



1-1-2013

Chapter 271: Another Step in California's Redistricting Reform

Elizabeth Smutz

Pacific McGeorge School of Law

Follow this and additional works at: <https://scholarlycommons.pacific.edu/mlr>

 Part of the [Election Law Commons](#), and the [Legislation Commons](#)

Recommended Citation

Elizabeth Smutz, *Chapter 271: Another Step in California's Redistricting Reform*, 44 MCGEORGE L. REV. 681 (2013).

Available at: <https://scholarlycommons.pacific.edu/mlr/vol44/iss3/17>

This Comments is brought to you for free and open access by the Journals and Law Reviews at Scholarly Commons. It has been accepted for inclusion in McGeorge Law Review by an authorized editor of Scholarly Commons. For more information, please contact mgibney@pacific.edu.

Government

Chapter 271: Another Step in California’s Redistricting Reform

Elizabeth Smutz

Code Sections Affected

Government Code §§ 8251, 8252, 8252.5, 8253, 8253.6 (amended).
SB 1096 (Correa); 2012 STAT. Ch. 271.

I. INTRODUCTION

After frustration with political battles over redistricting and five failed redistricting measures in two decades, political leaders joined a bipartisan effort to remove the power to redistrict from the California Legislature.¹ The Voters FIRST Act, or Proposition 11, amended the California Constitution to establish the Citizens Redistricting Commission (Commission) to redistrict California’s Senate, Assembly, and Board of Equalization Districts.² On November 4, 2008, voters approved Proposition 11.³ Two years later, voters approved Proposition 20, which extended the power to draw congressional district lines to the Commission.⁴ Chapter 271 amends the Government Code established by Propositions 11 and 20 to make the Commissions more efficient in the future.⁵ The amendments are the result of a public process conducted by the Commission after it created its final maps for congressional, Senate, Assembly, and Board of Equalization districts.⁶

1. Anthony York, *California Redistricting Plan Faces Hurdles*, POLITICO (May 7, 2008, 9:10 PM), <http://www.politico.com/news/stories/0508/10163.html> (on file with the *McGeorge Law Review*); *California Forward Launches Reform Effort*, CAPITOL WKLY. (Mar. 27, 2008, 12:00 AM), http://www.capitolweekly.net/article.php?issueId=x02apqesyw0p2&xid=x02dav54uvk58a&_adctlid=v%257Cjq2q43wvsl855o%257Cx03r7x321bkox1 (on file with the *McGeorge Law Review*).

2. CAL. CONST. art. XXI, § 2 (enacted by Cal. Proposition 11 (2008)).

3. CAL. SEC’Y OF STATE, STATEMENT OF VOTE 7 (2008) (on file with the *McGeorge Law Review*).

4. CAL. SEC’Y OF STATE, STATEMENT OF VOTE 7 (2010) (on file with the *McGeorge Law Review*).

5. CAL. GOV’T CODE §§ 8251–8253.6 (originally enacted by Cal. Proposition 11 (2008), later amended by Cal. Proposition 20 (2010)) (amended by Chapter 271).

6. CAL. CITIZENS REDISTRICTING COMM’N, GUIDE TO CITIZENS REDISTRICTING COMMISSION’S STATUTORY AMENDMENT PROCESS (2012), *available at* http://wedrawthelines.ca.gov/downloads/meeting_handouts_022012/handouts_20120224_crc_inputguide.pdf [hereinafter STATUTORY AMENDMENT PROCESS] (on file with the *McGeorge Law Review*).

2013 / Government

II. LEGAL BACKGROUND

Chapter 271 amends law enacted by two ballot measures by requiring a special amendment process.⁷ This section discusses Propositions 11 and 20 and the amendment process initiated by the Commission after completion of the final district maps.⁸

A. Voters FIRST Act (2008 Proposition 11)

Proponents of redistricting reform put the Voters FIRST Act on the ballot to increase transparency and lower the chances of majority-party control of the redistricting process.⁹ The Voters FIRST Act amended Article XXI of the California Constitution to create the Commission.¹⁰ The Act's provisions transferred the power to reapportion districts from elected officials to the Commission.¹¹ The Act's provisions emphasize a separation between elected officials and the power to determine changes in their own districts.¹²

On or before January 1 in any year ending with the number "0," the Applicant Review Panel, composed of three auditors, begins the selection process for commission members.¹³ The Applicant Review Panel then chooses sixty of the most qualified applicants to be put in groups called subpools: twenty members of the Democratic Party, twenty members of the Republican Party, and twenty members who are not members of either the state's two largest political parties.¹⁴ After the Panel chooses the three subpools, the majority and minority leaders in the Assembly and Senate may each strike up to two applicants from

7. GOV'T § 8251(c) (amended by Chapter 271).

8. *Id.* § 8251(c) (West Supp. 2012).

9. CAL. SEC'Y OF STATE, VOTER INFORMATION GUIDE 137–40 (2008) (paraphrasing "Findings and Purpose" of Proposition 11 as enacted).

10. CAL CONST. art. XXI, §§ 1–3 (enacted by Cal. Proposition 11 (2008)).

11. *Id.*

12. *See id.* § 2(c)(6) (enacted by Cal. Proposition 11 (2008)) (creating a ten-year ban on holding elective public office and a five-year ban on holding appointed public office or staff an elected official for commission members); GOV'T § 8252(a)(2)(A)(i)–(vi) (enacted by Cal. Proposition 11 (2008)) (listing several different circumstances that disqualify individuals from the applicant pool); *id.* § 8252(a)(2)(B) (enacted by Cal. Proposition 11 (2008)) (prohibiting immediate family members of elected officials from serving on the Commission).

13. GOV'T § 8252(a)(1), (b) (enacted by Cal. Proposition 11 (2008)) (requiring state-employed auditors licensed by the California Board of Accountancy serve on the Panel, with no two auditors of the same political party).

14. *Id.* § 8252(d) (enacted by Cal. Proposition 11 (2008)) (requiring the State Auditor to promote a diverse and qualified applicant pool but not defining "qualified"); CAL. SEC'Y OF STATE, REPORT OF REGISTRATION, REGISTRATION BY COUNTY (2012), available at <http://www.sos.ca.gov/elections/ror/ror-pages/60day-presprim-12/politicalsub1.pdf> (on file with the *McGeorge Law Review*) (reporting 43.49 percent of registered voters as Democrats and 30.31 percent of registered voters as Republicans).

McGeorge Law Review / Vol. 44

each subpool.¹⁵ From the remaining pool, the State Auditor selects eight members who choose the six additional members.¹⁶

The fourteen-member Commission is charged with the responsibility of drawing district lines for State Senate, Assembly, and Board of Equalization seats in an “open and transparent process enabling full public consideration”¹⁷ The Commission, with support from the Secretary of State, has wide latitude in hiring support and staffing to aid in redrawing district lines.¹⁸ However, all staff are subject to the same conflict of interest exclusions as the members themselves.¹⁹ In order to facilitate public discussion, the Commission must provide fourteen days’ notice of any meeting and fourteen days of public comment after the display of any map.²⁰

B. Voters FIRST Act for Congress (2010 Proposition 20)

Two years after the 2008 Voters FIRST Act, Proposition 20 gave the Commission the additional responsibility of redrawing congressional district boundaries.²¹ Proposition 20 amended Proposition 11 in three significant ways.²²

First, the Commission must draw a congressional district map in addition to State Senate, Assembly, and Board of Equalization maps, for a total of four maps.²³ Second, the Commission must respect the interests of local communities when drawing lines.²⁴ Third, it allows a registered voter to seek relief from the California Supreme Court if the final map chosen by the Commission “is subject to a referendum measure that is likely to qualify”²⁵ In a case concerning a referendum brought by the California Republican Party on the Commission-drawn State Senate maps, the California Supreme Court determined that this clause did not restrict the court’s original jurisdiction “in proceedings for extraordinary relief.”²⁶ The court found that a question over which Senate map should be used in the “impending 2012 election cycle” was a matter of great

15. GOV’T § 8252(e) (enacted by Cal. Proposition 11 (2008)).

16. *Id.* § 8252(f)–(g) (enacted by Cal. Proposition 11 (2008)) (requiring the State Auditor to choose three registered Democrats, three registered Republicans, and two Independents, and requiring the Commission to choose two registered Democrats, two registered Republicans, and two Independents).

17. CAL. CONST. art. XXI § 2(a), (b)(1)–(2) (enacted by Cal. Proposition 11 (2008), later amended by Cal. Proposition 20 (2010)).

18. GOV’T § 8253(a)(5) (enacted by Cal. Proposition 11 (2008)).

19. *Id.*

20. *Id.* § 8252(a)(1), (a)(7) (enacted by Cal. Proposition 11 (2008)).

21. CAL. SEC’Y OF STATE, VOTER INFORMATION GUIDE 95–97 (2010).

22. *Id.*

23. CAL. CONST. art. XXI, §§ 1, 2(c)(5) (amended by Cal. Proposition 20 (2010)).

24. *Id.* § 2(d)(4) (amended by Cal. Proposition 20 (2010)).

25. *Id.* § 3(b)(1)–(2) (amended by Cal. Proposition 20 (2010)).

26. *Vandermost v. Bowen*, 53 Cal. 4th 421, 449, 269 P.3d 446, 459 (2012) (quoting CAL. CONST. art. VI, § 10).

2013 / Government

public importance subject to original jurisdiction and avoided defining “likely to qualify.”²⁷

C. Citizens Redistricting Commission Proposed Amendments

On November 18, 2010, the State Auditor chose the first eight members of the Commission from a pool of thirty-thousand applicants.²⁸ Before voting to adopt the final district maps on August 15, 2011, the fourteen-member Commission listened to thousands of members of the public at over thirty public meetings.²⁹ After the Commission approved the final maps, it began the statutorily prescribed amendment process.³⁰

In order to amend the Commission, Proposition 11 requires that nine or more commissioners recommend amendments to the legislature and two-thirds of each house of the state legislature must approve the amendments.³¹ The Commission held three public meetings in early 2012 to discuss amendments to Sections 8251 through 8253.6 of the California Government Code and accept written submissions for amendments to Article XXI of the Constitution.³² From this process, the Commission approved and sent to the state legislature several proposals to improve the Government Code governing the Commission for legislative approval.³³ These proposals were enacted as Chapter 271.³⁴

III. CHAPTER 271

Chapter 271, the product of the Commission’s proposals, makes several changes to the voter-passed law that created the Commission.³⁵ First, Chapter 271 hastens the public comment on preliminary maps by permitting fourteen days of public comment for the first preliminary set of maps released, only seven days of

27. *Id.* at 450, 269 P.3d at 460.

28. *Redistricting Commission Gets First Members*, CAPITOL WKLY. (Nov. 18, 2010, 12:00 AM), http://www.capitolweekly.net/article.php?_c=z98zsw96m9xi0x&xid=zaaupchir1ldg5&done=.zaay6q55bzcaku (on file with the *McGeorge Law Review*).

29. Press Release, Citizens Redistricting Comm’n, Citizens Redistricting Commission Votes to Adopt Final District Maps (Aug. 15, 2011), *available at* <http://archive.constantcontact.com/fs021/1104387634937/archive/1107139782705.html> (on file with the *McGeorge Law Review*).

30. STATUTORY AMENDMENT PROCESS, *supra* note 6.

31. CAL. GOV’T CODE § 8251(c)(1)&(2) (enacted by Cal. Proposition 11 (2008)); CAL CONST. art. XXI, § (2)(c)(5) (enacted by Cal. Proposition 11 (2008), amended by Cal. Proposition 20 (2010)).

32. STATUTORY AMENDMENT PROCESS, *supra* note 6.

33. Press Release, Citizens Redistricting Comm’n, Citizens Redistricting Commission Votes to Forward to the Legislature Proposals to Improve State Statutes Governing Future Commissions (Mar. 29, 2012), *available at* <http://archive.constantcontact.com/fs021/1104387634937/archive/1109655252781.html> (on file with the *McGeorge Law Review*).

34. *Id.*

35. SENATE COMMITTEE ON ELECTIONS AND CONSTITUTIONAL AMENDMENTS, COMMITTEE ANALYSIS OF SB 1096, at 2 (Apr. 19, 2012).

McGeorge Law Review / Vol. 44

comment for the second set, and only three days of comment for the final maps.³⁶ Second, Applicant Review Panel members are selected four-and-one-half months earlier.³⁷ The Applicant Review Panel selects commissioners in essentially the same manner as approved by voters in 2008 and 2010, but the timeline is also advanced four-and-one-half months.³⁸ Additionally, if a vacancy occurs after the initial selection process, the State Auditor has an additional sixty days to fill the vacancy if it occurs on or after December 31 of a year ending with the number “2.”³⁹ Third, the State Auditor replaces the Secretary of State in providing support and staffing for the Commission before hiring its own staff.⁴⁰ Additionally, the members of the Applicant Review Panel must now be employees of the California Bureau of State Audits.⁴¹

IV. ANALYSIS

Chapter 271 makes detailed changes to the Commission.⁴² There are three general areas of reform: public comment period on district maps, beginning the redistricting process sooner, and more responsibility for the Bureau of State Audits.⁴³

A. Altering Public Comment Period on District Maps

Chapter 271 ensures that there will be sufficient time for a second round of map presentation.⁴⁴ The Commission now has a deadline for publishing its first set of preliminary district maps.⁴⁵ This requirement guarantees time for public participation.⁴⁶ Even though the 2010 Commission published its first map by June 10, 2011, the Commission delayed, and ultimately cancelled, the release of a

36. GOV'T § 8253(a)(7) (amended by Chapter 271).

37. *Id.* § 8252(a)(1) (amended by Chapter 271) (changing January 1 in years ending with “0” to August 15 in years ending with “9”).

38. *Id.* § 8252(b)–(g) (amended by Chapter 271).

39. *Id.* § 8252.5(b)(2) (enacted by Chapter 271).

40. *Id.* § 8253.6(a) (amended by Chapter 271).

41. *Id.* § 8251(b)(4) (amended by Chapter 271) (requiring auditors to be employed by the Bureau of State Audits instead of licensed by the California Board of Accountancy).

42. *Id.* §§ 8251(b)–(c), 8252(a)–(c), (e)–(g), 8252.5(b), 8253(a), 8253.6(a) (amended by Chapter 271).

43. *Id.* § 8253(a)(1), (a)(7) (amended by Chapter 271); *id.* § 8252(a)(1), (c), (e)–(g) (amended by Chapter 271); *id.* § 8252.5(b)(1)–(3) (amended by Chapter 271); *id.* §§ 8251(a)(4), 8253(a)(5), 8253.6(a) (amended by Chapter 271).

44. *Id.* § 8253(a)(7) (amended by Chapter 271).

45. *Id.* (“[T]he first preliminary statewide maps . . . shall be publicly displayed no later than July 1 in each year ending in the number one.”).

46. Letter from Lilbert “Gil” Ontai, Chair & Cynthia Dai, Vice-Chair, Citizens Redistricting Comm’n, to Cal. Legislature (Apr. 13, 2012), *available at* http://wedrawthelines.ca.gov/downloads/meeting_handouts_042012/handouts_20120413_crc_support_final.pdf [hereinafter Letter from Lilbert “Gil” Ontai] (on file with the *McGeorge Law Review*) (expressing the Commission’s support of amendments).

2013 / Government

second round of maps before voting on the final maps.⁴⁷ There was not enough time for a second round of maps because the Commission was required to give fourteen days' public notice of each meeting and another fourteen days of public comment after the display of any map.⁴⁸ This drew criticism from different groups that felt the Commission's map-drawing process was not as transparent as promised despite the Commission posting online alternative versions of the maps for comment.⁴⁹ Chapter 271 amends the fourteen day public comment requirement to a tiered schedule: fourteen days of comment after the first map, seven days of comment after the second map, and three days after the third.⁵⁰ The shortened time frame ensures that the Commission can publicly display two preliminary maps before the final maps between the July 1st and August 15th deadlines.⁵¹

B. Advancing the Redistricting Schedule

Chapter 271 lengthens the timeline for the Commission by four-and-one-half months.⁵² In 2010, it took the Commission seven-and-one-half months to hire staff, plan and execute an extensive public outreach process, and approve four final maps.⁵³ The Commission recommended that the process begin earlier to facilitate an "open, public process."⁵⁴ The Commission estimates that the additional time will add over one-million dollars to redistricting costs.⁵⁵

47. Press Release, Citizens Redistricting Comm'n, Citizens Redistricting Commission Moves Release of Second Draft District Maps to July 12th to Incorporate Greater Public Input (June 16, 2011), *available at* <http://archive.constantcontact.com/fs021/1104387634937/archive/1106053626513.html> [hereinafter Second Draft Maps] (on file with the *McGeorge Law Review*); Press Release, Citizens Redistricting Comm'n, Citizens Redistricting Commission Will Not Release Second Draft Maps in Order to Gather More Public Input Throughout Line Drawing Process and Product Best Final Maps Possible (July 9, 2011), *available at* <http://archive.constantcontact.com/fs021/1104387634937/archive/1106487913005.html> (on file with the *McGeorge Law Review*).

48. GOV'T § 8253(a)(1), (7) (enacted by Cal. Proposition 11 (2008)); *see also* Press Release, Citizens Redistricting Comm'n, Meeting Summary for July 21 (July 22, 2011), *available at* <http://archive.constantcontact.com/fs021/1104387634937/archive/1106709770088.html> (on file with the *McGeorge Law Review*) ("Received an opinion from the Commission's Chief Legal Counsel on the issue of a 14 day period of public review of maps released by the Commission as stated in the Voters First Act. The Commission let stand its previous plan to release preliminary final district maps on July 29th and have a public review period until it votes to adopt and certify the maps on August 15th.").

49. Jean Merl & Patrick McGreevy, *Redistricting Panel Cancels Second Draft of Legislative Maps*, L.A. TIMES (July 12, 2011), <http://articles.latimes.com/2011/jul/12/local/la-me-redistricting-20110712> (on file with the *McGeorge Law Review*).

50. GOV'T § 8253(a)(7) (amended by Chapter 271).

51. *Id.* (requiring first preliminary maps to be publicly displayed no later than July 1 in each year ending in the number one); CAL. CONST. art. XXI, § 2(g) (amended by Chapter 271) (requiring the Commission to approve final maps by August 15 in each year ending in the number one).

52. GOV'T §§ 8252(a)(1), (c), (e), (f), (g), 8252.5(b)(1)–(3) (amended by Chapter 271).

53. Letter from Lilbert "Gil" Ontai, *supra* note 46.

54. *Id.*

55. CAL. CITIZENS REDISTRICTING COMM'N, ACTUAL AND ESTIMATED COSTS OF SELECTING THE FIRST

McGeorge Law Review / Vol. 44

Even before Chapter 271, funding was a problem for the Commission because the legislature is only required to appropriate three years of estimated expenses.⁵⁶ After the Commission found itself facing defunding by the legislature, the media began running stories on the range of salaries made by commissioners.⁵⁷ Depending on the economic climate of 2020, the additional time and costs might cause friction between the public and the Commission, detrimental to the Commission fulfilling its duties.⁵⁸

C. Removing the Secretary of State from Support Staffing

Chapter 271 contains reforms intended to save time and money.⁵⁹ The State Auditor no longer shares responsibility with the Secretary of State.⁶⁰ Having one agency oversee the Commission's functions could be beneficial if the Commission ever finds itself without funding like in 2010.⁶¹ In 2010, the Commission was forced to search for a host agency to continue website maintenance, public participation, and defend the final district maps in any future litigation.⁶² However, a singular host agency may help provide the Commission

COMMISSION AND REDRAWING THE STATE'S CONGRESSIONAL, SENATE, ASSEMBLY AND BOARD OF EQUALIZATION DISTRICTS AND AN UNADJUSTED ESTIMATE OF THE COST TO EXTEND THE NEXT COMMISSION'S REDISTRICTING PERIOD BY 4.5 MONTHS STARTING AUGUST 15, 2020, at 6 (2012) (estimating \$1,017,103 in costs, in addition to \$13,763,053 estimated costs for the 2010 redistricting).

56. GOV'T § 8253.6(a) (West Supp. 2012).

57. Letter from Daniel Claypool, Exec. Dir., Citizens Redistricting Comm'n, to Commissioners (June 4, 2012), available at http://wedrawthelines.ca.gov/downloads/meeting_handouts_062012/handouts_20120605_crc_nohost.pdf [hereinafter Letter from Daniel Claypool] (on file with the *McGeorge Law Review*); Jim Sanders, *California Redistricting Commissioners Paid Varied Amounts for Work*, SACRAMENTO BEE (June 13, 2012), <http://www.sacbee.com/2012/06/13/4557715/redistricting-commissioners-paid.html> (on file with the *McGeorge Law Review*) (describing Commissioners making \$35,100 to \$68,400 from the \$300 per diem payments).

58. See Sanders, *supra* note 57 (quoting Commission Chairman Stanley Forbes: "It was done on the honor system. I didn't watch anybody else, and nobody watched me."); Dave Rice, *Redistricting Commissioners Cash In with Honor System Pay Reporting*, SAN DIEGO READER (June 14, 2012), <http://www.sandiegoreader.com/weblogs/news-ticker/2012/jun/14/redistricting-commissioners-cash-in-with-honor-sys/> (on file with the *McGeorge Law Review*) ("Working on the California citizens' redistricting commission appears to have been lucrative work for the 14 commissioners appointed to serve, who collected between \$35,100 and \$68,400 in per diem pay based on 'honor system' reporting of days worked, many of which were done from home."); GOV'T § 8253(a)(7) (amended by Chapter 271) ("The commission shall establish and implement an open hearing process for public input and deliberation that shall be subject to public notice and promoted through a thorough outreach program to solicit broad public participation in the redistricting public review process.").

59. GOV'T §§ 8253(a)(5), 8253.6(a) (amended by Chapter 271) (replacing Secretary of State with State Auditor); CITIZENS REDISTRICTING COMM'N, STATUTORY AMENDMENT DISCUSSIONS (2012), available at http://wedrawthelines.ca.gov/downloads/meeting_handouts_012012/handouts_20120128_crc_statamend.pdf (on file with the *McGeorge Law Review*).

60. GOV'T §§ 8253(a)(5), 8253.6(a) (amended by Chapter 271).

61. See Letter from Daniel Claypool, *supra* note 57 (stating that removing funding and an overseeing agency for the Commission, jeopardizes the effectiveness and abilities of the Commission).

62. *Id.*

2013 / Government

continuous funding without time wasted searching.⁶³ Although Chapter 271 delegates the support function to the State Auditor, the language does not otherwise differ from Propositions 11 and 20, which means the Commission might encounter similar problems in the 2020 redistricting process.⁶⁴

V. CONCLUSION

California's first Citizens Redistricting Commission tried to remedy the weaknesses of Propositions 11 and 20 by recommending to the legislature the amendments contained in Chapter 271.⁶⁵ Chapter 271 does not reflect all of the Commission's suggested changes.⁶⁶ The second Commission will likely further amend its governing language in response to new difficulties that arise while drawing political maps in such a large state.⁶⁷ However, Chapter 271 will give the 2020 Commission more time to accomplish its goals and give the public more say in the process.⁶⁸

63. *Id.*

64. Compare GOV'T § 8253.6(a) (amended by Chapter 271), *with id.* (enacted by Cal. Proposition 11 (2008)), and *id.* (enacted by Cal. Proposition 20 (2010)) (removing "and the Secretary of State" from the governor's budget requirements).

65. See Second Draft Maps, *supra* note 47 (moving release of second round of maps for greater public input); Letter from Lilbert "Gil" Ontai, *supra* note 46 (explaining the need for more time to set up the Commission and more time to draw maps to allow for public comment); Letter from Daniel Claypool, *supra* note 57 (announcing that the Commission was unable to find a host agency).

66. Letter from Lilbert "Gil" Ontai, *supra* note 46.

67. See Second Draft Maps, *supra* note 47 (needing more time for public comment on the first round of maps); Letter from Lilbert "Gil" Ontai, *supra* note 44 (running into time limitations to receive public comment); Letter from Daniel Claypool, *supra* note 57 (requiring a host agency and extended funding to continue public outreach).

68. See *id.* (explaining the need for more time during the redistricting process for setting up the Commission and receiving public comment).