

NORTH DAKOTA LEGISLATIVE COUNCIL

Minutes of the

LEGISLATIVE REDISTRICTING COMMITTEE

Monday, July 9, 2001
Harvest Room, State Capitol
Bismarck, North Dakota

Representative Mike Timm, Chairman, called the meeting to order at 10:00 a.m.

Members present: Representatives Mike Timm, Ole Aarsvold, Al Carlson, William R. Devlin, Glen Froseth, Pam Gulleson, Lyle Hanson, David Monson; Senators Bill Bowman, Randel Christmann, Layton Freborg, Ray Holmberg, Ed Kringstad, Tim Mathern, Steven W. Tomac

Others present: Aaron Krauter, State Senator, Regent

Merle Boucher, State Representative, Rolette

Dwight Cook, State Senator, Mandan

Wesley R. Belter, State Representative, Leonard

Ralph L. Kilzer, State Senator, Bismarck

Kevin Glatt, Burleigh County Auditor, Bismarck

Clarice Kesler, North Dakota Association of Rural Electric Cooperatives, Mandan

Janell Cole, The Forum, Bismarck

Bob Stenehjerm, State Senator, Bismarck

Bob Martinson, State Representative, Bismarck

Wade Williams, North Dakota Association of Counties, Jamestown

Dwight Wrangham, State Representative, Bismarck

Cory G. Fong, Secretary of State's office, Bismarck

At the request of Chairman Timm, Mr. John D. Olsrud, Director, Legislative Council, reviewed the supplementary rules of operation and procedure of the North Dakota Legislative Council. Mr. Olsrud said this committee has a limited amount of time to complete its study and submit a report to the Legislative Council. He said certain statutory time deadlines with respect to the conduct of the 2002 primary election may be affected by the work of this committee.

Chairman Timm said the interim committee responsible for redistricting in 1991 held several two-day meetings. He said he is not sure how many meetings this committee will require to complete its work. He said it is important that the members of the committee work together and cooperate to develop a redistricting plan that is fair and that will not result in a legal challenge. He said the Legislative Council office has two computers with the redistricting software for use by the Legislative Council staff and two computers loaded with the software for use by the members of the committee. He said he would like to

discuss a number of issues at this meeting, including establishing a schedule for future meetings, developing criteria for redistricting plans, and developing procedures for requesting the drafting of plans.

In response to a question from Representative Timm, the director said the consultant hired by the Legislative Council for redistricting in 1991 was paid approximately \$80,000 over a period of about three years.

In response to a question from Senator Tomac, the director said the Legislative Council has purchased four licenses for the AutoBound redistricting software. He said the software cannot be operated on the computers that legislators currently are using, but the software will work on the replacement computers under consideration by the Legislative Management Committee. He said the software can only be used on the computers for which licenses to operate the software have been purchased.

Chairman Timm said the committee may want to consider requesting the purchase of two more licenses and computers so that each caucus in each house would have the software for its use.

It was moved by Senator Holmberg and seconded by Representative Gulleson that the Legislative Council be requested to purchase two additional software licenses and two additional computers capable of operating the software.

In response to a question from Representative Belter, Legislative Council Chairman, the director said the Legislative Council has not ordered the new computers authorized by the Legislative Management Committee. He said any computers ordered would first be distributed for use for redistricting purposes.

Senator Mathern said although the redistricting information on the computer hard drives probably should be preserved, the computers should be used by legislators after redistricting is completed.

Representative Gulleson said she agrees that the two additional computers requested by this committee should be from the computers ordered for the full Legislative Assembly and should be used after redistricting.

Senator Holmberg said if each caucus has a computer, the caucus can determine how the computers will be used to prepare information before committee meetings. He said he agrees that the

computers used for redistricting should be part of the larger purchase of computers for the Legislative Assembly.

In response to a question from Senator Holmberg, committee counsel said members of the committee who will be using the redistricting software should be available for training on the use of the software before the next meeting of the committee.

In response to a question from Representative Devlin, the director said the Legislative Council will be purchasing 150 laptop computers for use by the Legislative Assembly. Because there will likely be a few extra computers that will not be assigned initially to legislators, he said, computers used by members of this committee for redistricting could be used at a later date for other purposes.

After this discussion, **the motion to purchase additional software licenses and computers necessary to operate the licenses was carried on a roll call vote.** Representatives Timm, Aarsvold, Carlson, Devlin, Froseth, Gulleon, Hanson, and Monson and Senators Bowman, Christmann, Freborg, Holmberg, Kringstad, Mathern, and Tomac voted "aye." No negative votes were cast.

At the request of Chairman Timm, committee counsel reviewed *Legislative Redistricting - Background Memorandum*.

In response to a question from Senator Mathern, committee counsel said the existing legislative districts will not dissolve automatically. He said the districts will remain in effect until either changed by an enactment of the Legislative Assembly or changed by judicial intervention.

In response to a question from Representative Gulleon, committee counsel said members of the Legislative Assembly whose terms do not expire in 2002 are not guaranteed the right to hold their legislative seats after redistricting. He said a 1991 Attorney General's opinion, which was widely criticized, indicated that it was unconstitutional to cut short a term of a member of the Legislative Assembly after redistricting. However, he said, there is sufficient authority, including a North Dakota Supreme Court decision, which indicates that reducing the term of a member of the Legislative Assembly to effectuate a legislative redistricting plan is permitted.

In response to a question from Representative Timm, committee counsel said one of the guidelines provided by the study resolution directing a study of redistricting in 1991 provided that senators whose district populations changed by 20 percent would be required to run for reelection. However, he said, the legislation implementing the redistricting plan provided that only senators who were in districts with other incumbent senators were required to run for reelection.

Chairman Timm called on Mr. Cory G. Fong, Deputy Secretary of State, Secretary of State's office, for comments regarding redistricting and 2002

election deadlines. Mr. Fong submitted a written summary of his remarks, a copy of which is on file in the Legislative Council office. He said under a best case scenario, a legislative redistricting plan would take effect by December 1, 2001. He said if that were the case, none of the election deadlines for conducting the 2002 primary election and for reorganization of political parties would require any adjustment. However, he said, if a redistricting plan were to take effect January 31, 2002, or later, certain statutory deadlines would likely require amendment. Among those deadlines, he said, are the date nominating petitions may first be circulated, the 35-day period for establishment of precincts at the city and county level, the deadline for calling and holding precinct caucuses and district endorsing conventions, the candidate filing deadline, and the deadline for the Secretary of State to provide notice of candidates to be listed on the ballot to the county auditors. He said the first real significant time deadline before the primary election is January 12, 2002, which is the first date that candidates are allowed to circulate nominating petitions.

Mr. Fong said counties are also going through the process of redistricting and will need to merge county commissioner districts with legislative districts to create precincts that are uniform. He said the county redistricting process will essentially be put on hold until the legislative redistricting process is complete.

In response to a question from Representative Timm, Mr. Fong said January 31, 2002, is essentially the last date that a legislative redistricting plan could become effective without having to significantly alter deadlines and procedures for the 2002 primary election.

In response to a question from Representative Timm, committee counsel said the effective date of legislation adopted at a special session of the Legislative Assembly is the date specified in the legislation. However, he said, if the Legislative Assembly were to meet in a reconvened legislative session that is not considered to be a special session, the effective date of the legislation would likely be 90 days after its filing unless the legislation were declared to be an emergency measure and passed by a two-thirds vote in each house.

In response to a question from Representative Gulleon, Mr. Fong said if a legislative redistricting plan were challenged in court or referred, the Secretary of State's office would continue to move forward with implementation of the new districts during the period of the challenge or until a referral election.

In response to a question from Representative Aarsvold, Mr. Fong said the date of the primary election is set by statute.

Representative Timm said the committee should develop guidelines for determining the proper procedure for submitting proposed plans to the committee.

In response to a question from Representative Boucher, committee counsel said the redistricting software that will be used by the committee and the Legislative Council costs approximately \$3,000 and may be purchased by any individual or group that desires to develop redistricting plans. In addition, he said, anyone with the census data and a map can draft proposed plans.

Senator Holmberg said it is important that the Legislative Council staff review proposed plans for technical accuracy before the plans are submitted to the committee for review.

Senator Bowman said if anyone is allowed to submit a plan for consideration, the committee and the Legislative Council staff will be overburdened with work.

Representative Gulleon said requests for plans should go through the Legislative Council.

Representative Froseth said the committee should develop guidelines similar to those used in 1991 with respect to criteria that must be followed in consideration of proposed plans.

In response to a question from Senator Mathern, committee counsel said the major constitutional issues to be considered in drafting a proposed plan are the population variance and the requirement that districts be compact and contiguous. He said a 10 percent standard of population equality has been generally accepted as the maximum variance that may be allowed by courts without sufficient state justification.

It was moved by Senator Mathern, seconded by Representative Monson, and carried on a roll call vote that plans considered by the committee be limited to plans within the 10 percent population variance. Representatives Timm, Aarsvold, Carlson, Devlin, Froseth, Gulleon, Hanson, and Monson and Senators Bowman, Christmann, Freborg, Holmberg, Kringstad, Mathern, and Tomac voted "aye." No negative votes were cast.

In response to a question from Representative Gulleon, Chairman Timm said a goal for the committee would be to complete its committee work by the first week of November.

After further discussion regarding the number of meetings and date and location of meetings, Chairman Timm announced that the committee would attempt to adhere to the following schedule of meetings:

July 24, 2001	Computer training
July 25, 2001	Committee meeting
August 23, 2001	Committee meeting
September 5-6, 2001	Committee meeting
October 4, 2001	Committee meeting
October 16-17, 2001	Committee meeting

Representative Gulleon said the committee should meet in areas of the state outside Bismarck to gather public input. Senator Mathern said the

redistricting process only happens once every 10 years so it is important the input of the public be sought during the process.

In response to a question from Representative Carlson, Representative Timm said public input at meetings outside Bismarck in 1991 was generally low.

Representative Froseth said he does not see a great benefit in holding meetings outside Bismarck.

Representative Monson said he agrees that meetings outside Bismarck may not be necessary. He said an important matter for the committee to consider is limiting the number of plans that will be presented at committee meetings. Without such a limit, he said, the committee and the Legislative Council staff will have a difficult time completing a plan by November.

It was moved by Senator Mathern and seconded by Senator Holmberg that the committee establish a guideline that provides that any plan heard at a committee meeting must first be submitted to the Legislative Council office at least three working days before the meeting for a technical review of the proposed plan.

In response to a question from Representative Timm, the director said any directive that relates to limits on service to legislators by the staff should come in the form of a letter from the chairman of the Legislative Council.

Representative Devlin said he is concerned with the number of plans that will be submitted to the Legislative Council. He said there should be a limit on the number of plans so that the Legislative Council staff can handle the workload.

After this discussion, **the motion carried on a roll call vote.** Representatives Timm, Aarsvold, Froseth, Gulleon, Hanson, and Monson and Senators Christmann, Holmberg, Mathern, and Tomac voted "aye." Representatives Carlson and Devlin and Senators Bowman, Freborg, and Kringstad voted "nay."

Representative Carlson said it is important the committee set criteria to be followed in the development of plans. He said by establishing such criteria much unnecessary work will be eliminated.

Senator Christmann said attempts to limit the scope of the committee's review are premature. He said the committee should look at various possibilities before limiting its scope.

It was moved by Representative Hanson and seconded by Representative Devlin that the committee limit the scope of its review of plans to plans that contain 49 and 51 districts.

Representative Gulleon said the committee should begin its work by attempting to preserve existing district boundaries to the extent possible.

Senator Tomac said he is opposed to limiting the committee's options at this point. He said it may be determined later that increasing the number of districts may not affect the overall impact of the redistricting plan.

After this discussion, Representative Hanson, with the consent of Representative Devlin, **withdrew his motion.**

It was moved by Representative Gulleson, seconded by Representative Aarsvold, and carried on a roll call vote that the committee attempt to preserve existing district boundaries to the extent possible in its consideration of proposed redistricting plans. Representatives Timm, Aarsvold, Carlson, Devlin, Froseth, Gulleson, Hanson, and Monson and Senators Bowman, Christmann, Freborg, Holmberg, Kringstad, Mathern, and Tomac voted "aye." No negative votes were cast.

Senator Tomac said the committee may be able to focus its work for the next meeting if a proposed plan is prepared for one area of the state.

Senator Mathern agreed the committee should attempt to focus its work on various areas of the state for future meetings. He said the committee could meet in various areas of the state to discuss the proposed plans for those areas of the state.

Representative Aarsvold said the committee should start to focus on areas that are the most

divergent from the ideal district size such as in Fargo and Bismarck.

Senator Bowman said it would be more practical to start creating districts in the rural areas initially.

Chairman Timm requested the Legislative Council staff to draft a proposal for districts in the northwest corner of the state and the city of Minot for the next meeting.

There being no further business, Chairman Timm adjourned the meeting at 2:40 p.m.

John Bjornson
Counsel

John D. Olsrud
Director