



Second Meeting
2011 Interim
June 8, 2011

Room 414
State Capitol Building
Pierre, South Dakota

Wednesday, June 8, 2011

The second meeting of the Legislative Redistricting Committee was called to order by the Representative Val Rausch, at 10:04 a.m. (CDT) in Room 414 of the State Capitol, Pierre, South Dakota.

A quorum was determined with the following members answering the roll call: Representatives Jim Bolin, Mitch Fargen, Kent Juhnke, Mark Kirkeby, David Lust, Val Rausch, and Susan Wismer; and Senators Jim Bradford, Corey Brown, Joni Cutler, Russell Olson, Deb Peters, Larry Rhoden, and Todd Schlekeway. Representative Brian Gosch was excused.

Staff members present included Jim Fry, Director; Dave Ortbahn, Principal Research Analyst; and Lisa Shafer, Legislative Secretary.

(NOTE: For purpose of continuity, the following minutes are not necessarily in chronological order. Also, all referenced documents distributed at the meeting are attached to the original minutes on file in the Legislative Research Council (LRC). This meeting was web cast live. The archived web cast is available at the LRC web site at <http://legis.state.sd.us> under "Interim Information – Current Interim – Minutes and Agendas.")

Approval of Minutes

SENATOR RHODEN MOVED, SECONDED BY REPRESENTATIVE FARGEN, THAT THE MINUTES OF THE MEETING ON MARCH 28, 2011 BE APPROVED. The motion prevailed on a voice vote.

Approval of Agenda

REPRESENTATIVE JUHNKE MOVED, SECONDED BY SENATOR SCHLEKEWAY, THAT THE AGENDA FOR TODAY'S MEETING BE APPROVED. The motion prevailed on a voice vote.

Legal Foundation of Redistricting

Mr. Reuben Bezpaletz, distributed a handout entitled "South Dakota Redistricting Law and Lakota Demographics" (**Document #1**). He explained the historical significance for creating the South Dakota Constitutional Provisions. Some of the provisions include:

- Populations of redistricting maps are to be nearly equal as possible – a gross deviation of 10% is allowed;
- Federal census data is the only numbers allowed to be used for redistricting;

- Redistricting must be completed by December 1 or the Supreme Court will create legislative districts; and
- Membership limitations.

Mr. Bezpaletz said that state statutes are not binding like the constitution and case law, but are there for guidance. Adopted policies that are adhered to are good in case there is a lawsuit. However, adopted policies that are not adhered to could hurt the state in any lawsuit. Page 5 of Document #1 lists the 2001 South Dakota Legislative Redistricting Policies.

South Dakota is a unique state in that Native Americans are the minority. Some of the uniqueness of the Native Americans (Lakota) include:

1. Fewer adults in comparison to the populations so it requires more votes compared to the rest of the state;
2. The Native American Tribes have their own unique government;
3. There is extreme poverty among the Lakota;
4. The Native Americans are the most rural minority.

Mr. Bezpaletz explained some of the historical cases concerning minority voting rights. Those cases addressed are:

- Reynolds v. Sims – South Dakota was required to reapportion the legislature on the basis of one man, one vote;
- Thornburg v. Gingles – the state created new legislative districts to make as many majority/minority districts as possible allowing more minorities to be in the legislature;
- Ketchum v. Byrne – created the three 5's rule;
- Gingles v. Edmisten – modified the three five's rule requiring that the minority needs to have a majority of the voting age in a district.
- Reno v. Shaw – created impact districts so minorities' vote can have an impact on the election by looking at the totality of circumstances in determining the best arrangement for the minority in the state;
- Bush v. Vera – need to look at totality of circumstances when creating minority/majority districts, but the districts should not regress or look ugly; and
- Miller v. Johnson – questioned the necessary use of single member house district within a multiple member house district to elect minorities to the legislature.

Mr. Bezpaletz distributed two handouts showing options to address the majority/minority redistricting issue entitled "South Dakota Majority-Minority Redistricting 2001" (**Document #2**) and "South Dakota Majority-Minority Redistricting 2011" (**Document #3**). He explained the differences between the maps and compared the changes from the 2001 redistricting maps and the 2011 redistricting maps.

In 1991, the Legislative Redistricting Committee began hold redistricting hearings on the reservations. It is important to continue holding those meetings and possibly expand the number of visits to the various reservations.

Redistricting as a Legislative Process

Mr. Jim Fry stated that if the committee desires, all local legislators can receive an invitation to attend the meetings on the reservation areas. The legislative travel mileage and salary can't be extended to them.

The committee will try to ensure all interested parties have public access to the meetings. Locations will be selected on the reservations that are closely connected to the community.

Mr. Fry commented that the redistricting software the Legislative Research Council (LRC) purchased costs \$5,900 per unit. The software was purchased to create all supporting maps and documents for the redistricting process. A computer with the software will be available in the LRC office for any interested person to use. Staff will be available to help use the software.

The Supreme Court asked the Legislature to approve the redistricting maps for the Supreme Court during the Special Session in October. The courts will present information as to how they would prefer the redistricting to occur. **Representative Val Rausch** requested to have the Supreme Court maps presented to the committee early for review.

Recess 11:53 am and reconvened at 1:10pm

Demographics

Mr. Dave Ortbahn explained the demographic in the state outside of the Native American tribal land. From the last census, South Dakota had growth and decline across the state. The overall state population increase about 59,000 (7.9%); which is a lower increase from 1990 – 2000 census information. Over half the increase (30,000 people) occurred in the city of Sioux Falls. Minnehaha County and Lincoln County increased by 42,000 people; which is 71% of the entire state's increase.

Distributed was a handout entitled "Population Summary Report" (**Document #4**) Mr. Ortbahn said that there were dramatic increases in the Sioux Falls Districts 13, 14, and 15 compared to the last census. Rapid City had growth in Districts 33 and 35. Meade County (District 29) also grew in population since the last census. The city of Brookings (District 7) has grown enough to be outside the 5% deviation. If the city of Brookings is not separated, less population from the outside area would have to be used. There was also growth in Districts 26 and 27, but not in proportion to the extreme growth in the Sioux Falls area. To maintain those districts, they would need to be enlarged since they are under the 5% deviation.

The primary areas of population decline in the state were in the north east – Districts 1, 2, 3, and 4. Those districts need to be larger geographically to offset the decline in census numbers. There were also declines in Districts 19 – 24. District 28 is down significantly in population.

Senator Larry Rhoden requested the exact population numbers for Districts 28A and 28B.

In response to **Representative Susan Wismer's** questions about challenges during the redistricting process, Mr. Bezpaletz stated that there is an issue with the illegal aliens in the

state that don't want to be counted. There also is an issue with communities where RV owners establish a legal residency in the state but don't physically live there.

After the census numbers were released, the information showed an increase in minorities in the state. Statewide, the number of Hispanics increased 102.9%, Native Americans increased 15.3%, and blacks increased 117.9%.

The district changes in Sioux Falls and Rapid City will have major impacts to the districts in the center part of the state. To help address this, maps of conurbation districts for Sioux Falls and Rapid City were distributed. (**Document #5**). Mr. Ortbahn stated that smaller the conurbation districts will benefit other parts of the state. Larger conurbation districts will result in larger legislative districts epigraphically in other areas of the state. He explained the different Sioux Falls conurbation districts shown on pages 1 – 5 of Document #5 and the different Rapid City conurbation districts shown on pages 6 – 8 of Document #5.

The committee discussed the different conurbation maps for both Sioux Falls and Rapid City. Representative Rausch stated that he would like to create two subcommittees to review the Sioux Falls and Rapid City conurbation areas.

Representative David Lust asked if anticipated growth in the Sioux Falls area can be factored in the process for determining districts. Mr. Bezpaletz stated that the redistricting process is to be strictly neutral. There are court cases prohibiting the exercise of judgment about future growth in an area. Any organized attempt to build a growth factor in areas would be in jeopardy if the state's redistricting went to litigation.

SENATOR CUTLER MOVED, SECONDED BY REPRESENTATIVE FARGEN, THAT THE LEGISLATIVE REDISTRICTING COMMITTEE RECOMMENDS USING NINE (9) DISTRICTS FOR REDISTRICTING PROCESS WITH THE SIOUX FALLS CONURBATION SUBCOMMITTEE. The motion passed on a voice vote.

SENATOR RHODEN MOVED, SECONDED BY REPRESENTATIVE FARGEN, THAT THE LEGISLATIVE REDISTRICTING COMMITTEE RECOMMENDS USING FOUR (4) DISTRICTS FOR REDISTRICTING PROCESS WITH THE RAPID CITY CONURBATION SUBCOMMITTEE. The motion passed on a voice vote.

Members of the Sioux Falls conurbation subcommittee include: Senator Cutler (Chair), Representative Bolin (Vice Chair), Senator Schlekeway, Representative Fargen, Senator Olson, and Senator Peters.

Members of the Rapid City conurbation subcommittee include: Representative Lust (Chair), Senator Rhoden (Vice Chair), Representative Kirkeby, Representative Gosch, Senator Bradford, and Representative Juhnke. (**Document #6**)

Redistricting Technology

Ms. Lou Adamson, Legislative Information System Coordinator for the LRC, reviewed the different types of technological resources available to the committee members and public. The information available on the system provides details from general statewide totals to district

blocks. It was stated that the system – Autobound – may seem cumbersome and take time to understand, but it is very reliable. The system is also able to incorporate Native American voting and population information into the district maps.

Ms. Adamson stated that there is a computer set up in LRC with Windows 7, Autobound, and Crystal reports. Any person is able to use the computer to create maps and reports. Staff will be available to assist.

The Autobound system has some features that the LRC staff has not attempted yet. One is publishing reports and maps to the internet. Ms. Adamson stated that information published could only be looked at and not altered or designed.

Senator Russell Olson asked about maps submitted by citizens. Representative Rausch stated that any member of the public can submit maps for review by getting it to a committee member. The maps will then be made available at the next full committee meeting.

The committee recessed at 2:40 p.m. and reconvened at 3:06 p.m.

Public Testimony

Ms. Kim Wright, Rapid City, told the committee that the citizens of Rapid City have organized the South Dakota Citizen's Redistricting Commission to address the redistricting process. In addition to public forum, the commission will be sponsoring a community map contest. The citizen input will be used in offering suggestions to the Legislative Redistricting Committee. Distributed was a handout containing the commissioners contact information. (**Document #7**)

Representative Peggy Gibson distributed a handout showing the cost of litigation for the state from the last redistricting process. (**Document #8**) There were three lawsuits for a total cost to South Dakota of \$782,939. She encourages the committee to visit all seven Native American reservations and receive as much public input as possible to avoid potential lawsuits.

Representative Gibson stated that she would like the committee to include single member legislative districts for all counties because it provides for a strong constituent and geographical representation and maximum accountability. She would also like to have Beadle County in one legislative district.

Mr. Bill Thompson, Sioux Falls, made four suggestions to the committee. They are to:

- Include information for voter registration when creating final maps;
- Use single member house districts for all legislative districts;
- Erase all district lines and start over; and
- Not include electoral outcomes.

Overview if Redistricting Policies

Representative Kent Juhnke asked if there is a target number for voting age the committee should use. Mr. Bezpaletz stated that the court says to remain within the range that will work –

84% is too high, 65% is borderline too low, and therefore 70% is about right. He reminded the committee that voting age is critical especially for the Lakota population.

The committee discussed the concept of adopting the 2001 Legislative Redistricting Policies. Some of the issues addressed include:

- The committee would be acting under policies that would not be adopted until full legislature meets in October;
- Maintaining county boundaries if possible; and
- Provide guidelines to educate the public about the committee requirements;

SENATOR CUTLER MOVED, SECONDED BY REPRESENTATIVE WISMER, THAT THE 2011 LEGISLATIVE REDISTRICTING COMMITTEE ADOPT THE 2001 REDISTRICTING POLICIES AS PRINCIPLES TO USE FOR THE 2011 REDISTRICTING PROCESS.

The committee discussed the motion.

In response to Representative Rausch's question, Mr. Bezpaletz stated that the best way to protect the state from possible litigation is to codify the policies or principles used when the maps are adopted in October.

The motion prevailed on a voice vote.

Number of Legislative Districts

SENATOR SCHLEKEWAY MOVED, SECONDED BY SENATOR CUTLER, THAT THE LEGISLATIVE REDISTRICTING COMMITTEE HAS THIRTY-FIVE (35) DISTRICTS IN SOUTH DAKOTA FOR THE 2011 REDISTRICTING PROCESS. The motion prevailed on a roll call vote with 14 AYES and 1 EXCUSED. Those voting AYE include: Representatives Bolin, Fargen, Juhnke, Kirkeby, Lust, Rausch, and Wismer; and Senators Bradford, Brown, Cutler, Olson, Peters, Rhoden, and Schlekeway. Those members EXCUSED include: Gosch.

Additional Information

Senator Olson requested that an invitation be sent to the Secretary of the Department of Tribal Relations for all meetings that are held on the reservations.

Representative Rausch stated that the co-chairs will create the subcommittees that will visit the Native American tribes.

Next Meetings

Representative Rausch asked that both the Rapid City Conurbation Subcommittee and the Sioux Falls Conurbation Subcommittee meet prior to the next full committee meeting. Meeting dates are to be determined.

The next full committee meeting for the Legislative Redistricting Committee is scheduled for Thursday, July 28, 2011 in Pierre. The full committee will review reports from the conurbation subcommittees.

Adjourn

REPRESENTATIVE JUHNKE MOVED, SECONDED BY REPRESENTATIVE FARGEN, TO ADJOURN. The motion prevailed unanimously on a voice vote.

The committee adjourned at 4:20 p.m.



All Legislative Research Council committee minutes and agendas are available at the South Dakota Legislature's Homepage: <http://legis.state.sd.us>. Subscribe to receive electronic notification of meeting schedules and the availability of agendas and minutes at **MyLRC** (<http://legis.state.sd.us/mylrc/index.aspx>).