

112TH CONGRESS
1ST SESSION

S. 694

To prohibit States from carrying out more than one Congressional redistricting after a decennial census and apportionment, to require States to conduct such redistricting through independent commissions, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MARCH 31, 2011

Mr. JOHNSON of South Dakota (for himself and Mr. UDALL of New Mexico) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

To prohibit States from carrying out more than one Congressional redistricting after a decennial census and apportionment, to require States to conduct such redistricting through independent commissions, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE; FINDING OF CONSTITUTIONAL**
4 **AUTHORITY.**

5 (a) SHORT TITLE.—This Act may be cited as the
6 “Fairness and Independence in Redistricting Act”.

1 (b) FINDING.—Congress finds that it has the author-
2 ity to establish the terms and conditions States must fol-
3 low in carrying out Congressional redistricting after an
4 apportionment of Members of the House of Representa-
5 tives because—

6 (1) the authority granted to Congress under ar-
7 ticle I, section 4 of the Constitution of the United
8 States gives Congress the power to enact laws gov-
9 erning the time, place, and manner of elections for
10 Members of the House of Representatives; and

11 (2) the authority granted to Congress under
12 section 5 of the fourteenth amendment to the Con-
13 stitution gives Congress the power to enact laws to
14 enforce section 2 of such amendment, which requires
15 Representatives to be apportioned among the several
16 States according to their number.

17 **SEC. 2. LIMIT ON CONGRESSIONAL REDISTRICTING AFTER**
18 **AN APPORTIONMENT.**

19 The Act entitled “An Act for the relief of Doctor Ri-
20 cardo Vallejo Samala and to provide for congressional re-
21 districting”, approved December 14, 1967 (2 U.S.C. 2e),
22 is amended by adding at the end the following: “A State
23 which has been redistricted in the manner provided by law
24 after an apportionment under section 22(a) of the Act en-
25 titled ‘An Act to provide for the fifteenth and subsequent

1 decennial censuses and to provide for an apportionment
 2 of Representatives in Congress', approved June 18, 1929
 3 (2 U.S.C. 2a), may not be redistricted again until after
 4 the next apportionment of Representatives under such sec-
 5 tion, unless a court requires the State to conduct such
 6 subsequent redistricting to comply with the Constitution
 7 or to enforce the Voting Rights Act of 1965 (42 U.S.C.
 8 1973 et seq.).”.

9 **SEC. 3. REQUIRING REDISTRICTING TO BE CONDUCTED**
 10 **THROUGH PLAN OF INDEPENDENT STATE**
 11 **COMMISSION OR PLAN OF HIGHEST STATE**
 12 **COURT.**

13 (a) USE OF PLAN REQUIRED.—

14 (1) IN GENERAL.—Notwithstanding any other
 15 provision of law, any Congressional redistricting con-
 16 ducted by a State shall be conducted in accordance
 17 with—

18 (A) the redistricting plan developed by the
 19 independent redistricting commission estab-
 20 lished in the State, in accordance with section
 21 4; or

22 (B) if the plan developed by such commis-
 23 sion is not enacted into law, the redistricting
 24 plan selected by the highest court in the State

1 or developed by a United States district court,
2 in accordance with section 5.

3 (2) OTHER CRITERIA AND PROCEDURES PER-
4 MITTED.—Nothing in this Act or the amendments
5 made by this Act may be construed to prohibit a
6 State from conducting Congressional redistricting in
7 accordance with such criteria and procedures as the
8 State considers appropriate, to the extent that such
9 criteria and procedures are consistent with the appli-
10 cable requirements of this Act and the amendments
11 made by this Act.

12 (b) CONFORMING AMENDMENT.—Section 22(c) of
13 the Act entitled “An Act to provide for the fifteenth and
14 subsequent decennial censuses and to provide for an ap-
15 portionment of Representatives in Congress”, approved
16 June 18, 1929 (2 U.S.C. 2a(c)), is amended by striking
17 “in the manner provided by the law thereof” and insert-
18 ing: “in the manner provided by the Fairness and Inde-
19 pendence in Redistricting Act”.

20 **SEC. 4. INDEPENDENT REDISTRICTING COMMISSION.**

21 (a) ADMINISTRATIVE MATTERS.—

22 (1) APPOINTMENT OF MEMBERS.—Each State
23 shall establish an independent redistricting commis-
24 sion composed of—

1 (A) a chair, who shall be appointed by ma-
2 jority vote of the other members of the commis-
3 sion; and

4 (B) an equal number of members (but not
5 fewer than 1) from each of the following cat-
6 egories:

7 (i) Members appointed by a member
8 of the upper house of the State legislature
9 who represents the political party with the
10 greatest number of seats in that house.

11 (ii) Members appointed by a member
12 of the upper house of the State legislature
13 who represents the political party with the
14 second greatest number of seats in that
15 house.

16 (iii) Members appointed by a member
17 of the lower house of the State legislature
18 who represents the political party with the
19 greatest number of seats in that house.

20 (iv) Members appointed by a member
21 of the lower house of the State legislature
22 who represents the political party with the
23 second greatest number of seats in that
24 house.

1 (2) SPECIAL RULE FOR STATES WITH UNICAM-
2 ERAL LEGISLATURE.—In the case of a State with a
3 unicameral legislature, the independent redistricting
4 commission established under this subsection shall
5 be composed of—

6 (A) a chair, who shall be appointed by ma-
7 jority vote of the other members of the commis-
8 sion; and

9 (B) an equal number of members (but not
10 fewer than 2) from each of the following cat-
11 egories:

12 (i) Members appointed by a member
13 of the legislature who shall be selected by
14 the chair of the Government Affairs Com-
15 mittee of the legislature to represent the
16 State political party whose candidate for
17 chief executive of the State received the
18 greatest number of votes on average in the
19 3 most recent general elections for that of-
20 fice.

21 (ii) Members appointed by a member
22 of the legislature who shall be selected by
23 the chair of the Government Affairs Com-
24 mittee of the legislature to represent the
25 State political party whose candidate for

1 chief executive of the State received the
2 second greatest number of votes on aver-
3 age in the 3 most recent general elections
4 for that office.

5 (3) ELIGIBILITY.—An individual is eligible to
6 serve as a member of an independent redistricting
7 commission if—

8 (A) as of the date of appointment, the in-
9 dividual is registered to vote in elections for
10 Federal office held in the State, and was reg-
11 istered to vote in the 2 most recent general
12 elections for Federal office held in the State;

13 (B) the individual did not hold public office
14 or run as a candidate for election for public of-
15 fice, or serve as an employee of a political party
16 or candidate for election for public office, at
17 any time during the 4-year period ending on the
18 December 31 preceding the date of appoint-
19 ment; and

20 (C) the individual certifies that he or she
21 will not run as a candidate for the office of
22 Representative in the Congress until after the
23 next apportionment of Representatives under
24 section 22(a) of the Act entitled “An Act to
25 provide for the fifteenth and subsequent decen-

1 nial censuses and to provide for an apportion-
2 ment of Representatives in Congress”, approved
3 June 18, 1929 (2 U.S.C. 2a).

4 (4) VACANCY.—A vacancy in the commission
5 shall be filled in the manner in which the original
6 appointment was made.

7 (5) DEADLINE.—Each State shall establish a
8 commission under this section, and the members of
9 the commission shall appoint the commission’s chair,
10 not later than the first February 1 which occurs
11 after the chief executive of a State receives the State
12 apportionment notice.

13 (6) APPOINTMENT OF CHAIR REQUIRED PRIOR
14 TO DEVELOPMENT OF REDISTRICTING PLAN.—The
15 commission may not take any action to develop a re-
16 districting plan for the State under subsection (b)
17 until the appointment of the commission’s chair in
18 accordance with paragraph (1)(A).

19 (7) REQUIRING ALL MEETINGS TO BE OPEN TO
20 PUBLIC.—The commission shall hold each of its
21 meetings in public.

22 (8) INTERNET WEB SITE.—As soon as prac-
23 ticable after establishing the commission, the State
24 shall establish and maintain a public Internet Web

1 site for the commission which meets the following re-
2 quirements:

3 (A) The site is updated continuously to
4 provide advance notice of commission meetings
5 and to otherwise provide timely information on
6 the activities of the commission.

7 (B) The site contains the most recent
8 available information from the Bureau of the
9 Census on voting-age population, voter registra-
10 tion, and voting in the State, including pre-
11 cinct-level and census tract-level data with re-
12 spect to such information, as well as detailed
13 maps reflecting such information.

14 (C) The site includes interactive software
15 to enable any individual to design a redis-
16 tricting plan for the State on the basis of the
17 information described in subparagraph (B), in
18 accordance with the criteria described in sub-
19 section (b)(1).

20 (D) The site permits any individual to sub-
21 mit a proposed redistricting plan to the com-
22 mission, and to submit questions, comments,
23 and other information with respect to the com-
24 mission's activities.

25 (b) DEVELOPMENT OF REDISTRICTING PLAN.—

1 (1) CRITERIA.—The independent redistricting
2 commission of a State shall develop a redistricting
3 plan for the State in accordance with the following
4 criteria:

5 (A) Adherence to the “one person, one
6 vote” standard and other requirements imposed
7 under the Constitution of the United States.

8 (B) To the greatest extent mathematically
9 possible, ensuring that the population of each
10 Congressional district in the State does not
11 vary from the population of any other Congres-
12 sional district in the State (as determined on
13 the basis of the total count of persons of the
14 most recent decennial census conducted by the
15 Bureau of the Census).

16 (C) Consistency with any applicable re-
17 quirements of the Voting Rights Act of 1965
18 and other Federal laws.

19 (D) To the greatest extent practicable, the
20 maintenance of the geographic continuity of the
21 political subdivisions of the State which are in-
22 cluded in the same Congressional district, in the
23 following order of priority:

24 (i) The continuity of counties or par-
25 ishes.

1 (ii) The continuity of municipalities.

2 (iii) The continuity of neighborhoods
3 (as determined on the basis of census
4 tracts or other relevant information).

5 (E) To the greatest extent practicable,
6 maintaining compact districts (in accordance
7 with such standards as the commission may es-
8 tablish).

9 (F) Ensuring that districts are contiguous
10 (except to the extent necessary to include any
11 area which is surrounded by a body of water).

12 (2) FACTORS PROHIBITED FROM CONSIDER-
13 ATION.—In developing the redistricting plan for the
14 State, the independent redistricting commission may
15 not take into consideration any of the following fac-
16 tors, except to the extent necessary to comply with
17 the Voting Rights Act of 1965:

18 (A) The voting history of the population of
19 a Congressional district, except that the com-
20 mission may take such history into consider-
21 ation to the extent necessary to comply with
22 any State law which requires the establishment
23 of competitive Congressional districts.

24 (B) The political party affiliation of the
25 population of a district.

1 (C) The residence of incumbent Members
2 of the House of Representatives in the State.

3 (3) SOLICITATION OF PUBLIC INPUT IN DEVEL-
4 OPMENT OF PLANS.—The commission shall solicit
5 and take into consideration comments from the pub-
6 lic in developing the redistricting plan for the State
7 by holding meetings in representative geographic re-
8 gions of the State at which members of the public
9 may provide such input, and by otherwise soliciting
10 input from the public (including redistricting plans
11 developed by members of the public) through the
12 commission Internet Web site and other methods.

13 (4) PUBLIC NOTICE OF PLANS PRIOR TO SUB-
14 MISSION TO LEGISLATURE.—Not fewer than 7 days
15 prior to submitting a redistricting plan to the legis-
16 lature of the State under subsection (c)(1), the com-
17 mission shall post on the commission Internet Web
18 site and cause to have published in newspapers of
19 general circulation throughout the State a notice
20 containing the following information:

21 (A) A detailed version of the plan, includ-
22 ing a map showing each Congressional district
23 established under the plan and the voting age
24 population by race of each such district.

1 (B) A statement providing specific infor-
 2 mation on how the adoption of the plan would
 3 serve the public interest.

4 (C) Any dissenting statements of any
 5 members of the commission who did not ap-
 6 prove of the submission of the plan to the legis-
 7 lature.

8 (c) SUBMISSION OF PLANS TO LEGISLATURE.—

9 (1) IN GENERAL.—At any time prior to the
 10 first November 1 which occurs after the chief execu-
 11 tive of the State receives the State apportionment
 12 notice, the commission may submit redistricting
 13 plans developed by the commission under this sec-
 14 tion to the legislature of the State.

15 (2) CONSIDERATION OF PLAN BY LEGISLA-
 16 TURE.—After receiving any redistricting plan under
 17 paragraph (1), the legislature of a State may—

18 (A) approve the plan as submitted by the
 19 commission without amendment and forward
 20 the plan to the chief executive of the State; or

21 (B) reject the plan.

22 (3) ENACTMENT OF PLAN.—

23 (A) IN GENERAL.—A redistricting plan de-
 24 veloped by the commission shall be considered
 25 to be enacted into law only if the plan is for-

1 warded to the chief executive of the State pur-
2 suant to paragraph (2)(A) and—

3 (i) the chief executive approves the
4 plan as forwarded by the legislature with-
5 out amendment; or

6 (ii) the chief executive vetoes the plan
7 and the legislature overrides the veto in ac-
8 cordance with the applicable law of the
9 State, except that at no time may the plan
10 be amended.

11 (B) SPECIAL RULE.—In the case of a
12 State in which the chief executive is prohibited
13 under State law from acting on a redistricting
14 plan, a redistricting plan developed by the com-
15 mission shall be considered to be enacted into
16 law if—

17 (i) the plan is submitted to the legisla-
18 ture of the State; and

19 (ii) the legislature approves the plan
20 as submitted by the commission without
21 amendment.

22 (d) REQUIRING MAJORITY APPROVAL FOR AC-
23 TIONS.—The independent redistricting commission of a
24 State may not submit a redistricting plan to the State leg-
25 islature, or take any other action, without the approval

1 of at least a majority of its members given at a meeting
2 at which at least a majority of its members are present.

3 (e) TERMINATION.—

4 (1) IN GENERAL.—The independent redistricting
5 commission of a State shall terminate on the
6 day after the date of the first regularly scheduled
7 general election for Federal office which occurs after
8 the chief executive of the State receives the State
9 apportionment notice.

10 (2) PRESERVATION OF RECORDS.—The State
11 shall ensure that the records of the independent re-
12 districting commission are retained in the appro-
13 priate State archive in such manner as may be nec-
14 essary to enable the State to respond to any civil ac-
15 tion brought with respect to Congressional redistricting
16 in the State.

17 **SEC. 5. SELECTION OF PLAN BY COURTS.**

18 (a) STATE COURT.—

19 (1) SUBMISSION AND SELECTION OF PLAN.—If
20 a redistricting plan developed by the independent re-
21 districting commission of a State is not enacted into
22 law under section 4(c)(3) by the first November 1
23 which occurs after the chief executive of the State
24 receives the State apportionment notice, the commis-
25 sion may submit redistricting plans developed by the

1 commission in accordance with section 4 to the high-
2 est court of the State, which may select and publish
3 one of the submitted plans to serve as the redistricting
4 plan for the State.

5 (2) NO MODIFICATION OF PLAN PERMITTED.—

6 The highest court of a State may not modify any re-
7 districting plan submitted under this subsection.

8 (b) FEDERAL COURT.—

9 (1) FAILURE OF STATE COURT TO SELECT
10 PLAN.—

11 (A) NOTICE TO COURT IF PLAN NOT SE-
12 LECTED BY STATE COURT.—If a State court to
13 whom redistricting plans have been submitted
14 under subsection (a) does not select a plan to
15 serve as the redistricting plan for the State
16 under such subsection on or before the first De-
17 cember 1 which occurs after the chief executive
18 of the State receives the State apportionment
19 notice, the State shall file a notice with the
20 United States district court for the district in
21 which the capital of the State is located.

22 (B) DEVELOPMENT AND SELECTION OF
23 PLAN BY FEDERAL COURT.—Not later than 30
24 days after receiving a notice from a State under

1 subparagraph (A), the court shall develop and
2 publish a final redistricting plan for the State.

3 (2) FAILURE OF STATE TO ESTABLISH COMMISS-
4 SION.—

5 (A) IN GENERAL.—If a State does not es-
6 tablish an independent redistricting commission
7 under section 4 by the first September 1 which
8 occurs after the chief executive of the State re-
9 ceives the State apportionment notice—

10 (i) the State may not establish the
11 commission; and

12 (ii) the United States district court
13 for the district in which the capital of the
14 State is located shall develop and publish
15 a final redistricting plan for the State not
16 later than the first December 1 which oc-
17 curs after the chief executive of the State
18 receives the State apportionment notice.

19 (B) DETERMINATION OF FAILURE TO ES-
20 TABLISH COMMISSION.—For purposes of sub-
21 paragraph (A), a State shall be considered to
22 have failed to establish an independent redis-
23 tricting commission by the date referred to in
24 such subparagraph if a chair of the commission
25 has not been appointed on or before such date.

1 (3) CRITERIA.—It is the sense of Congress
2 that, in developing a redistricting plan for a State
3 under this subsection, the district court should ad-
4 here to the same terms and conditions that applied
5 to the development of the plan of the commission
6 under section 4(b).

7 (c) ACCESS TO INFORMATION AND RECORDS OF
8 COMMISSION.—A court which is required to select, pub-
9 lish, or develop a redistricting plan for a State under this
10 section shall have access to any information, data, soft-
11 ware, or other records and material used by the inde-
12 pendent redistricting commission of the State in carrying
13 out its duties under this Act.

14 **SEC. 6. SPECIAL RULE FOR REDISTRICTING CONDUCTED**
15 **UNDER ORDER OF FEDERAL COURT.**

16 If a Federal court requires a State to conduct redis-
17 tricting subsequent to an apportionment of Representa-
18 tives in the State in order to comply with the Constitution
19 or to enforce the Voting Rights Act of 1965, sections 4
20 and 5 shall apply with respect to the redistricting, except
21 that—

22 (1) the deadline for the establishment of the
23 independent redistricting commission and the ap-
24 pointment of the commission's chair (as described in
25 section 4(a)(5)) shall be the expiration of the 30-day

1 period which begins on the date of the final order of
2 the Federal court to conduct the redistricting;

3 (2) the deadline for the submission of redis-
4 tricting plans to the legislature by the commission,
5 and the date of the termination of the commission
6 (as described in section 4(c)(1) and section 4(e), re-
7 spectively) shall be the expiration of the 150-day pe-
8 riod which begins on the date of the final order of
9 the Federal court to conduct the redistricting;

10 (3) the deadline for the selection and publica-
11 tion of the plan by the highest court of the State (as
12 described in section 5(a)) shall be the expiration of
13 the 180-day period which begins on the date of the
14 final order of the Federal court to conduct the redis-
15 tricting; and

16 (4) the deadline for the selection and publica-
17 tion of the plan by the district court of the United
18 States (as described in section 5(b)) shall be the ex-
19 piration of the 210-day period which begins on the
20 date of the final order of the Federal court to con-
21 duct the redistricting.

22 **SEC. 7. PAYMENTS TO STATES FOR CARRYING OUT REDIS-**
23 **TRICTING.**

24 (a) **AUTHORIZATION OF PAYMENTS.**—Subject to sub-
25 sections (c) and (d), not later than 30 days after a State

1 receives a State apportionment notice, the Election Assist-
2 ance Commission shall make a payment to the State in
3 an amount equal to the product of—

4 (1) the number of Representatives to which the
5 State is entitled, as provided under the notice; and

6 (2) \$150,000.

7 (b) USE OF FUNDS.—A State shall use the payment
8 made under this section to establish and operate the
9 State’s independent redistricting commission, to imple-
10 ment the State redistricting plan, and to otherwise carry
11 out Congressional redistricting in the State.

12 (c) NO PAYMENT TO STATES WITH SINGLE MEM-
13 BER.—The Election Assistance Commission shall not
14 make a payment under this section to any State which
15 is not entitled to more than one Representative under its
16 State apportionment notice.

17 (d) REQUIRING ESTABLISHMENT OF COMMISSION AS
18 CONDITION OF PAYMENT.—The Election Assistance Com-
19 mission may not make a payment to a State under this
20 section until the State certifies to the Commission that
21 the State has established an independent redistricting
22 commission, and that a chair of the commission has been
23 appointed, in accordance with section 4.

1 (e) AUTHORIZATION OF APPROPRIATIONS.—There
2 are authorized to be appropriated such sums as may be
3 necessary for payments under this section.

4 **SEC. 8. STATE APPORTIONMENT NOTICE DEFINED.**

5 In this Act, the term “State apportionment notice”
6 means, with respect to a State, the notice sent to the State
7 from the Clerk of the House of Representatives under sec-
8 tion 22(b) of the Act entitled “An Act to provide for the
9 fifteenth and subsequent decennial censuses and to pro-
10 vide for an apportionment of Representatives in Con-
11 gress”, approved June 18, 1929 (2 U.S.C. 2a), of the
12 number of Representatives to which the State is entitled.

13 **SEC. 9. NO EFFECT ON ELECTIONS FOR STATE AND LOCAL**
14 **OFFICE.**

15 Nothing in this Act or in any amendment made by
16 this Act may be construed to affect the manner in which
17 a State carries out elections for State or local office, in-
18 cluding the process by which a State establishes the dis-
19 tricts used in such elections.

20 **SEC. 10. EFFECTIVE DATE.**

21 This Act and the amendments made by this Act shall
22 apply with respect to any Congressional redistricting
23 which occurs after the regular decennial census conducted
24 during 2020.

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