

HB 121-FN-A - AS INTRODUCED

2021 SESSION

21-0066

11/06

HOUSE BILL ***121-FN-A***

AN ACT establishing an independent redistricting commission.

SPONSORS: Rep. M. Smith, Straf. 6; Rep. Berch, Ches. 1; Rep. Gordon, Graf. 9; Rep. Wolf,
Merr. 5; Rep. Bunker, Rock. 18; Rep. Schuett, Merr. 20; Rep. Kenney, Straf. 6

COMMITTEE: Election Law

ANALYSIS

This bill establishes an independent redistricting commission.

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Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Twenty One

AN ACT establishing an independent redistricting commission.

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

1 1 New Chapter; Independent Redistricting Commission. Amend RSA by inserting after chapter
2 662-A the following new chapter:

3 CHAPTER 662-B

4 INDEPENDENT REDISTRICTING COMMISSION

5 662-B:1 Independent Redistricting Commission Established. There is hereby established a New
6 Hampshire independent redistricting commission ("commission"), that shall convene no later than
7 July 1, 2021, and every 10 years thereafter, in order to:

8 I. Conduct an open and transparent process enabling full public consideration of and
9 comment on the drawing of district lines.

10 II. Draw district lines according to the redistricting criteria specified in this chapter.

11 III. Conduct its business with integrity and fairness.

12 662-B:2 Eligibility to Serve on the Commission. A person shall be eligible for appointment to
13 the commission if the person is eligible to register to vote in New Hampshire and if the person does
14 not currently hold office in the United States House of Representatives, New Hampshire senate,
15 New Hampshire house of representatives, or executive council, or a county commission.

16 662-B:3 Appointment of Commissioners.

17 I. The secretary of state shall identify the pool of eligible commissioners. He or she shall, to
18 the extent practicable, notify all eligible persons and invite them to apply. These efforts may
19 include:

20 (a) Advertising the application period and criteria in daily newspapers in the state.

21 (b) Advertising the application period and criteria on the home page of state agency
22 websites.

23 (c) Requesting media to publicize the commission's search for eligible members.

24 (d) Publicizing the application period and criteria in the New Hampshire house and
25 senate calendars.

26 II.(a) A person who is eligible to serve as a member of the commission may submit an
27 application to the secretary of state no later than February 1 of each year ending in the number one,
28 except the year 2021, during which applications shall be submitted no later than 60 days after the
29 effective date of this section. Such application shall include the following information:

30 (1) Whether the applicant has registered as a lobbyist in the preceding 10 years.

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

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

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

14 (c) The 10 commissioners so selected shall together select 5 commissioners from the
15 applicants who are not members of the majority party in the house or the largest minority party in
16 the house. The 10 commissioners may not initiate communications or reply to communications
17 about the selection process of the remaining 5 commissioners with outside persons attempting to
18 influence commissioners or commission action. The process of selecting the 5 commission members
19 not affiliated with the majority party in the house or the largest minority party in the house is not
20 subject to the right-to-know law in RSA 91-A.

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

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

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

32 662-B:4 Commission Meetings.

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

34 II. All meetings of the commission shall be open to the public. The commission shall
35 publicly post notice of its meetings on the commission website and other appropriate outlets at least
36 7 days prior to such meetings. All records of the commission, including all communications to or

1 from the commission regarding the work of the commission, shall be made available for public
2 inspection.

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

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

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

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

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

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

23 **662-B:5 Developing Redistricting Maps.**

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

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

34 (1) Advertising the availability of the proposed maps in daily newspapers in the
35 state.

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

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

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

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

7 IV.(a) No later than December 20 of any year ending in one, the commission shall submit
8 final plans for New Hampshire county commission, house, senate, executive council, and
9 congressional districts to the senate president, speaker of the house of representatives, and senate
10 and house minority leaders.

11 (b) If a chamber of the legislature fails to pass the final plans for any of the districts, the
12 commission shall review the legislative record. The commission shall then amend the final plans
13 after reviewing the legislative record, and resubmit the plans to the legislature.

14 (c) When the legislature passes final redistricting plans the plans shall be filed with the
15 secretary of state.

16 662-B:6 Redistricting Criteria.

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

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

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

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

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

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

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

HB 121-FN-A - AS INTRODUCED
- Page 5 -

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

3 662-B:7 Failure of Legislature to Reach Consensus. If a redistricting plan is not enacted, any
4 registered voter may file a petition with the New Hampshire supreme court. The supreme court may
5 appoint a special master to create the relevant plans, upon its determination that no redistricting
6 plan will be validly enacted in time for the upcoming election. If the court creates a redistricting
7 plan, nothing in this section shall prevent a subsequent legislature from enacting an otherwise
8 lawful redistricting plan.

9 662-B:8 Judicial Review. Any registered voter in this state may file a petition, within 45 days
10 after adoption of a final map on the grounds that the plan violates any federal or state law.

11 662-B:9 Compensation. Members of the commission shall receive mileage reimbursement at the
12 federal rate for expenses incurred in connection with the duties performed pursuant to this chapter.

13 662-B:10 Financial Independence.

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

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

21 662-B:11 Secretary of State to Provide Support. The secretary of state shall provide such
22 administrative and staff support as is necessary for the commission to perform its duties.

23 2 Effective Date. This act shall take effect upon its passage.

HB 121-FN-A- FISCAL NOTE
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AN ACT establishing an independent redistricting commission.

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 estimates it would budget \$10,000 to advertise in daily newspapers for qualified persons to apply to the commission to be considered for appointment. The cost of the

required administrative support from the Secretary of State's Office is unknown at this time but the Department indicates that 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 indicates 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 states this bill provides a statutory basis for bringing suit to block a redistricting plan. Petitions would fall within the Equity jurisdiction of the Supreme Court. Consolidation of individual petitions into a single suit could be handled by the Supreme Court within its existing resources. The bill requires the Supreme Court to appoint a special master if the Legislature fails to approve a redistricting plan submitted by the redistricting commission. The costs of appointment of a special master are indeterminable, with other states having paid in excess of \$30,000 for such services, with hourly rates for expert services between \$250 and \$300 per hour. Such costs would be incurred only once during the redistricting process in FY 2022 and possibly every ten years thereafter.

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