

Five-Member Commission for Rio Arriba County?

Our three-member Rio Arriba Board of County Commissioners has received a proposal to change the composition of the Board from three members to five. The existing Board has the power to do so by passing an ordinance.

The Democratic Party of Rio Arriba County submitted this proposal to the commissioners in late July after the DPRAC Central Committee unanimously endorsed this proposal at the end of May.

For the county to move to a five-member Board, here's what has to occur, step-by-step:

- 1.) The commissioners now in office would need to adopt an ordinance creating a five-member commission. By state law, such an ordinance must pass unanimously—all three commissioners must vote in favor of it. The actual, specific five-member commission district boundaries would not be determined via that ordinance. That step comes later.
- 2.) In accordance with a wide variety of laws and court decisions, the commissioners must redraw the commission-member district boundaries before next year's (2022) partisan primary elections. This requirement is based on the decennial Census results and population shifts since the previous Census.

The commissioners need to redraw the commission's district boundaries every 10 years just as state legislatures must redraw congressional district and legislative district boundaries every 10 years. City councils and school boards in jurisdictions of a certain minimum population size must do the same.

If Rio Arriba County sticks with a three-member Board, the commissioners must nonetheless adopt a new commission plan for the 2022 elections. Same goes if the commissioners do vote for an ordinance creating a five-member commission. Either way, the county must have a new plan for commissioner-district boundaries for the 2022 elections since the county has experienced significant internal population shifts since the 2010 Census.

- 3.) While the commissioners can pass an ordinance creating a five-member commission at any time, they must wait until the complete, technical/statistical data for Rio Arriba County is released. These data include precise population numbers for small geographic areas known as "Census Blocks." This time around, the Bureau of the Census has experienced long delays in compiling/releasing that Census Block data due to the Covid-19 situation.

Census Blocks are the statistical units that are used to draw new political district boundaries (congressional, legislative, city council, school board, county commission). All such districts must be approximately equal in population—not to exceed a small variance that is generally allowed within 5%. The "population" of Census Blocks (and consequently political districts) is the entire population count of those geographic areas as determined by the Census on "Census Day" in 2020.

That means all living souls of any age residing there irrespective of voter registration or their citizenship or immigration/documentation status.

The Census Bureau has already released total population figures for all New Mexico counties, but has yet to release the detailed Census Block counts for any of those counties. That eagerly-awaited Census Block data is expected later this year—perhaps by September 30, 2021.

The Census Bureau has determined that Rio Arriba County had a population of over 40,000 individuals on Census Day, 2020—a slight increase in population from the 2010 Census.

The county will contract with a demographic consulting firm to analyze the Census Block breakdowns and devise one or more model redistricting plans, drawing new commissioner district boundaries (be it a three-member or a five-member plan, depending on the commissioners' previous decision to pass or forgo a five-member ordinance). In the past, new districting plans utilizing the Census Block data can conform to the "no more than a 5% variance" requirement without having to split or re-draw existing voting precinct boundaries.

A commission district must consist of a group of contiguous voting precincts. The Rio Arriba Board of County Commissioners recently modified the county's voting precinct alignments (splitting some old precincts into two new precincts) in accordance with state law regarding the maximum number of registered voters allowed in any given precinct. This particular state law regarding voting precincts size is based on voter registration numbers, not the actual population as determined by the Census count.

This splitting of several voting precincts by the county may actually make drawing boundaries for a new commissioner district plan by the consulting firm and the commissioners a little bit easier in term of achieving the "no more than a 5% variance" requirement.

Whatever plan or plans the consulting firm may submit to the commissioners, it is ultimately up to the commissioners to adopt or modify the final plan as they see fit—so long as the "no more than a 5% variance" requirement is observed.

With a five-member commission, the number of citizens (actual population, not registered voters) represented by each commissioner would be approximately 40% less than the current situation. Also, the geographic footprint for each district of a five-member commissioner would be much more compact than the current alignment.

4.) If the commissioners do pass a five-member commission ordinance and then follow up with a new commissioner-district plan as required by law, then four—not five--commission seats would be on the Rio Arriba ballot for the 2022 primary and general elections.

Two of the three existing commissioners' seats must be up for election in 2022, whereas one of those seats (Commissioner District 3, held by Moises Morales) would not come up for election again until 2024.

The current commission seats that will be up for election in 2022 are for Commissioner Districts 1 and 2—now held by James Martinez (first elected in 2018) and Christine (Teeney) Bustos (appointed by the governor to fill a vacancy this year).

Also on the 2022 ballot would be the newly created Commissioner Districts 4 and 5. And this is where the situation, as determined by state law, becomes a bit more complicated. By law, a five-member county commission must have those commission seats up for election on alternating cycles of two seats on the ballot for one four-year cycle and three seats on the ballot for the alternating four-year cycle.

So, with two commission seats on the ballot no matter what in 2022 plus another two “new” seats (per a five-member commission ordinance passed by the current commissions) up for election in 2022, the legally required alternating (staggered seat) cycles would not be in place for commissioners elected in 2022 to four-year terms as the law would otherwise require (the fifth seat being held by Commissioner Morales and would not be on the ballot again until 2024).

Well, the state constitution has a fix for this problem. The two commissioners elected to the “new” seats (Districts 4 & 5) would then be subject to a “lottery” (a procedure to be conducted in December 2022, by the Secretary of State in her “ministerial” capacity) to determine which of those individuals gets a four-year term and which gets a two-year term.

With such an adjustment, the staggered-term election cycles would be back in balance with two commission seats up for election on one four-year cycle and the other three commissioner seats up for election for the other four-year cycle.

One interesting aspect of this “balancing” procedure is that whichever of the newly-elected commissioners gets the two-year term by the lottery process, would be eligible for subsequent re-election to two four-year terms. He/she could conceivably serve a total of 10 consecutive years in that office—one initial two-year term and then two consecutive four-year terms.

The term-limits law (otherwise limiting county elected officers to two consecutive four-year terms) does not apply to this constitutional election cycle fix just as it does not apply to those who are appointed to fill vacancies in elective county offices prior to their election to those same offices.

All of the larger counties in Northern New Mexico, except Rio Arriba, have gone to five-member commissions over the past few decades. That lineup includes, Taos, San Juan, Santa Fe, Sandoval and San Miguel Counties (Taos and San Miguel have smaller populations than Rio Arriba). Rio Arriba is the largest geographically of all the aforementioned Northern New Mexico counties.

One problem for commissioners in counties with three-member Boards of County Commissioners is compliance with the state Open Meetings Act. With a three-member Board, a quorum exists when any two of the commissioners speak together regarding any matter deemed “county business” and that discussion is considered a “meeting.”

This includes a personal chat, a telephone call, email correspondence—any sort of communication between those two commissioners regarding county business is subject to the Open Meetings Act since two for them constitute a quorum.

Consequently, any such “meeting” needs to be advertised to the public in advance and open to public attendance (in person or virtually, via Zoom for instance).

This Open Meetings Act/quorum matter makes it virtually impossible/illegal for any two commissioners (serving on a three-member county commission) to discuss any “county business” matter outside the any called public commission meeting or work session.

But with a five-member commission, the quorum is three members. So, two of them could chat about an upcoming matter involving “county business” and then one of them could then chat with a third member and so forth without violating the quorum rule/Open Meetings Act.

This happens all the time in those counties with five-member commissions as those commissioners prepare for the called/advertised public meetings.

Back to Step #1:

To get on the path for a five-member Rio Arriba Board of County Commissioners in time for the 2022 elections, the current commissioners need to pass the initial ordinance and do so fairly soon. (The actual five-member district plan would be devised several months afterwards—when all the Census Block data are available).

If you want to let the current commissioners know your thoughts about this critical issue, here are the most recent points of contact for them to the best of our knowledge (some county government and some personal/political).

The window of opportunity for Rio Arriba finally to have a five-member Board of County Commissioners is open NOW (created essentially by the 2020 decennial Census), but is rapidly closing. If the current commissioners do not act quickly, the alternative options to achieve that goal must wait until the 2023 legislative session at the earliest and are extremely problematic/cumbersome.

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