SENATE BILL 21-247

A BILL FOR AN ACT

CONCERNING THE PROCEDURES OF THE INDEPENDENT REDISTRICTING COMMISSIONS.

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at http://leg.colorado.gov/.)

Executive Committee of the Legislative Council. The COVID-19 pandemic has caused a delay in the ability of the United States Census Bureau (Census Bureau) to deliver to the state the population and demographic data necessary to redraw election districts. The Census Bureau has indicated that the final census data will not be available for at least 6 months after the deadline contemplated in federal law. Under the

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters or bold & italic numbers indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.
current definition of "necessary census data" contained in state law, this
delay prevents the independent congressional redistricting commission
and the independent legislative redistricting commission (commissions)
from completing their work by the deadlines in the constitution. An
extended delay in finalizing the commissions' redistricting plans will
make it impossible to complete all of the steps in the 2022 election
procedures in time for the general election.

For the commissions convened in 2021 only, the bill amends the
definition of "necessary census data" to allow the preliminary and staff
plans to be developed using the data on the total population by state that
will be released by the Census Bureau on April 30, 2021, and other
population and demographic data from federal or state sources that are
approved by the commissions. Once final census data is released by the
Census Bureau, the nonpartisan staff of the commission must complete
adjustments for incarcerated populations required by current law within
5 days. All staff plans presented to the commissions or submitted to the
Colorado supreme court after that date must use the final data as adjusted.
A plan approved by the Colorado supreme court must be based on the
final data as adjusted.

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. Legislative declaration. (1) The general assembly
finds and declares that:

(a) Due to the COVID-19 pandemic, the United States Census
Bureau has been delayed in collecting the information for the census due
to stay-at-home orders and an inability to conduct in-person visits to
residences that did not reply to requests to respond to the census questions
either online, telephonically, or through mailed paper responses. While
the Census Bureau was to have completed its collection of the answers to
the census by July 31, 2020, the Census Bureau finally ended its
collection efforts on October 15, 2020.

(b) Pursuant to 13 U.S.C. sec. 141 (b), the Census Bureau was to
have released the reapportionment data, which data is the total population
figures at the state level necessary to reapportion the 435 seats in congress
among the states, by December 31, 2020, but has not yet been able to release those figures. After completing its collection efforts, due in part to the pandemic, the Census Bureau has found anomalies in the data and needs additional time to deliver accurate reapportionment data. The Census Bureau now intends to release this data by April 30, 2021, four months after its statutory deadline.

(c) Pursuant to 13 U.S.C. sec. 141 (c), the Census Bureau was to have released the redistricting data, which is the population and demographic data at the census block level, by March 31, 2021. However, in an attempt to get the reapportionment data finalized as quickly as possible, the Census Bureau "decoupled" some of the work on the final redistricting data so the redistricting data will now take longer to finalize after the reapportionment data is finalized.

(d) In light of the difficulties the delays are causing for the states, the Census Bureau has indicated it will release a legacy format summary redistricting data file to the states by mid to late August 2021; and

(e) The Census Bureau has not been able to inform the states as to when the redistricting data in its final format will be released, except to say that it will not be before September 30, 2021. Again, this means that the earliest the state will receive the final redistricting data will be six months after March 31, 2021, which is the statutory deadline to release the redistricting data to the states pursuant to 13 U.S.C. sec. 141.

(2) The general assembly further finds and declares that:

(a) In 2018, the voters in Colorado approved two amendments to the state constitution on redistricting, specifically:

(I) Amendment Y that changed the entity responsible for redrawing the boundaries of Colorado's congressional districts from the
general assembly to a new independent congressional redistricting commission created pursuant to sections 44 to 44.6 of article V of the state constitution (congressional commission); and

(II) Amendment Z that changed the entity responsible for redrawing the boundaries of the state senate and state house of representative districts from a reapportionment commission to a new independent legislative redistricting commission created pursuant to sections 46 to 48.4 of article V of the state constitution (legislative commission);

(b) Amendments Y and Z both contained specific requirements for increased public participation in the redistricting process, including:

(I) Sections 44.2 (3)(a) and 48 (3)(a) of article V of the state constitution, allowing any Colorado resident to present proposed redistricting maps or written comments to the commissions, and sections 44.2 (3)(c) and 48 (3)(c) of article V of the state constitution, requiring the commissions to maintain a website through which the public submits maps or comments;

(II) Sections 44.4 (1) and 48 (1) of article V of the state constitution, authorizing any member of the public to submit written comments to nonpartisan staff concerning the creation of the preliminary plans and communities of interest that require representation and require nonpartisan staff to consider the written comments in preparing the preliminary plan and later staff plans;

(III) Sections 44.2 (3)(b) and 48 (3)(b) of article V of the state constitution, requiring the commissions to hold at least three public meetings in each of the seven congressional districts on the preliminary plans created by nonpartisan staff prior to approving any plan;
(IV) Sections 44.4 (3) and 48.2 (3) of article V of the state constitution, requiring nonpartisan staff, after the hearings on the preliminary plans, to present to the commissions up to three staff plans that must be posted online prior to being presented and requiring the presentation of each staff plan to be separated by at least ten days; and

(V) Finally, sections 44.2 (2) and 48 (2) of article V of the state constitution, prohibiting each of the commissions from voting on a plan presented to the commission or amended at a meeting of the commission for at least seventy-two hours after the meeting unless the commission unanimously waives this requirement;

(c) Under sections 44.4 (1) and 48.2 (1) of article V of the state constitution, nonpartisan staff for the commissions are required to create preliminary plans and present the plans to the respective commissions between thirty and forty-five days after the commissions convene or the necessary census data are available, whichever is later;

(d) While amendments Y and Z establish certain deadlines by which the commissions are required to complete certain steps in the redistricting process, sections 44.4 (5) and 48.2 (5) of article V of the state constitution give the commissions authority to adjust those dates if conditions outside of the commissions' control make it impossible for them to meet those deadlines. The six-month delay in receiving the redistricting data qualifies as a condition outside of the commissions' control, requiring adjustment of the dates.

(e) Section 44.5 (4)(a) of article V of the state constitution requires that, by November 1, the Colorado supreme court must either approve the congressional plan or return the congressional plan with the reasons why it is not approved, and section 48.3 (4)(a) of article V of the
state constitution requires that, by November 15, the Colorado supreme
court must either approve the legislative plans or return the legislative
plans with the reasons why either is not approved;

(f) Section 44.5 (5) of article V of the state constitution requires
the Colorado supreme court to give final approval to a congressional plan
by December 15, 2021, and section 48.3 (5) of article V of the state
constitution requires the Colorado supreme court to give final approval
to legislative plans by December 29, 2021; and

(g) If the commissions are required to wait to begin their work
until the final redistricting data is released by the Census Bureau on
September 30, 2021, the deadlines in the state constitution for the
Colorado supreme court's consideration and approval of the plans cannot
be met.

(3) The general assembly also finds that:

(a) Delays in receiving final approval of the plans of the
commissions would severely impact the election calendar of 2022. After
the commission plans are approved, section 2-1-104 (1)(a), C.R.S.,
requires county clerks to redraw precincts so that each precinct contains
only one congressional, one state senate, and one state house of
representatives district and to have their county commissioners approve
the changes. Section 1-5-103 (1), C.R.S., requires that this be done at
least twenty-nine days before precinct caucuses are held. Section 1-3-102
(1)(a)(I), C.R.S., provides that precinct caucuses are to be held on March
1, 2022, meaning that counties must have redrawn precincts approved by
January 29, 2022. The remainder of the election calendar is based on
when the precinct caucuses occur.

(b) While the general assembly can change these dates by bill, any
significant delay in holding the precinct caucuses adversely affects all other aspects of the election calendar, including limiting the ability of candidates to petition onto the ballot and to campaign and limiting the ability of the electors to be informed of the positions of candidates.

(4) The general assembly finds that, in light of the delay by the Census Bureau in delivering the population and demographic data necessary to redraw election districts and the impossibility of complying with the constitutional deadlines, to effectuate the intent of the voters in approving amendments Y and Z, and to cause minimum disruption to the 2022 election calendar, it is in the best interest of the state to:

(a) Define the necessary census data for the purposes of drawing preliminary plans to include the tabulation of the total population by state published by the Census Bureau for the state by April 30, 2021, along with additional state or federal data sources as approved by the commissions in order to allow the commission to begin their work and seek public input on a more timely basis; and

(b) Require that all plans developed after the final redistricting data is released, including the final plan approved by the Colorado supreme court, must be based on the final redistricting data.

SECTION 2. In Colorado Revised Statutes, 2-2-902, amend (1)(c), (4), (5)(a), (5)(b) introductory portion, and (6); and add (1)(c.5), (1)(e), and (6.5) as follows:


(1) As used in this section, unless the context otherwise requires:

(c) (I) "Necessary FINAL census data" means the federal decennial Pub.L. 94-171 data published for the state by the United States census
bureau and adjusted by the general assembly’s nonpartisan staff to reflect
the changes pursuant to subsections (5) and (6) of this section IN
ACCORDANCE WITH 13 U.S.C. SEC. 141 (c).

(II) (A) For the 2021 redistricting year, "final census data"
also includes a legacy format summary redistricting data file
that nonpartisan staff can use to tabulate the redistricting
data.

(B) This subsection (1)(c)(II) is repealed, effective July 1,
2023.

(c.5) (I) "necessary census data" means final census data
as adjusted by the general assembly’s nonpartisan staff to
reflect the changes pursuant to subsections (5) and (6) of this
section, except as provided in subsection (1)(c.5)(II) of this
section.

(II) (A) For the 2021 redistricting year only, in light of the
delays caused by the COVID-19 pandemic and for purposes of
allowing timely public input and consideration of preliminary =
plans for congressional, state senatorial, and state
representative districts, "necessary census data" means the	
tabulation of the total population by state published in 2021 for
the state by the United States census bureau in accordance with
13 U.S.C. sec. 141 (b) and such other total population and
demographic data from federal or state sources as are approved
by either the independent congressional redistricting
commission or the independent legislative redistricting
commission to facilitate the development of preliminary = plans
under section 44.4 or 48.2 of article V of the state constitution,
(B) This subsection (1)(c.5)(II) is repealed, effective July 1, 2023.

(e) “Redistricting Year” means the year following the year in which the Federal Decennial Census is taken.

(4) Pursuant to subsection (5) of this section, nonpartisan staff shall prepare redistricting population data to reflect incarcerated persons at their residential addresses in this state rather than their place of incarceration. Except as provided in subsections (1)(c.5)(II) and (6.5) of this section, this data prepared by nonpartisan staff is the necessary census data provided to and to be used by the independent legislative and congressional redistricting commissions established pursuant to sections 44 and 46 of article V of the state constitution. The data is the population basis of congressional districts, state house of representative districts, and state senate districts. Nonpartisan staff shall make this census data available to the independent legislative and congressional redistricting commissions and to members of the public and any county or local governmental entity of Colorado upon request.

(5) (a) For each person included in a report received pursuant to subsections (2)(b) and (3) of this section, nonpartisan staff shall determine the geographic units for which population counts are reported in the final census data that contain the facility of incarceration and the legal residence in this state as listed in the report.

(b) For each person included in a report received pursuant to subsections (2)(b) and (3) of this section, if the legal residence is known and in this state, nonpartisan staff shall adjust the final census data to:
6 (a) **EXCEPT AS PROVIDED IN SUBSECTION (6)(b) OF THIS SECTION,** the data prepared by nonpartisan staff pursuant to this section must be completed and published no later than thirty days after the date that federal decennial Pub.L. 94-171 FINAL CENSUS data for the state is delivered to the state.

6 (b) (I) **FOR THE 2021 REDISTRICTING YEAR ONLY,** THE DATA PREPARED BY NONPARTISAN STAFF PURSUANT TO THIS SECTION MUST BE COMPLETED AND PUBLISHED **AS SOON AS PRACTICABLE BUT NO LATER THAN TEN DAYS AFTER THE DATE THAT ANY FINAL CENSUS DATA FOR THE STATE IS DELIVERED TO THE STATE.**

6 (II) **THIS SUBSECTION (6)(b) IS REPEALED, EFFECTIVE JULY 1, 2023.**

6.5 **FOR THE 2021 REDISTRICTING YEAR ONLY:**

6.5 (a) **NONPARTISAN STAFF SHALL USE NECESSARY CENSUS DATA AS DEFINED IN SUBSECTION (1)(c.5)(II) OF THIS SECTION TO PREPARE PRELIMINARY PLANS AS REQUIRED BY SECTIONS 44.4 (1) AND 48.2 (1) OF ARTICLE V OF THE STATE CONSTITUTION.**

6.5 (b) **NONPARTISAN STAFF SHALL USE FINAL CENSUS DATA AS ADJUSTED PURSUANT TO SUBSECTIONS (5) AND (6)(b) OF THIS SECTION TO PREPARE STAFF PLANS AS REQUIRED BY SECTIONS 44.4 (3) AND 48.2 (3) OF ARTICLE V OF THE STATE CONSTITUTION.**

6.5 (c) **THE INDEPENDENT CONGRESSIONAL REDISTRICTING COMMISSION AND THE INDEPENDENT LEGISLATIVE REDISTRICTING COMMISSION SHALL NOT APPROVE A FINAL PLAN TO BE SUBMITTED TO THE COLORADO SUPREME COURT UNLESS THE COMMISSION HAS HELD AT LEAST ONE PUBLIC HEARING GIVING THE PUBLIC AN OPPORTUNITY TO COMMENT ON A PLAN PRESENTED TO THE COMMISSION THAT WAS DEVELOPED USING THE FINAL CENSUS DATA, AS ADJUSTED IF SUCH ADJUSTMENT IS REQUIRED**
Pursuant to this section:

(d) This subsection (6.5) is repealed, effective July 1, 2023.

Section 3. In Colorado Revised Statutes, add 2-2-903 as follows:

2-2-903. Redistricting deadlines - legislative declaration.

(1) The general assembly finds that:

(a) Given the extensive delays in receiving the census data, the independent congressional redistricting commission and the independent legislative redistricting commission will likely be unable to adopt final plans by the deadlines set forth in sections 44.4 (5)(b) and 48.2 (5)(b) of article V of the state constitution. In turn, the Colorado supreme court will likely be prevented from approving or disapproving such maps by November 1 and November 15, as required by sections 44.5 and 48.3 of article V of the state constitution.

(b) Colorado courts and election statutes commonly apply a substantial compliance standard to election matters. Colorado courts also interpret election requirements to avoid absurd results that would be produced by an overly technical application of a statutory or constitutional requirement.

(c) The supreme court has inherent authority over its own procedures and is authorized by sections 44.5 and 48.3 of article V of the state constitution to develop the rules for judicial review of redistricting plans.

(2) In any legal proceeding challenging compliance by the commissions, the Colorado supreme court, or nonpartisan staff with the technical rather than substantive provisions that
IMPLEMENT THE REDISTRICTING PROCESSES ESTABLISHED IN THE
COLORADO CONSTITUTION AND RELATED STATUTES, A COURT SHALL
ADJUDICATE SUCH DISPUTE WITH A VIEW TO ASCERTAINING WHETHER
THERE WAS SUBSTANTIAL COMPLIANCE WITH THE REQUIREMENTS OF SUCH
CONSTITUTIONAL OR STATUTORY PROVISIONS.

SECTION 4. Safety clause. The general assembly hereby finds,
determines, and declares that this act is necessary for the immediate
preservation of the public peace, health, or safety.