

CHAPTER 419

AN ACT

SB 259

Relating to redistricting; and declaring an emergency.

Whereas Oregon bases both state legislative reapportionment plans and congressional reapportionment plans on P.L. 94-171 redistricting data from the United States Census Bureau (“census redistricting data”); and

Whereas the COVID-19 pandemic prevented the United States Census Bureau from meeting its requirement under federal law to provide census redistricting data to Oregon by March 31, 2021; and

Whereas the United States Census Bureau has publicly stated that it will provide final census redistricting data to Oregon in a legacy format by “mid-to-late August 2021”; and

Whereas the anticipated August 2021 delivery date of census redistricting data would make it impossible for the Legislative Assembly to enact either a state legislative reapportionment plan based on the census redistricting data by the July 1, 2021, deadline set forth in Article IV, section 6, of the Oregon Constitution, or a congressional reapportionment plan based on the census redistricting data by the July 1, 2021, deadline set forth in ORS 188.125; and

Whereas the Legislative Assembly petitioned the Oregon Supreme Court both to extend the deadline for state legislative reapportionment set forth in Article IV, section 6, of the Oregon Constitution, and to permit the Legislative Assembly to conduct state legislative reapportionment during a special session; and

Whereas the Oregon Supreme Court granted the petition from the Legislative Assembly and established a deadline of September 27, 2021, for the Legislative Assembly to enact a state legislative reapportionment plan; and

Whereas the timeline for enactment and judicial review of a 2021 state legislative reapportionment plan that was established by the Oregon Supreme Court will permit the 2022 primary election and the 2022 general election to take place on their regularly scheduled dates; and

Whereas the Legislative Assembly has a long history of having the same legislative committees be responsible for enacting both a state legislative reapportionment plan and a congressional reapportionment plan; and

Whereas the Legislative Assembly intends to convene a special session to enact both a state legislative reapportionment plan and a congressional reapportionment plan before the September 27, 2021, deadline for enacting a state legislative reapportionment plan established by the Oregon Supreme Court; now, therefore,

Be It Enacted by the People of the State of Oregon:

SECTION 1. (1) Notwithstanding ORS 188.125, this section provides the exclusive

method for an elector to file a petition with a circuit court on or before December 31, 2022, to:

(a) Challenge a legislatively adopted reapportionment plan; or

(b) Request a reapportionment of congressional districts.

(2) An elector may file a petition in Marion County Circuit Court on or before October 12, 2021, to:

(a) Challenge a legislatively adopted reapportionment plan; or

(b) Request a reapportionment of congressional districts if:

(A) The Legislative Assembly failed to pass a reapportionment of congressional districts by September 27, 2021; or

(B) The Governor vetoed the reapportionment of congressional districts passed by the Legislative Assembly and the Legislative Assembly did not override the veto.

(3) The Secretary of State shall serve as respondent in any petition filed under subsection (2) of this section.

(4) An elector may file a petition in Marion County Circuit Court on or before October 15, 2021, to intervene in a petition filed under subsection (2) of this section.

(5)(a) A petition filed under subsection (2) or (4) of this section may include any materials from the legislative record relating to congressional reapportionment plans.

(b) A petition filed under subsection (2) of this section must include:

(A) The legislatively adopted reapportionment plan that is being challenged and an explanation of the factual and legal defects in the plan.

(B) If no legislatively adopted reapportionment plan was passed, the petitioner’s proposed reapportionment plan and an explanation of how the plan complies with all applicable statutes and the United States and Oregon Constitutions.

(c) A petition to intervene filed under subsection (4) of this section must include an explanation of the factual and legal defects with assertions made in a petition filed under subsection (2) of this section.

(6) On September 28, 2021, the Chief Justice of the Supreme Court shall appoint a special judicial panel. The panel shall consist of one state circuit court judge, senior judge or judge who is serving as a judge pro tempore under ORS 238.535 (1)(c) from each congressional district in this state. The Chief Justice shall also select one of the appointed judges to preside over the special judicial panel and to make all rulings on procedural and evidentiary matters before the panel.

(7) Jurisdiction is vested in the special judicial panel described in subsection (6) of this section to decide any petitions filed under subsections (2) and (4) of this section. The panel may:

(a) Consolidate some or all petitions filed under subsections (2) and (4) of this section.

(b) Allow amicus curiae to file briefs and participate in oral arguments.

(c) Request that the Chief Justice appoint a special master to receive evidence and to prepare recommended findings of fact. Upon receiving such a request from the special judicial panel, the Chief Justice shall appoint a special master. A special master appointed by the Chief Justice under this paragraph must be a state circuit court judge, senior judge or judge who is serving as a judge pro tempore under ORS 238.535 (1)(c).

(8) The special judicial panel shall employ the following standards in deciding upon a reapportionment plan:

(a) For a legislatively adopted reapportionment plan, the panel must affirm the plan if the plan complies with all applicable statutes and the United States and Oregon Constitutions. If the panel finds that the legislatively adopted reapportionment plan does not comply with applicable statutes or the United States or Oregon Constitution, the panel may create its own reapportionment plan. A reapportionment plan adopted by the panel under this paragraph must comply with all applicable statutes and the United States and Oregon Constitutions.

(b) If no legislatively adopted reapportionment plan was passed, the panel must consider all plans submitted by petitioners and intervenors but may create its own reapportionment plan. A reapportionment plan adopted by the panel under this paragraph must comply with all applicable statutes and the United States and Oregon Constitutions.

(9)(a) On or before October 22, 2021, the special judicial panel shall set a schedule to receive written memoranda and supporting evidence in support of or in opposition to any petitions filed under subsection (2) of this section and a date to hear oral arguments on the petitions.

(b) The special judicial panel shall decide whether to dismiss a petition filed under subsection (2) of this section that challenges a legislatively adopted reapportionment plan by November 24, 2021.

(c) If the panel dismisses the petition under this subsection, a party to the action may appeal the decision by filing a notice of appeal with the Supreme Court on or before November 29, 2021.

(10)(a) The special judicial panel shall decide all other petitions filed under subsection (2) of this section, including petitions challenging a legislatively adopted reapportionment plan that the panel does not dismiss under subsection (9)(a) of this section, by November 24, 2021.

(b) A party to the action may appeal a decision reached under this subsection by filing a notice of appeal with the Supreme Court on or before November 29, 2021.

(11) The Supreme Court shall:

(a) On or before November 30, 2021, set a schedule to receive written memoranda and a date to hear oral arguments, if any, on any appeal brought under subsection (9) or (10) of this section;

(b) Hear any appeal brought under subsection (9) or (10) of this section; and

(c) Employ the following standards in deciding upon a reapportionment plan affirmed or adopted by the special judicial panel:

(A) For a legislatively adopted reapportionment plan, the Supreme Court must affirm the plan if the plan complies with all applicable statutes and the United States and Oregon Constitutions. If the court finds that the legislatively adopted reapportionment plan does not comply with applicable statutes or the United States or Oregon Constitution, the court may create its own reapportionment plan. A reapportionment plan adopted by the Supreme Court under this subparagraph must comply with all applicable statutes and the United States and Oregon Constitutions.

(B) For a reapportionment plan that was adopted unanimously by the special judicial panel, the Supreme Court must affirm the plan if the plan complies with all applicable statutes and the United States and Oregon Constitutions. If the court finds that the unanimously adopted reapportionment plan does not comply with applicable statutes or the United States or Oregon Constitution, the court may create its own reapportionment plan. A reapportionment plan adopted by the Supreme Court under this subparagraph must comply with all applicable statutes and the United States and Oregon Constitutions.

(C) For a reapportionment plan that was created or adopted by the special judicial panel by a less than unanimous decision, the Supreme Court may, in its discretion, try the cause anew upon the record. This review must be based on the record created by the special judicial panel, but the Supreme Court may make its own determinations of law or underlying findings of fact. After conducting its review, the Supreme Court may affirm the panel's reapportionment plan, amend the panel's reapportionment plan or adopt a new reapportionment plan. A reapportionment plan decided upon by the Supreme Court under this subparagraph must comply with all applicable statutes and the United States and Oregon Constitutions.

(12) If a party to an action files a notice of appeal with the Supreme Court under subsection (9) of this section:

(a) The Supreme Court shall decide whether to approve the legislatively adopted reapportionment plan without any changes by January 3, 2022.

(b) If the Supreme Court determines that the legislatively adopted reapportionment plan must

be amended or substituted, by January 3, 2022, the court shall direct the special judicial panel to make such changes.

(c) The special judicial panel shall make any required changes and submit a revised reapportionment plan to the Supreme Court by January 24, 2022.

(d) The Supreme Court shall review the reapportionment plan revised by the special judicial panel and approve a final reapportionment plan by February 7, 2022.

(13) If a party to an action files a notice of appeal with the Supreme Court under subsection (10) of this section:

(a) The Supreme Court shall decide whether to approve a legislatively adopted reapportionment plan or a reapportionment plan that was unanimously adopted by the special judicial panel without any changes by January 3, 2022.

(b) The Supreme Court shall decide whether to approve a less than unanimous decision of the special judicial panel without any changes by January 3, 2022.

(c) If the Supreme Court determines that changes are required for a reapportionment plan approved by the special judicial panel, by January 3, 2022, the Supreme Court shall direct the panel to make such changes.

(d) The special judicial panel shall make any required changes and submit a revised reapportionment plan to the Supreme Court by January 24, 2022.

(e) The Supreme Court shall review the reapportionment plan revised by the special judicial panel and approve a final reapportionment plan by February 7, 2022.

(14) A final reapportionment plan resulting from a petition filed under subsection (2) or (4) of this section becomes operative on the later of:

(a) January 1, 2022; or

(b) The day after the reapportionment plan is approved and becomes final under this section.

(15) As used in this section, "elector" and "legislatively adopted reapportionment plan" have the meanings given those terms in ORS 188.125.

SECTION 2. (1) Notwithstanding ORS 249.037, for the nominating election held on May 17, 2022:

(a) A nominating petition or declaration of candidacy for the major political party nomination to the office of state Senator or state Representative shall be filed not later than the 70th day before the date of the nominating election and not sooner than:

(A) October 26, 2021, if the Legislative Assembly enacts a state legislative reapportionment plan on or before September 27, 2021, and no elector files an objection to the plan with the Oregon Supreme Court by October 25, 2021;

(B) November 16, 2021, if:

(i) The Legislative Assembly fails to enact a state legislative reapportionment plan by September 27, 2021;

(ii) The Secretary of State makes a state legislative reapportionment plan that is filed with the Oregon Supreme Court by October 18, 2021; and

(iii) No elector files an objection to the plan with the Oregon Supreme Court by November 15, 2021; or

(C) The day a state legislative reapportionment plan becomes effective for purposes of Article IV, section 6 (6)(b), of the Oregon Constitution, under the revised deadlines established by the Oregon Supreme Court in the court's opinion dated April 9, 2021, in the case of *State ex rel. Kotek v. Fagan*, 367 Or. 803 (2021), and the related peremptory writ of mandamus and appellate judgment issued by the court on April 19, 2021.

(b) A nominating petition or declaration of candidacy for the major political party nomination to the office of Representative in Congress shall be filed not later than the 70th day before the date of the nominating election and not sooner than:

(A) October 13, 2021, if the Legislative Assembly enacts a congressional reapportionment plan on or before September 27, 2021, and no elector files an objection to the plan with the Marion County Circuit Court in a manner specifically provided by law for challenging a legislatively adopted reapportionment plan; or

(B) The day a congressional reapportionment plan becomes operative under the laws of this state, if an elector files a petition in Marion County Circuit Court on or before October 12, 2021, in the manner specifically provided by law to either challenge a legislatively adopted reapportionment plan or request a reapportionment of congressional districts.

(2) Notwithstanding ORS 251.065, for the nominating election held on May 17, 2022, a candidate for the major political party nomination to the office of state Senator, state Representative or Representative in Congress may file with the Secretary of State a portrait of the candidate and a statement of the reasons the candidate should be nominated no later than the 68th day before the nominating election and not sooner than the day after the candidate is eligible to file a nominating petition or declaration of candidacy under subsection (1) of this section.

(3)(a) Notwithstanding any other provision of ORS chapters 246 to 260, the Secretary of State may adopt rules establishing revised deadlines or filing dates for the primary election held on May 17, 2022, or the nominating election held on the same date as the primary election held on May 17, 2022, to the extent necessary to ensure the fair and orderly nomination or election of candidates while:

(A) Implementing the revised deadlines for state legislative reapportionment established by the Oregon Supreme Court in the opinion, writ and appellate judgment described in subsection (1)(a)(C) of this section; and

(B) Implementing any revisions enacted by the Eighty-first Legislative Assembly during the 2021 regular session relating to the enactment, judicial review or operative date of a congressional reapportionment plan.

(b) Rules adopted by the Secretary of State under this subsection may include deadlines or filing dates for a candidate for the major political party nomination to the office of state Senator, state Representative or Representative in Congress in any scenario not otherwise prescribed by this section.

(4) As used in this section:

(a) “Candidate” and “elector” have the meanings given those terms in ORS 249.002.

(b) “Legislatively adopted reapportionment plan” has the meaning given that term in ORS 188.125.

(c) “Major political party” means a political party that qualifies as a major political party under ORS 248.006.

SECTION 3. Sections 1 and 2 of this 2021 Act are repealed on January 2, 2023.

SECTION 4. This 2021 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2021 Act takes effect on its passage.

Approved by the Governor June 25, 2021
 Filed in the office of Secretary of State June 25, 2021
 Effective date June 25, 2021