

From the Concord Monitor, Dec. 1, 2018, by Ethan DeWitt

[Independent Redistricting Commission Bills proposed in NH]

LWVNH comments added in italics

Nearly two years ago, an effort to overhaul New Hampshire's once-a-decade redistricting process fell flat, sputtering out of committee after unified Republican opposition. *(LWVNH has been testifying in support of Independent Redistricting Council bills for more than 10 years)*

This session, Democrats are hoping to try again. *(LWVNH and others are encouraging Republicans to co-sponsor these bills too.)*

In a legislative services request filed last month, Rep. Marjorie Smith, a Durham Democrat, is pressing to create an independent redistricting commission to help redraw the state's 424 House and Senate districts. *(LWVNH has met with Rep. Smith and others on her bill, which draws heavily on the recommendations of the Brennan Center of NYU—League's favored source for factual information related to gerrymandering)*

And Democratic leaders in the state Senate, whose filing period extends later than the House, say they're hoping to match that effort with a bill of their own. "Redistricting ultimately becomes partisan, but the formation of the committee to try to make it un-partisan I think is a very popular idea," said Senate Democratic leader Donna Soucy of Manchester.

But the proposal faces a history of recent Legislative failures and a potential veto from Gov. Chris Sununu, whose office appears skeptical. "The current system works well," Ben Vihstadt, spokesman for the governor, said on Thursday.

Changing the process would mean a shift of decades of precedent.

Since 1964, New Hampshire's constitution has required the apportionment of districts in the House (Part 2, Article 9) and Senate (Part 2, Article 26) every 10 years according to the latest census figures. That apportionment is carried out by the Legislature, with a veto option for the governor, the constitution says, and the districts themselves must be as close to even as possible. *(next redistricting will be done in 2021.)*

But Democrats have long charged that the latest state Senate map, drawn in 2011 under a Republican-majority Legislature, is tilted to create built-in advantages for certain Republican members. For years, they've pressed for a nonpartisan commission to carve up districts using independent reasoning, and passing those recommendations onto the Legislature. *NHPR did a thorough series on the topic several years ago, with charts that show the skewed effect in the NH Senate. Here is the link to one of those reports: <http://www.nhpr.org/post/redistricting-swing-state-nhs-party-politics>*

With new majorities, Democrats now envision moving a proposal to Sununu's desk.

"There is nobody who is saying this is going to be easy to accomplish," Smith said. "I hope it's easier to pass the bill than it will be to draw the district."

Both Smith and Soucy say their chambers' respective bills will largely conform to the structure of a pair of bills in 2017, which allowed for a commission with appointees from both political parties that would meet ahead of the redistricting deadline. Those commissions, laid out in House Bill 203 and Senate Bill 107, would then pass their recommendations to the Legislature, which would still have final approval. *(League testified in support of both of these bills.)*

“The primary goal is to make the populations as equal as possible, and then to do so in such a way that you have similar situated communities of interest,” Soucy said.

Smith and Soucy said they’ve heard interest for an independent panel from “an overwhelming majority of” constituents. To Smith a robust selection process for commissioners – akin to jury selection – and a strong set of guidelines for the redistricting itself could help restore bipartisan faith in the process.

Of course, political considerations may also hover. With an unpopular president and a census year that this time coincides with a presidential election, state Democrats may have a chance at keeping or even strengthening their majorities ahead of 2021. That prospect could make sitting back and waiting for a potential chance to draw districts in the majority a temptation for the party.

Smith dismissed that idea, arguing the motivation behind her bill was one on principle, and that the time for Democrats to get the overhaul is when they’re in power, not out of it.

And she pointed to 2006, when the newly Democrat-controlled Legislature eliminated straight-ticket voting – the ability to check a box and automatically vote in all party candidates. That decision was made with the process, not the politics, in mind, Smith said.

“People told us there would be a time when straight-ticket voting would be very beneficial to us,” she said, alluding to last month’s midterm elections when all major races went to Democrats except the governor’s. “(But) we believed we had an obligation to create the fairest path to make sure that educated voters could end up with the best candidate. And I see this in the same way.”

She added: “Sure we could gamble and hope that we will be in the majority again in 2020, and then we could set up districts that favor Democrats. I believe that’s wrong, and I do not want to be part of that system, and that’s why I’m strongly in favor of an independent commission.”

But some Republicans say their opposition two years ago was rooted just as much in principle, and a shift in power isn’t going to change that.

“I don’t think it’s needed in this state,” said Republican Sen. Regina Birdsell of Hampstead. For Birdsell, the former chairwoman of the Senate Election Committee, the rationale is simple: The constitution put the job of redistricting in the Legislature’s hands, and it is the Legislature that must do that job.

“The Legislature actually has to live with the result they put together,” she said. “Just like any child, when they make a decision, they have to live with the results of the decision they made, whether it’s good or it’s bad. . . . I think we need to feel more of the pain, feel more of the results of our work.”

The decision-making process is already constrained by the constitution, which sets out population size standards for each district, as well as two Civil Rights-era Supreme Court rulings that laid out criteria for state legislative districts, Birdsell said. Those two factors alone greatly reduce the hand of the Legislature, she said.

“In New Hampshire you have a very narrow way to draw the lines,” she argued. “I was here for the last redistricting, and I do remember that they struggled mightily with trying to keep within our constitution and the federal law.” *(Some League members remember very well the frustration and embarrassment of the 2011 process, where the legislators assigned to explain the plan at public hearings around the state had to tell the public they hadn’t yet seen the plan, that it was being drawn up by a small group of legislators in private session.)*

And Birdsell said she didn’t see the process as flawed, nor the recent results as unfair. Since the last redistricting effort, all major state offices have flipped at least once, from the governor’s office to the Executive Council to both Legislative chambers, Birdsell pointed out.

That last point was echoed by the governor's office. "As evidenced by the last four elections . . . New Hampshire voters are independent-minded," Vihstadt said. Vihstadt invoked the hotly contested redistricting process of 2002 – in which an impasse between the governor and Legislature led the state Supreme Court to mandate the districts be drawn by an independent consultant – as an example of the mechanism available to rectify unfairness. *(Again, many League members and others will remember that foolish attempt—huge districts created, often with small towns having no resident serving in the legislature and all the reps coming from the one large town within the giant district...)*

"Courts provide a robust backstop against unfair and unconstitutional legislative maps, and judges have recently not hesitated to strike down maps that truly create an uneven playing field," Vihstadt said.

It's a position that could make a push for an overhaul a non-starter. But Smith said she'd hold onto hope.

"There's a category of bills where [the Governor] has taken one position and then subsequently taken another position," she said of Sununu. "So it's really hard to predict. I'm hoping that the governor will recognize the importance of supporting such an effort, particularly since he talks so often about the need to work across the aisle."