1 million in House Bill No. 1018 (2019) to fund the Census 2020 Program. Governor Doug Burgum also signed [Executive Order 2019-05](#) on May 7, 2019, which established the Complete Count Task Force. The task force was created to implement a statewide outreach campaign to raise awareness of the census.

The United States Census Bureau began contacting households by mail starting in March 2020.⁶ Twenty percent of household mailings sent by the Census Bureau contained a paper questionnaire and the remainder contained an invitation to respond to an online survey.⁷ Individuals respond to the census with information based on where they lived on April 1, 2020, which is Census Day.⁸ Census workers generally follow up with additional mailings or in person with individuals who do not respond by April 1.⁹ Home visits and additional data collection activities typically continue through August 15, after which the Census Bureau calculates the final population figures to report to the President by the December 31, 2020, deadline, and the states by the March 31, 2021, deadline for purposes of redistricting.¹⁰

CENSUS DELAYS RESULTING FROM COVID-19

The Census Bureau faced challenges in maintaining its normal schedule of activities as a result of the COVID-19 pandemic. On March 11, 2020, the Census Bureau released a statement regarding the establishment of a Census Bureau COVID-19 Internal Task Force to monitor the outbreak and update the Census Bureau's Continuity of Operations Plan.¹¹ On March 18, 2020, the Census Bureau announced the suspension of all field operations until

¹ United States Census Bureau, *U.S. Census Bureau History: History of the Census*, <https://www.census.gov/history/?#>.

² *Id.*

³ *Id.*

⁴ Mac Taylor, California Legislative Analyst's Office, *The 2020 Census: Potential Impacts on California*, Dec. 13, 2018, at 6, 7.

⁵ *Id.*

⁶ United States Census 2020, *Important Dates*, <https://2020census.gov/en/important-dates.html>.

⁷ Taylor, *supra* note 4, at 7.

⁸ United States Census 2020, *supra* note 6.

⁹ *Id.*

¹⁰ *Id.*

¹¹ United States Census Bureau, Press Release Number CB20-RTQ.05, <https://www.census.gov/newsroom/press-releases/2020/statement-coronavirus.html>.

April 1.¹² The suspension of field operations was subsequently extended through April 15, 2020.¹³ On April 13, 2020, the United States Department of Commerce Secretary Wilbur Ross and the United States Census Bureau Director Steven Dillingham released a joint statement requesting Congress grant a 120-day extension for various reporting deadlines related to the 2020 Census.¹⁴ Proposed changes to key census deadlines and activities are summarized in the following chart.

Activity	Original Timeline	Modified Timeline
Date on which field offices will be operating at peak levels.	March 1, 2020	June 1, 2020
Period during which census workers will attempt to conduct in-person interviews with individuals who did not respond to previous census questionnaires.	May 13, 2020 - July 31, 2020	August 11, 2020 - October 31, 2020
Period during which the Census Bureau will process and review data collected during the census.	July 31, 2020 - December 31, 2020	October 31, 2020 - April 30, 2021
Date by which the Census Bureau is required by law to deliver each state's population totals to the President for purpose of apportioning congressional House seats. ¹	December 31, 2020	April 30, 2021
Date by which the Census Bureau is required by law to deliver local populations totals to each state for purposes of legislative redistricting. ²	April 1, 2021	July 31, 2021
<p>¹Section 141(b) of Title 13 of the United States Code requires the Secretary of Commerce to deliver the total population of each state, as derived from the most recent decennial census, to the President of the United States within 9 months of the April 1, 2020, census date. Congressional action is required to change this deadline.</p> <p>²Section 141(c) of Title 13 of the United States Code requires the Secretary of Commerce to report the population of each state to each respective state's governor, and the public bodies responsible for legislative apportionment or redistricting in each state, within 1 year of the April 1, 2020, census date. Congressional action is required to change this deadline.</p> <p>Source: United States Census 2020, <i>2020 Census Operational Adjustments Due to COVID-19</i>, April 27, 2020, https://2020census.gov/content/dam/2020census/materials/news/2020-census%20operational-adjustments-long%20version.pdf</p>		

Though Congress has yet to act on extending key reporting deadlines, the Census Bureau is warranted in its efforts to provide as complete and accurate of a count as possible considering the important purposes for which census data is used. Data derived from the census is used to allocate \$675 billion from census-guided federal programs per year and influences a variety of state and local decisions.¹⁵ The data also is used to determine the number of seats each state receives in the United States House of Representatives and is relied on by many states for purposes of legislative redistricting.

IMPACT OF THE CENSUS ON FUNDING Federal Funding and Resources

Census totals provide the data used to determine the amount of funding state governments and local communities will receive from the federal government for the next decade. According to a February 10, 2020, article, *Counting for Dollars 2020: The Role of the Decennial Census in the Geographic Distribution of Federal Funds*, by Dr. Andrew Reamer of George Washington University, in fiscal year (FY) 2017, 316 federal spending programs relied on 2010 Census-derived data to distribute \$1.504 trillion to state and local governments, nonprofits, businesses, and households across the nation.¹⁶ Census-derived data sets are used to allocate funding geographically by identifying which organizations or individuals can receive funds, compute formulas that

¹² United States Census Bureau, Press Release Number CB20-RTQ.08, <https://www.census.gov/newsroom/press-releases/2020/operational-update.html>.

¹³ United States Census Bureau, Press Release Number CB20-RTQ.14, Mar. 28, 2020, <https://www.census.gov/newsroom/press-releases/2020/update-on-2020-census-field-operations.html>.

¹⁴ United States Census Bureau, Press Release Number CB20-RTQ.16, <https://www.census.gov/newsroom/press-releases/2020/statement-covid-19-2020.html>.

¹⁵ National Conference of State Legislatures, *2020 Census Talking Points*, at 2, https://www.ncsl.org/Portals/1/Documents/Elections/NCSL_Census_Talking_Points.pdf.

¹⁶ <https://gwipp.gwu.edu/counting-dollars-2020-role-decennial-census-geographic-distribution-federal-funds>.

geographically allocate funds to eligible recipients, rank project applications based on priorities, and set interest rates for federal loan programs. In FY 2017, the state received \$3,877,526,000 in census-guided federal funds derived from the 2010 Census.¹⁷ The federal programs funded include domestic financial assistance programs, such as direct payments to individuals; grants, loans, and loan guarantees to nonfederal entities that fulfill a public purpose; tax credit programs; Medicare; Medicaid; and procurement programs that award a portion of federal prime contract dollars to small businesses located in areas selected on the basis of census-derived data.

State and Local Funding and Resources

Local governments and nonprofit organizations rely on decennial census data to determine the need for new infrastructure, schools, and other public sector investments. Census data also is vital to businesses as a source of information about the population's changing needs and is critical for emergency response in the wake of disasters. The Census Bureau's Population Estimates Program uses census data and birth, death, and migration data to produce annual population and housing unit estimates. The estimates are then used as population controls for the American Community Survey, Current Population Survey, and various other federal surveys.

Provisions in North Dakota Century Code also rely on the population figures determined by the decennial census in distributing state funds, setting the threshold for approving excess levies, and setting license fees. Section 57-51-15 requires a portion of the gross production allocations received by counties be prorated among nonhub cities located in the county based on the population of each city according to the last decennial federal census. Section 57-15-14 requires differing levels of approval by the qualified voters in a school district for excess levy authority based on the population of the school district as determined by the last federal decennial census. Approval is required by a majority of the qualified voters in school districts with a population exceeding 4,000 and 55 percent of the qualified voters in school districts with a population of fewer than 4,000. Section 5-02-04 sets the annual fee for a state beer or liquor license based on the population of the city, as determined by the last decennial census, in which the license will be used. The \$50 license fee doubles for licenses purchased for use in cities with a population that exceeds 500.

IMPACT OF THE CENSUS ON GOVERNMENT REPRESENTATION

Congressional Representation

The most notable use of the census, and the reason it was ratified as part of the United States Constitution in 1788, is to determine states' representation in Congress. While every state is entitled to two seats in the United States Senate,¹⁸ state representation in the United States House of Representatives is apportioned based on population after each state receives at least one seat.¹⁹ The Permanent Apportionment Act of 1929 limited the total number of house seats to 435.²⁰ As a result of this limitation, states have the potential to gain or lose house seats every 10 years based on changes to each state's population in relation to the population of all states. For instance, after the 2010 Census, seats were gained by Arizona, Florida, Georgia, Nevada, South Carolina, Texas, Utah, and Washington; and lost by Illinois, Iowa, Louisiana, Massachusetts, Michigan, Missouri, New Jersey, New York, Ohio, and Pennsylvania.²¹ The number of electoral votes a state receives is impacted by gaining or losing seats because a state's electoral votes are calculated by adding the state's two Senate seats to the number of the state's House seats. Electoral votes contribute to a state's political influence because a presidential candidate must receive a majority of the 538 electoral votes to be elected President.

North Dakota currently holds one seat in the House of Representatives, and three electoral votes, and is not expected to gain any seats as a result of the 2020 Census. States that gain or lose seats, or experience large population changes, use census data to redraw the boundaries of state congressional districts. In North Dakota, census data is used for the sole purpose of redrawing the boundaries of state legislative districts because the state only contains one congressional district.

State Representation

North Dakota uses census data to determine political representation among state legislative districts in a process called redistricting. Since 2001, the state has been divided into 47 legislative districts. Redistricting is addressed in

¹⁷ *Id.* at Part B, Table 1, https://gwipp.gwu.edu/sites/g/files/zaxdzs2181/f/downloads/Counting%20for%20Dollars%202020%20-%20Comprehensive%20Accounting_Report%207B%20Feb%202020%20rev.pdf.

¹⁸ U.S. Const. art. I, § 3.

¹⁹ U.S. Const. art. I, § 2.

²⁰ United States House of Representatives, House Budget Committee Staff, *These Are Our Numbers - The Importance of the 2020 Census*, Jan. 31, 2019, at 1, <https://budget.house.gov/sites/democrats.budget.house.gov/files/documents/Census%20Report%201.31.19.pdf>.

²¹ Kristin D. Burnett, United States Census Bureau, 2010 Census Briefs, *Congressional Apportionment*, Nov. 2011, at 4, <https://www.census.gov/content/dam/Census/library/publications/2011/dec/c2010br-08.pdf>.

various statutory and constitutional provisions and its primary purpose is to ensure districts are reasonably equal in population.

Constitutional Provisions

Section 1 of Article IV of the Constitution of North Dakota provides that the "senate must be composed of not less than forty nor more than fifty-four members, and the house of representatives must be composed of not less than eighty nor more than one hundred eight members." Section 2 of Article IV requires the Legislative Assembly to "fix the number of senators and representatives and divide the state into as many senatorial districts of compact and contiguous territory as there are senators." In addition, that section provides that the districts ascertained after the 1990 federal decennial census must continue until the adjournment of the first regular session after each federal decennial census, or until changed by law.

Section 2 further requires the Legislative Assembly to "guarantee, as nearly as practicable, that every elector is equal to every other elector in the state in the power to cast ballots for legislative candidates." Under that section, one senator and at least two representatives must be apportioned to each senatorial district. Section 2 also provides that two senatorial districts may be combined when a single senatorial district includes a federal facility or installation containing over two-thirds of the population of a single member senatorial district and that elections may be at large or from subdistricts.

Section 3 of Article IV requires the Legislative Assembly to establish by law a procedure whereby one-half of the members of the Senate and one-half of the members of the House of Representatives, as nearly as practicable, are elected biennially.

Statutory Provisions

In addition to the constitutional requirements, Section 54-03-01.5 provides a legislative apportionment plan based on any census taken after 1999 must provide for the Senate to consist of 47 members and the House to consist of 94 members. That section also provides the plan must ensure population deviation from district to district be kept at a minimum. In addition, that section provides the total population variance of all districts, and subdistricts if created, from the average district population may not exceed recognized constitutional limitations.

As a result of concerns regarding the timetable for calling a special election to vote on a referral of a redistricting plan, in 1991 the Legislative Assembly amended Section 16.1-01-02.2 at the November 1991 special legislative session. The amendment to the section provided "notwithstanding any other provision of law, the governor may call a special election to be held in thirty to fifty days after the call if a referendum petition has been submitted to refer a measure or part of a measure that establishes a legislative redistricting plan."

If redistricting of the Legislative Assembly becomes effective after the organization of political parties and before the primary or the general election, Section 16.1-03-17 requires the political parties in the newly established precincts or districts to reorganize as closely as possible in conformance with Chapter 16.1-03 to ensure compliance with primary election filing deadlines.

Redistricting Timeline

Pursuant to Section 141(c) of Title 13 of the United States Code, the Secretary of Commerce must report population data from the 2020 Census to the states by July 31, 2021. Generally, the Legislative Assembly that meets in the year in which the data is received enacts legislation to establish an interim committee to address redistricting. The committee is tasked with developing a legislative redistricting plan to be implemented in time for use in the next primary election. The most recent redistricting processes have been performed by interim committees consisting of an equal number of members from the Senate and the House of Representatives. The committee must ensure any legislative redistricting plan be of compact and contiguous territory and conform to all constitutional requirements with respect to population equality. In recent redistricting processes, the committee has been directed to submit a redistricting plan and legislation to implement the plan to the Legislative Management before early November. After submission of a plan, the Legislative Management calls a special legislative session under Section 54-03-02(3) or the Chairman of the Legislative Management requests the governor call a special session of the Legislative Assembly pursuant to Section 7 of Article V of the Constitution of North Dakota to allow the Legislative Assembly to adopt a redistricting plan to be implemented in time for use in the primary election.

After the 2010 Census, the Legislative Assembly adopted House Bill No. 1267 (2011) to establish the Legislative Redistricting Committee. The committee consisted of 16 members and held 7 meetings. The committee's first meeting was held on June 16, 2011, and its final meeting was held on October 11, 2011. The committee's final report, and its bill draft for a 47-district plan, was accepted by the Legislative Management Committee on November 3, 2011. A special session was called by then Governor Jack Dalrymple on November 7, 2011. House

Bill No. 1473 (2011), which provided the revised boundaries of the state's 47 legislative districts, was passed by both houses and signed by Governor Dalrymple on November 9, 2011. House Bill No. 1473 became effective on November 25, 2011.

If Congress acts to extend the deadline for the Census Bureau to deliver the 2020 Census data to the states from April 1, 2021, to July 31, 2021, the extension will result in significant delays to North Dakota's redistricting process. The delay either will result in a shorter time period for the interim redistricting committee to complete its work, or a later start to the 2021 special legislative session, which could potentially be delayed until early 2022.

Legislation passed during the special session would not require an emergency clause because Section 13 of Article IV of the Constitution of North Dakota provides every law enacted by a special session of the Legislative Assembly takes effect on the date specified in the Act. However, it would be prudent for the Legislative Assembly to select an effective date that falls shortly after the bill's passage in light of other timeline considerations outlined in Title 16.1.

Pursuant to Chapter 16.1-03, political parties are permitted to meet in each odd-numbered year to organize at the precinct and district level and are required to meet in each odd-numbered year to organize at the state level. If a delay in the delivery of census data results in redistricting of the Legislative Assembly becoming effective after organization of the political parties in 2022, Section 16.1-03-17 would require the political parties in newly established precincts or districts to reorganize as closely as possible in conformance with Chapter 16.1-03 to ensure compliance with primary election filing deadlines.

Pursuant to Section 16.1-11-06, the deadline for a candidate for legislative office to submit either a certificate of endorsement or a nominating petition is 4:00 p.m. on the 64th day before the primary election, which in 2022, will be held on June 14. While political parties may be burdened with reorganizing after 2021, it is unlikely the delay would impact the submission of a legislative candidate's certificate of endorsement or nominating petition, which would not be due until April 11, 2022.

If the effective date of redistricting legislation is after December 31, 2021, it would be beneficial for the legislation to include in Section 16.1-04-01 the following language previously found in Section 16.1-04-03 before that section was repealed by House Bill No. 1363 (2017):²²

If legislative reapportionment occurs, the authority granted by this chapter must be exercised, as it relates to the establishment or re-establishment of voting precincts that may be required because of any change in legislative districts, within thirty-five days after the effective date of the reapportionment.

It would be beneficial to add this language to Section 16.1-04-01 if redistricting legislation becomes effective after December 31, 2021.

SUMMARY

North Dakota is not likely to gain a congressional seat as a result of the 2020 Census. The accuracy of the 2020 Census has a substantial impact on the state in regard to the allocation of state and federal funds and for purposes of drawing new boundaries for state legislative districts. Delays in receiving data from the 2020 Census as a result of the COVID-19 pandemic are not anticipated to be overly burdensome to the state's budget or election cycle.

²² Although House Bill No. 1363 (2017) moved the requirement from Section 16.1-04-03 to Section 16.1-04-01 for precincts to be established no later than December 31 of the year immediately preceding an election cycle, the bill failed to relocate the corresponding exception to the December 31 deadline previously found in Section 16.1-04-03.