

8-2021

S.2670 U.S. Senate Redistricting Bill

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Recommended Citation

Zanfardino, Marissa, "S.2670 U.S. Senate Redistricting Bill" (2021). *Redistricting Resources*. 4.
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Legislative Bill Summary
Redistricting Reform Act of 2021 (S.2670)
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This bill was introduced in the Senate by Senator Charles E. Schumer on August 6, 2021 and its consideration was blocked by the Senate on August 11, 2021.

Constitutional Authority

Section 2 cites the constitutional authority as Article I, Section 4 of the Constitution that gives Congress the power to enact laws governing the time, place, and manner of elections for Members of the House of Representatives, and section 5 of the 14th Amendment that gives Congress the power to enact laws to enforce section 2 of the 14th Amendment requiring Representatives to be apportioned among the several States according to their number. (Section 2).

Requirements for Congressional Redistricting

Any congressional redistricting in a State must be conducted in accordance with a redistricting plan developed and enacted by an independent redistricting commission to be established by the State. If a plan developed by the commission is not enacted into law, the redistricting must occur through the redistricting plan developed by a 3-judge federal district court, in accordance with section 301. (Section 101).

Requirements for States with a Pre-existing Commission

This law does not apply to any State that carries out congressional redistricting in accordance with a plan developed and approved by a redistricting commission that is in compliance with the law. The criteria include the requirement for membership on the commission to be through a publicly available application process, disqualification from government service and political appointment, screening for conflicts, and a multi-partisan composition. Redistricting must include minimizing the division of communities of interest and a ban on drawing maps to favor a political party. There must be public input on the process and a majority vote of the members of the commission. In addition to the majority vote, the support must include at least one member who is affiliated with the political party whose candidate received the most votes in the most recent statewide election for Federal office in the State, at least one member who is affiliated with the political party who received the second most votes in the most recent statewide election for Federal office held in the State, and at least one member who is not affiliated with any party or who is not affiliated with the previous two parties. (Section 101(c)). This provision does not apply to the state of Iowa as long as the redistricting is carried out in accordance with a plan

developed by the Iowa Legislative Services Agency with the assistance of a Temporary Redistricting Advisory Committee. (Section 101(d)).

Criteria for Redistricting

Districts must comply with the United States Constitution, including the requirement that they equalize total population. Districts must comply with the Voting Rights Act of 1965. Districts must be drawn, to the extent that the totality of the circumstances warrants, to ensure the practical ability of a group protected under the Voting Rights Act of 1965 to participate in the political process and to nominate and elect candidates. Districts must respect communities of interest, neighborhoods, and political subdivisions to the extent practicable. There is a prohibition on favoring or disfavoring political parties. (Section 103).

The following factors are prohibited from consideration: the residence of any Member of the House of Representatives or candidate and the political party affiliation or voting history of the population of a district. (Section 103(c)).

The redistricting plan enacted by a State may not be drawn with the intent or effect of unduly favoring or disfavoring any political party. (Section 103(b)(1)). The determination of whether a redistricting plan has the effect of favoring or disfavoring a political party shall be based on the totality of the circumstances including evidence regarding the durability and severity of a plan's bias. A plan may be deemed to have the effect of unduly favoring or disfavoring a political party if modeling based on relevant historical voting patterns shows that the plan is statistically likely to result in partisan bias of more than 1 seat in States with 20 or fewer congressional districts or more than 2 seats in States with more than 20 congressional districts, as determined using quantitative measures of partisan fairness, which may include, but are not limited to, the seats-to-votes curve for an enacted plan, the efficiency gap, the declination, partisan asymmetry, and the median difference and if alternative plans exist that could have complied with the requirements of law. (Section 103(b)(2)).

There is a rebuttable presumption that a redistricting plan enacted by the legislature of a State was not enacted with the intent of unduly favoring or disfavoring a political party if the plan was enacted with the support of at least a third of the members in the second largest political party in each house of the legislature. (Section 103(b)(3)).

Section 102 includes a ban on mid-decade redistricting. (Section 102).

Independent Redistricting Commission Requirements

Commission Members

The independent redistricting commission must consist of 15 members appointed by the nonpartisan agency. No later than October 1 of a year ending in the number 0, the agency must hold a public meeting no earlier than 15 days after notice has been given to the public to first appoint 6 members. The agency must appoint 2 members on a random basis from the majority category of the approved selection pool. The agency must appoint 2 members on a random basis from the minority category of the approved selection pool. The agency must appoint 2 members on a random basis from the independent category of the approved selection pool. (Section 201).

No later than November 15 of a year ending in 0, the already appointed members must hold a public meeting no earlier than 15 days after public notice of the meeting to appoint the remaining 9 members. The members must appoint 3 members from the majority category of the approved selection pool, 3 members from the minority category of the approved selection pool, and 3 members from the independent category of the approved selection pool. This appointment occurs through an affirmative vote of at least 4 of the existing members. There is a diversity requirement for members. The bill also outlines appointment requirements for alternatives to serve in case of vacancies. A member may be removed by a majority vote of the remaining members of the commission. A chair is selected by a majority vote of one member who was appointed from the independent category. (Section 201).

Commission Action

The independent redistricting commission may not publish and disseminate any draft or final redistricting plan, or take any other action, without the approval of a majority of the whole membership of the commission and at least one member of the commission appointed from each of the categories described in Section 202(b)(1). A majority of the members constitute a quorum. (Section 201).

Criteria for Eligibility

An individual is eligible to serve as a member if the individual meets the following criteria: registered to vote in elections for Federal office held in the State, during the 3-year period ending on the date of appointment, the individual has been continuously registered to vote with the same political party or no political party, and submission of attestation. (Section 202(a)).

Disqualifications from Eligibility

The following causes disqualification: the individual or an immediate family member holds political office or is a candidate for election for public office, the individual or an immediate family member serves as an officer for a political party, the individual or an immediate family member holds the position of a registered lobbyist, the individual or an immediate family member is an employee of an elected public official, the individual paid a civil money penalty or criminal fine or was sentenced to a term of imprisonment, for violating any provision of the Federal Election Campaign Act, or the individual or an immediate family member is an agent for a foreign principal under the Foreign Agents Registration Act. (Section 202(a)(2)).

Political Expenditure Reporting

Each individual who applies for a position as an employee of the independent redistricting commission and each vendor who applies for a contract with the commission must, at the time of applying, file with the commission a report summarizing political expenditures for the last 10 years and income that is attributable to an expenditure for political activity during the last 10 years. Annual reports after appointment are also required. (Section 201).

Termination

The commission is to terminate on the earlier of June 14 of the next year ending the numeral 0 or the day on which the nonpartisan agency submitted a selection pool to the Select Committee on Redistricting. (Section 201(d)).

Development and Submission of Selection Pool

No later than June 15 of each year ending in the number 0, the non-partisan agency established under Section 204(a) must develop and submit a selection pool of 36 individuals who are eligible to serve as members of the commission. 12 must be individuals affiliated with the political party who received the most votes in the most recent statewide election for Federal office held in the State. 12 must be individuals affiliated with the political party who received the second most votes in the most recent statewide election for Federal office held in the State. 12 must be individuals who are not affiliated with either of the two previous political parties. The nonpartisan agency must consider the following factors: representation of demographic groups and analytical skills of the individuals. The nonpartisan agency must accept comments from the public on the individuals included in the selection pool during a 14-day period after the agency publishes the selections. (Section 202(b)).

The Select Committee on Redistricting must approve or reject the pool by majority vote. Inaction is deemed a rejection of the pool. There is to be a replacement selection pool no later than 14 days after a rejection that the Select Committee will vote on. (Section 202(b)(8)).

Public Notice and Input

The commission is to hold each of its meetings in public, solicit and take into consideration comments from the public, including proposed maps, throughout the process of developing a redistricting plan for the State. The commission must maintain a public website no later than January 1 of the year ending in numeral 1. (Section 203(a)).

The commission shall solicit, accept, and consider comments from the public at any time during the period beginning on January 1 of the year ending in numeral 1 and ending 7 days before the date of the meeting at which the commission is to vote to approve the final redistricting plan for enactment into law. (Section 203(a)).

Process for Preliminary Plan

Prior to developing and publishing a final redistricting plan, the commission of a state must develop and publish a preliminary redistricting plan. The commission must hold a minimum of 3 public hearings when developing a preliminary plan. Notice must be given no fewer than 14 days from the date of each hearing. A minimum of 3 public hearings is required for members to provide input on the preliminary redistricting plan. Notice must be given no fewer than 14 days from the date of each hearing. (Section 203(b)).

Process for Enactment of Final Redistricting Plan

After taking into consideration comments from the public on any preliminary redistricting plan, the commission must develop and public a final plan for the State. The commission must hold a public hearing at which members of the commission are to vote on approving the final plan for enactment into law. The final redistricting plan will not be deemed to be enacted into law unless the State submits the plan to the Department of Justice for an administrative review to determine that the plan is in compliance with the criteria described in paragraphs (2) and (3) of section 103(a). (Section 203(c)).

The commission is to submit a written evaluation of its plan. (Section 203(d)).

The commission may begin its work upon the receipt of relevant population information from the Bureau of the Census and must approve a final redistricting plan for the State in each year ending in the numeral 1 no later than 8 months after the date on which the State receives the apportionment notice or October 1, whichever occurs later. (Section 203(e)).

Establishment of Related Entities

Nonpartisan Agency

Each State must establish a nonpartisan agency in the legislative branch of the State government to appoint the members of the independent redistricting commission for the State in accordance with section 201. The nonpartisan agency must provide the independent redistricting commission with initial training no later than January 15 of the year ending in numeral 1. The nonpartisan agency must adopt and publish regulations, after notice and opportunity for comment, establishing the procedures that the agency will follow. These should include procedures to be used in vetting the qualifications and political affiliation of applicants and in creating the selection pools, the randomized process to be used in selecting the initial members of the independent redistricting commission, and the rules the agency will apply in carrying out its duties. Termination is upon the enactment of the redistricting plan for the State. The deadline for the above requirements is October 15 of a year ending in numeral 1. (Section 204(a)).

A state may designate an existing agency to appoint members of the redistricting commission so long as the agency meets the requirements for nonpartisanship. (Section 204(a)(5)).

Select Committee on Redistricting

Each state is required to appoint a Select Committee on Redistricting to approve or disapprove a selection pool developed for the State by the nonpartisan agency to section 202(b). The members must consist of one member from the upper part of the State legislature who shall be appointed by the leader of the party with the greatest number of seats in the upper house, one member of the upper house of the State legislature who shall be appointed by the leader of the party with the second greatest number of seats in the upper house, one member of the lower house of the State legislature who shall be appointed by the leader of the party with the greatest number of seats in the lower house, and one member of the lower house of the State legislature who shall be appointed by the leader of the party with the second greatest number of seats in the lower house. (Section 204(b)).

In the case of a State with a unicameral legislature, the Select Committee on Redistricting for the State is to consist of the following members: two members of the State legislature appointed by the chair of the political party of the State whose candidate received the highest percentage of votes in the most recent statewide election for Federal office held in the state and two members of the State legislature appointed by the chair of the political party whose candidate received the second-highest percentage of votes in the most recent statewide election for Federal office held in the State. (Section 204(b)(3)).

The deadline for the creation of the Select Committee is January 15 of a year ending in the numeral 0. (Section 204(b)(4)).

The Role of Courts in Development of Redistricting Plans

Triggering events are as follows (1)the failure of the State to establish or designate a nonpartisan agency of the State legislature under section 204(a) prior to the expiration of the deadline set forth in 204(a)(8); (2)the failure of the State to appoint a Select Committee of Redistricting under section 204(b) prior to the expiration deadline in 204(b)(4); (3) the failure of the Select Committee on Redistricting to approve any selection pool under 202 prior to expiration deadline set forth in 202(d)(2), or (4) the failure of the independent redistricting commission of the State to approve a final redistricting plan prior to the expiration deadline in 203(e).

If any of the mentioned triggering events occur, the United States district court for the applicable venue, acting through a 3-judge court convened pursuant to section 2284 of title 28, United States Code, must develop and publish the congressional redistricting plan for the State no later than December 15 in the year the triggering event occurs. The same redistricting requirements apply. There must also be public participation and publication of the plan. (Section 301).

If a Federal court requires a State to conduct redistricting subsequent to an apportionment of Representatives in the State in order to comply with the Constitution or to enforce the Voting Rights Act of 1965, the court may revise any of the deadlines set forth in section 203 if the court determines that a revision is appropriate in order to provide for a timely enactment of a new redistricting plan for the State. (Section 302).

Administrative Provisions

Payments to States

Section 401 outlines payments to states for carrying out redistricting. (Section 401).

Civil Enforcement

Section 402 outlines civil enforcement. The Attorney General may bring a civil action in an appropriate district court for such relief as may be appropriate. Any citizen of a State who is aggrieved by the failure of the State to meet the requirements of this Act may bring a civil action in the United States district court for the applicable venue for such relief as may be appropriate to remedy the failure. (Section 402(a)).

Potential remedies include the adoption of a replacement plan. There is no injunctive relief permitted and no stay pending appeal. (Section 402(c)).

Effective Date

Section 405 outlines the effective date as being applicable with respect to redistricting carried out pursuant to the decennial census conducted during 2030 or any succeeding decennial census. (Section 405).

Requirements for Redistricting Carried out Pursuant to 2020 Census

Notwithstanding section 405, titles I, III, and IV apply with respect to congressional redistricting conducted during 2020 in the same manner as the titles would apply for redistricting after the 2030 census. There are a few exceptions. Redistricting must occur in accordance with the redistricting plan enacted into law by the independent redistricting commission established in accordance with subtitle B or if a plan is not enacted into law, the redistricting plan developed and enacted into law by a 3-judge court in accordance with section 301. (Section 511).

If any triggering events occur, the United States district court for the applicable venue shall develop and publish the redistricting plan for the State in accordance with section 301 no later than March 15, 2022. (Section 511). Triggering events are as follows: the failure of the State to establish or designate a nonpartisan agency of the State legislature under section 524(a) prior to the expiration of the deadline set forth in 524(a)(6), the failure of the State to appoint a Select Committee of Redistricting under section 522(b) prior to the expiration deadline in 522(b)(4), the failure of the Select Committee on Redistricting to approve any selection pool under 522(b) prior to expiration deadline set forth in 522(b)(7), or the failure of the independent redistricting commission of the State to approve a final redistricting plan prior to the expiration deadline in 523(e). (Section 512).

Independent Redistricting Commissions for Redistricting Carried Out Pursuant to the 2020 Census

The creation of the nonpartisan agency must occur no later than September 1, 2021. (Section 524(a)(6)). The Select Committee on Redistricting must be created no later than September 15, 2021. (Section 524(b)(4)). The nonpartisan agency must develop and submit the selection pool no later than October 15, 2021. (Section 522(b)). The Select Committee on Redistricting must approve or reject the pool no later than November 1, 2021. The requirements are the same as Title III. (Section 522).

The nonpartisan agency must appoint the first 6 members no later than November 5, 2021. (Section 521). No later than November 15, 2021, the members appointed by the agency must appoint the remaining 9 members. The member requirements are the same as those previously mentioned.

There is a requirement for 2 public hearings for this process instead of the 3 required by other titles. The independent redistricting commission must approve a final plan for the State no later than February 15, 2022. (Section 523(e)).