

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2019

H.B. 140
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HOUSE PRINCIPAL CLERK

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HOUSE BILL DRH10054-BKy-1

Short Title: The FAIR Act.

(Public)

Sponsors: Representatives McGrady, Reives, Stevens, and Hardister (Primary Sponsors).

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT TO ENACT THE FAIRNESS AND INTEGRITY IN REDISTRICTING (FAIR) ACT
3 AND TO AMEND THE CONSTITUTION TO ESTABLISH NONPARTISAN
4 REDISTRICTING CRITERIA.

5 The General Assembly of North Carolina enacts:

6 **SECTION 1.** Section 3 of Article II of the North Carolina Constitution reads as
7 rewritten:

8 "**Sec. 3. Senate districts; apportionment of Senators.**

9 The Senators shall be elected from districts. The General Assembly, at the first regular session
10 convening after the return of every decennial census of population taken by order of Congress,
11 shall revise the senate districts and the apportionment of Senators among those districts, subject
12 to the following requirements: requirements in Section 25 of this Article.

13 (1) Each Senator shall represent, as nearly as may be, an equal number of inhabitants, the
14 number of inhabitants that each Senator represents being determined for this purpose by dividing
15 the population of the district that he represents by the number of Senators apportioned to that
16 district;

17 (2) Each senate district shall at all times consist of contiguous territory;

18 (3) No county shall be divided in the formation of a senate district;

19 (4) When established, the senate districts and the apportionment of Senators shall remain
20 unaltered until the return of another decennial census of population taken by order of Congress."

21 **SECTION 2.** Section 5 of Article II of the North Carolina Constitution reads as
22 rewritten:

23 "**Sec. 5. Representative districts; apportionment of Representatives.**

24 The Representatives shall be elected from districts. The General Assembly, at the first regular
25 session convening after the return of every decennial census of population taken by order of
26 Congress, shall revise the representative districts and the apportionment of Representatives
27 among those districts, subject to the following requirements: requirements in Section 25 of this
28 Article.

29 (1) Each Representative shall represent, as nearly as may be, an equal number of
30 inhabitants, the number of inhabitants that each Representative represents being determined for
31 this purpose by dividing the population of the district that he represents by the number of
32 Representatives apportioned to that district;

33 (2) Each representative district shall at all times consist of contiguous territory;

34 (3) No county shall be divided in the formation of a representative district;



1 (4) When established, the representative districts ~~and the apportionment of~~
2 ~~Representatives~~ shall remain unaltered until the return of another decennial census of population
3 taken by order of Congress."

4 **SECTION 3.** Article II of the North Carolina Constitution is amended by adding a
5 new section to read:

6 **"Sec. 25. Redistricting.**

7 (1) Redistricting standards. Electoral districts shall be established for Congress and the
8 General Assembly, and may be established for local boards of education and for any unit of local
9 government in the State, and meet the following requirements:

10 (a) In the legislative drafting of each electoral district for any plan introduced for
11 consideration by the General Assembly, no use shall be made by either house
12 of the General Assembly, or any member, committee, or commission thereof,
13 or any employee, agent, or contractor of the General Assembly, of the
14 following:

15 i. Political affiliations of registered voters.

16 ii. Previous election results.

17 iii. Residential address of an incumbent or declared candidate.

18 iv. Demographic information, other than population head counts, except
19 as required to comply with federal law.

20 v. Any other data which could identify with reasonable certainty the
21 voting tendencies of any group of citizens.

22 (b) Each electoral district required by federal law or the State Constitution shall
23 be formed prior to the formation of all other electoral districts and shall be
24 formed consistent with law.

25 (c) Each electoral district shall be established on the basis of population. Any
26 deviation from the ideal population for an electoral district shall comply with
27 one person, one vote requirements and the requirements of equal protection as
28 established in federal law for Congressional districts and state law for all other
29 districts.

30 (d) Each electoral district shall consist of contiguous territory. Areas which meet
31 only at the points of adjoining corners are not contiguous.

32 (e) To the extent practicable and consistent with subsection (b), no county shall
33 be divided in the drawing of any Congressional or legislative districts. In
34 counties having a census population sufficient to support the formation of one
35 or more electoral districts solely within the county, the physical boundaries of
36 those districts shall not cross or traverse the exterior geographic line of any
37 such county. For all other counties, the minimum number of whole,
38 contiguous counties shall be combined or grouped to form electoral districts,
39 and the physical boundaries of those districts shall not cross or traverse the
40 exterior line of the multi-county grouping. Only the smallest number of
41 counties necessary to comply with population requirements shall be
42 combined.

43 (f) Each electoral district shall be as reasonably compact as practicable and
44 consistent with subsection (e), taking into account geographic features.

45 (g) For Congressional and legislative districts, a single member shall be
46 apportioned to each electoral district.

47 (h) Electoral districts may not be drawn that have the purpose of discriminating
48 on the basis of race or political affiliation.

49 (2) Process for redistricting. For all bills being considered by the General Assembly for
50 establishing electoral districts under subsection (1) of this section, the following requirements
51 shall apply:

- 1 (a) All data and methodology used in the legislative drafting of electoral districts
 2 for any plan introduced for consideration by the General Assembly must be
 3 made available to the public five legislative days prior to the introduction of a
 4 plan.
- 5 (b) One or more public hearings shall occur between first and second reading of
 6 the bill in each house of the General Assembly, provided the public hearing
 7 shall occur no sooner than five legislative days after the first reading.
- 8 (c) There shall be at least 10 legislative days between first and second reading of
 9 the bill in each house of the General Assembly.
- 10 (3) Redistricting commission. The General Assembly may authorize a redistricting
 11 commission to establish Congressional and legislative districts."

12 **SECTION 4.** The amendments set out in Sections 1 through 3 of this act shall be
 13 submitted to the qualified voters of the State at the primary election in March 2020, which
 14 election shall be conducted under the laws then governing elections in the State. Ballots, voting
 15 systems, or both may be used in accordance with Subchapter III of Chapter 163A of the General
 16 Statutes. The question to be used in the voting systems and ballots shall be:

17 "[] FOR [] AGAINST

18 A constitutional amendment providing for nonpartisan criteria and a nonpartisan
 19 process for redistricting."

20 **SECTION 5.** If a majority of votes cast on the question are in favor of the
 21 amendments set out in Sections 1 through 3 of this act, the State Board of Elections shall certify
 22 the amendments to the Secretary of State. The Secretary of State shall enroll the amendments so
 23 certified among the permanent records of that office. The amendments set out in Sections 1
 24 through 3 of this act are effective upon certification.

25 **SECTION 6.** Chapter 120 of the General Statutes is amended by adding a new
 26 Article to read:

27 "Article 1B.

28 "Nonpartisan Redistricting Process.

29 "**§ 120-4.51. Definitions.**

30 As used in this Article, unless the context requires otherwise, the following definitions apply:

- 31 (1) Census Bureau. – The United States Bureau of the Census.
- 32 (2) Commission. – The Temporary Redistricting Advisory Commission
 33 established pursuant to this Article.
- 34 (3) Federal census. – The decennial census required by federal law to be
 35 conducted by the Census Bureau in every year ending in zero.
- 36 (4) Four selecting authorities. –
 37 a. The President Pro Tempore of the Senate.
 38 b. The minority leader of the Senate.
 39 c. The Speaker of the House of Representatives.
 40 d. The minority leader of the House of Representatives.
- 41 (5) Ideal population. – The number determined by dividing the number of
 42 members in a plan into the population of the State as reported in the federal
 43 census.
- 44 (6) Plan. – A plan for reapportionment of electoral districts for Congress, the
 45 General Assembly, and for any local board of education or any unit of local
 46 government in the State, if introduced for consideration by the General
 47 Assembly, drawn up pursuant to the requirements of this Article.
- 48 (7) Political party office. – An office in the national or state organization of a
 49 political party.
- 50 (8) Public office. –
 51 a. An elective State, local, or federal office.

b. An appointive State or federal office.

(9) Relative. – An individual who is related to the person in question as father, mother, son, daughter, brother, sister, uncle, aunt, first cousin, nephew, niece, husband, wife, grandfather, grandmother, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, stepfather, stepmother, stepson, stepdaughter, stepbrother, stepsister, half brother, or half sister.

(10) VTD. – A voting tabulation district reported by the Census Bureau.

"§ 120-4.52. Preparations for redistricting.

(a) The Legislative Services Office shall acquire appropriate information, review and evaluate information, review and evaluate available facilities, and develop programs and procedures in preparation for drawing congressional and legislative redistricting plans on the basis of each federal census. Funds shall be expended for the purchase or lease of equipment and materials only with prior approval of the Legislative Services Commission.

(b) By December 31 of each year ending in zero, the Legislative Services Office shall obtain from the Census Bureau information regarding geographic and political units in this State for which federal census population data has been gathered and will be tabulated. The Legislative Services Office shall use the data so obtained to:

(1) Prepare necessary descriptions of geographic and political units for which census data will be reported and which are suitable for use as components of legislative districts.

(2) Prepare maps of counties, cities, precincts, VTDs, and other geographic units within the State which may be used to illustrate the locations of legislative district boundaries proposed in plans drawn in accordance with this Article.

(c) As soon as possible after January 1 of each year ending in one, the Legislative Services Office shall obtain from the Census Bureau the population data needed for legislative districting which the Census Bureau is required to provide this State under P.L. 94-171 and shall use that data to assign a population figure to geographic and political units based upon that data. Upon completing that task, the Legislative Services Office shall begin the preparation of congressional and legislative districting plans as required by this Article.

(d) The Legislative Services Office shall make publicly available all data and methodology to be used in the legislative drafting of electoral districts before preparing any districting plans pursuant to this Article.

(e) Upon each delivery by the Legislative Services Office to the General Assembly of a bill embodying a plan, pursuant to this Article, the Legislative Services Office shall at the earliest feasible time make available to the public the following information:

(1) Copies of the bill delivered by the Legislative Services Office to the General Assembly.

(2) Maps illustrating the plan.

(3) A summary of the standards prescribed by this Article for development of the plan.

(4) A statement of the population of each district included in the plan and the relative deviation of each district population from the ideal district population.

"§ 120-4.53. Preparations for redistricting.

(a) Not later than April 1 of each year ending in one, the Legislative Services Office shall deliver to the Principal Clerk of the Senate and the Principal Clerk of the House of Representatives and to the members of the Senate and the House of Representatives identical bills embodying a plan of legislative and congressional districting prepared in accordance with this Article. It is the intent of this Article that the bill shall be brought to a vote in either the Senate or the House of Representatives expeditiously, but not less than three legislative days after the report of the Temporary Redistricting Advisory Commission required by G.S. 120-4.56 is

1 received and made available to the members of the General Assembly. The bill shall be voted in
2 under a procedure or rule permitting no amendments except those of a purely corrective nature.
3 It is further the intent of this Article that if the bill is approved on third reading by the first house
4 in which it is considered, it shall expeditiously be brought to a vote in the second house under a
5 similar procedure or rule. If the bill embodying the plan submitted by the Legislative Services
6 Office under this subsection fails to be approved on second or third reading in either the Senate
7 or the House of Representatives, the Principal Clerk of the Senate or the Principal Clerk of the
8 House of Representatives, as the case may be, shall at once, but in no event later than seven days
9 after the date the bill failed to be approved, transmit to the Legislative Services Office
10 information which the Senate or the House of Representatives may direct by resolution regarding
11 reasons why the plan was not approved.

12 (b) If the population data for legislative districting which the Census Bureau is required
13 to provide this State under P.L. 94-171 and, if used by the Legislative Services Office, the
14 corresponding geographic referencing data file for that population data are not available to the
15 Legislative Services Office on or before February 15 of the year ending in one, the April 1 date
16 set forth in subsection (a) of this section shall be extended by a number of days equal to the
17 number of days after February 15 of the year ending in one that the federal census population
18 data and the geographic encoding and referencing data file for legislative districting become
19 available.

20 (c) If the bill embodying the plan submitted by the Legislative Services Office under
21 subsection (a) of this section fails to pass second or third reading in either house, the Legislative
22 Services Office shall prepare a bill embodying a second plan of legislative and congressional
23 districting. The bill shall be prepared in accordance with this section and, insofar as it is possible
24 to do so within the requirements of G.S. 120-4.54, with the reasons cited by the Senate or the
25 House of Representatives by resolution for the failure to approve the plan. If a second plan is
26 required under this subsection, it is the intent of this Article that the bill embodying it shall be
27 delivered to the Principal Clerk of the Senate and the Principal Clerk of the House of
28 Representatives and to the members of the Senate and the House of Representatives not later than
29 35 calendar days after the date of the vote by which the Senate or the House of Representatives
30 fails to approve the bill submitted under subsection (a) of this section. If it is necessary to submit
31 a bill under this subsection, it is the intent of this Article that the bill shall be brought to a vote
32 not less than seven calendar days after the bill is submitted and made available to the members
33 of the General Assembly, and shall be subject to amendment in the same manner as other bills.
34 It is further the intent of this Article that if the bill is approved on third reading by the first house
35 in which it is considered, it shall expeditiously be brought to a vote in the second house.

36 (d) Prior to delivering any plan of legislative and congressional districting and the bill
37 embodying that plan in accordance with this section, the Legislative Services Office shall provide
38 to persons outside its staff only such information regarding the plan as may be required by
39 policies agreed upon by the Temporary Redistricting Advisory Commission. This subsection
40 does not apply to population and geographic data furnished to the Legislative Services Office by
41 the Census Bureau.

42 **"§ 120-4.54. Redistricting standards.**

43 (a) No district shall be drawn for the purpose of favoring a political party, incumbent
44 legislator, or member of Congress, or other person or group, or for the purpose of augmenting or
45 diluting the voting strength of a language or racial minority group. Except to the extent required
46 by the North Carolina or United States Constitutions, federal law, and applicable court decisions,
47 in the legislative drafting of electoral districts for any plan, no use shall be made of:

- 48 (1) Political affiliations of registered voters.
- 49 (2) Previous election results.
- 50 (3) Residential address of an incumbent or declared candidate.

- 1 (4) Demographic information, other than population head counts, except as
2 required to comply with federal or State law.
- 3 (5) Any other data which could identify with reasonable certainty the voting
4 tendencies of any group of citizens.
- 5 (b) Electoral districts shall be drawn in a manner that complies with requirements of
6 federal and State law.
- 7 (c) Electoral districts shall be established on the basis of population.
- 8 (d) Senatorial and representative districts, as well as electoral districts for local boards of
9 education and for any unit of local government in the State, shall each have a population that is
10 within five percent (5%) of the ideal population for that district.
- 11 (e) Congressional districts shall each have a population as nearly equal as practicable to
12 the ideal population, but in all cases within one-tenth of a percent (0.1%) of the ideal population.
- 13 (f) Electoral districts shall be composed of convenient contiguous territory. Areas which
14 meet only at the points of adjoining corners are not contiguous.
- 15 (g) To the extent consistent with other standards provided by this section, district
16 boundaries in a plan shall coincide with the boundaries of political subdivisions of the State. In
17 Senate and State House plans, the "whole county" requirements established by the North Carolina
18 Constitution shall be complied with in a manner consistent with federal law. The number of
19 counties and cities divided among more than one district shall be as small as possible, but in the
20 case of cities located in more than one county, minimizing the division of counties prevails. The
21 division of VTDs shall also be minimized consistent with the other standards of this section.
- 22 (h) Electoral districts shall be reasonably compact in form, to the extent consistent with
23 the standards established by this section. In general, reasonably compact districts are those which
24 are not irregularly shaped, to the extent of natural or geographic features or those of VTDs. If it
25 is necessary to compare the relative compactness of two or more districts, or of two or more
26 alternative districting plans, the tests prescribed by this subsection may be used as follows:
- 27 (1) Length-width compactness. – The compactness of a district is greatest when
28 the length of the district and the width of the district are equal. The measure
29 of a district's compactness is the absolute value of the difference between the
30 length and the width of the district. In general, the length-width compactness
31 of a district is calculated by measuring the distance from the northernmost
32 point or portion of the boundary of a district to the southernmost point or
33 portion of the boundary of the same district and the distance from the
34 westernmost point or portion of the boundary of the district to the easternmost
35 point or portion of the boundary of the same district. The absolute values
36 computed for individual districts under this subdivision may be cumulated for
37 all districts in a plan in order to compare the overall compactness of two or
38 more alternative districting plans for the State or for a portion of the State.
- 39 (2) Perimeter compactness. – The compactness of a district is greatest when the
40 distance needed to traverse the perimeter boundary of a district is as short as
41 possible. The total perimeter distance computed for individual districts under
42 this subdivision may be cumulated for all districts in a plan in order to compare
43 the overall compactness of two or more alternative districting plans for the
44 State or for a portion of the State.
- 45 **§ 120-4.55. Temporary Redistricting Advisory Commission.**
- 46 (a) Not later than February 15 of each year ending in one, a five-member Temporary
47 Redistricting Advisory Commission shall be established as provided by this section. The
48 Commission's only functions shall be those prescribed by G.S. 120-4.56.
- 49 (b) Each of the four selecting authorities shall certify to the Chair of the State Board of
50 Elections the authority's appointment of a person to serve on the Commission.

1 (c) Within 10 days after the four selecting authorities have certified their respective
2 appointments, but in no event later than February 15 of the year ending in one, the four
3 commission members so appointed shall select, by a vote of at least three members, and certify
4 to the Chair of the State Board of Elections the fifth Commission member, who shall serve as
5 chairperson.

6 (d) A vacancy on the Commission shall be filled by the initial selecting authority within
7 15 days after the vacancy occurs.

8 (e) Members of the Commission shall receive from funds appropriated to the General
9 Assembly per diem, travel expenses, and reimbursement for other necessary expenses incurred
10 in performing their duties as provided by G.S. 138-5 or G.S. 138-6 as applicable.

11 (f) No person shall be appointed to the Commission who:

12 (1) Is not a registered voter of this State at the time of selection.

13 (2) Holds public office or political party office.

14 (3) Is a relative of or is employed by a member of the General Assembly or of the
15 United States House of Representatives or Senate, or is employed directly by
16 the General Assembly or by the United States House of Representatives or
17 Senate.

18 **"§ 120-4.56. Duties of Commission.**

19 The functions of the Commission shall be as follows:

20 (1) Answer a written request for direction made by the Legislative Services Office
21 when in preparation of congressional or legislative plans as required by this
22 Article, the Legislative Services Office is confronted with the necessity to
23 make any decision for which no clearly applicable guideline is provided by
24 G.S. 120-4.54 and requests direction from the Commission.

25 (2) Authorize by adoption of policies the release of information under
26 G.S. 120-4.53(e).

27 (3) Upon the delivery by the Legislative Services Office to the General Assembly
28 of a bill embodying an initial plan for congressional or legislative districting,
29 as required by G.S. 120-4.53(a), the Commission shall:

30 a. As expeditiously as reasonably possible, schedule and conduct at least
31 three public hearings, in different geographic regions of the State, on
32 that plan.

33 b. Following the hearings, promptly prepare and submit to the Principal
34 Clerk of the Senate and the Principal Clerk of the House of
35 Representatives a report summarizing information and testimony
36 received by the Commission in the course of the hearings. The
37 Commission's report shall include any comments and conclusions
38 which its members deem appropriate on the information and testimony
39 received at the hearings or otherwise presented to the Commission.
40 The report as to a plan shall be submitted no later than 14 calendar
41 days after the date the bill embodying an initial plan is delivered to the
42 General Assembly."

43 **SECTION 7.** Section 6 of this act becomes effective January 1, 2021, if the
44 constitutional amendments proposed by Sections 1 through 3 of this act are approved by the
45 qualified voters as provided in Sections 4 and 5 of this act.

46 **SECTION 8.** The remainder of this act is effective when it becomes law.