

**GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2021**

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**SENATE BILL 581**

Short Title:   Redistricting Criteria for 2021. (Public)

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Sponsors:     Senators Clark and Fitch (Primary Sponsors).

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Referred to:   Rules and Operations of the Senate

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April 7, 2021

A BILL TO BE ENTITLED

1  
2 AN ACT TO ESTABLISH CRITERIA FOR LEGISLATIVE AND CONGRESSIONAL  
3 REDISTRICTING FOLLOWING THE RETURN OF THE 2020 DECENNIAL CENSUS.

4       Whereas, following the receipt on March 2, 2011, of population data from the 2010  
5 decennial census pursuant to P.L. 94-171 (2010 Redistricting Data File), the General Assembly  
6 realigned districts for the following bodies on the following dates:

- 7       (1)    House of Representatives of the United States Congress on July 28, 2011, in  
8             S.L. 2011-403, as amended by S.L. 2011-414, hereinafter referred to as Senate  
9             Bill 453.
- 10       (2)   North Carolina Senate on July 27, 2011, in S.L. 2011-402, as amended by S.L.  
11             2011-413, hereinafter referred to as Senate Bill 455.
- 12       (3)   North Carolina House of Representatives on July 28, 2011, in S.L. 2011-404,  
13             as amended by S.L. 2011-416, hereinafter referred to as House Bill 937; and

14       Whereas, on February 5, 2016, the United States District Court for the Middle District  
15 of North Carolina held in *Harris v. McCrory*, 159 F. Supp. 3d 600, that Senate Bill 453 was an  
16 unconstitutional racial gerrymander; and

17       Whereas, on February 19, 2016, the General Assembly enacted a remedial plan for  
18 congressional districts in S.L. 2016-1, hereinafter referred to as Senate Bill 2; and

19       Whereas, on October 28, 2019, a three-judge panel of the superior court division of  
20 the General Court of Justice in *Harper v. Lewis*, 19 CVS 012667, concluded that the  
21 congressional districts enacted in Senate Bill 2 were unconstitutional extreme partisan  
22 gerrymanders and enjoined the State from holding elections under those districts; and

23       Whereas, on November 15, 2019, the General Assembly enacted a remedial plan for  
24 congressional districts for the 2020 general election in S.L. 2019-249, hereinafter referred to as  
25 House Bill 1029; and

26       Whereas, on August 11, 2016, the United States District Court for the Middle District  
27 of North Carolina held in *Covington v. North Carolina*, 316 F.R.D. 117, aff'd, 137 S. Ct. 2211,  
28 that portions of Senate Bill 455 and House Bill 937 were unconstitutional racial gerrymanders;  
29 and

30       Whereas, on August 31, 2017, the General Assembly enacted remedial plans for  
31 legislative districts for use beginning with the 2018 general election in S.L. 2017-208, hereinafter  
32 referred to as House Bill 927, and S.L. 2017-207, hereinafter referred to as Senate Bill 691; and

33       Whereas, on January 21, 2018, the United States District Court for the Middle District  
34 of North Carolina held in *Covington v. North Carolina*, 283 F. Supp. 3d 410, aff'd in part and  
35 rev'd in part, 138 S. Ct. 2548, that certain districts realigned in House Bill 927 and Senate Bill



1 691 continued to be unconstitutional racial gerrymanders and instituted its own remedial districts  
2 for use beginning with the 2018 general election; and

3       Whereas, on November 2, 2018, a three-judge panel of the superior court division of  
4 the General Court of Justice in NAACP v. Lewis, 18 CVS 002322, held that certain districts  
5 realigned by the General Assembly in 2017 violated the North Carolina Constitution's prohibition  
6 against mid-decade redistricting; and

7       Whereas, on September 3, 2019, a three-judge panel of the superior court division of  
8 the General Court of Justice in Common Cause v. Lewis, 18 CVS 014001, held that additional  
9 portions of House Bill 927 and Senate Bill 691 were unconstitutional partisan gerrymanders; and

10       Whereas, on September 17, 2019, the General Assembly enacted remedial plans for  
11 legislative districts for use in the 2020 general election in S.L. 2019-220, hereinafter referred to  
12 as House Bill 1020, and S.L. 2019-219, hereinafter referred to as Senate Bill 692; and

13       Whereas, on October 28, 2019, the three-judge panel of the superior court division of  
14 the General Court of Justice approved the remedial maps for use in the 2020 general election;  
15 and

16       Whereas, every congressional and legislative election conducted in the State of North  
17 Carolina during the 2010 decade was conducted with the use of unconstitutional congressional  
18 and legislating districting plans that contained either racial gerrymanders, partisan gerrymanders,  
19 or both; and

20       Whereas, it is the intent of the General Assembly to avoid racial and partisan  
21 gerrymanders in future congressional and legislative districts; Now, therefore,  
22 The General Assembly of North Carolina enacts:

23       **SECTION 1.** Following the return of the 2020 federal decennial census, for the  
24 purpose of revising districts and the apportionment among those districts of members of the  
25 Senate and the House of Representatives of the General Assembly and the House of  
26 Representatives of the United States Congress, the following requirements shall apply:

27       (1)     Baseline criteria. – Baseline criteria, as defined below, shall have priority over  
28 any other redistricting criteria. For purposes of this act, baseline criteria refers  
29 to all of the following, in order of priority:

30       a.     Equal population. – Each member of each body identified above shall  
31 represent, as nearly as may be, an equal number of inhabitants. The  
32 ideal population for a district is the population of the State, as reported  
33 by the 2020 federal decennial census, divided by the number of  
34 members in a plan for one of the bodies identified above.

35       b.     Population deviation. – For purposes of this act, "total population  
36 deviation" refers to the difference between the population of the most  
37 populous district and the least populous district, and "population  
38 deviation from ideal" refers to the difference between the actual  
39 population of a district and the ideal population for that district.  
40 Population deviations for each body identified above shall be as  
41 follows:

42       1.     Congress. – Population deviation from ideal shall be zero or  
43 one person, unless a higher deviation is necessary to achieve  
44 or optimize a compelling State interest associated with the  
45 baseline criteria.

46       2.     North Carolina Senate and House of Representatives. – Total  
47 population deviation shall not exceed ten percent (10%).  
48 Population deviation from ideal shall not exceed five percent  
49 (5%), in accordance with *Stephenson v. Bartlett*, 355 N.C. 354,  
50 562 S.E.2d 377 (2002).

- 1 c. Contiguity. – All districts shall be contiguous. Contiguity by water is  
2 sufficient. To the extent practicable, areas within a district should be  
3 easily accessible to one another without requiring travel through  
4 another district.
- 5 d. County groupings. – Legislative districts shall be drawn within county  
6 groups as required by *Stephenson v. Bartlett*, 355 N.C. 354, 562 S.E.2d  
7 377 (2002), *Stephenson v. Bartlett*, 357 N.C. 301, 582 S.E.2d 247  
8 (2003), *Dickson v. Rucho*, 367 N.C. 542, 766 S.E.2d 238 (2014), and  
9 *Dickson v. Rucho*, 368 N.C. 481, 781 S.E.2d 460 (2015). Within  
10 county groupings, county lines shall not be crossed except as  
11 authorized by the cases identified in this sub-subdivision.
- 12 e. Political boundaries. – All districts shall minimize the number of split  
13 precincts and municipalities.
- 14 f. Communities of interest. – All districts shall minimize the number of  
15 split communities of interest. For purposes of this act, "communities  
16 of interest" are geographically contiguous areas of cohesive  
17 populations of people that share common social, cultural, and  
18 economic interests that should be included within a single district for  
19 purposes of their effective, fair, and equitable representation. A  
20 community of interest does not include a community based on political  
21 affiliation or relationships with a political party, elected official, or  
22 candidate for office. Public and private institutions of higher education  
23 that offer a postsecondary degree, as defined in G.S. 116-15(a2)(1),  
24 and have a residential campus, including off-site housing near the  
25 campus, constitute communities of interest.
- 26 g. Compactness. – Reasonable efforts shall be made to ensure that all  
27 districts are compact. The following measures shall be used for  
28 assessing compactness:
- 29 1. The number of cut edges in a plan, as described in  
30 Recombination, A family of Markov chains for redistricting by  
31 Daryl DeFord, Moon Duchin, and Justin Solomon in an article  
32 published on March 27, 2020, and available at  
33 <https://mggg.org/uploads/ReCom.pdf>.
- 34 2. Reock, i.e., dispersion, and Polsby-Popper, i.e., perimeter,  
35 assessments.
- 36 (2) Candidate considerations. – No effort shall be made to create a district  
37 favorable or unfavorable to any candidate.
- 38 (3) Partisan advantage. – No effort shall be made to maintain or establish an  
39 electoral advantage for any party in any plan. Based on an outlier analysis  
40 conducted in accordance with subdivision (6) of this section, except as  
41 necessary to comply with State and federal law, a plan shall not advantage a  
42 political party beyond the most common seat distribution for that plan, except  
43 as follows:
- 44 a. For a congressional plan, by no more than one district.
- 45 b. For a plan for the North Carolina Senate, by no more than two districts.
- 46 c. For a plan for the North Carolina House of Representatives, by no  
47 more than three districts.
- 48 (4) Partisan election data. – Election results data may only be used as part of an  
49 ensemble analysis of an entire plan, including an outlier analysis, as provided  
50 in subdivision (6) of this section. Election results data shall not be used in  
51 order to provide any party a disproportionate number of seats in a plan, and a

- 1 composite index of election results shall not be used. Only election results data  
2 from elections for the following offices occurring in and after the year 2016  
3 shall be considered:
- 4 a. All offices of the Council of State.
  - 5 b. President of the United States.
  - 6 c. United States Senate.
- 7 (5) Partisan analysis. – To add context and validity to the outlier analysis  
8 performed pursuant to subdivision (6) of this section, the third-party  
9 consultant identified in subdivision (6) of this section shall produce  
10 rank-ordered marginal histograms that show typical vote fractions of all  
11 districts in each plan from the district that favors each political party the most  
12 to the district that favors each political party the least. Additionally, all plans  
13 shall be evaluated based on elections from each general election in at least the  
14 previous 10 years for each of the offices identified in sub-subdivisions a., b.,  
15 and c. of subdivision (4) of this section with different statewide vote counts.  
16 To the extent possible, the information produced pursuant to this subdivision  
17 shall comport with the methodology discussed in the article Quantifying  
18 Gerrymandering in North Carolina by Gregory Herschlag, Han Sung Kang,  
19 Justin Luo, Christy Vaughn Graves, Sachet Bangia, Robert Ravier, and  
20 Jonathan C. Mattingly, published in volume 7, issue 1, of the 2020 edition of  
21 the journal Statistics and Public Policy.
- 22 (6) Outlier analysis. – All districting plans shall be subjected to an analysis of  
23 their probable partisan effects prior to their adoption by any committee of the  
24 General Assembly or enactment by the General Assembly. This process shall  
25 be performed by a third-party consultant. The third-party consultant shall  
26 produce at least all of the following:
- 27 a. An ensemble of at least 20,000 alternative plans that meet the  
28 requirements of this section. Election data shall not be used in the  
29 construction of the ensemble.
  - 30 b. An analysis of the plans using a method for which the consultant shall  
31 provide a detailed description.
  - 32 c. Evidence that the number of plans drawn for the analysis is sufficient  
33 for the statistics and diagrams presented to have stabilized.
  - 34 d. Evidence that choices made in generating the plans are consistent with  
35 the policy priorities specified in this section and do not affect  
36 qualitative outcomes.
- 37 (7) Summary metrics. – The following summary metrics shall be used as part of  
38 the outlier analysis described in subdivision (6) of this section:
- 39 a. Declination. – The method developed by Gregory S. Warrington to  
40 identify possible partisan gerrymanders by analyzing voter  
41 distributions.
  - 42 b. Gerrymandering index. – The method developed by Jonathan  
43 Mattingly to quantify and provide relative context for packing and  
44 cracking in districting plans by measuring how individual districts  
45 deviate from an expected percentage of partisan voters.
- 46 (8) Consultant disclosure. – Notwithstanding any other provision of law, if any  
47 member, committee, officer, or employee of the General Assembly hires or  
48 consults with any person or entity not employed by the General Assembly  
49 regarding the realignment of districts for any plan, all related information is  
50 no longer confidential and is a public record. The member, committee, officer,  
51 or employee of the General Assembly shall publish the name of the person or

- 1                   entity and all communications with that person or entity within 24 hours of
- 2                   hiring that person or entity and receiving any communication from that person
- 3                   or entity.
- 4           (9)   Map source disclosure. – If any member, committee, officer, or employee of
- 5                   the General Assembly receives a plan to realign districts from any person or
- 6                   entity that is not a member of or employed by the General Assembly, the
- 7                   member, committee, officer, or employee shall publish the plan and the name
- 8                   of the person or entity that provided the plan within 24 hours of receipt.
- 9           (10)   Privileged relationship disclosure. – Notwithstanding any other provision of
- 10                  law, including G.S. 120-133(b), any attorney-client privilege, confidentiality,
- 11                  or other privilege that may exist between any member, committee, officer, or
- 12                  employee of the General Assembly and any person or entity, including any
- 13                  attorney, regarding the realignment of districts pursuant to this act shall
- 14                  dissolve upon the act establishing the relevant district plan becoming law.
- 15   **SECTION 2.** This act is effective when it becomes law.