

**Senate Election Law and Municipal Affairs Committee**  
*Tricia Melillo 271-3077*

**SB 80-FN-A**, establishing an independent advisory commission on redistricting.

**Hearing Date:** January 28, 2021

**Members of the Committee Present:** Senators Gray, Birdsell, Ward, Soucy and Perkins Kwoka

**Members of the Committee Absent :** None

**Bill Analysis:** This bill establishes an independent advisory commission on redistricting.

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**Sponsors:**

Sen. Sherman  
Sen. D'Allesandro  
Sen. Soucy  
Rep. Wolf

Sen. Kahn  
Sen. Rosenwald  
Sen. Watters

Rep. M. Smith  
Sen. Perkins Kwoka  
Sen. Whitley

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**Who supports the bill:** 118 - Please See Sign In Sheet

**Who opposes the bill:** Karen Thoman, Jean Kimball

**Summary of testimony presented in support:**

**Senator Soucy**

- This bill had bi-partisan support in the past.
- It is an important initiative to allow involvement and transparency in the redistricting process.
- Having expertise in the buildup to deciding districts in the state is a critical part of the process.

**Senator Sherman**

- He served on the Select Committee, appointed by the Secretary of State, to look at how they could keep elections safe during COVID.
- That Committee put much focus on the security and safety of elections by spending weeks listening to testimony, generating a 20 page report, and putting together a bi-partisan Omnibus Bill.
- The General Election proved just how well that process worked.
- He wondered what if all that work had been done and the votes did not count.
- In NH you can see the evidence of gerrymandering in Executive Council District 2. It largely surrounds Democratic strongholds touching the border of Maine, Vermont, and Massachusetts.
- You can see the evidence in Senate District 23 which is a plus 4 Republican District.
- This past week the Chair for the NH Republican Party announced that plans are already underway for partisan gerrymandering to favor the Republican Party.
- He quoted "Because of this we control redistricting," and "I can stand here today and guarantee you that we will send a conservative Republican to Washington, D.C. as a Congress person in 2022."
- Nowhere in his quote did he consider what the voters want.
- Redistricting was not designed to keep a party in power for ten years.
- It was designed to make sure that the districts reflected the change in the demographics in NH.
- It is their constitutional duty as legislators to make sure that is done with honesty, integrity, and transparency.

- Some people may say this is sour grapes because the Democrats lost the majority but that is not the case.
- This bill is the product of bipartisan work. It has passed both the House and the Senate, and unfortunately was vetoed.
- At a time when we are having our democracy questioned and the integrity of the elections questioned, it is their most sacred task to make sure that voters votes count.
- If you are a Republican in Portsmouth, or a Democrat in Salem, your vote really does not count.
- There were questions about the constitutionality of the bill, and he can say that the bill is absolutely dependent on the Legislatures actions.
- The Legislature will pick the Commission and they do not have to accept the advice of this council. That is what makes it constitutional.
- What he is bringing forward is a nonpartisan, transparent, redistricting process that will make sure that every vote in NH will have meaning.
- Senator Perkins Kwoka asked if under current law, does the public have a say in how the districts are drawn, through public hearings or similar.
  - Senator Sherman replied that he does not know the answer, but he believes the Constitution does call for this to be an open process.
- Senator Perkins Kwoka asked if what this bill does is ask the Legislature to convene a committee composed of people that are independent of this process and in addition creates some transparency by allowing public involvement.
  - Senator Sherman replied that is correct and her bill SB 90, takes it one step further and guarantees that the public will have access. There is nothing more important to our democracy than making sure that votes count, and he cannot see any argument for anything less than that. He continued that it is the publics right to know especially in the Live Free or Die state. If you live free but your districts are gerrymandered behind closed doors, that is not free.
- Senator Gray asked if on any bill that the legislature acts on, is it not the practice that the Committee would meet in open session and the public would be allowed to attend hearings and have input.
  - Senator Sherman answered that he would certainly hope that is the practice and is how it should work.

### **Representative Marjorie Smith**

- She would like to thank those that have been on the committee to come up with the best bill.
- Four out of five NH voters support the effort to end gerrymandering.
- We hope that we would convince one voter
- The House and the Senate have both supported creating a redistricting Commission
- Article 11 of the New Hampshire Constitution, which each of them has taken an oath to protect and defend, states: “All elections are to be free, and every inhabitant of the state of 18 years and upwards shall have an equal right to vote...”
- She wondered how can an election be free and equal if district lines are specifically and systematically designing election districts for partisan purposes and a desire to preserve power.
- Every voter should have an equal opportunity to translate their votes into representation
- A system in which elected officials get to choose which voters will get the chance to vote for them is backwards.
- This bill learns from those states that have gone before, and has benefitted from responsible, cooperative work of the election law committees in both bodies.
- It demonstrates the principles of independence, balance, compromise, community based decision making.
- This is not about Democratic and Republican or liberal and conservative. It is not about left and right. It is about right and wrong.
- She quoted Former House Speaker Newt Gingrich, “We’ve been drawing lines for political reasons all the way back to 1812. But I think it is wrong. I think it leads to bad government”.

- Ohio Governor John Lynch, “To me the biggest problem we have is in a gerrymandered environment...We need to eliminate gerrymandering. We’ve got to figure out a way to do it.”
- President Ronald Reagan, “That’s all we’re asking for: an end to the antidemocratic and un-American practice of gerrymandering congressional districts...The fact is gerrymandering has become a national scandal.”
- The most significant change from the bill they started with has to do the selection of commissioners.
- As they supported last term, this plan involves the Speaker, House Minority Leader, Senate President and Senate Minority Leader who select most, but not all of the commissioners.
- The most important benefit of this approach to highlight, is that it clearly lays responsibility for a major portion of the appointment process to the legislature, emphasizing the role of the legislature at the start and the finish of the redistricting process
- It also lessens significantly, the role of the secretary of state
- They also clarified the role of the Supreme Court if, regrettably, the legislature cannot fulfill its obligations to the people of the state in a timely manner.
- The cost of drawing district lines is minimal. The significant costs are incurred when the work of the state is challenged in court and the state loses.
- An independent redistricting system minimizes the possibility of the court being involved.
- The federal government will not have the census numbers we need until July of 2021.
- Senator Gray asked if she could give the Committee some input as to why in HB 706, that did pass and was vetoed by the Governor, on page four where it discusses review by the legislature, that section is not in this bill.
  - Representative Smith responded that there are two different bills going through right now. This bill that Senator Sherman brought forward, tries to address every question the Governor raised in the first effort. The version in the House addresses the Governor’s concerns from the second effort. She added that the hope is that the House and Senate can all come together with the best possible bill.
- Senator Gray stated that his point was that part of the constitutionality of HB 706 was having the back and forth between the Legislature and it also specifying that the Legislature has the final say. He added, that is what he would like her to clarify in some form to the Committee. He does not want to have to rely on one bill passing to make another bill constitutional.
  - Representative Smith replied that she will submit a letter to the Committee.

### **Senator Perkins Kwoka**

- At this time, more than ever, they are feeling a commitment to democracy and a need to protect civil institutions.
- This is an issue that matters not to just one party or the other but to voters across the state.
- They are living at a time where as civil servants they are afraid to return to the state house due to the violence shown towards some officials.
- She believes they need to do whatever it takes to restore voters faith in our democracy and confidence in the fairness of our elections.
- NH takes politics and civic democracy too seriously to allow this process to be anything other than the most fair and robust that it can.

### **Senator Melanie Levesque**

- This commission will advise the legislature on drawing legislative districts in New Hampshire.
- NH is a state that experiences extreme fluctuations in government moving from Democrat to Republican majorities often.
- Laws are put in place during one session, and the next session they are repealed.
- When legislators cannot come together and compromise, the government does not work for the people.
- Eric Holder, former Attorney General under President Obama, described the scenario where the extremes from both sides compete for legislative seats.

- If a legislator votes with the opposite party, for example, to pass a budget, they are primaried out for someone who is more extreme.
- This has happened in NH and across the Country. We have lost good legislators, who lose their seat due to working with the opposite party.
- The end result is that the citizens do not see a government that works, they see one that is broken.
- According to Common Cause, when legislators draw districts, regardless of the party, there may be a temptation or even a purposeful decision to draw districts that give them an unfair advantage.
- In states where politicians are in charge of redistricting, 36% of the maps are struck down as illegal or drawn by courts for failure to approve the districts.
- District maps are often drawn in secret by the incumbent party or the party in power.
- An independent commission will consist of Democrats, Republicans, and undeclared citizens.
- It removes the temptation to gerrymander districts and forces each party to listen, advocate, and work together, to do what is best for the voters, not the politicians.
- Twenty one states have some version of an independent redistricting commission.
- NH has proposed commissions twice and each time they were vetoed by the Governor.
- This year there are two bills and amendments being proposed.
- This bill is asking for integrity, transparency, and fairness when drawing the district maps.

### **Bob Perry**

- He has spoken on each bill that has been brought before the legislature in support of what this bill is proposing, fair maps.
- Executive Council District 2 is clearly gerrymandered because of its shape alone.
- It includes the very democratic leaning municipalities to the east of the state and travels westward to a thin block of towns acting as a pathway to connect with the heavy democratic leaning municipalities in the second Congressional District.
- This district was packed in the last redistricting in order to allow for the majority to create districts elsewhere to their advantage.
- The only Democrat on the Executive Council after the November elections is in gerrymandered District 2.
- All of this is legal, but it should not be.
- Most recently the high court refused to make it illegal and continue to allow the states devaluation of the voters influence.
- He urges that the interest of all voters be prime taking into consideration the 2006 amendment to the NH constitution, which established that towns with the requisite population get their own state representative.
- Additionally, he urges that maps in the public interest be adopted.

### **Olivia Zink – Open Democracy**

- Voters should be picking politicians, not politicians picking voters.
- Referring to the quote by GOP Party Chair, Steve Stepanek, party leaders should not be guaranteeing seats in Congress.
- She believes that legislators should not be accountable to party leadership, they should be accountable to voters.
- Daniel Webster said, “The people's government, made for the people, made by the people and answerable to the people.”
- Ten years ago, the public was given twenty four hours’ notice to comment on the district maps that were drawn.
- Partisan gerrymandering perpetrated by bad actors from ANY party is bad for the towns, which may not get someone who advocates for its interests.
- It is bad for the voters, because their vote does not matter as much in a rigged district; and bad for the state, because the voters lose faith in the honesty of their government.

- SB 80 is an independent redistricting advisory commission. The bipartisan committee makes a recommendation, and the NH House and Senate approve the final maps, ensuring that the process meets the NH Constitution's mandate.
- Fair maps and an independent redistricting process enforces a two-way conversation between voters and their elected official.
- Recent cycles of redistricting in New Hampshire have resulted in distorted and partisan skewed districts.

#### **Louise Spencer – Co-Founder, Kent Street Coalition**

- She will fight for what she believes in, but it should be a fair fight.
- Good competition usually brings people to compromise and the best path forward.
- This bill is the best path towards fairness in our elections.
- When she is out knocking on doors, she hears all the time, voting does not matter, and no one cares.
- They hear cries to “throw the bums out”, “drain the swamp”, “enact term limits”, which all express the frustration of citizens who believe their vote does not count.
- Too often, they are right. The election is already determined before a single vote is cast.
- In the U.S. House only 60 seats are considered competitive. The others have been drawn to favor one party or the other.
- This means that in 86% of U.S. House Districts the results have already been decided by the time the November election comes around.
- In many instances gerrymandering is the culprit, and it is a problem in both parties.
- Elections are supposed to be a check on too much power and not an endorsement of it.
- Maps have been drawn up to protect everyone except the voter.
- In New Hampshire we should ensure transparency, fairness, and the robust exchange of ideas.
- The best way to do that is to have independent redistricting with SB 80.

#### **Liz Tentarelli – NH League of Women Voters**

- Her organization has been advocating for fair redistricting in New Hampshire since 2004.
- She has sent the committee detailed testimony of what happened in 2011. It includes the Supreme Courts ruling and shows the lack of transparency and the frustration that the public felt.
- In SB 80 on page 2, lines 8-11, it calls for an open and transparent process to draw the redistricting according to criteria, and to conduct business with integrity and fairness.
- She believes that all on the committee agree with those principals as a way to run our government.
- On page 4, lines 4-8, it does not go into as much detail as the last redistricting bill but it now states that everything gets turned over to the Legislature.
- One of the complaints from some people, including the Governor, two years ago, was that the bill was unconstitutional.
- That is why they are trying to make it very clear in this bill that it is constitutional.
- NH has a number of Commissions that study issues of concern to the public and then report to the Legislature.
- The Legislators do not have time to study every issue and that is why they appoint Commissions, who then turn over the information gathered to the Legislature for a vote.
- This Independent Advisory Redistricting Commission does the same thing.
- It will ensure that no one is acting in self interest but ultimately it is the Legislature that will vote to approve the maps.
- This will help build the trust of the voters, who will have confidence in fair elections.

**Senator Gray** commented regarding the remarks made by the GOP Chair.

He stated that the Senators on this committee, both Republican and Democrat have taken an oath to uphold the Constitution. There is no one from the party that is pressuring him to do anything. No matter who is in charge of the redistricting process they will follow the procedures that are in RSA 91:A. There will be caucuses on both sides, but the public proceedings will happen. He will work to make sure that there is adequate notice to the public if he is on the Committee.

**Summary of testimony presented in opposition:** None

TJM

Date Hearing Report completed: February 4, 2021