

2009 SENATE INDUSTRY, BUSINESS AND LABOR

SCR 4031

2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. 4031

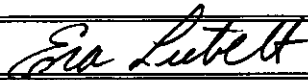
Senate Industry, Business and Labor Committee

☐ Check here for Conference Committee

Hearing Date: March 2, 2009

Recorder Job Number: 9966

Committee Clerk Signature



Minutes:

Senator John Warner: Written testimony in favor of 4031.

Senator Wanzek: In playing devil's advocate, I guess in my mind some of the reason the rural districts are odd shaped, is some of the criteria and requirements of population and representation, it seems to me with the nature and geography of North Dakota it is not easy.

Senator Warner: To some degree I agree with you. Some things could have been redistricted a lot better.

Chairman Klein: The lines change on a regular basis because when we try to get the numbers, it was one of those things that in setting those numbers, we have that problem. We can go back and I don't know if through the years in North Dakota that redistricting has done a lot. It's just shown that North Dakotan's vote people not as much for parties as we think they do.

Representative Cory Mock: Written testimony and handouts of maps, in favor of the bill.

Senator Potter: Is there any way to avoid the entire election of both houses of the legislature in 2012?

Representative Mock: It is something I have worked with. If you're going to have new district lines and not reelect your representatives you fun into the question of having your representative being someone you didn't have the opportunity to vote for.

Linda Wurtz, Associate state director for advocacy for AARP North: Written testimony in favor of 4031.

Chairman Klein: Someone would argue that the members of the legislative redistricting committee were keeping an open mind. They had meetings all across the state, which I am sure you were there helping drawing those lines ten years ago. They're wide open meetings no one is denied any access there flashed up on the screen, we watch how the whole thing comes together and there is lots of discussion because this is a very difficult process. I believe these people worked very hard at what they did.

Chairman Klein: Closed the hearing on 4031.

2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. 4031

Senate Industry, Business and Labor Committee

☐ Check here for Conference Committee

Hearing Date: March 2, 2009

Recorder Job Number: 9969

Committee Clerk Signature

Era Lubelt

Minutes:

Senator Andrist: Moved a do not pass on 4031.

Senator Nodland: Seconded the motion.

Roll Call Vote: Yes: 5, No: 2 Absent: 0

Floor Assignment: Senator Wanzek.

FISCAL NOTE
Requested by Legislative Council
02/26/2009

Bill/Resolution No.: SCR4031

1A. State fiscal effect: *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2007-2009 Biennium		2009-2011 Biennium		2011-2013 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues						
Expenditures					(\$273,158)	
Appropriations					(\$273,158)	

1B. County, city, and school district fiscal effect: *Identify the fiscal effect on the appropriate political subdivision.*

2007-2009 Biennium			2009-2011 Biennium			2011-2013 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts

2A. Bill and fiscal impact summary: *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

Senate Concurrent Resolution No. 4031 is a proposed amendment to Article IV of the Constitution of North Dakota to establish an independent legislative redistricting commission.

B. Fiscal impact sections: *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

The proposed constitutional amendment provides that the Legislative Assembly is to appropriate funds necessary for the operation of the commission and the efficient performance of the commission's duties and is to provide compensation and expense reimbursement to commission members during the period of service of the commission as provided for other state officers and employees. The Legislative Assembly would no longer meet in special session to approve the redistricting plan.

3. State fiscal effect detail: *For information shown under state fiscal effect in 1A, please:*

A. Revenues: *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

N/A

B. Expenditures: *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

The following is a brief description of the estimated fiscal impact of the measure.

The estimated costs of the commission assuming 7 meetings of the commission during the 2011-13 biennium (the same number of meetings as the 2001-02 interim legislative committee) include:

Funding for per diem - \$13,733

Funding for travel expenses - \$14,569

Funding for equipment, software, and other expenses - \$130,000

Total - \$158,302

Actual costs will depend on the decisions and actions of the commission.

The estimated reduction in costs for the Legislative Assembly include:

Equipment and software - (\$116,000)

Five day special legislative session (same number of days as 2001 special session) - (\$290,000)

Legislative interim committee on redistricting - (\$25,460)

Total - (\$431,460)

C. Appropriations: *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation is also included in the executive budget or relates to a continuing appropriation.*

The 2011-13 appropriations would potentially be decreased by a net amount of \$273,158.

Name:	Allen H. Knudson	Agency:	Legislative Council
Phone Number:	328-2916	Date Prepared:	02/27/2009

Date: 3/2/09
Roll Call Vote #: 1

Senate

Industry, Business and Labor

☐ Check here for Conference Committee

Legislative Council Amendment Number

Action Taken

☐ **Pass**☒ **Do Not Pass**☐ Amended

Motion Made By Senator Andrist Seconded By Senator Nodland

[illegible]

Total (Yes) 5 No 2

Absent 

Floor Assignment Senator Wanzek

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE (410)
March 4, 2009 8:31 a.m.

Module No: SR-38-3994
Carrier: Wanzek
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE

SCR 4031: Industry, Business and Labor Committee (Sen. Klein, Chairman)
recommends **DO NOT PASS** (5 YEAS, 2 NAYS, 0 ABSENT AND NOT VOTING).
SCR 4031 was placed on the Eleventh order on the calendar.

2009 TESTIMONY

SCR 4031



March 2, 2009

SCR 4031

Senate Industry, Business, and Labor

Chairman Klein and members of the Senate IB&L Committee. My name is Linda Johnson Wurtz, I am associate state director for advocacy for AARP North Dakota and today I represent our more than 88,000 North Dakota members.

Our compliments to the sponsors of SCR 4031. One of this nation's fundamental principles is that citizens are able to select leaders who will represent their interests in the state legislature, and so we appreciate the beginnings of this discussion.

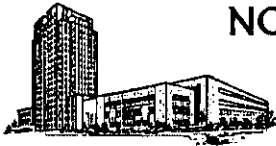
AARP policy recommends a nonpartisan redistricting commission that has diverse membership, is independent, and represents the state geographically and demographically. The process should be transparent and provide a meaningful opportunity for interested parties and the public to participate effectively.

Having a commission made up of people appointed by legislative leadership could meet the geographic and demographic criteria, however it seems to bring it into the realm of party politics and away from the "independent" nature. We would suggest, during your deliberations, to look at California's model, where citizen members are appointed through an applicant review panel and process established by the State Auditor. Also, please consider expanding the prohibition made for the chair of the committee, of removing from consideration individuals who have served elected or appointed office, served as a registered paid lobbyist, campaign official, or political party officer. Arizona sets their time parameters for these provisions at 3 years before or after service on the commission, California has established a 10 years preceding and after.

Regarding the criteria for legislative districts, there is no specific mention of the U.S. Voting Rights Act in the bill. Section 5 approaches this area, and the U.S. Voting Rights Act could easily be worked into this section, should you choose to do so.

The 30 day comment period and public hearings meet the transparency test. In addition, the commission should be meeting the requirements of North Dakota's open meeting laws. It may help to require internet access to the plan and commission documents during this period, although that may be accomplished during implementation.

In summary, SCR 4031 has merit and I appreciate this opportunity to contribute to the discussion.



NORTH DAKOTA HOUSE OF REPRESENTATIVES

STATE CAPITOL
600 EAST BOULEVARD
BISMARCK, ND 58505-0360



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COMMITTEES:
Education
Political Subdivisions

Testimony in SUPPORT of SCR 4031

March 02, 2009

Greetings Chairman Klein and members of the Senate Industry, Business and Labor Committee. I stand before you today in support of SCR 4031. I'd like to begin by thanking Sen. Warner and the other co-sponsors of this bill for standing up on behalf of redistricting commissions. The work involved with redistricting is tiresome and thankless, more so than the work of legislators on a day to day basis. It's an issue that is important to all, but interesting to a select few.

The resolution before you today is one of two models. As discussed by Sen. Warner, the need for an independent or bi-partisan redistricting commission is long overdue. Not only in North Dakota, but across the country. For this reason, 20 states have taken the lead on removing the legislative assembly from sole control of drawing the lines that determine their own jurisdiction.

The current system is as follows: members are selected to serve on the redistricting committee, with majority party retaining control, similar to other committees. Legislative Council trains one member from each party how to use complex GIS redistricting software. Each party meets, drawing ideal lines that accommodate their interests, with some regard to constitutional guidelines. The new maps are brought to the committee, then brought to Legislative Council for further correcting, and then approved by the committee.

This system is nothing more than a pickup game of touch football with players calling their own fouls and changing the rules at halftime. With no referees, no balance, and little general understanding of redistricting principles, the winners are incumbent elected officials and the loser is democracy of North Dakota.

There are three models introduced as Constitutional Revisions this session:

HCR 3053 is an independent redistricting commission composed of one district judge from each district court, chosen by lot by the Chief Justice. There is an 8th member of the commission,

which is a professional chosen by the department of geography at the state university and approved by a majority of the judges. This member is the committee chair, and a vice chair is elected by the commission at large. Funds are appropriated by the Legislative Assembly.

SCR 4031 is a bi-partisan redistricting commission that is the closest to our existing system, but with equal number of legislators from each party, in each chamber. A 9th member of the commission is chosen by the department of geography at the state university and approved by a majority of the legislators. This member is the committee chair, and a vice chair is elected by the commission at large. Funds are appropriated by the Legislative Assembly.

SCR 4029 is an independent redistricting commission composed of the appointees from each presiding judge of each district court, and an 8th member appointed by the Chief Justice. These members may not be elected officials for 5 years prior and 2 years following the commission's existence. The Chief Justice appointee is the chair, and the vice chair is elected by the commission at large. Funds are appropriated by the Legislative Assembly.

While no system is perfect, they are all a substantial improvement of the current system. For this reason, I encourage this committee to explore these commissions, work with your colleagues and pass a resolution that creates a fair or independent commission that our voters can trust.

Thank you all for your time and attention, I will now be happy to entertain any questions you may have.

APPENDIX C

REDISTRICTING COMMISSIONS: LEGISLATIVE PLANS

Commissions with Primary Responsibility for Drawing a Plan

State	Number of Members	Selection Requirements	Formation Date	Initial Deadline	Final Deadline
Alaska ALASKA CONST. art. 6	5	Governor appoints two; then president of the Senate appoints one; then speaker of the House appoints one; then chief justice of the Supreme Court appoints one. At least one member must be a resident of each judicial district. No member may be a public employee or official.	By September 1, 2010	30 days after census officially reported	90 days after census officially reported

State	Number of Members	Selection Requirements	Formation Date	Initial Deadline	Final Deadline
Arizona ARIZ. CONST. art. 4, pt. 2, § 1	5	The commission on appellate court appointees creates a pool of 25 nominees, 10 from each of the two largest parties and five not from either of the two largest parties. The highest ranking officer of the house appoints one from the pool, then the minority leader of the house appoints one, then the highest ranking officer of the senate appoints one, then the minority leader of the senate appoints one. These four appoint a fifth from the pool, not a member of any party already represented on the commission, as chair. If the four deadlock, the commission on appellate court appointments appoints the chair.	By February 28, 2011	None	None
Arkansas ARK. CONST. 1874, art. 8	3	Commission consists of the governor, secretary of state, and the attorney general	None	By February 1, 2011	Plan becomes official 30 days after it is filed

State	Number of Members	Selection Requirements	Formation Date	Initial Deadline	Final Deadline
California CALIF. CONST. art. XXI, § 2 Cal. Gov. Code §§ 8251-8253.6	14	Five registered with largest political party, five registered with second largest political party, and four not registered with either of the two largest political parties. Must have voted in two of the last three statewide general elections and not changed registration within the last five years. Must not have been politically active for last 10 years. Chosen at random from three pools, starting with 20 candidates each selected by a board of three state auditors, then reduced by up to eight strikes by legislative leaders. Prohibited from holding appointive public office or working as legislative staff or lobbyist for five years after appointment.	By December 31, 2010		September 15, 2011
Colorado COLO. CONST. art. V, § 48	11	Legislature selects four: (speaker of the House; House minority leader; Senate majority and minority leaders; or their delegates). Governor selects three. Judiciary selects four. Maximum of four from the legislature. Each congressional district must have at least one person, but no more than four people representing it on the commission. At least one member must live west of the Continental Divide.	By August 1, 2011	90 days after the availability of the census data, or after the formation of the committee, whichever is later	March 15, 2012

State	Number of Members	Selection Requirements	Formation Date	Initial Deadline	Final Deadline
Hawaii HAW. CONST. art. IV	9	President of the Senate selects two. Speaker of the House selects two. Minority senate party selects two. These eight select the ninth member, who is the chair. No commission member may run for the legislature in the two elections following redistricting.	By March 1, 2011	80 days after the commission forms	150 days after commission formation
Idaho IDAHO CONST. art. III, § 2	6	Leaders of two largest political parties in each house of the legislature each designate one member; chairs of the two parties whose candidates for governor received the most votes in the last election each designate one member. No member may be an elected or appointed official in the state at the time of designation.	Within 15 days after the secretary of state orders creation of a commission	None	90 days after the commission is organized, or after census data is received, whichever is later
Missouri MO. CONST. art. III, § 2	House: 18 Senate: 10	There are two separate redistricting committees. Governor picks one person from each list of two submitted by the two main political parties in each congressional district to form the house committee. Governor picks five people from two lists of 10 submitted by the two major political parties in the state to form the senate committee. No commission member may hold office in the legislature for four years after redistricting.	Within 60 days of the census data becoming available	Five months after the commission forms	Six months after formation

State	Number of Members	Selection Requirements	Formation Date	Initial Deadline	Final Deadline
Montana MONT. CONST. art. V, § 14	5	Majority and minority leaders of both houses of the Legislature each select one member. Those four select a fifth, who is the chair. Members cannot be public officials. Members cannot run for public office in the two years after the completion of redistricting.	The legislative session before the census data is available	The commission must give the plan to the Legislature at the first regular session after its appointment	30 days after the plan is returned by the Legislature
New Jersey N.J. CONST. art. IV, § 3	10	The chairs of the two major parties each select five members. If these 10 members cannot develop a plan in the allotted time, the chief justice of the state Supreme Court will appoint an 11th member.	December 1, 2010	February 1, 2011, or one month after the census data becomes available, whichever is later	The initial deadline, or one month after the 11th member is picked
Ohio OHIO CONST. art. XI	5	Board consists of the governor, auditor, secretary of state, and two people selected by the legislative leaders of each major political party.	Between August 1 and October 1, 2011	None	October 5, 2011
Pennsylvania PA. CONST. art. II, § 17	5	Majority and minority leaders of the legislative houses each select one member. These four select a fifth to chair. If they fail to do so within 45 days, a majority of the state Supreme Court will select the fifth member. The chair cannot be a public official.	None listed	90 days after the availability of the census data or after commission formation, whichever is later	30 days after the last public exception that is filed against the initial plan
Washington WASH. CONST. art. II, § 43	5	Majority and minority leaders of the House and Senate each select one. These four select a non-voting fifth to chair the commission. If they fail to do so by January 1, 2001, the state Supreme Court will select the fifth by February 5, 2001. No commission member may be a public official.	January 31, 2011	None	January 1, 2012

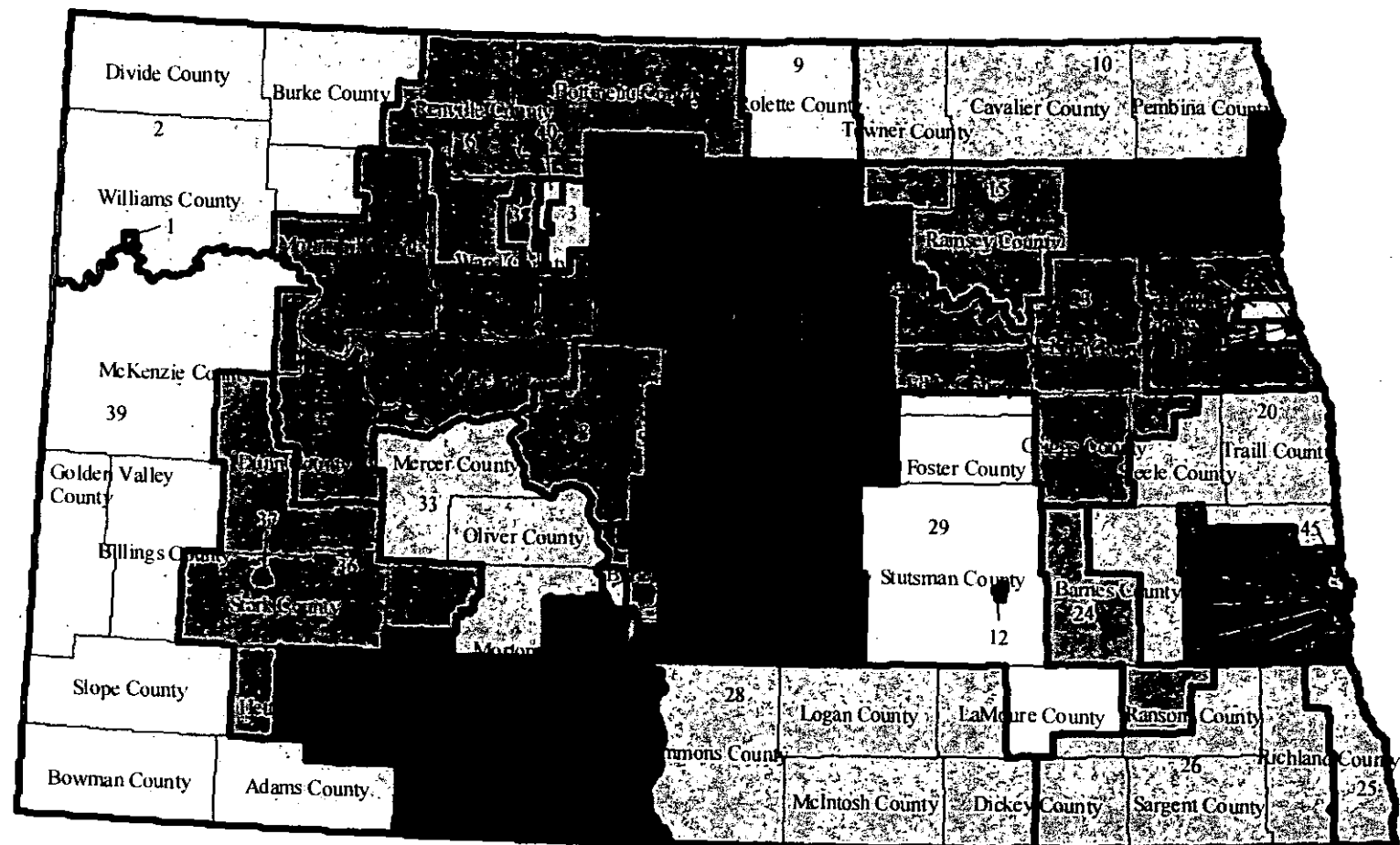
Advisory Commissions

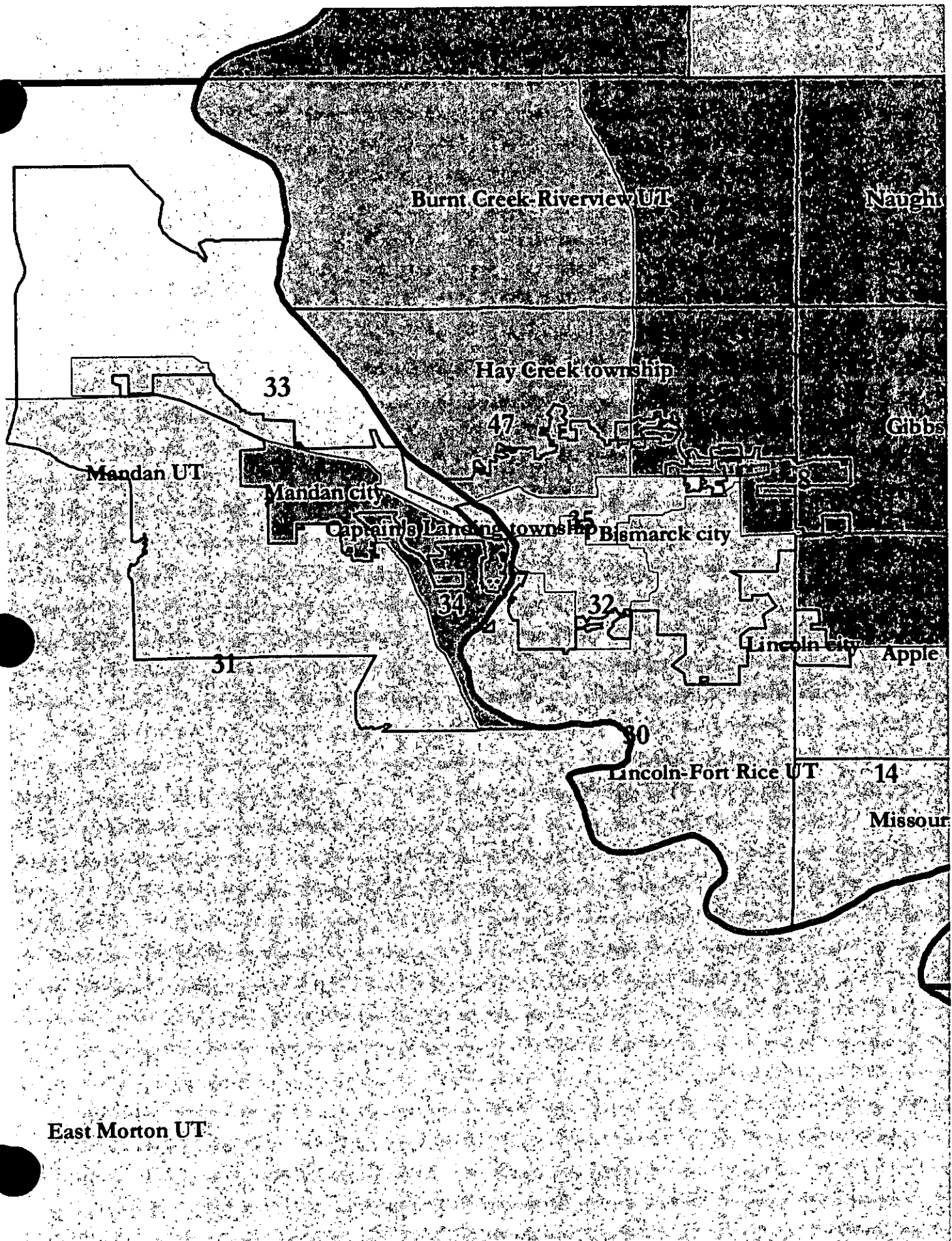
State	Number of Members	Selection Requirements	Formation Date	Initial Deadline	Final Deadline
Maine ME. CONST. art. IV, pt. 3, § 1-A	15	Speaker of the House appoints three. House minority leader appoints three. President of the Senate appoints two. Senate minority leader appoints two. Chairs of two major political parties, or their designees. The members from the two parties represented on the commission each appoint a public member, and the two public members choose a third public member.	Within three calendar days of convening the Legislature in 2013	The commission must submit its plan to the Legislature within 120 days after the Legislature convenes in 2013. The Legislature must enact the plan, or another plan, by a 2/3 vote of both houses within 30 days after it receives the commission's plan.	Within 60 days after the Legislature fails to meet its deadline, the supreme judicial court must adopt a plan
Vermont Vt. Stat. Ann. tit. 34A	5	Chief justice appoints the chair; governor appoints one member from each political party that received 25 percent of the vote in the last gubernatorial election; those parties each select one. Secretary of state is secretary of the board but does not vote. No commissioner may be a member or employee of the legislature.	By July 1, 2010	April 1, 2011	May 15, 2011. Legislature must adopt the plan or a substitute at that biennial session.

Backup Commissions

State	Number of Members	Selection Requirements	Formation Date	Initial Deadline	Final Deadline
Connecticut CONN. CONST. art. III, § 6	9	President pro tem of the Senate, Senate minority leader, speaker of the House, and House minority leader each select two; these eight must select the ninth within 30 days.	After legislature fails to meet deadline (September 15, 2011)	None	November 30, 2011
Illinois ILL. CONST. art. IV, § 3	8	President of the Senate, Senate minority leader, speaker of the House, and House minority leader each select two, one of whom is a legislator and the other is not. No more than four from the same party. If the commission fails to develop a plan by August 10, 2011, the state Supreme Court selects two persons not of the same political party, one of whom is chosen by lot to be the ninth member.	July 10, 2011 (if legislature fails to meet its deadline of June 30)	None	October 5, 2011
Mississippi MISS. CONST. art. 13, § 254	5	Chief justice of Supreme Court is chair; attorney general, secretary of state, speaker of the House, president pro tem of the Senate	After legislature fails to meet deadline (60 days after end of second regular session following decennial census)	None	180 days after special apportionment session adjourns
Oklahoma OKLA. CONST. § V-11A	3	Attorney general, superintendent of public instruction, and state treasurer	After legislature fails to meet deadline (90 days after convening first regular session following decennial census)	None	None

State	Number of Members	Selection Requirements	Formation Date	Initial Deadline	Final Deadline
Texas TEX. CONST. art. 3, § 28	5	Lieutenant governor, speaker of the House, attorney general, comptroller of public accounts, and commissioner of the general land office	Within 90 days after legislature fails to meet deadline (adjournment of the first regular session following decennial census)	None	60 days after formation





Senate Concurrent Resolution 4031
Senate Industry, Business and Labor Committee
Senator John Warner
2 March 2009

Chairman Klein, Members of the Committee,

The legislation that you have before you today is one of at least two constitutional revision resolutions in the legislature this session aimed at addressing the rising tide of voter discontent about the way that their elections system has been manipulated to create partisan advantage.

Our founding fathers recognized a problem that they had inherited from the British parliamentary system, that of "rotten boroughs", the allocation of representation to cities and towns which no longer had population to justify a representative of their own and by extension the denial of representation to emerging economic powerhouses. Americans watched with amazement as the British village of Old Sarum, which had not one single resident, elected more members of Parliament than the city of Birmingham, the second largest city in England.

The writers of the constitution solved this problem, rather brilliantly, by creating the decennial census, a recounting of the population and the reallocation of representation every ten years. Unfortunately they left that reallocation in the hands of elected officials who could easily exploit the process for partisan gain.

This is not a new problem. In fact, we owe the term "gerrymander" to a governor of Massachusetts in the early 1800s, Elbridge Gerry, who redrew an election district in such a contorted way that it resembled a salamander.

With the rise of computer aided design and sophisticated voter and demographic profiling, the abuse has only gotten worse. The problems have devolved into two areas:

- **Gerrymandering to protect incumbents without partisan bias.** Perhaps the most brazen example took place in California following the 2000 census when mostly Democrat state politicians drew congressional boundaries to make every single incumbent safe. That may be the most egregious example but plenty of other states can rival that piece of work. If you combine all of the federal House districts created in 2000 in New York, Illinois and Ohio combined with those in California, and then compare these 119 congressional seats to the five in Iowa, you will find that the tiny state of Iowa produced nearly the same number of competitive elections in 2002 as these four large states put together. The large states were gerrymandered using the best political profiling money could buy and Iowa was redistricted using a nonpartisan citizens commission. Arizona and Iowa have been leaders in recent years in creating these nonpartisan commissions.
- **Gerrymandering to create partisan advantage.** Perhaps the most infamous example of this in recent times occurred in Texas when control of both chambers of the legislature and the governorship changed hands in 2002. Texas legislators, with partisan purpose, broke longstanding tradition and redistricted the state just two years after new maps had been drawn to ensure that whatever the change in the mood of the state, the House would stay in the hands of Republicans for a long time to come.

North Dakota has its own examples from the redistricting after the 2000 census. Six Senators of one party were forced to run against each other after being redistricted into three legislative districts.

There were a number of animal shaped districts created to protect or injure incumbents. The Eighth district has its head north of the Snake Creek embankment then slithers down the Missouri river valley, loops east of Bismarck, loops around Apple Creek and finally tails off south of Bismarck in the town of Lincoln.

The infamous Thirty-first district resembles nothing so much as a battleship towing a water skier. After sprawling over thousands of square miles of southwestern North Dakota it sends a slender tow line over to reel-in a small neighborhood in Mandan. If you drive west across the Missouri on the interstate you will find yourself in District 33 when on the westbound lane, District 34 when on the eastbound lane and District 31 when on the median strip between the lanes of highway.

My own Fourth district resembles nothing so much as a snail or a nautilus, curling in on itself. At first glance it looks fairly compact on the map until you realize that that thin blue line is Lake Sakakawea and that the only bridge within 120 miles is at New Town. If the Fourth District could be uncurled it would stretch from Sawyer out to beyond Sidney, Montana. I live within 10 miles of the geographical center of my district yet I have to travel 150 miles to reach the farthest precincts in the district, the towns of Dodge, Dunn Center and Halliday. These people live within a stone's throw of two different Dickinson area legislative districts that have similar geography, similar patterns of commerce and similar economic base but were tacked onto a district north of the river that stretches as far east as the eastern suburbs of Minot.

All of us here could cite many other "goofy" shaped districts but these will suffice for now.

Looking beyond the games we play, beyond our ability here in this legislature to protect or damage each other, why should we care about the integrity of the redistricting process? We should care because we are charged with protecting and defending the constitution and the democratic processes that set America apart as the standard of freedom in the world. We should care because, more and more, voters are turning away from participating in a system that they see as fundamentally broken and corrupt.

Finally, I want to talk about the damage that we do to the political conversation when we create districts where there is no effective competition for the chance to represent the electorate. I live in one of those districts. In my first election to the Senate in 2004 I lead my opponent by about 900 votes. In this more recent election in 2008 I didn't even have an opponent. In some ways this is what uniquely qualifies me to argue in favor of this type of legislation.

When we create situations where one party cannot win and the other cannot lose we polarize the political conversation. Winning the nomination, where only the party regulars participate, becomes more important than winning the election where the electorate chooses and so the only views that matter are those at the extremes of the political spectrum.

I want to spend a few minutes discussing the particulars of the bill. This Senate version and its House equivalent, introduced by Rep. Mock are the same in almost every detail but one. Both introduce the concept of a redistricting commission presided over by a professional geographer. In the House version this commission is made up of district court judges selected by random drawing from their respective judicial districts. This Senate version uses legislative appointees selected in equal numbers by the four caucus leaders of the legislature. In both bills the presiding officer is the chairman of the geography department at the University of North Dakota.

Quite candidly, neither of these is a perfect solution. As long as redistricting is done by men and not by angels there will continue to be opportunities for abuse but I think that either of these is an improvement on the current situation.

While I did not bring amendments, upon reflection I can think of a couple of places where changes might be an improvement.

On page 1, line 19, the redistricting commission fixes the number of legislative districts. I think that it might be more appropriate for the previous legislative assembly to establish that number by resolution or statute.

Page 2, line 30 makes the chairman of the geography department at UND the presiding officer. Consideration might also be given to the chairman of the State Data Center at NDSU as an appropriate presiding officer.

Mr. Chairman, members of the committee, I thank you for the opportunity to appear before you today and I thank you in advance for the wise deliberation that I expect you will give this matter. It's time we return to the American tradition of voters choosing their elected representatives instead of the elected representatives choosing their voters.