

ASSEMBLY BILL NO. 252—COMMITTEE ON
LEGISLATIVE OPERATIONS AND ELECTIONS

MARCH 11, 2015

Referred to Committee on Legislative Operations and Elections

SUMMARY—Revises provisions relating to elections.
(BDR 17-737)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State: Yes.

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EXPLANATION – Matter in *bolded italics* is new; matter between brackets ~~omitted material~~ is material to be omitted.

AN ACT relating to elections; creating the Legislative Advisory Commission on Reapportionment and Redistricting to assist the Legislature with reapportionment; requiring the Advisory Commission to meet by a specified time after each decennial census to develop proposed reapportionment plans for congressional districts, state legislative districts, state election districts for the Board of Regents of the University of Nevada and certain other state election districts; authorizing the Legislative Commission to convene the Advisory Commission under certain circumstances if there is a need to develop new reapportionment plans; and providing other matters properly relating thereto.

Legislative Counsel’s Digest:

1 Under the United States Constitution, each state legislature has been delegated
2 the authority to regulate the times, places and manner of holding elections for the
3 state’s Representatives in Congress, which includes the power to establish by law
4 congressional districts for their election. (U.S. Const. Art. I, § 4; *Smiley v. Holm*,
5 285 U.S. 355, 362-73 (1932)) This delegated authority requires each state
6 legislature to apportion the state’s Representatives in Congress among
7 congressional districts according to population. (U.S. Const. Art. I, § 2; 2 U.S.C. §
8 2c; *Tennant v. Jefferson County Comm’n*, 133 S. Ct. 3, 5 (2012)) To account for
9 changes or shifts in a state’s population over time, the state legislature must
10 reapportion the state’s congressional districts following each decennial census of
11 the United States. (2 U.S.C. § 2a; 13 U.S.C. § 141; *Franklin v. Massachusetts*, 505
12 U.S. 788, 791-92 (1992); *Georgia v. Ashcroft*, 539 U.S. 461, 488 n.2 (2003)) When
13 the state legislature reapportions the state’s congressional districts, the districts



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generally must consist of equal population, as nearly as is practicable, so that each person's vote is given equal weight to comply with the one-person, one-vote principle embraced by Article I, Section 2 of the United States Constitution. (*Wesberry v. Sanders*, 376 U.S. 1, 7-8 (1964); *Karcher v. Daggett*, 462 U.S. 725, 730-31 (1983); *Tennant v. Jefferson County Comm'n*, 133 S. Ct. 3, 5 (2012))

In addition, after each decennial census of the United States, the Nevada Constitution requires the Legislature to fix by law the number of members of the Senate and Assembly and apportion them among the state's legislative districts according to population. (Nev. Const. Art. 1, § 13, Art. 4, § 5, Art. 15, § 13) The Nevada Constitution also requires that the number of members of the Senate must not be less than one-third nor more than one-half of the number of members of the Assembly and that the aggregate number of members of both Houses must not exceed 75 total members. (Nev. Const. Art. 4, § 5, Art. 15, § 6) When the Legislature reapportions the state's legislative districts, the districts generally must consist of equal population, as nearly as is practicable, so that each person's vote is given equal weight to comply with the one-person, one-vote principle embraced by the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution. (U.S. Const. Amend. XIV, § 1; *Reynolds v. Sims*, 377 U.S. 533, 561-68 (1964); *Connor v. Finch*, 431 U.S. 407, 416 (1977))

Finally, the Nevada Constitution requires the Legislature to provide for the election of the members of the Board of Regents of the University of Nevada, and the Legislature has provided by law for their election from districts apportioned according to population. (Nev. Const. Art. 11, § 7; NRS 396.040) When the members of a governing board are elected from districts apportioned according to population, the districts must be apportioned based on the same principles that apply to the apportionment of legislative districts. (*Hadley v. Junior College Dist.*, 397 U.S. 50, 51-59 (1970)) As a result, when the Legislature reapportions the districts for members of the Board of Regents, the districts generally must consist of equal population, as nearly as is practicable, so that each person's vote is given equal weight to comply with the one-person, one-vote principle embraced by the Equal Protection Clause. (*Tam v. Colton*, 94 Nev. 452, 458-59 (1978))

This bill creates the Legislative Advisory Commission on Reapportionment and Redistricting to assist the Legislature with reapportionment by preparing and submitting proposed reapportionment plans for consideration by the Legislature. **Section 6** of this bill defines the term "reapportionment plan" as a plan for reapportioning congressional districts, state legislative districts, state election districts for the Board of Regents and certain other state election districts.

Section 7 of this bill provides that the Advisory Commission consists of five members appointed by the following appointing authorities: (1) the Chief Justice of the Nevada Supreme Court; (2) the Majority and Minority Leaders of the Senate; and (3) the Speaker and Minority Leader of the Assembly. **Section 7** prohibits a person from serving as a member of the Advisory Commission if the person holds an elective office. **Section 7** also provides that for a period of 5 years, a former member is not eligible to be a candidate for or hold an office that is elected from any district for which the Advisory Commission is authorized to develop a reapportionment plan. However, this restriction does not apply to the office of Representative in Congress because the states do not have the power to fix qualifications for service in Congress. (*U.S. Term Limits, Inc. v. Thornton*, 514 U.S. 779, 782-827 (1995))

Section 8 of this bill establishes procedural requirements for the operation of the Advisory Commission and also provides that the members serve without compensation but are entitled to receive from the Legislative Fund per diem allowances and travel expenses while engaged in the business of the Advisory Commission.



Section 9 of this bill directs the Legislative Counsel Bureau to provide the Advisory Commission with staff and legal, technical and other appropriate services. **Section 9** also provides that when carrying out their duties, the members and staff of the Advisory Commission are entitled to the same rights, privileges and immunities recognized by law for the members and staff of the Legislature when carrying out their legislative duties and functions.

Section 10 of this bill contains requirements relating to the meetings of the Advisory Commission, including receiving public testimony, considering reapportionment plans and maps submitted by the public and making the Advisory Commission's reapportionment plans and maps available for public review and comment. **Section 10** also gives the Advisory Commission the same investigative powers as other interim legislative committees.

Section 11 of this bill requires the Advisory Commission to develop reapportionment plans using certain guidelines and to apply the guidelines in a manner that is impartial and reinforces public confidence in the integrity of the reapportionment process.

Section 12 of this bill requires the members of the Advisory Commission to be appointed during the regular session immediately preceding each even-numbered year in which a decennial census is conducted and to meet not later than July 1 of the year in which the decennial census is conducted. **Section 13** of this bill requires the Advisory Commission to submit during the regular session following the decennial census three reapportionment plans proposing to the Legislature three different options for all districts.

Section 14 of this bill provides that during any period between each decennial census in which the Advisory Commission is not carrying out its duties, the Legislative Commission may convene the Advisory Commission if there is a need to develop reapportionment plans, including, without limitation, because of a decision of a court of competent jurisdiction relating to the validity of the districts.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Chapter 218B of NRS is hereby amended by adding thereto the provisions set forth as sections 2 to 14, inclusive, of this act.

Sec. 2. *As used in sections 2 to 14, inclusive, of this act, unless the context otherwise requires, the words and terms defined in sections 3 to 6, inclusive, of this act have the meanings ascribed to them in those sections.*

Sec. 3. *"Advisory Commission" means the Legislative Advisory Commission on Reapportionment and Redistricting created by section 7 of this act.*

Sec. 4. *"Decennial census" means the national decennial census conducted by the Bureau of the Census of the United States Department of Commerce pursuant to Section 2 of Article I of the United States Constitution and reported by the Secretary of Commerce to the Governor pursuant to 13 U.S.C. § 141(c).*

Sec. 5. *"District" means an election district included in a reapportionment plan.*



1 **Sec. 6. "Reapportionment plan" means a plan for**
2 **reapportioning:**

3 1. *The members of the Legislature among legislative districts*
4 *for the purposes of this chapter;*

5 2. *The Representatives in Congress among congressional*
6 *districts for the purposes of chapter 304 of NRS;*

7 3. *The members of the Board of Regents of the University of*
8 *Nevada among districts for the purposes of chapter 396 of NRS;*
9 *or*

10 4. *The members of any other state board or state body that, in*
11 *whole or in part, includes members who are required by law to be*
12 *elected from districts apportioned according to population, unless*
13 *the districts are coextensive with any of the other districts set forth*
14 *in this section.*

15 **Sec. 7. 1. The Legislative Advisory Commission on**
16 **Reapportionment and Redistricting is hereby created within the**
17 **Legislative Department.**

18 2. *The membership of the Advisory Commission consists of*
19 *five members as follows:*

20 (a) *One member appointed by the Chief Justice of the Supreme*
21 *Court of Nevada.*

22 (b) *One member appointed by the Majority Leader of the*
23 *Senate or the person designated after the general election as the*
24 *Majority Leader of the Senate for the next regular session.*

25 (c) *One member appointed by the Minority Leader of the*
26 *Senate or the person designated after the general election as the*
27 *Minority Leader of the Senate for the next regular session.*

28 (d) *One member appointed by the Speaker of the Assembly or*
29 *the person designated after the general election as the Speaker of*
30 *the Assembly for the next regular session.*

31 (e) *One member appointed by the Minority Leader of the*
32 *Assembly or the person designated after the general election as the*
33 *Minority Leader of the Assembly for the next regular session.*

34 3. *A member of the Advisory Commission:*

35 (a) *Shall not hold an elective office of the United States, this*
36 *State or a political subdivision of this State at the time of*
37 *appointment to or while serving on the Advisory Commission; and*

38 (b) *Except as otherwise provided in this paragraph, is not*
39 *eligible to be a candidate for or hold an office that is elected from*
40 *any district for which the Advisory Commission is authorized to*
41 *develop a reapportionment plan for a period of 5 years following*
42 *the date on which the terms of all members of the Advisory*
43 *Commission expire pursuant to section 12 or 14 of this act, as*
44 *applicable, whether or not the member leaves his or her office on*
45 *the Advisory Commission before that date. The provisions of this*



1 *paragraph do not apply to the office of Representative in*
2 *Congress.*

3 *4. A vacancy occurring in the membership of the Advisory*
4 *Commission must be filled in the same manner as the original*
5 *appointment for the remainder of the unexpired term.*

6 *5. The terms of the members of the Advisory Commission*
7 *expire as provided in sections 12 and 14 of this act.*

8 **Sec. 8.** *1. The member of the Advisory Commission*
9 *appointed by the Chief Justice of the Supreme Court of Nevada*
10 *pursuant to paragraph (a) of subsection 2 of section 7 of this act*
11 *shall serve as the Chair of the Advisory Commission.*

12 *2. The members of the Advisory Commission shall elect a*
13 *Vice Chair from among the other members. If the position of Vice*
14 *Chair becomes vacant, the vacancy must be filled in the same*
15 *manner for the remainder of the unexpired term.*

16 *3. A majority of the members of the Advisory Commission*
17 *constitutes a quorum for the transaction of business, and a*
18 *majority of a quorum present at any meeting is sufficient for any*
19 *official action taken by the Advisory Commission.*

20 *4. The members of the Advisory Commission serve without*
21 *compensation. While engaged in the business of the Advisory*
22 *Commission, each member of the Advisory Commission is entitled*
23 *to receive from the Legislative Fund the:*

24 *(a) Per diem allowance provided for state officers and*
25 *employees generally; and*

26 *(b) Travel expenses provided for Legislators pursuant to*
27 *NRS 218A.655.*

28 *5. A member of the Advisory Commission who is an officer or*
29 *employee of this State or a political subdivision of this State must*
30 *be relieved from his or her duties without loss of regular*
31 *compensation to prepare for and attend meetings of the Advisory*
32 *Commission and perform any work necessary to carry out the*
33 *duties of the Advisory Commission in the most timely manner*
34 *practicable. A state agency or political subdivision of this State*
35 *shall not require such a person who is a member of the Advisory*
36 *Commission to:*

37 *(a) Make up the time he or she is absent from work to carry*
38 *out his or her duties as a member of the Advisory Commission; or*

39 *(b) Take annual leave or compensatory time for the absence.*

40 **Sec. 9.** *1. To the extent of legislative appropriation:*

41 *(a) The Legislative Counsel Bureau shall provide the Advisory*
42 *Commission with such staff and legal, technical and other*
43 *appropriate services as necessary to carry out the duties of the*
44 *Advisory Commission.*



(b) Each member of the Advisory Commission, and such staff as approved by the Director, shall attend at least one conference or program on reapportionment and redistricting conducted by the National Conference of State Legislatures or another organization approved by the Advisory Commission.

2. When carrying out the duties of the Advisory Commission, the members and staff of the Advisory Commission are entitled to the same rights, privileges and immunities recognized by law for the members and staff of the Legislature when carrying out legislative duties and functions, including, without limitation, the rights, privileges and immunities recognized by the constitutional doctrines of separation of powers and legislative privilege and immunity and statutorily codified in NRS 41.071.

Sec. 10. 1. The Advisory Commission shall:

(a) Adopt rules for its own management and government.

(b) Meet at the call of the Chair or a majority of its members as necessary, within the budget of the Advisory Commission.

(c) Conduct its meetings in the same manner as any other legislative committee created by a specific statute to conduct studies or investigations or perform any other legislative business during the legislative interim, including, without limitation:

(1) Receiving public testimony.

(2) Considering reapportionment plans and maps submitted by the public.

(3) Making the Advisory Commission's reapportionment plans and maps available for public review and comment.

2. When carrying out its duties, the Advisory Commission may exercise any of the investigative powers set forth in NRS 218E.105 to 218E.140, inclusive.

Sec. 11. 1. The Advisory Commission shall develop reapportionment plans to assist the Legislature with reapportionment.

2. When establishing the districts for each reapportionment plan, the Advisory Commission shall consider the following guidelines:

(a) Districts must comply with the United States Constitution and the Nevada Constitution and with the Voting Rights Act of 1965, 52 U.S.C. §§ 10101 and 10301 et seq., and any amendments thereto.

(b) Districts must consist of equal population, as nearly as is practicable.

(c) Districts must be geographically contiguous.

(d) Districts must be drawn to encourage geographical compactness such that nearby areas of population are not bypassed for more distant population.



(e) Districts must not be drawn with the intent or result of denying or abridging the equal opportunity of racial or language minorities to participate in the political process or to diminish their ability to elect representatives of their choice.

(f) Districts must not be drawn with the intent to favor or disfavor a political party or an incumbent.

(g) Where feasible, districts must utilize existing political and geographical boundaries.

3. Each member of the Advisory Commission shall apply the guidelines set forth in this section in a manner that is impartial and reinforces public confidence in the integrity of the reapportionment process.

4. For each reapportionment plan, the Advisory Commission shall prepare and submit maps that separately set forth the boundary lines for each district that is part of the reapportionment plan.

Sec. 12. 1. Not earlier than the commencement of the regular session held in the odd-numbered year immediately preceding the even-numbered year in which a decennial census is conducted, but not later than the adjournment sine die of that regular session, the appointing authorities shall appoint the members of the Advisory Commission.

2. After the appointment of the members, the Advisory Commission may meet as necessary, within the budget of the Advisory Commission, to carry out its duties, but the Advisory Commission shall meet to begin the process of preparing reapportionment plans not later than July 1 of the even-numbered year in which a decennial census is conducted.

3. The terms of the members of the Advisory Commission expire on the earlier of:

(a) The date on which reapportionment plans enacted by the Legislature become law in the odd-numbered year immediately following the even-numbered year in which the decennial census is conducted; or

(b) The last day of that odd-numbered year.

Sec. 13. Not later than the 30th day of the regular session held in the odd-numbered year immediately following the even-numbered year in which the decennial census is conducted, the Advisory Commission shall submit to the Director for transmittal to the Legislature three reapportionment plans, with appropriate maps, proposing three different options for all districts.

Sec. 14. 1. During any period between each decennial census in which the Advisory Commission is not carrying out its duties pursuant to sections 11, 12 and 13 of this act, if there is a need to develop reapportionment plans, including, without



1 *limitation, because of a decision of a court of competent*
2 *jurisdiction relating to the validity of the districts, the Legislative*
3 *Commission may convene the Advisory Commission to develop*
4 *reapportionment plans to assist the Legislature with*
5 *reapportionment.*

6 *2. If the Legislative Commission convenes the Advisory*
7 *Commission pursuant to this section, the Legislative Commission*
8 *shall:*

9 *(a) Direct the appointing authorities to appoint the members of*
10 *the Advisory Commission by a specified date.*

11 *(b) Direct the Advisory Commission to meet by a specified*
12 *date.*

13 *(c) Direct the Advisory Commission to:*

14 *(1) Develop reapportionment plans pursuant to section 11*
15 *of this act, with appropriate maps, and submit the*
16 *reapportionment plans and maps to the Director by a specified*
17 *date for transmittal to the Legislature; and*

18 *(2) Take such other actions as the Legislative Commission*
19 *deems necessary regarding the reapportionment plans and maps.*

20 *(d) Determine when the terms of the members of the Advisory*
21 *Commission expire, except that the terms of the members may not*
22 *exceed 2 years or extend into the period during which the next*
23 *succeeding Advisory Commission is carrying out its duties*
24 *pursuant to sections 11, 12 and 13 of this act.*

