



HOUSE BILL 140: The FAIR Act.

2019-2020 General Assembly

Committee:	House Redistricting. If favorable, re-refer to Rules, Calendar, and Operations of the House	Date:	October 24, 2019
Introduced by:	Reps. McGrady, Reives, Stevens, Hardister	Prepared by:	Erika Churchill and Jessica Sammons, Committee Counsel
Analysis of:	First Edition		

OVERVIEW: *House Bill 140 would amend the Constitution of North Carolina, effective upon a vote of the people, to establish a process for redistricting, including the option of a redistricting commission for Congressional and legislative districts.*

CURRENT LAW: Following each federal decennial census, the General Assembly of North Carolina engages in redistricting of congressional districts and legislative districts, as required by the U.S. and N.C. Constitutions. The constitutional provisions addressing redistricting are as follows:

United States Constitution

Article I, Section 2

Clause 3: Representatives . . . shall be apportioned among the several States which may be included within this Union, according to their respective Numbers, which shall be determined by adding to the whole Number of free Persons . . . [and] three fifths of all other Persons. The actual Enumeration shall be made within three Years after the first Meeting of the Congress of the U.S., and within every subsequent Term of ten Years, in such Manner as they shall by Law direct.

Amendment XIV

SECTION 2. Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed.

North Carolina Constitution

Article II: Legislative

Sec. 2. Number of Senators.

The Senate shall be composed of 50 Senators, biennially chosen by ballot.

Sec. 3. Senate districts; apportionment of Senators.

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

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- (1) Each Senator shall represent, as nearly as may be, an equal number of inhabitants, the number of inhabitants that each Senator represents being determined for this purpose by dividing the population of the district that he represents by the number of Senators apportioned to that district;
- (2) Each senate district shall at all times consist of contiguous territory;
- (3) No county shall be divided in the formation of a senate district;
- (4) When established, the senate districts and the apportionment of Senators shall remain unaltered until the return of another decennial census of population taken by order of Congress.

Sec. 4. Number of Representatives.

The House of Representatives shall be composed of 120 Representatives, biennially chosen by ballot.

Sec. 5. Representative districts; apportionment of Representatives.

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

- (1) Each Representative shall represent, as nearly as may be, an equal number of inhabitants, the number of inhabitants that each Representative represents being determined for this purpose by dividing the population of the district that he represents by the number of Representatives apportioned to that district;
- (2) Each representative district shall at all times consist of contiguous territory;
- (3) No county shall be divided in the formation of a representative district;
- (4) When established, the representative districts and the apportionment of Representatives shall remain unaltered until the return of another decennial census of population taken by order of Congress.

In North Carolina, a bill creating an official redistricting plan follows the same course through the General Assembly as any other legislation, culminating in a statute setting forth the redistricting plan for House, Senate, or Congress, which statute specifies the counties, voting tabulation districts, and census blocks that comprise each district. House, Senate, and Congressional plans must be approved by the full General Assembly. However, a redistricting plan is not subject to gubernatorial veto if it is in a bill that contains no other matter. The maps and statistics generated during the redistricting process are not part of the legislation that enacts the plans, but can be used as tools to evaluate the plans.

Case law at both the federal and State level have set additional criteria and factors that the legislative body must take into consideration when enacting new districting plans, such as:

- Population equality (One person, one vote).
- The Voting Rights Act of 1965.
- Stephenson v. Bartlett (legislative redistricting).
- Gerrymandering.

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BILL ANALYSIS: Subject to an affirmative vote of the people during the March 2020 primary, the bill would amend the North Carolina Constitution to establish redistricting standards, create a redistricting process for establishing districts by legislative act, and authorize the General Assembly to create a redistricting commission for House, Senate, and Congressional plans.

- **Redistricting Standards.** The constitutional amendment would require that any electoral districts established for House, Senate, and Congress, local boards of education, and any unit of local government in the State meet the following requirements:
 - In the legislative drafting for any plan introduced for consideration by the General Assembly, no use could be made of the following:
 - Political affiliations of registered voters.
 - Previous election results.
 - Residential address of an incumbent or declared candidate.
 - Demographic information, other than population head counts, except as required to comply with federal law.
 - Any other data which could identify with reasonable certainty the voting tendencies of any group of citizens.
 - Each electoral district required by federal law or the State Constitution is to be formed prior to the formation of all other electoral districts, and formed consistent with law.
 - Each electoral district is to be established on the basis of population. Any deviation from the ideal population for an electoral district shall comply with federal law for Congressional districts and state law for all other districts.
 - Each electoral district is to consist of contiguous territory. Point contiguity would not be considered contiguity.
 - To the extent practicable and consistent with federal and State law, no county is to be divided in the drawing of any Congressional or legislative districts. If a county has a census population sufficient to support the formation of one or more electoral districts solely within that county, the physical boundaries of those districts are not cross the county line. Otherwise, the plan is to group the smallest number of counties necessary to combine the minimum number of whole, contiguous counties to form electoral districts, and the physical boundaries of those districts are not cross the multi county grouping boundary.
 - Each electoral district is to be as reasonably compact as practicable, taking into account geographic features.
 - For House, Senate, and Congress, single member districts would be required.
 - Electoral districts are not to be drawn with the purpose of discriminating on the basis of race or political affiliation.
- **Redistricting Process.** For all bills being considered by the General Assembly for establishing electoral districts under subsection (1) of this section, the following requirements shall apply:
 - All data and methodology used in the legislative drafting of electoral districts for any plan introduced for consideration by the General Assembly must be made available to the public five legislative days prior to the introduction of a plan.

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- One or more public hearings shall occur between first and second reading of the bill in each house of the General Assembly, provided the public hearing shall occur no sooner than five legislative days after the first reading.
 - There shall be at least 10 legislative days between first and second reading of the bill in each house of the General Assembly.
- **Redistricting Commission.** Constitutionally, the General Assembly would be authorized to create a redistricting commission to establish Congressional and legislative districts. The bill would also implement this provision, by establishing a five member Temporary Redistricting Advisory Commission in each year ending in one. The Commission's function would be as follows:
- Answer a written request for direction made by the Legislative Services Office (LSO) when in preparation of congressional or legislative plans, the Legislative Services Office is confronted with the necessity to make any decision for which no clearly applicable guideline is provided by the statutes.
 - Authorize by adoption of policies the release of information.
 - Upon the delivery by the LSO to the General Assembly of a bill embodying an initial plan for congressional or legislative districting, the Commission must do all of the following:
 - Schedule and conduct at least three public hearings on that plan, in different geographic regions of the State.
 - Following the hearings, promptly prepare and submit to the Principal Clerks a report summarizing information and testimony received by the Commission in the course of the hearings. The report as to a plan shall be submitted no later than 14 calendar days after the date the bill embodying an initial plan is delivered to the General Assembly.

EFFECTIVE DATE: January 1, 2021, if the constitutional amendments are approved by a majority vote of the people.