



# Montana Districting and Apportionment Commission

## Commission members:

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Secretary

## MINUTES

February 17, 2012

Room 172, State Capitol  
Helena, Montana

Please note: These minutes provide abbreviated information about committee discussion, public testimony, action taken, and other activities. To the left of each section in these minutes is a time designation indicating the approximate amount of time in hours, minutes, and seconds that has elapsed since the start of the meeting. This time designation may be used to locate the referenced discussion on the audio or video recording of this meeting.

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Hard copies of the exhibits for this meeting are available upon request. Legislative Council policy requires a charge of 15 cents a page for copies of the document.

### **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  
Julianne Burkhardt, Attorney  
Dawn Field, Secretary

### **AGENDA & VISITORS' LIST**

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

### **COMMITTEE ACTION**

The Districting and Apportionment Commission:

- approved the July 12, 2011, meeting minutes;
- approved the suggested public hearing schedule;
- did not approve a motion to revise plans to be identified by who requested and prepared them;
- approved a naming convention to clearly identify the preparer and theme of each plan; and
- approved putting forth five plans for public comment.

### **CALL TO ORDER AND ROLL CALL**

00:00:04 Commissioner Regnier called the meeting to order at 9:30 a.m. The Secretary took the roll, all members were present (ATTACHMENT #3)

### **Welcome and Announcements**

00:02:03 Commissioner Regnier welcomed all to the meeting and reviewed meeting protocol.

### **Overview of Meeting Purpose**

00:04:00 Commissioner Regnier reviewed the purpose of the meeting and emphasized that the Commission would discuss each map and take public comment but that no decisions would be made until much later in the process.

### **Approval of Minutes**

00:05:13 **Commissioner Vaughey moved to approve the July 12, 2011, meeting minutes. The motion passed on a unanimous voice vote.**

### **2012 SUGGESTED PUBLIC HEARING AND MEETING SCHEDULE**

00:05:34 **Rachel Weiss, Staff Research Analyst, Legislative Services Division (LSD), reviewed the draft 2012 public hearing and meeting schedule (EXHIBIT 1).**

00:08:31 **Commissioner Smith moved to adopt the draft 2012 public hearing and meeting schedule. The motion passed on a unanimous voice vote.**

### **REVIEW OF CRITERIA AND DRAFT LEGISLATIVE DISTRICTING PLANS**

00:09:04 Ms. Weiss reviewed the map "themes" chosen by the Commissioners, as well as the mandatory and discretionary districting criteria adopted by the Commission (EXHIBIT 2). Ms. Weiss' presentation also included the review process that will be used.

00:14:02 **Joe Kolman, Research Analyst, LSD, demonstrated how to use the Districting and Apportionment Commission (DAC) webpages to view the proposed maps. He also demonstrated how to use Google Earth to view maps and noted that the information on the DAC webpages can interface with GIS technology as well. He said that the technology applications were developed by Mike Allen, Information Technology, LSD.**

### **Plan Overview**

- **Existing 100 Theme: Use Existing Districts as Starting Point for Redrawn Districts**

00:22:36 Mr. Kolman discussed an overview of the Existing 100 Theme Plan: use existing districts as a starting point for redrawn districts (EXHIBIT 2).

**Commissioner questions**

00:38:51 Commissioner Vaughney asked if at any time voting patterns or election results were taken into consideration. Mr. Kolman said no.

● **Urban Rural Plan 100 Theme: Emphasize Clear Lines Between Population Centers and Rural Areas**

00:39:35 Ms. Weiss discussed an overview of the Urban Rural 100 Theme Plan to emphasize clear lines between population centers and rural areas (EXHIBIT 2).

**Commissioner questions**

00:52:31 Commissioner Lamson asked if the maps submitted by the Billings Chamber of Commerce were incorporated into the plan. Ms. Weiss said they were to a certain extent and explained.

00:53:44 Commissioner Lamson asked if other city maps submitted were incorporated. Ms. Weiss said that other plans were submitted but were not encompassed. She explained further.

00:55:00 Commissioner Vaughney asked if staff has looked at programs that measure and quantify the compactness of a proposed district. Ms. Weiss said not yet but does intend to do so. Ms. Weiss read the compactness criteria aloud and discussed issues that must be considered when measuring compactness. She said staff could provide additional information on compactness.

00:59:37 Commissioner Regnier asked Ms. Weiss to clarify how the Billings Chamber of Commerce map was incorporated into staff maps. Ms. Weiss said that in visits to communities last fall, staff gathered regional and local information and also encouraged people to submit maps for consideration. She said the map submitted for the Billings area fit well into the Urban Rural Theme so it was incorporated.

01:01:26 Commissioner Lamson commented on biases that occur in the mapping process, particularly when measuring compactness.

01:02:27 Commissioner Bennion asked how staff dealt with larger urban areas. Ms. Weiss said that following city lines is a difficult task because they are not usually contiguous. She explained how staff attempted to follow city lines as much as possible and discussed obstacles or other considerations encountered in the mapping process.

01:05:25 Commissioner Smith asked how staff approached mapping suburban areas in the Urban Rural 100 Plan. Ms. Weiss said it was very difficult to deal with the suburban areas in the Urban Rural 100 Plan maps and that challenges were encountered in all of the major city areas.

01:07:03 Commissioner Vaughey said that following actual neighborhoods would make it easier. Ms. Weiss agreed and said that staff also tried to use elementary school district lines. Commissioner Vaughey referred back the previous discussion of the compactness issue and recalled an article published by the League of Women Voters regarding using several different models to measure compactness. Ms. Weiss said staff would watch for that type of information.

01:09:38 Commissioner Regnier recessed Commission for 10-minute break at 10:44 a.m..

**BREAK**

01:20:26 Commissioner Regnier called the meeting back to order at 10:55 a.m. Staff continued their presentation of draft redistricting plans

● **Subdivision 100 Theme: Attempt to Keep Political Subdivisions Intact When Possible**

01:20:37 Ms. Weiss discussed an overview of the Subdivision 100 Theme Plan: attempt to keep political subdivision intact when possible (EXHIBIT 2).

**Commissioner questions**

01:30:58 In response to a question from Commissioner Lamson, Ms. Weiss discussed how districts were drawn and the trade-offs that were considered when drawing the lines.

01:33:10 Commissioner Vaughey asked for the total number of counties that were kept whole. Ms. Weiss said that 31 counties were kept whole in the Subdivision 100 Plan. Commissioner Vaughey said that the process of drawing maps ahead of time and being able to preview of the impacts will keep the Commission mindful of the ripple effects of changes.

01:35:22 Commissioner Regnier reminded everyone that the maps are just starting points and that they may look entirely different by the time voting takes place.

● **Deviation 100 Theme: Emphasize the Commission's Criterion on Relative Population Equality Between the Districts**

01:36:08 Mr. Kolman discussed an overview of the Deviation 100 Theme Plan: emphasize the Commission's criterion on relative population equality between the districts (EXHIBIT 2).

01:37:09 Commissioner Regnier said the deviation criteria was mandatory criterion and he asked if it was difficult to work with, compared to the other types of criteria used. Mr. Kolman said the deviation criteria was neither easier nor more difficult to work with. He explained how staff worked with the deviation criteria.

01:41:29 Mr. Kolman continued discussion of Deviation 100 Theme Plan.

01:42:18 Commissioner Regnier asked about deviation ranges.

01:42:36 Mr. Kolman continued his overview of the Deviation Theme Plan (EXHIBIT 2).

**Commissioner questions**

01:53:08 Commissioner Bennion commended staff on the draft maps. He asked about working with maps with very low deviation and the amount of flexibility in those maps as compared to a map with a larger deviation and perhaps more flexibility. Mr. Kolman explained that it is a matter of working with the numbers. Ms. Weiss noted that a change in one district can ripple through several districts before the effect of the change can be mitigated.

01:55:38 Commissioner Regnier said other plans could be presented at this time.

- **Communities 100 Theme Plan: Integrates Montana Communities of Interests within Multiple Criteria, developed by Commissioners Lamson and Smith**

01:58:09 Commissioner Lamson discussed the Communities 100 Plan: integrates Montana communities of interest within multiple criteria (EXHIBIT 3).

02:02:52 Commissioner Smith said the plan compliments work done by the staff and is meant to be used as a starting point for discussion. He discussed his focus on Indian majority districts, including the work of the 2000 Commission creating six House and three Senate districts, the undercount of American Indians in the 2010 census, and the Federal Voting Rights Act.

02:06:31 Commissioner Regnier asked about Commissioner Smith's comments regarding an undercount in Indian voting districts and the possible significance of the undercount. Commissioner Smith said the significance can't be known and said that the Communities Plan adds a cushion to lessen the effect of the undercount.

02:07:49 Commissioner Smith continued his discussion of Districts 15 and 16 (EXHIBIT 3).

02:09:19 Commissioner Bennion asked if population breakdown was done on either side of the Continental Divide. Commissioner Smith said he didn't have an exact number but could get the information. He continued his overview of the plan.

02:15:12 Commissioner Lamson discussed metropolitan areas, beginning with Billings.

02:25:38 Commissioner Regnier recessed the meeting for lunch until 1 p.m.

#### **LUNCH BREAK**

Commissioner Regnier called the meeting back to order at 1:06 p.m.

#### **Committee Questions**

03:31:27 Commissioner Vaughey asked if voter patterns and election results were used in creating the Communities Plan maps. Commissioner Lamson said yes, as well as a variety of other information sources.

03:33:49 Commissioner Bennion asked a series of questions of Commissioner Lamson regarding the Communities Plan. Questions included how the plan should be judged based on the criteria used to design the plan, components of the plan, data sources, concerns regarding how the Communities Plan divides his own community and county, and concern that malapportionment could occur under the Communities Plan. Commissioner Lamson responded to each of the questions.

- 03:43:44 Commissioner Bennion discussed his concerns about the Communities Plan and said that he is reluctant to put it forward as an official Commission plan.
- 03:48:11 Commissioner Regnier reiterated that all plans would be considered starting points and that no plan would be endorsed at this time. He reviewed the rules adopted by the Commission in judging and adopting a plan and said that the mandatory and discretionary criteria would be adhered to, regardless of which plan is chosen.
- 03:50:28 Commissioner Lamson voiced his objections to several of Commissioner Bennion's statements. He discussed his view of what the job, as a commissioner, requires in gathering information and how the information should be used in drafting maps. He also responded to several of Commissioner Bennion's concerns about the data used in the Communities Plan.
- 03:53:06 Commissioner Bennion formally requested that at future hearings that Commissioner Lamson provide the Democratic Party Quotient (DPQ) and the **NCECDPI** to the public to help the public evaluate the information properly.
- 03:54:01 Commissioner Vaughney commented that perhaps she was more naive about the process than she realized after studying failed districting efforts in other states. She briefly discussed another state's situation and said, given the skill set of the Montana Commissioners, that she had hoped this Commission would not encounter similar problems. She stated that she has not looked at voter patterns or election results and that she was disappointed that the Democrats have.
- 03:59:17 Commissioner Lamson said the goal of the Democrats has been to put out the best plan possible. He discussed the 1990 districting cycle and stated that "complete Republican domination of both houses of the legislature for the last ten years" was the result. He said that at least three of the staff plan continues that pattern and that political data is a part of all of the plans.
- 04:01:35 Commissioner Bennion commented on how the use of sophisticated computer technology has changed the process and has increased the danger of manipulating districts, which he said, the Commission should not be a part of. He said he would like see the rest of the 81 districts' numbers that Commissioner Lamson relied on to create the "fair and competitive" districts in the Communities Plan.
- 04:03:11 Commissioner Smith commented that he considers himself a student of politics with an emphasis on Native American interests, and that he has learned enough to realize that redistricting is inherently an incredibly partisan process. He said that while LSD staff approached the mapping process in a nonpartisan fashion, the fact is that no matter where lines are drawn, there will be political consequences. He said that any interest group can look at partisan or other types of data and that no one is precluded from considering that data in decisions. He agreed that the adopted criteria must be followed but reminded the Commissioners that they agreed that any person or entity could submit maps for the Commission's consideration based on whatever data they wished. He added

that it might be helpful to the public to be able to see what the partisan impacts of each particular plan might be. He discussed the positive attributes of the Communities Plan.

- 04:09:36 Commissioner Regnier discussed his view that his role on the Commission as being nonpartisan. He stated that while the Commissioners agreed to be inclusive of outside plans, those plans would be clearly identified as being submitted by individuals and not as drafted by LSD staff.
- 04:12:30 Commissioner Vaughey asked if staff could attach an addendum to the Communities Plan that explains more clearly what the directions were that resulted in that particular plan. Ms. Weiss said she would do so. Commissioner Regnier emphasized that the Communities Plan must be identified as Commissioner Lamson's and Commissioner Smith's plan. Commissioner Lamson said he would expect the same naming courtesy be used for plans submitted by the other Commissioners. The Commission discussed how the different plans should be named and/or identified.
- 04:15:50 Commissioner Bennion said that the other plans were prepared by staff, which is the distinction between the other plans and the Communities 100 Plan. He said it is a more an issue of who the preparer is, not the requestor. Commissioner Lamson disagreed and said that the staff-prepared plans were requested by specific Commissioners and should be noted as such.
- 04:17:24 Commissioner Vaughey commented that while she may have suggested a plan and did so without motive, and that the Chair of the Commission also suggested a particular plan.
- 04:19:29 Commissioner Regnier asked if the members wanted to vote on how plans would be identified. Commissioner Lamson said yes. He suggested that each plan be given a different number in order to more clearly differentiate them from one another.
- 04:22:21 Commissioner Regnier said, for the public's benefit, that he wanted a clear distinction to be made between plans prepared by Legislative Services and plans prepared by others. Commissioner Lamson suggested that each plan be labeled with the plan name, the requestor, and the preparer.
- 04:23:52 Commissioner Bennion said that a distinction is who requested the plans and that the Commission acted as a whole in requesting the original four plans.
- 04:25:28 **Commissioner Smith moved that plans be clearly transparent and that each plan would clearly state who requested the plan and clearly state who prepared each plan.** Commissioner Bennion asked for clarification on if the plan would be still be named the Communities Plan. Commissioner Smith said yes, but that it would have his name and Commissioner Lamson's name on it as requestors. Commissioner Bennion objected to naming it the Communities Plan. Commissioner Smith responded.

- 04:27:39 Commissioner Vaughey discussed her concern that the public may perceive that the Communities Plan was at the request of the Commission. She suggested that a different naming mechanism be used for plans not prepared by LSD staff in order to make clear that the plans prepared by staff were prepared on a nonpartisan basis. She recalled that Commission discussion on different themes for plans was done more as a "brainstorming" session and not as being requested individually by Commissioners. Commissioner Lamson disagreed and said the plans should be identified by who requested them and who prepared them. He dismissed that the notion that the staff-prepared plans are nonpartisan. **The motion failed on 2-3 roll call vote. Commissioners Bennion, Vaughey, and Regnier voted no. Commissioner Regnier moved that plans be identified as Legislative Services plans with the plan name following; and that the Communities 100 Plan be identified as being prepared by Commissioners Lamson and Smith.** Commissioner Vaughey asked if a short description of each plan could be included in the naming convention.
- 04:34:51 Ms. Weiss explained how she could identify the different plans. Commissioner Regnier supported Ms. Weiss's suggestions for identifying plans. Commissioner Lamson thought that a one-line explanation would be better. The Commissioners discussed the issue.
- 04:39:11 Ms. Weiss asked for clarification of the motion about how to name and identify each plan. Commissioner Regnier said he wanted each plan to be identified first by the preparer and then the plan name. Ms. Weiss said that when naming files, the names may have to be shortened. **The motion passed on a unanimous voice vote.**
- 04:41:16 Commissioner Regnier recessed the meeting for a short break.  
**BREAK**
- 04:51:54 Commissioner Regnier called the meeting back to order. He asked that a formal motion be made regarding approval of the draft plans. **Commissioner Lamson moved that the Commission put forth all five plans for public comment.** Commissioner Vaughey said included is understanding each plan identified by author. **The motion passed on a unanimous voice vote.**

#### **PUBLIC COMMENT**

- 04:55:24 **Ed Bartlett, Billings, lawyer/lobbyist, representing Yellowstone County and Yellowstone County Election Administrator**, commented on the maps submitted (*at a previous meeting*) by the City of Billings and Yellowstone County, including the nonpartisan staff and entities who prepared them. He discussed several of the components of the Urban Rural 100 Plan and said that he strongly endorses the plan "as it applies to Yellowstone County". He discussed the plan.
- 05:05:19 Commissioner Lamson questioned Mr. Bartlett about his past history as a lobbyist on this issue and his party preference. Mr. Bartlett responded and noted that his party affiliation is not a part of his work as a lobbyist.
- 05:10:34 Commissioner Bennion discussed the subject of his own employment by the Montana Chamber of Commerce and his opinion that Commissioner Lamson's

frequent references to that could discourage local governments from participating in the districting process. Mr. Bartlett said that Commissioner Bennion made it clear when he met with the Billings Chamber of Commerce that he was there as a Commissioner, not as a Chamber of Commerce official; and that he encouraged the Chamber to participate in the process but did not offer guidance or suggestions to the Billings Chamber.

- 05:14:13 Commissioner Vaughey asked about the differentiation between the Billings Chamber of Commerce and the Montana Chamber of Commerce. Mr. Bartlett explained that there is no affiliation between the two entities. Commissioner Lamson commented that the Chamber organization is not as nonpartisan as Mr. Bartlett indicated.
- 05:16:00 **Bruce McCandless, City of Billings**, commented that a nonpartisan City Council unanimously approved the Billings/Yellowstone County maps.
- 05:16:47 Commissioner Lamson asked about the political composition of the Yellowstone County Commission. Mr. McCandless said he doesn't work for Yellowstone County. Commissioner Lamson questioned the capacity in which the Mayor of Billings has participated in community events. Mr. McCandless said that the Billings City Charter requires the Mayor to act in a nonpartisan capacity when fulfilling official duties.
- 05:17:56 **Bruce MacIntyre, Billings Chamber of Commerce**, said that the Chamber does not give political endorsements or candidate endorsements, and because the Chamber represents many different types of businesses, it tries to be as nonpartisan as possible. He said the maps submitted by the Billings and Yellowstone County were a collaborative effort, with input from many entities. He said his role was to take the maps out into the community for comment. Mr. MacIntyre listed a number of organizations to which he presented the maps and said that was the extent of his involvement. He said the Billings Chamber is getting criticism for ads being run by the U.S. Chamber and that he wanted there to be a clear distinction that there is no official affiliation between the groups.
- 05:20:48 **Ronda Wiggers, Great Falls Chamber of Commerce**, presented and discussed a districting plan designed by Cascade County and the City of Great Falls (EXHIBIT 4).
- 05:36:44 Commissioner Lamson asked if the other maps would be presented with the Cascade County maps, in order to allow the public to see all of the options. Ms. Wiggers said yes. Commissioner Lamson and Ms. Wiggers discussed legislative district boundaries in Teton County and around Seeley Lake.
- 05:39:23 **Leonard Wortman, Chair, Jefferson County Commission**, testified that Jefferson County is not a political subdivision to be divided up in order to benefit Butte-Silver Bow. He said that because the county is largely agricultural, it would be better to pair it with Madison County.

- 05:41:00 Commissioner Lamson said that the last Jefferson County Commission supported a plan that divided the county into multiple legislative districts. Mr. Wortman said that the current Jefferson County Commissioners have all expressed the opinion that Jefferson County needs to be represented as Jefferson County, and not as a part of Butte-Silverbow
- 05:42:29 **Nichole Brown, Broadwater County Planner**, submitted and discussed six maps representing Broadwater County as a whole (EXHIBIT 5). She read a letter from Broadwater County Commissioners requesting that Broadwater County be kept in one legislative district. Ms. Brown reviewed other documents included in the information submitted by the Broadwater County Commission.
- 05:45:02 Commissioner Regnier recessed the meeting for a short break.
- BREAK**
- 05:53:10 Commissioner Regnier reconvened the meeting.
- 05:53:22 **Sen. Jeff Essmann, SD 28, Billings**, thanked the Commission for having an open process and allowing public participation all throughout the process. He offered comments and suggestions on how to ensure that the districting process be open, fair, and transparent. Sen. Essmann requested, as hearings go forth, that the Commission place the issue of senate pairings and senate assignments on each hearing agenda, rather than just one hearing in the fall; in order to get a sense of what the public thinks.
- 06:00:18 Sen. Essmann responded to comments made earlier in the meeting regarding partisan plans and noted that the Republican Party has not requested or paid for a plan in the last three districting cycles. He also commented on minority-majority voting districts, saying that he questions the need to under-populate those districts and that there is no proof that there was an undercount in those districts.
- 06:05:22 Commissioner Lamson and Sen. Essmann discussed demographics of reservations, including Indian and non Indian population increases and other issues related to the districting process.
- 06:11:07 Commissioner Bennion thanked Sen. Essmann for his participation and diligence in attending the meetings. He said that every member of the Commission shares the mission of preserving majority-minority districts and that decisions will be based on sound information and facts.
- 06:11:52 Commissioner Smith said that his understanding is that there is no appeal that can affect the data that must be used by the Commission with the districting proceedings but that tribal government officials he has spoken with feel strongly that there were serious undercounts on reservations.
- 06:12:45 **Christine Kaufman, Democrat, Helena**, thanked the Commissioners for their service. She discussed her experience as a senator from an urban area having to also campaign in rural areas, saying that it gives her a better appreciation and understanding of issues and helps her provide a more balanced approach to legislating. She discussed the benefits of mixed districts, the role of partisan

politics in the districting process, her support of the Communities Plan, and her strong support for fair representation of minorities.

- 06:20:46 **Leo Tanner, Helena, citizen**, discussed his concerns regarding minority voting districts, specifically violations of *Shaw v. Reno* in stretching too far to gain minority votes. He discussed his objections to the Communities 100 Plan and his opinion of the last districting cycle.
- 06:23:42 Commissioner Lamson noted that he and Mr. Tanner have been emailing about the issues Mr. Tanner discussed. He asked Mr. Tanner how his proposal could be defended under the Voting Rights Act. Mr. Tanner explained how it would be covered under *Shaw v. Reno*.
- 06:26:43 Commissioner Smith and Mr. Tanner discussed the ruling by the Ninth Circuit Court regarding the Blackfoot-Flathead district.

#### **INSTRUCTIONS TO STAFF & UPCOMING MEETINGS**

- 06:30:05 Commissioner Regnier said he would like to discuss Sen. Essmann's suggestion about senate district pairings as agenda items at future meetings. Commissioner Lamson said people should be free to suggest senate pairings but that the house districts must be completed before senate districts can be drawn.
- 06:31:14 Commissioner Bennion agreed. He said it the public should be able to provide comment but would have to understand the process. Commissioner Regnier asked staff to note that in preparation of future agendas. Ms. Weiss asked if it should be a separate agenda item or just to notice the public that comment or suggestions would be taken on that topic. Commissioner Regnier said the latter. The issue of numbering the plans was discussed. It was agreed that Ms. Weiss would remove the numbers from the plans until later, when the amendment process begins.

#### **ADJOURNMENT**

- 06:33:28 With no further business before the Commission, **Commissioner Smith moved to adjourn. The motion passed on a unanimous voice vote.** The Districting and Apportionment Commission will meet on March 13 and 14, 2012, in Missoula, Pablo, and Kalispell, to hold hearings on the proposed maps.

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