

SB 259-2
(LC 1726)
4/27/21 (DRG/ps)

Requested by Senator TAYLOR

**PROPOSED AMENDMENTS TO
SENATE BILL 259**

1 In line 2 of the printed bill, after “redistricting” insert “; and declaring
2 an emergency”.

3 After line 2, insert:

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

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

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

13 Whereas the anticipated August 2021 delivery date of census redistricting
14 data would make it impossible for the Legislative Assembly to enact either
15 a state legislative reapportionment plan based on the census redistricting
16 data by the July 1, 2021, deadline set forth in Article IV, section 6, of the
17 Oregon Constitution, or a congressional reapportionment plan based on the
18 census redistricting data by the July 1, 2021, deadline set forth in ORS
19 188.125; and

20 Whereas the Legislative Assembly petitioned the Oregon Supreme Court
21 both to extend the deadline for state legislative reapportionment set forth in

1 Article IV, section 6, of the Oregon Constitution, and to permit the Legisla-
2 tive Assembly to conduct state legislative reapportionment during a special
3 session; and

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

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

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

14 Whereas the Legislative Assembly intends to convene a special session to
15 enact both a state legislative reapportionment plan and a congressional re-
16 apportionment plan before the September 27, 2021, deadline for enacting a
17 state legislative reapportionment plan established by the Oregon Supreme
18 Court; now, therefore,”.

19 Delete lines 4 through 12 and insert:

20 **“SECTION 1. (1) Notwithstanding ORS 188.125, this section provides**
21 **the exclusive method for an elector to file a petition with a circuit**
22 **court on or before December 31, 2022, to:**

23 **“(a) Challenge a legislatively adopted reapportionment plan; or**

24 **“(b) Request a reapportionment of congressional districts.**

25 **“(2) An elector may file a petition in Marion County Circuit Court**
26 **on or before October 25, 2021, to:**

27 **“(a) Challenge a legislatively adopted reapportionment plan; or**

28 **“(b) Request a reapportionment of congressional districts if:**

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

1 **“(B) The Governor vetoed the reapportionment of congressional**
2 **districts passed by the Legislative Assembly and the Legislative As-**
3 **sembly did not override the veto.**

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

6 **“(4) An elector may file a petition in Marion County Circuit Court**
7 **on or before November 1, 2021, to intervene in a petition filed under**
8 **subsection (2) of this section.**

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

12 **“(b) A petition filed under subsection (2) of this section must in-**
13 **clude:**

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

17 **“(B) If no legislatively adopted reapportionment plan was passed,**
18 **the petition must include the petitioner’s proposed reapportionment**
19 **plan and an explanation of how the plan complies with all applicable**
20 **statutes and the United States and Oregon Constitutions.**

21 **“(c) A petition to intervene filed under subsection (4) of this section**
22 **must include an explanation of the factual and legal defects with as-**
23 **sertions made in a petition filed under subsection (2) of this section.**

24 **“(6) If an elector files a petition under subsection (2) of this section,**
25 **the Chief Justice of the Supreme Court shall appoint a special judicial**
26 **panel. The panel shall consist of one state circuit court judge, senior**
27 **judge or judge who is serving as a judge pro tempore under ORS 238.535**
28 **(1)(c) from each congressional district in this state. The Chief Justice**
29 **shall also select one of the appointed judges to preside over the special**
30 **judicial panel and to make all rulings on procedural and evidentiary**

1 matters before the panel.

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

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

7 “(b) Allow amicus curiae to file briefs and participate in oral argu-
8 ments.

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

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

18 “(a) For a legislatively adopted reapportionment plan, the panel
19 must affirm the plan if the plan complies with all applicable statutes
20 and the United States and Oregon Constitutions. If the panel finds
21 that the legislatively adopted reapportionment plan does not comply
22 with applicable statutes or the United States or Oregon Constitution,
23 the panel may create its own reapportionment plan. A reapportion-
24 ment plan adopted by the panel under this paragraph must comply
25 with all applicable statutes and the United States and Oregon Consti-
26 tutions.

27 “(b) If no legislatively adopted reapportionment plan was passed,
28 the panel must consider all plans submitted by petitioners and
29 intervenors, but may create its own reapportionment plan. A reap-
30 portionment plan adopted by the panel under this paragraph must

1 **comply with all applicable statutes and the United States and Oregon**
2 **Constitutions.**

3 **“(9)(a) The special judicial panel shall decide whether to dismiss a**
4 **petition filed under subsection (2) of this section that challenges a**
5 **legislatively adopted reapportionment plan by November 15, 2021.**

6 **“(b) If the panel dismisses the petition under this subsection, a**
7 **party to the action may appeal the decision by filing a notice of appeal**
8 **with the Supreme Court on or before November 22, 2021.**

9 **“(10)(a) The special judicial panel shall decide all other petitions**
10 **filed under subsection (2) of this section, including petitions challeng-**
11 **ing a legislatively adopted reapportionment plan that the panel does**
12 **not dismiss under subsection (9)(a) of this section, by November 15,**
13 **2021.**

14 **“(b) A party to the action may appeal a decision reached under this**
15 **subsection by filing a notice of appeal with the Supreme Court on or**
16 **before November 22, 2021.**

17 **“(11) The Supreme Court shall:**

18 **“(a) Hear any appeal brought under subsection (9) or (10) of this**
19 **section; and**

20 **“(b) Employ the following standards in deciding upon a reappor-**
21 **tionment plan affirmed or adopted by the special judicial panel:**

22 **“(A) For a legislatively adopted reapportionment plan, the Supreme**
23 **Court must affirm the plan if the plan complies with all applicable**
24 **statutes and the United States and Oregon Constitutions. If the court**
25 **finds that the legislatively adopted reapportionment plan does not**
26 **comply with applicable statutes or the United States or Oregon Con-**
27 **stitution, the court may create its own reapportionment plan. A re-**
28 **apportionment plan adopted by the Supreme Court under this**
29 **subparagraph must comply with all applicable statutes and the United**
30 **States and Oregon Constitutions.**

1 **“(B) For a reapportionment plan that was adopted unanimously by**
2 **the special judicial panel, the Supreme Court must affirm the plan if**
3 **the plan complies with all applicable statutes and the United States**
4 **and Oregon Constitutions. If the court finds that the unanimously**
5 **adopted reapportionment plan does not comply with applicable stat-**
6 **utes or the United States or Oregon Constitution, the court may cre-**
7 **ate its own reapportionment plan. A reapportionment plan adopted by**
8 **the Supreme Court under this subparagraph must comply with all ap-**
9 **licable statutes and the United States and Oregon Constitutions.**

10 **“(C) For a reapportionment plan that was created or adopted by the**
11 **special judicial panel by a less than unanimous decision, the Supreme**
12 **Court may, in its discretion, try the cause anew upon the record. This**
13 **review must be based on the record created by the special judicial**
14 **panel, but the Supreme Court may make its own determinations of law**
15 **or underlying findings of fact. After conducting its review, the Su-**
16 **preme Court may affirm the panel’s reapportionment plan, amend the**
17 **panel’s reapportionment plan or adopt a new reapportionment plan.**
18 **A reapportionment plan decided upon by the Supreme Court under this**
19 **subparagraph must comply with all applicable statutes and the United**
20 **States and Oregon Constitutions.**

21 **“(12) If a party to an action files a notice of appeal with the Su-**
22 **preme Court under subsection (9) of this section:**

23 **“(a) The Supreme Court shall decide whether to approve the**
24 **legislatively adopted reapportionment plan without any changes by**
25 **December 6, 2021.**

26 **“(b) If the Supreme Court determines that the legislatively adopted**
27 **reapportionment plan must be amended or substituted, by December**
28 **20, 2021, the court shall direct the special judicial panel to make such**
29 **changes.**

30 **“(c) The special judicial panel shall make any required changes and**

1 submit a revised reapportionment plan to the Supreme Court by Jan-
2 uary 17, 2022.

3 “(d) The Supreme Court shall review the reapportionment plan re-
4 vised by the special judicial panel and approve a final reapportionment
5 plan by February 7, 2022.

6 “(13) If a party to an action files a notice of appeal with the Su-
7 preme Court under subsection (10) of this section:

8 “(a) The Supreme Court shall decide whether to approve a
9 legislatively adopted reapportionment plan or a reapportionment plan
10 that was unanimously adopted by the special judicial panel without
11 any changes by December 6, 2021.

12 “(b) The Supreme Court shall decide whether to approve a less than
13 unanimous decision of the special judicial panel without any changes
14 by December 20, 2021.

15 “(c) If the Supreme Court determines that changes are required for
16 a reapportionment plan approved by the special judicial panel, by De-
17 cember 20, 2021, the Supreme Court shall direct the panel to make
18 such changes.

19 “(d) The special judicial panel shall make any required changes and
20 submit a revised reapportionment plan to the Supreme Court by Jan-
21 uary 17, 2022.

22 “(e) The Supreme Court shall review the reapportionment plan re-
23 vised by the special judicial panel and approve a final reapportionment
24 plan by February 7, 2022.

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

28 “(a) January 1, 2022; or

29 “(b) The day after the reapportionment plan is approved and be-
30 comes final under this section.

1 “(15) As used in this section, ‘elector’ and ‘legislatively adopted re-
2 apportionment plan’ have the meanings given those terms in ORS
3 188.125.

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

6 **“(a) A nominating petition or declaration of candidacy for the ma-
7 jor political party nomination to the office of state Senator or state
8 Representative shall be filed not later than the 70th day before the
9 date of the nominating election and not sooner than:**

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

14 **“(B) November 16, 2021, if:**

15 **“(i) The Legislative Assembly fails to enact a state legislative re-
16 apportionment plan by September 27, 2021;**

17 **“(ii) The Secretary of State makes a state legislative reapportion-
18 ment plan that is filed with the Oregon Supreme Court by October 18,
19 2021; and**

20 **“(iii) No elector files an objection to the plan with the Oregon Su-
21 preme Court by November 15, 2021; or**

22 **“(C) The day a state legislative reapportionment plan becomes ef-
23 fective for purposes of Article IV, section 6 (6)(b), of the Oregon Con-
24 stitution, under the revised deadlines established by the Oregon
25 Supreme Court in the court’s opinion dated April 9, 2021, in the case
26 of State ex rel. Kotek v. Fagan, 367 Or. 803 (2021), and the related
27 peremptory writ of mandamus and appellate judgment issued by the
28 court on April 19, 2021.**

29 **“(b) A nominating petition or declaration of candidacy for the ma-
30 jor political party nomination to the office of Representative in Con-**

1 **gress shall be filed not later than the 70th day before the date of the**
2 **nominating election and not sooner than:**

3 **“(A) October 26, 2021, if the Legislative Assembly enacts a congress-**
4 **sional reapportionment plan on or before September 27, 2021, and no**
5 **elector files an objection to the plan with the Marion County Circuit**
6 **Court in a manner specifically provided by law for challenging a**
7 **legislatively adopted reapportionment plan; or**

8 **“(B) The day a congressional reapportionment plan becomes opera-**
9 **tive under the laws of this state, if an elector files a petition in Marion**
10 **County Circuit Court on or before October 25, 2021, in the manner**
11 **specifically provided by law to either challenge a legislatively adopted**
12 **reapportionment plan or request a reapportionment of congressional**
13 **districts.**

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

23 **“(3)(a) Notwithstanding any other provision of ORS chapters 246 to**
24 **260, the Secretary of State may adopt rules establishing revised dead-**
25 **lines or filing dates for the primary election held on May 17, 2022, or**
26 **the nominating election held on the same date as the primary election**
27 **held on May 17, 2022, to the extent necessary to ensure the fair and**
28 **orderly nomination or election of candidates while:**

29 **“(A) Implementing the revised deadlines for state legislative reap-**
30 **portionment established by the Oregon Supreme Court in the opinion,**

1 writ and appellate judgment described in subsection (1)(a)(C) of this
2 section; and

3 “(B) Implementing any revisions enacted by the Eighty-first Legis-
4 lative Assembly during the 2021 regular session relating to the
5 enactment, judicial review or operative date of a congressional reap-
6 portionment plan.

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

12 “(4) As used in this section:

13 “(a) ‘Candidate’ and ‘elector’ have the meanings given those terms
14 in ORS 249.002.

15 “(b) ‘Legislatively adopted reapportionment plan’ has the meaning
16 given that term in ORS 188.125.

17 “(c) ‘Major political party’ means a political party that qualifies as
18 a major political party under ORS 248.006.

19 “SECTION 3. Sections 1 and 2 of this 2021 Act are repealed on Jan-
20 uary 2, 2023.

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

24