

CITIZEN REDISTRICTING COMMITTEE RULES OF PROCEDURE

- 1. ISSUING AGENCY:** Citizen redistricting committee (the committee), PO Box 92860, Albuquerque, NM 87199-2860; crc@state.nm.us.
- 2. SCOPE:** These rules apply to all committee members, committee staff, and contractors with the committee.
- 3. STATUTORY AUTHORITY:** Laws 2021, Chapter 79, Section 6, Paragraph B.
- 4. DURATION:** Through October 30, 2021, or as soon thereafter as the committee delivers adopted district plans and all accompanying written evaluations and explanatory statements to the legislature.
- 5. EFFECTIVE DATE:** July 1, 2021, unless a later date is cited at the end of a section, in which case the later date is the effective date.
- 6. OBJECTIVE:** The objective of these rules is to provide procedures for the committee's public hearings regarding district plans and the proposal and adoption of district plans. The purpose of these rules is to ensure compliance with the Redistricting Act, Laws 2021, Chapter 79, Sections 2 through 10, and to promote fairness, transparency, and public participation in the development and adoption of statewide district plans for New Mexico's delegation to the United States House of Representatives, New Mexico's Senate, New Mexico's House of Representatives, and the Public Education Commission.
- 7. DEFINITIONS:**
 - A. "Chair"** means the member appointed by the State Ethics Commission who shall be a retired justice of the New Mexico Supreme Court or a retired judge of the New Mexico Court of Appeals;
 - B. "Contract demographer"** means a contractor who has a contract to provide demographic and map-making professional services to the committee.
 - C. "District plans"** means maps and any other related geographical information of the boundaries of all single-member districts corresponding to each member of an elected body that is subject to districting.
 - D. "Online portal"** means a publicly available website, subject to the committee's direction, by which members of the public can submit comment, testimony, maps of one or more single districts, maps of one or more communities of interest, and maps of statewide district plans.
 - E. "Person"** means an individual or entity.
 - F. "Traditional redistricting principles"** means compactness; contiguity; preservation of communities of interest, taking into consideration political and geographic boundaries, including the boundaries of Indian nations, tribes, and pueblos; preservation of cores of prior districts; and consideration of an incumbent's address only to avoid the pairing of incumbents unless pairing is required by the aforementioned principles.

Committee commentary: In interpreting “traditional redistricting principles” as used in the Redistricting Act and defining that term for the purpose of these rules, the committee relies upon the New Mexico Supreme Court’s discussion of redistricting guidelines in *Maestas v. Hall*, 2012-NMSC-006, 274 P.3d 66. There, the Court concluded that the aforementioned list of principles, or principles very similar in substance, have been followed in New Mexico since 1991 and, moreover, should be used by state courts whenever called upon to draw a redistricting map. For the Court’s elaboration on each of these principles, see *Maestas v. Hall*, 2012-NMSC-006, ¶¶ 34–39.

8. COMMITTEE QUORUM AND AUTHORIZED ACTIONS:

- A. A majority of the committee constitutes a quorum for the undertaking of committee business.
- B. A majority of a quorum is sufficient to authorize action on any committee business.
- C. Except for contracts for legal services, the chair is authorized to act on behalf of the committee to enter into contracts and any interagency agreements, including agreements to provide for professional or technical services, as necessary to accomplish the committee’s duties under the Redistricting Act.

Committee Commentary: The Redistricting Act did not enact quorum or consent requirements that depart from the common law. This rule simply codifies the common-law rule that a majority of all the members of a board or commission constitutes a quorum, and the acts of a majority of the quorum are binding on the entire body. See *Pet. of Kinscherff*, 1976-NMCA-097, ¶ 4, 89 N.M. 669.

9. PER DIEM AND MILEAGE REIMBURSEMENTS:

- A. Committee members are entitled to receive per diem and mileage as provided in the Per Diem and Mileage Act, including per diem for the attendance of a virtual committee meeting, and shall receive no other compensation, perquisite or allowance.
- B. Any member electing to receive reimbursement for per diem and mileage shall request reimbursement from the Legislative Council Service on a form provided by that agency.

Committee commentary: Laws 2021, Chapter 81 amended Section 10-8-3 of the Per Diem and Mileage Act to clarify that, under the Act, “attend” means the act of being present, either physically or through a virtual platform that is approved by the entity responsible for determining attendance. Accordingly, committee members are entitled to receive per diem payments, as provided in the Per Diem and Mileage Act, for in-person and virtual attendance of committee meetings.

10. COMMITTEE MEETINGS BEFORE PROPOSING DISTRICT PLANS:

- A. Before proposing district plans for public comment, the committee shall hold no fewer than six public meetings that allow for virtual participation. The committee shall hold and conduct these meetings:
 - (1) after having provided the public with notice at least thirty days before each meeting; provided that, all public notices shall include information about how the public may participate and submit testimony, documents and information; and

(2) in-person; provided that:
(a) all meetings shall allow for virtual participation; and
(b) the committee shall not meet in person if any such meeting would violate a public health order issued by the department of health or another relevant government entity;

(3) in each of the four geographic quadrants of the state with one meeting on tribal land, subject to the agreement of the respective Indian nation, tribe or pueblo; and

(4) pursuant to the requirements of the Open Meetings Act, Sections 10-15-1 through 10-15-4, NMSA 1978.

B. At its meetings before proposing district plans, the committee may receive from any person testimony, as well as maps of communities of interest, maps of one or more single districts, and maps of statewide district plans, provided that:

(1) before the first meeting for the receipt of public testimony and maps, the committee has established an online portal for the public's submission and the committee's receipt of testimony, maps of communities of interest, single districts, and statewide district plans;

(2) any person attending a public meeting and providing a map of either communities of interest, one or more single districts, or statewide district plans must submit the maps through the committee's online portal or by sending either a hand-drawn map or, preferably, a map in a common format, such as a shapefile, to the committee via electronic mail at crc@state.nm.us, U.S. mail, or hand delivery;

(3) the committee shall not consider:
(a) any testimony referencing partisan data, such as voting history in partisan-contested elections or party registration data; or

(b) any complete district plan for the New Mexico House of Representatives, the New Mexico Senate, or the Public Education Commission that has a total deviation in population among districts of more than ten percent, or complete district plan for New Mexico's congressional districts with more than zero deviation unless that deviation is justified by legitimate state objectives.

C. At each of its meetings before proposing district plans, the committee may provide directions to the contract demographer regarding the development of district plans, including the preservation of communities of interest, and may receive information from the contract demographer regarding any trade-offs entailed by the committee's directions.

D. At any of its meetings before proposing district plans, the committee may select a district plan submitted by a member of the public and provide directions to the contract demographer to work from that plan.

Committee Commentary:

Regarding Section 11(B)(2), members of the public are encouraged to submit district plans through the committee's online portal. If a member of a public presents a district plan to the committee for the first time during the public meeting, having not submitted that plan through the committee's online portal, the committee staff will work with that member of the public to submit the district plan on the committee's online portal, so that all members of the public have an opportunity to evaluate the proposed plan.

Regarding Section 11(B)(4)(b), see *Tennant v. Jefferson County Commission*, 567 U.S. 758 (2012).

11. COMMITTEE DEVELOPMENT AND PROPOSAL OF DISTRICT PLANS:

A. The committee shall propose for public comment no fewer than twelve district plans, comprised of three district plans for each of:

- (1) New Mexico's congressional districts;
- (2) the New Mexico House of Representatives;
- (3) the New Mexico Senate; and
- (4) the New Mexico Public Education Commission.

B. The proposed district plans shall be based:

(1) on the most recent federal decennial census data generated by the United States census bureau (including both the legacy format dataset or, when available, the PL94-171 redistricting data summary files); the American community survey (a product of the United States census bureau); and, if necessary, on other reliable sources of data as determined by a majority of the entire committee;

(2) in part, on testimony, documents, including maps of communities of interest, one or more single districts, or statewide district plans, and other information received during the no fewer than six public meetings the committee shall hold before the proposal of district plans.

C. The committee shall develop district plans for proposal in accordance with the following provisions:

(1) district plans shall be composed of contiguous, single-member districts;

(2) congressional districts shall be as equal in population as is practicable;

(3) districts for the New Mexico House of Representatives, the New Mexico Senate, and the New Mexico Public Education Commission shall be substantially equal in population, such that no district plan will be characterized by a population deviation of more than ten percent among districts;

(4) district plans must comply with all applicable federal law, including the Voting Rights Act of 1965, as amended;

(5) districts shall be drawn consistent with traditional districting principles;

(6) districts shall be reasonably compact;

(7) districts shall be drawn in the attempt to preserve communities of interest, taking into consideration geographical boundaries and political boundaries, including political subdivisions and Indian nations, tribes, and pueblos; and

(8) districts shall be composed of entire precincts; provided that, a district plan may split precincts if and only if necessary to comply with the Voting Rights Act of 1965, as amended.

D. Subordinate to the criteria specified in subsection C of this section, the committee may seek to preserve the cores of existing districts.

E. When developing district plans for proposal, the committee shall not:

(1) use, rely upon or reference partisan data, including voting history in partisan contested elections or party registration data; provided that, the contract demographer and the committee's counsel may consider voting history data to ensure that a district plan complies with applicable federal law, including the Voting Rights Act of 1965, as amended; or

(2) consider the voting address of any candidate or incumbent holding elected office; provided that, the committee may consider the voting address of any candidate or incumbent holding elected office only if

(a) necessary to avoid the pairing of incumbents; and
(b) other traditional districting principles do not necessitate the pairing of incumbents.

F. After the committee develops district plans in accordance with subsections A through E of this section, the committee shall:

- (1) issue the district plans for public comment on the committee's online portal at least ten days before the meetings required by section 6(A)(3) of the Redistricting Act and section 13 of these rules; and
- (2) provide public access to all testimony, documents and information received in the meetings conducted before issuing proposed district plans for public comment.

Committee Commentary:

Regarding Section 12(C)(8), to the extent feasible and under the guidance of the contract demographer, the committee will make use of the precincts shown upon the standard base maps submitted pursuant to NMSA 1978, Section 1-3-13 and as revised and approved by the Secretary of State pursuant to the Precinct Boundary Adjustment Act, NMSA 1978, Sections 1-3-10 through 1-3-14.

12. COMMITTEE MEETINGS AFTER PROPOSING DISTRICT PLANS:

A. After publishing district plans for public comment, the committee shall hold no fewer than six public meetings that allow for virtual participation. The committee shall hold and conduct these meetings:

(1) after having provided the public with notice at least thirty days before each meeting; provided that, all public notices shall include:

(a) information about how the public may participate and submit testimony, documents and information; and

(b) reference to these rules;

(2) in-person; provided that:

(a) all meetings shall allow for virtual participation; and

(b) the committee shall not meet in person if any such meeting would violate a public health order issued by the department of health;

(3) in each of the four geographic quadrants of the state with one meeting on tribal land, subject to the agreement of the respective Indian nation, tribe or pueblo; and

(4) pursuant to the requirements of the Open Meetings Act, Sections 10-15-1 through 10-15-4, NMSA 1978.

B. At its meetings after proposing statewide district plans, the committee may receive from any person testimony and maps of alternative statewide district plans, provided that:

(1) before the first meeting, the committee has established an online portal for the public's submission and the committee's receipt of testimony and statewide district plans; and

(2) any person providing an alternative statewide district plan shall submit the alternative district plan through the committee's online portal or by sending either a hand-drawn map or, preferably, a map in a common format, such as a shapefile, to the committee via electronic mail at crc@state.nm.us, U.S. mail, or hand delivery.

C. After publishing statewide district plans for public comment, the committee shall not, either at a public meeting or through its online portal, consider:

- (1) maps of either communities of interest or one or more single districts, unless the maps of communities of interest or one or more single districts are submitted:
 - (a) as part of a statewide district plan; or
 - (b) in support of public comment regarding compliance with the Voting Rights Act, or other applicable federal law, of a district plan published by the committee;
- (2) any complete district plan for the New Mexico House of Representatives, the New Mexico Senate, or the Public Education Commission that has a total deviation in population among districts of more than ten percent, or complete district plan for New Mexico's congressional districts with more than zero deviation unless that deviation is justified by legitimate state objectives; or
- (3) any testimony making reference to the partisanship of New Mexico voters, including information referencing partisan data, such as voting history in partisan-contested elections or party registration data; provided that, the committee may receive and consider information relating to voting history when submitted to show that a district plan complies or does not comply with applicable federal law, including the Voting Rights Act of 1965, as amended.

D. The committee may provide directions to the contract demographer regarding the development of district plans, including the preservation of communities of interest, and may receive information from the contract demographer regarding any trade-offs entailed by the committee's directions. The committee may also select a district plan submitted by a member of the public and provide directions to the contract demographer to work from that plan.

Committee Commentary:

Regarding Section 13(B)(2), members of the public are encouraged to submit district plans through the committee's online portal. If a member of a public presents a district plan to the committee for the first time during the public meeting, having not submitted that plan to through the committee's online portal, the committee staff will work with that member of the public to submit the district plan on the committee's online portal, so that all members of the public have an opportunity to evaluate the proposed plan.

Regarding section 13(C)(2), see *Tennant v. Jefferson County Commission*, 567 U.S. 758 (2012).

13. ADOPTION OF DISTRICT PLANS

A. After the committee holds public meetings to receive public testimony and alternative district plans, the committee may incorporate any suggested changes to its proposed district plans in accordance with public comments and testimony the committee receives, subject to the following provisions:

- (1) when incorporating any suggested changes, the committee shall not subordinate the requirements of Paragraphs (1) through (9) of Subsection A of Section 8 of Laws 2021, Chapter 79; and
- (2) the committee shall not:
 - (a) use, rely upon, or reference partisan data, including voting history in partisan contested elections or party registration data; provided that, the contract demographer and the committee's counsel may consider voting history data to ensure that a district plan complies with applicable federal law, including the Voting Rights Act of 1965, as amended; or

(b) consider the voting address of any candidate or incumbent holding elected office; provided that, the committee may consider the voting address of any candidate or incumbent holding elected office only if

- (i) necessary to avoid the pairing of incumbents; and
- (ii) other traditional districting principles do not necessitate the pairing of incumbents.

B. After the committee has incorporated any suggested changes to its proposed district plans, the committee shall adopt, at a public meeting, which may be virtual, no fewer than twelve district plans, comprised of three district plans for each of:

- (1) New Mexico's congressional districts;
- (2) the New Mexico House of Representatives;
- (3) the New Mexico Senate; and
- (4) the New Mexico Public Education Commission.

14. WRITTEN EVALUATIONS OF ADOPTED DISTRICT PLANS AND SUBMISSION TO THE LEGISLATURE:

A. After the committee adopts the district plans, the committee shall prepare written evaluations of each district plan. These written evaluations shall include:

- (1) a narrative description of the committee's work; and
- (2) for each district plan:
 - (a) a description of how the plan satisfies the requirements sets forth in the Redistricting Act;
 - (b) an analysis of the ability of racial and language minorities to elect candidates of their choice;
 - (c) an analysis of how each district plan preserves communities of interest; and
 - (d) measures of partisan fairness, which shall be informed by:
 - (i) prior partisan election data in New Mexico, collected within the past ten years;
 - (ii) a comparison of the committee's adopted plans for each districted body against an ensemble of computer-simulated district plans for each districted entity, so long as those district plans include constraints imposed by the Voting Rights Act of 1965, as amended, and identified by the committee; and
 - (iii) established standards for measuring partisan gerrymandering, including the efficiency gap, the mean-median difference, and partisan symmetry.

B. The committee shall deliver its adopted district plans and accompanying written evaluations to the Legislature by October 30, 2021, or as soon thereafter as practicable.

Committee commentary: *See, e.g.,* Jowei Chen and Jonathan Roden, "Cutting Through the Thicket: Redistricting Simulations and the Detection of Partisan Gerrymanders," Election Law Journal 14:14 (2015), 331-345; Nicholas O. Stephanopoulos and Eric McGhee, "Partisan Gerrymandering and the Efficiency Gap," U. Chi. L. Rev. 831 (2015).

