



Montana Districting and Apportionment Commission

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MINUTES

May 28, 2010

Room 137, State Capitol
Helena, Montana

Please note: These minutes provide abbreviated information about committee discussion, public testimony, action taken, and other activities. The minutes are accompanied by an audio recording. For each action listed, the minutes indicate the approximate amount of time in hours, minutes, and seconds that has elapsed since the start of the meeting. This time may be used to locate the activity on the audio recording.

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COMMITTEE MEMBERS PRESENT

Jim Regnier, Presiding Officer
Jon Bennion
Joe Lamson
Pat Smith
Linda Vaughey

STAFF PRESENT

Rachel Weiss, Research Analyst
Joe Kolman, Research Analyst
Lisa Mecklenberg-Jackson, Attorney
Dawn Field, Secretary

AGENDA & VISITORS LIST

Agenda, Attachment #1.
Visitors' list, Attachment #2.

COMMITTEE ACTION

The Districting and Apportionment Commission:

- approved the minutes from the April 8, April 19, and April 28, 2010, hearings, as written;
- adopted mandatory criteria for congressional districts;
- adopted mandatory criteria for legislative districts; and
- adopted discretionary criteria for legislative districts.

CALL TO ORDER AND ROLL CALL

00:00:01 Commissioner Regnier called meeting to order at 10:00 a.m. The Secretary took roll, all members were present (ATTACHMENT 3).

Administrative Matters

00:01:54 **Commissioner Smith moved to adopt the April 8, April 12, and April 19, 2010, meeting minutes. The motion passed on a unanimous voice vote.**

Update on purchase of redistricting software

00:02:30 **Joe Kolman, Research Analyst, Legislative Services Division (LSD),** reported that after he and other DAC staff members completed a comparison process, the decision was made to purchase "Maptitude", as was demonstrated at the Austin conference. He said that the purchase includes software, three user licenses, and training.

Commission discussion and adoption of redistricting criteria

00:03:59 Commissioner Regnier thanked, on behalf of the Districting and Apportionment Commission, the many citizens of Montana who took the time to provide public and written comment on the redistricting process and on the mandatory discretionary criteria. He made additional comments regarding the process of districting and how, as Presiding Officer of the Commission, he planned to conduct the Commission's meetings and work plan. He said that he will focus on three areas: to follow the principles of the United States Constitution and federal court case decisions regarding the redistricting process, to follow Montana's Constitutional requirements for redistricting, and to remain cognizant of the obligations set forth in the Voter Rights Act of 1965.

00:10:39 Commissioner Lamson agreed with Commissioner Regnier's comments and said that the Commissioners received earlier and more thorough training than previous commissions and that the Commissioners already have a good sense of the diverse opinions in the state. He said that the Commission's goal is to mold the diverse opinions into a policy that reflects the State.

00:13:42 Commissioner Bennion said the current Commission is already on track to have the most open and transparent redistricting process, thanks to the comments received and public hearings. He said that even though very diverse opinions and ideas have been submitted, he is already coming up with ideas of how to meld them into a workable public policy for Montana.

00:15:17 Commissioner Vaughney said that because of the hearings, the public has a heightened awareness of what the Commission is doing and the importance of its

work. She said she looks forward to working with all of the Commissioners and will follow the Presiding Officer's lead in pursuing a collaborative and transparent approach.

- 00:17:06 Commissioner Regnier recognized Mary Craigle, Department of Commerce for her contributions and efforts to the process.
- 00:17:29 Commissioner Smith said he is strongly committed to an open, transparent, and fair redistricting process and that he takes compliance with the Voter Rights Act very seriously. He said it is not the job of the Commission to balance the state politically or to allow domination, but that the end result of the process should reflect the diversity of the state, including the vastness of its geography, its independent voters, and the changing dynamic of Montana's increasing suburban-rural interface.
- 00:27:18 Commissioner Regnier noted that Lisa Mecklenberg-Jackson, Staff Attorney, Legislative Services Division (LSD), prepared a checklist for selecting congressional and legislative redistricting criteria, as outlined by state and federal law (**EXHIBIT 1**). It was agreed that the checklist would be used as the template for discussion and selection of the criteria.

MANDATORY CRITERIA FOR CONGRESSIONAL DISTRICTS

1. Population equality

- 00:28:49 **Commissioner Vaughey moved to adopt the mandatory criteria for congressional districts, as written.** Commission Vaughey read aloud the criteria (EXHIBIT 1). **The motion passed on a unanimous voice vote.**

MANDATORY CRITERIA FOR LEGISLATIVE DISTRICTS

1. Population equality

- 00:30:17 **Commissioner Vaughey moved to approve mandatory criteria for legislative districts as proposed in her document (EXHIBIT 2).** Commissioner Vaughey read her statement into the record. She said the motion, as written, clearly addresses the "one person, one vote" concerns as heard in the public hearings, and that the language would go along way to keeping the public confidence in the process, as well as reducing the risk of a lawsuit. The Commissioners discussed the motion at length.
- 00:34:16 Commissioner Bennion supported the motion, saying it clearly addresses concerns presented in the public hearings. He discussed the motion.
- 00:36:46 Commissioner Lamson thanked Commissioner Vaughey for offering the motion but said he has concerns about adopting a 1percent deviation standard. He discussed his concerns, saying that there are legitimate reasons to allow a certain amount of flexibility in the deviation standard.
- 00:40:57 Commissioner Smith said he also has concerns about adopting a 1 percent deviation standard. He said that the switch from a 5percent deviation standard to

a 1 percent deviation would be too huge and said he would be more comfortable with a 3 percent standard. He suggested that the 1 percent standard be considered for the next districting cycle. Commissioner Smith discussed several additional concerns with the motion.

- 00:43:39 Commissioner Regnier said Commissioner Vaughey's motion directs the Commission to focus on the importance of reducing the deviation percentage. He said that Montana's Constitution requires the standard to be nearly equal as practicable and that with the advancement of software, his instincts are that the 5 percent standard can be improved upon but that he has concerns about adopting a 1 percent deviation standard. He discussed the motion further and offered suggestions on how it could be modified to alleviate the concerns as discussed. The Commissioners continued to discuss the motion.
- 01:09:30 Commissioner Lamson asked Mary Craigle, Department of Commerce, to comment on the status of census in Montana.
- 01:10:12 **Mary Craigle, Census Bureau Chief, Department of Commerce**, reported on the specific activities and outreach efforts that the census workers have completed and commented briefly on the preliminary numbers.
- 01:13:11 Commissioner Bennion asked when preliminary and official numbers would be available. Ms. Craigle said that the initial numbers will be available in March of 2011 and the redistricting file is produced in April 2011. Commissioner Smith asked about home visits in which the resident was not at home. Ms. Craigle said that up to seven visits are allowed and that neighbors are allowed to give information on the residents. She said that the census workers will follow up until the information is obtained.
- 01:14:53 Commissioner Lamson thanked Ms. Craigle and her staff for their tremendous effort. Commissioner Regnier asked Commissioner Vaughey if she would consider withdrawing her motion and redraft it to reflect the Commission's discussion. **Commissioner Vaughey withdrew her motion.**
- BREAK**
- 01:38:32 Commissioner Regnier reconvened the meeting at 11:40 a.m. **Commissioner Vaughey moved to approve her redrafted motion and read it into the record (EXHIBIT 3).**
- 01:40:56 Commissioner Bennion said he has certain issues but thought they could be worked out and the process moves along. He said the Commission needs to discuss the actual process in more detail and suggested having a fall meeting to do so.
- 01:41:58 Commissioner Smith said he could support the language, so long as adjustments could be made when the official census numbers come in.
- 01:42:17 Commissioner Regnier said he was concerned that the language could be misinterpreted. **Joe Kolman, Research Analyst, LSD**, suggested alternative language, beginning with the third sentence: *"Any deviation may not exceed plus*

or minus 3 percent from this ideal population. Each deviation will be accompanied by an explanation of the mandatory or discretionary criteria justifying such deviation." (The last sentence to remain as written.)

01:44:25 **Commissioner Vaughey withdrew her motion and moved the language as stated by Mr. Kolman.** She read the amended statement into the record: "*Each legislative district shall be as nearly equal in population as is practicable. It is the goal of the Commission that each district have a population of _____. Any deviation may not exceed plus or minus 3 percent from this ideal population. Each deviation will be accompanied by an explanation of the mandatory or discretionary criteria justifying such deviation. An explanation for any deviation shall be articulated and made part of the written record that accompanies each district description in the Commission report*". Commissioner Regnier said the motion would be amended, not withdrawn. He asked if there was any additional discussion. There was none. **The motion passed on a unanimous voice vote.**

2. Compact and contiguous districts

01:45:56 Commissioner Regnier said this criteria's source is the Montana Constitution, Article V, section 14. He read the criteria into the record (EXHIBIT 1).

01:46:41 Commissioner Vaughey said that much testimony was given in hearings about the current senate districts not being compact. She asked if this criteria relates to just the senate, or to the house districts also. Commission Lamson said it applies to both.

01:48:57 **Lisa Mecklenberg-Jackson, Staff Attorney, LSD,** noted that just the first sentence is from the Montana Constitution, the remainder is from the 1990 and 2000 districting commissions. Commissioner Smith said that the mention of the Montana Constitution in the criteria is misleading and suggested deleting it from the criteria language.

01:50:15 Commissioner Bennion said the notion of a general appearance test is vague and that he is uncomfortable with it. He discussed his concerns and said he is open to additional discussion of what a "compact" district really looks like. Commissioner Regnier said an alternative would be to have the Constitutional language only in the criteria. Commissioner Smith said he liked the language and that it is consistent with the training the Commissioners have received.

01:52:29 Commissioner Lamson said that there are many ways to measure compactness and that experts have agreed that each measure has its own biases. Commissioner Regnier said he understood the concerns discussed by Commissioner Bennion.

01:53:17 Commissioner Vaughey asked if there is additional language that would clarify that Commission isn't bound to just what is listed in the criteria. Commissioner Bennion said that using a general appearance test may leave things too wide open. Commissioner Vaughey, in the second sentence, suggested inserting "*but not be limited to*" after "*The Commission will use*". Commissioner Lamson said

he would agree to that change. Commissioner Smith suggested changing "will" to "may".

01:57:26 **Commissioner Vaughey moved to amend the language in the compact and contiguous criteria, as discussed by the Commission.** She read the amended statement into the record: " *Each district shall consist of compact and contiguous territory. (MT Constitution). The Commission may use but not be limited to a general appearance test regarding the compactness of the district and consider the district's functional compactness in terms of travel and transportation, communication, and geography.*" **The motion passed on a unanimous voice vote.**

3. Protection of minority voting rights and compliance with the Voting Rights Act

01:58:37 Commissioner Regnier read the criteria language into the record and noted that the source of the criteria is 42 U.S.C. 1973 (EXHIBIT 1).

01:59:23 **Commissioner Bennion moved to adopt the criteria, as written. The motion passed on a unanimous voice vote.**

4. Race cannot be the predominant factor to which the traditional discretionary criteria are subordinated.

01:59:54 Commissioner Regnier read the criteria language into the record and noted the source of the criteria is Shaw v. Reno, 509 U. S. 630 (1993) (EXHIBIT 1). **Commissioner Bennion moved to adopt the criteria, as written. The motion passed on a unanimous voice vote.**

02:01:00 Commissioner Regnier recessed the Commission for a 15-minute break.

BREAK

02:17:03 Commissioner Regnier called the Commission back to order at 12:18 p.m.

DISCRETIONARY CRITERIA FOR LEGISLATIVE DISTRICTS

1. Following the lines of political units

02:17:41 Commissioner Regnier read the criteria into the record (Page 2, EXHIBIT 1).

02:18:00 Commissioner Vaughey said that she prepared alternative language for this criteria (EXHIBIT 4). **Commissioner Vaughey moved to adopt her proposed language as the first discretionary criteria.** She spoke to her motion, saying that the addition of "neighborhood commissions" in place of "voting precincts" was prompted by testimony received.

02:19:57 Commissioner Lamson said he did not object to the language but reminded the Commission that for the first time, many precincts took census data at the request of county clerks and recorders. The Commissioners discussed the motion.

02:23:39 Commissioner Regnier asked Mary Craigle to respond to the discussion regarding voting precincts. Ms. Craigle said it is true that census data will be

associated with voting precincts as boundaries and that the precinct lines will be redrawn after the legislative districts are drawn.

- 02:24:14 Commissioner Bennion supported the motion.
- 02:24:20 Commissioner Smith said he would support the motion but said he would prefer to keep voting precincts in the language. Commissioner Vaughey said that because precincts are redrawn after the legislative district, it is not appropriate to include them. Commissioner Lamson reiterated that he considers voting precincts other political units so would be part of the general consideration.
- 02:25:26 **Rachel Weiss, Research Analyst, LSD**, discussed staff concerns about the wording. She said that neighborhood commissions will not be reflected in the census' geographical database so the motion may need to be reworded. Mr. Kolman recommended placing a period after "political units" and deleting the remainder of the statement. The Commissioners discussed the staff suggestions.
- 02:28:00 **Commissioner Vaughey amended her motion to read, "The Commission will consider the boundary lines of counties, cities, towns, school districts, Indian reservations, neighborhood commissions, and other political units." The motion passed on a unanimous voice vote.**

2. Following geographic boundaries

- 02:29:17 Commissioner Regnier read the proposed criteria into the record (Page 2, EXHIBIT 1). Commissioner Lamson asked if the TIGER/Line files will be the same as those used in 2000. Mr. Kolman said yes.
- 02:30:08 **Commissioner Vaughey moved to adopt the second discretionary (to follow geographic boundaries) as written. The motion passed on a unanimous voice vote.**

3. Keeping communities of interest intact

- 02:30:51 Commissioner Regnier read the proposed criteria into the record (Page 2, EXHIBIT 1). Commissioner Vaughey said that she had prepared alternative language for the third discretionary criteria - keeping communities of interest intact . She read her proposed language into the record (**EXHIBIT 5**). **Commissioner Vaughey moved to approve the language.** She said that she changed the order of entities listed to better reflect the hierarchy and also included language to address public comment received relative to keeping intact city, suburban, and rural residents intact. Commissioner Lamson and Commissioner Bennion both spoke in support of the motion.
- 02:33:51 **The motion to adopt Commissioner Vaughey's alternative language for the third discretionary criteria passed on a unanimous voice vote.**
- 02:34:09 The Commission discussed the addition of language to discretionary criteria 3. -- Keeping communities of interest intact. Ms. Mecklenberg-Jackson explained that the language ("*An attempt will be made to keep city residents and rural residents in separate districts to the extent possible.*") was added as a result of public

comment received. It was agreed that the additional language was not needed because Commissioner Vaughey's proposed and adopted language (EXHIBIT 5) incorporated that concern.

4. Consideration of existing district lines

02:37:04 Commissioner Regnier read the proposed criteria into the record (Page 2, EXHIBIT 1). **Commissioner Vaughey moved not to include consideration of existing district lines as a discretionary criteria.** After a brief discussion, it was agreed that the information would be helpful for review purposes but was not needed as criteria. **The motion passed on a unanimous voice vote.**

5. Political fairness

02:40:13 Commissioner Regnier read the proposed criteria into the record (Page 2, EXHIBIT 1).

02:40:41 Commissioner Lamson did not support adopting the language as formal criteria. Commissioner Bennion said he was uncomfortable with this criteria and did not want to adopt it. Commissioner Regnier also did not support adoption of the criteria. **Commissioner Lamson moved not to adopt political fairness as discretionary criteria. The motion passed on a unanimous voice vote.**

02:43:22 Commissioner Regnier asked if there were other criteria the Commissioners wished to add. There was none. Commissioner Bennion asked to add a fall meeting at which process would be discussed. The Commissioners discussed the date of their next meeting. It was agreed that the Commission would schedule a meeting for spring and that the date would be determined later.

02:50:18 Commissioner Lamson asked about the budget. Ms. Weiss said that unless directed to do otherwise, she would budget for the same number of meetings as the last Commission. Commissioner Regnier said that would be a good starting point on which to base budget projections. Commissioner Lamson suggested using video conference technology whenever possible.

02:52:08 The Commission discussed participation in the software training. Mr. Kolman discussed the plans for training.

PUBLIC COMMENT

02:55:28 **Sen. Jeff Essmann, SD 28, Billings**, thanked the Commissioners for holding the public hearings in advance of adopting mandatory and discretionary criteria. He commented specifically on the importance of elementary school district boundaries in defining neighborhoods, both in urban and rural areas of the state.

BREAK The Commission recessed briefly while Ms. Mecklenberg-Jackson prepared the revised criteria list.

03:06:55 Ms. Mecklenberg-Jackson distributed copies of the mandatory and discretionary criteria, as approved by the Commissioners (**EXHIBIT 6**). Commissioner Regnier noted, for the record, a typographical error in the third discretionary criteria (Keeping communities of interest intact.) Ms. Mecklenberg-Jackson said, in the

second sentence, insert the word "be" between "can" and "based". (*Exhibit 6, as contained in the minutes and posted on the website, is the corrected version*).

ADJOURNMENT

03:07:50 With no further business before the Districting and Apportionment Commission, Commissioner Regnier adjourned the meeting at 1:09 p.m.

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