

SB 80-FN-A - AS INTRODUCED

2021 SESSION

21-0910

11/05

SENATE BILL

80-FN-A

AN ACT

establishing an independent advisory commission on redistricting.

SPONSORS:

Sen. Sherman, Dist 24; Sen. Kahn, Dist 10; Rep. M. Smith, Straf. 6; Sen. D'Allesandro, Dist 20; Sen. Rosenwald, Dist 13; Sen. Perkins Kwoka, Dist 21; Sen. Soucy, Dist 18; Sen. Watters, Dist 4; Sen. Whitley, Dist 15; Rep. Wolf, Merr. 5

COMMITTEE:

Election Law and Municipal Affairs

ANALYSIS

This bill establishes an independent advisory commission on redistricting.

Explanation:

Matter added to current law appears in ***bold italics***.

Matter removed from current law appears ~~[in brackets and struckthrough]~~

Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

In the Year of Our Lord Two Thousand Twenty One

Be it Enacted by the Senate and House of Representatives in General Court convened:

(2) What elective offices, if any, the applicant has held in New Hampshire in the preceding 10 years.

1 (3) If the applicant has voted in a state primary election or presidential primary
2 election in New Hampshire in the preceding 6 years, which political party's ballots the applicant has
3 taken.

4 (b) From all eligible applications received, the senate and house leaders from the
5 majority party in the house shall nominate 10 applicants from the majority party in the house, and
6 the senate and house leaders from the largest minority party in the house shall nominate 10
7 applicants from the largest minority party in the house. The senate and house leaders from the
8 majority party in the house shall chose 5 members from the 10 applicants so selected from largest
9 minority party in the house to serve on the commission. The senate and house leaders from the
10 largest minority party in the house shall chose 5 members from the 10 applicants so selected from
11 the majority party in the house to serve on the commission.

12 (c) The 10 commissioners so selected shall together select 5 commissioners from the
13 applicants who are not members of the majority party in the house or the largest minority party in
14 the house. The 10 commissioners may not initiate communications or reply to communications
15 about the selection process of the remaining 5 commissioners with outside persons attempting to
16 influence commissioners or commission action.

17 III. In the event of substantial neglect of duty, gross misconduct in office, or inability to
18 discharge the duties of office, a member of the commission may, after being served written notice
19 and given an opportunity for a response, be removed by a vote of 11 members of the commission. A
20 finding of substantial neglect of duty or gross misconduct in office may result in referral to the New
21 Hampshire attorney general for criminal prosecution.

22 IV. Vacancies on the commission shall be filled when they occur by the commission
23 selecting, by a vote of 11 members, a new member from among the original pool of applicants of the
24 same political party as the vacated commissioner seat still willing to serve or by seeking a
25 replacement in the same manner as initial appointments.

26 V. The term of office of commission members expires 2 years after the final enactment of the
27 redistricting plan into law.

28 662-B:4 Commission Meetings.

29 I. The commission shall act in public meetings by the affirmative vote of at least 9 members.

30 II. All meetings of the commission shall be open to the public. The commission shall
31 publicly post notice of its meetings on the commission website and other appropriate outlets at least
32 7 days prior to such meetings. All records of the commission, including all communications to or
33 from the commission regarding the work of the commission, shall be made available for public
34 inspection.

35 III. The commission shall hold at least one public meeting in each county prior to drawing
36 any maps and at least one public meeting in each county after releasing any proposed maps.

1 IV. The commission shall create a website that shall provide, at a minimum, a description of
2 the role of the commission in the redistricting process, timely information to the public about the
3 time, place, and purpose of each meeting of the commission, reports, minutes, and such other
4 information that will support an open and transparent process.

5 V. The commission shall provide a meaningful opportunity for all persons to participate in
6 the public meetings. Meetings shall be held only in spaces that are accessible under the Americans
7 with Disabilities Act of 1990, as amended.

8 VI. Commission meetings shall be adequately advertised and planned so as to encourage
9 attendance and participation across the state. This includes scheduling meetings outside of regular
10 work hours.

11 VII. The commission shall be considered a public body subject to RSA 91-A. No documents
12 created or received by the commissioners or staff as part of official duties, including emails and text
13 messages, shall be exempt from disclosure for any privilege other than attorney-client privilege.

14 VIII. Commissioners and staff may not initiate communications or reply to communications
15 about commission business with outside persons attempting to influence commissioners or
16 commission action outside of public meetings. To the extent that commissioners and staff receive
17 such communications, the identity of the person or group and the subject of the communication shall
18 be publicly disclosed on the commission website.

19 662-B:5 Developing Redistricting Maps.

20 I. During the map drawing process, any member of the public may submit maps or portion of
21 maps for consideration by the commission in a portable document format suitable for archiving
22 (PDF/A) format, or other format approved by the secretary of state. These submissions shall be
23 made publicly available and shall include the name of the person making the submission.
24 Electronically submitted maps may be posted on the commission website.

25 II.(a) The commission shall post proposed maps in a manner determined by the commission,
26 provided that such display shall include posting on the commission website for a minimum of 7 days
27 for public comment and by distribution to the news media in a manner designed to achieve the
28 widest public access reasonably possible before establishing a final plan. Additionally, the efforts to
29 achieve access may include but not be limited to:

30 (1) Advertising the availability of the proposed maps in daily newspapers in the
31 state.

32 (2) Advertising the availability of the proposed maps on the home page of state
33 agency websites.

34 (3) Requesting media to publicize the availability of the proposed maps.

35 (b) When releasing a proposed map, the commission shall also release the data used to
36 create the plan, such as population data, geographic data, and election data.

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1 III. The commission shall issue with the proposed and final maps written evaluations that
2 measure the maps against external metrics, and may include efficiency gap and compactness. These
3 metrics shall cover all criteria set forth in RSA 662-B:6.

4 IV. No later than December 20 of any year ending in one, the commission shall submit final
5 advisory plans for New Hampshire county commission, house, senate, executive council, and
6 congressional districts to the senate president, speaker of the house of representatives, and senate
7 and house minority leaders for their consideration and action pursuant to pertinent sections of the
8 New Hampshire Constitution, including part II, articles 9, 11, and 26.

9 662-B:6 Redistricting Criteria.

10 I. The commission shall establish single or multi-member districts for the New Hampshire
11 county commissions, house of representatives, and single member districts for the New Hampshire
12 senate, executive council, and United States representative, using the following criteria as set forth
13 in the following order of priority:

14 (a) Districts shall comply with the United States Constitution and all applicable federal
15 laws. Districts shall be drawn on the basis of total population.

16 (b) Districts shall comply with the New Hampshire constitution and all applicable state
17 laws.

18 (c) Districts shall form single boundaries and shall not be bisected or otherwise divided
19 by other districts, and shall respect the geographic integrity of political boundaries to the extent
20 practicable without violating the requirements of state law or any preceding subdivisions.

21 (d) Districts shall be drawn in compact shapes and shall avoid jagged edges and
22 extensions.

23 (e) Commissioners shall consider the integrity of communities of interest to the extent
24 practicable. For purposes of this section a community of interest is defined as an area with
25 recognized similarities of interests, including but not limited to economic, social, cultural,
26 geographic, racial, ethnic, or historic identities. Communities of interest shall not include common
27 relationships with political parties or political candidates.

28 II.(a) The plan as a whole shall not have the intent or the effect of unduly favoring or
29 disfavoring any political party, incumbent, or candidate for political office.

30 (b) Districts shall not have the intent or the effect of unduly favoring or disfavoring any
31 racial or language group.

32 662-B:7 Compensation. Members of the commission shall receive mileage reimbursement at the
33 federal rate for expenses incurred in connection with the duties performed pursuant to this chapter.

34 662-B:8 Financial Independence.

35 I. For the fiscal year ending June 30, 2021, the governor may draw a warrant out of sums
36 not otherwise appropriated to fund expenses of the commission established pursuant to this chapter.

1 II. For each subsequent biennium preceding the decennial census, the governor shall include
2 in his or her budget recommendation appropriations sufficient to meet the estimated expenses of the
3 commission, including but not limited to adequate funding for a statewide outreach program to
4 solicit broad public participation in the redistricting process and adequate office space available for
5 the operation of the commission.

6 662-B:9 Secretary of State to Provide Support. The secretary of state shall provide such
7 administrative and staff support as is necessary for the commission to perform its duties.

8 2 Effective Date. This act shall take effect upon its passage.

SB 80-FN-A- FISCAL NOTE
AS INTRODUCED

AN ACT establishing an independent advisory commission on redistricting.

FISCAL IMPACT: ☒ **State** ☒ **County** ☐ **Local** ☐ **None**

STATE:	Estimated Increase / (Decrease)			
	FY 2021	FY 2022	FY 2023	FY 2024
Appropriation	Indeterminable Increase	\$0	\$0	\$0
Revenue	\$0	\$0	\$0	\$0
Expenditures	Indeterminable Increase	Indeterminable Increase	Indeterminable Increase	Indeterminable Increase
Funding Source:	<input checked="" type="checkbox"/> General	<input type="checkbox"/> Education	<input type="checkbox"/> Highway	<input type="checkbox"/> Other

COUNTY:

Revenue	\$0	\$0	\$0	\$0
Expenditures	Indeterminable Increase	Indeterminable Increase	Indeterminable Increase	Indeterminable Increase

METHODOLOGY:

This bill creates an independent redistricting commission to convene no later than July 1, 2021, and every 10 years thereafter. The Secretary of State would identify the pool of eligible individuals to serve as commissioners, notify such eligible persons and invite them to apply, and use advertisements and media to publicize the search for eligible members. From all eligible applications received, 10 applicants shall be nominated and chosen by majority and minority leadership of the General Court, and the 10 commission members shall then select 5 additional commissioners from the applicant pool. The Secretary of State shall provide administrative and staff support to the commission.

The bill includes an appropriation for the fiscal year ending June 30, 2021 to fund expenses of the commission from general funds and directs the governor to include funding in future budget proposals for each subsequent biennium preceding the decennial census. Such future funding shall be sufficient to meet the estimated expenses of the commission, including funding for a statewide outreach program to solicit broad public participation and adequate office space for the operation of the commission.

The Department of State indicates it would incur costs related to advertising, notifications, creating the candidate pool, and receiving and vetting applications of potential commissioners.

Previously the department estimated it would budget \$10,000 to advertise in daily newspapers for qualified persons to apply to the commission to be considered for appointment. The department does not know how many individuals may apply to be a commissioner, therefore the amount of related additional expense to process and vet such applications is indeterminable. The administrative and staff support needed in support of the commission is also unknown at this time and any associated cost is also indeterminable. However the department previously estimated it would need a full time employee while the commission is meeting regularly. The cost for a full time administrative assistant labor grade 19 for 10 months is estimated to be \$57,000. There would be an indeterminable cost associated with the Secretary of State hosting and maintaining a website for displaying redistricting proposals.

The Legislative Branch assumes additional costs associated with independent commission mileage reimbursement would be addressed through appropriations to the Secretary of State's Office. Expenses of the leadership of the General Court in choosing 10 members of the commission and legislative chamber review and vote on the final advisory plan submitted by the commission would be minimal and could be absorbed without additional legislative funding.

The Department of Justice indicated there may be an unknown number of cases referred to the Attorney General for criminal prosecution when the commission makes a finding of substantial neglect of duty or gross misconduct by a commission member. This may result in an unknown number of investigations and/or prosecutions by the Department and require additional resources, therefore the resulting fiscal impact is indeterminable.

The Judicial Branch expects any fiscal impacts to be minimal. The creation of a new public body subject to RSA 91-A may lead to possible complaints of non-compliance. A new crime related to commissioner's duties would be rarely, if ever prosecuted. The Branch estimates less than \$10,000 of additional expense in the first year related to updating forms, databases and the e-filing system and notification of and training for judges and staff.

This bill contains penalties that may have an impact on the New Hampshire judicial and correctional systems. There is no method to determine how many charges would be brought as a result of the changes contained in this bill to determine the fiscal impact on expenditures. However, the entities impacted have provided the potential costs associated with these penalties below.

Judicial Branch	FY 2021	FY 2022
Class B Misdemeanor	\$55	\$55

Class A Misdemeanor	\$78	\$78
Simple Criminal Case	\$309	\$309
Routine Criminal Felony Case	\$494	\$494
Appeals	Varies	Varies
It should be noted that average case cost estimates for FY 2021 and FY 2022 are based on data that is more than ten years old and does not reflect changes to the courts over that same period of time or the impact these changes may have on processing the various case types. An unspecified misdemeanor can be either class A or class B, with the presumption being a class B misdemeanor.		
Judicial Council		
Public Defender Program	Has contract with State to provide services.	Has contract with State to provide services.
Contract Attorney – Felony	\$825/Case	\$825/Case
Contract Attorney – Misdemeanor	\$300/Case	\$300/Case
Assigned Counsel – Felony	\$60/Hour up to \$4,100	\$60/Hour up to \$4,100
Assigned Counsel – Misdemeanor	\$60/Hour up to \$1,400	\$60/Hour up to \$1,400
It should be noted that a person needs to be found indigent and have the potential of being incarcerated to be eligible for indigent defense services. The majority of indigent cases (approximately 85%) are handled by the public defender program, with the remaining cases going to contract attorneys (14%) or assigned counsel (1%).		
Department of Corrections		
FY 2020 Average Cost of Incarcerating an Individual	\$47,691	\$47,691
FY 2020 Annual Marginal Cost of a General Population Inmate	\$6,407	\$6,407
FY 2020 Average Cost of Supervising an Individual on Parole/Probation	\$584	\$584
NH Association of Counties		
County Prosecution Costs	Indeterminable	Indeterminable
Estimated Average Daily Cost of Incarcerating an Individual	\$105 to \$120	\$105 to \$120

AGENCIES CONTACTED:

Departments of State, Justice and Corrections, Legislative and Judicial Branches, Judicial Council and New Hampshire Association of Counties