

109TH CONGRESS
1ST SESSION

H. R. 2642

To prohibit States from carrying out more than one Congressional redistricting after a decennial census and apportionment, to require States to conduct such redistricting through independent commissions, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

MAY 25, 2005

Mr. TANNER (for himself, Mr. COOPER, Mr. CHANDLER, Mr. COSTA, Mr. CARDOZA, Mr. BOYD, Mr. CASE, Mr. MOORE of Kansas, Mr. SCHIFF, Mr. FORD, and Mr. MATHESON) introduced the following bill; which was referred to the Committee on the Judiciary

A BILL

To prohibit States from carrying out more than one Congressional redistricting after a decennial census and apportionment, to require States to conduct such redistricting through independent commissions, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE; FINDING OF CONSTITUTIONAL**
2 **AUTHORITY.**

3 (a) **SHORT TITLE.**—This Act may be cited as the
4 “Fairness and Independence in Redistricting Act of
5 2005”.

6 (b) **FINDING.**—Congress finds that it has the author-
7 ity to establish the terms and conditions States must fol-
8 low in carrying out Congressional redistricting after an
9 apportionment of Members of the House of Representa-
10 tives because—

11 (1) the authority granted to Congress under ar-
12 ticle I, section 4 of the Constitution of the United
13 States gives Congress the power to enact laws gov-
14 erning the time, place, and manner of elections for
15 Members of the House of Representatives; and

16 (2) the authority granted to Congress under
17 section 5 of the fourteenth amendment to the Con-
18 stitution gives Congress the power to enact laws to
19 enforce section 2 of such amendment, which requires
20 Representatives to be apportioned among the several
21 States according to their number.

22 **SEC. 2. LIMIT ON CONGRESSIONAL REDISTRICTING AFTER**
23 **AN APPORTIONMENT.**

24 The Act entitled “An Act for the relief of Doctor Ri-
25 cardo Vallejo Samala and to provide for congressional re-
26 districting”, approved December 14, 1967 (2 U.S.C. 2e),

1 is amended by adding at the end the following: “A State
2 which has been redistricted in the manner provided by law
3 after an apportionment under section 22(a) of the Act en-
4 titled ‘An Act to provide for the fifteenth and subsequent
5 decennial censuses and to provide for an apportionment
6 of Representatives in Congress’, approved June 18, 1929
7 (2 U.S.C. 2a), may not be redistricted again until after
8 the next apportionment of Representatives under such sec-
9 tion, unless a court requires the State to conduct such
10 subsequent redistricting to comply with the Constitution
11 or to enforce the Voting Rights Act of 1965 (42 U.S.C.
12 1973 et seq.).”.

13 **SEC. 3. REQUIRING REDISTRICTING TO BE CONDUCTED**
14 **THROUGH PLAN OF INDEPENDENT STATE**
15 **COMMISSION OR PLAN OF HIGHEST STATE**
16 **COURT.**

17 (a) USE OF PLAN REQUIRED.—

18 (1) IN GENERAL.—Notwithstanding any other
19 provision of law, any Congressional redistricting con-
20 ducted by a State shall be conducted in accordance
21 with—

22 (A) the redistricting plan developed by the
23 independent redistricting commission estab-
24 lished in the State, in accordance with section
25 4; or

1 (B) if the plan developed by such commis-
2 sion is not enacted into law, the redistricting
3 plan selected by the highest court in the State
4 or developed by a United States district court,
5 in accordance with section 5.

6 (2) OTHER CRITERIA AND PROCEDURES PER-
7 MITTED.—Nothing in this Act or the amendments
8 made by this Act may be construed to prohibit a
9 State from conducting Congressional redistricting in
10 accordance with such criteria and procedures as the
11 State considers appropriate, to the extent that such
12 criteria and procedures are consistent with the appli-
13 cable requirements of this Act and the amendments
14 made by this Act.

15 (b) CONFORMING AMENDMENT.—Section 22(c) of
16 the Act entitled “An Act to provide for the fifteenth and
17 subsequent decennial censuses and to provide for an ap-
18 portionment of Representatives in Congress”, approved
19 June 18, 1929 (2 U.S.C. 2a(c)), is amended by striking
20 “in the manner provided by the law thereof” and insert-
21 ing: “in the manner provided by the Fairness and Inde-
22 pendence in Redistricting Act of 2005”.

23 **SEC. 4. INDEPENDENT REDISTRICTING COMMISSION.**

24 (a) APPOINTMENT OF MEMBERS; ELIGIBILITY.—

1 (1) APPOINTMENT OF MEMBERS.—Each State
2 shall establish an independent redistricting commis-
3 sion composed of—

4 (A) a chair, who shall be appointed by ma-
5 jority vote of the other members of the commis-
6 sion; and

7 (B) an equal number of members (but not
8 fewer than 1) from each of the following cat-
9 egories:

10 (i) Members appointed by a member
11 of the upper house of the State legislature
12 who represents the political party with the
13 greatest number of seats in that house.

14 (ii) Members appointed by a member
15 of the upper house of the State legislature
16 who represents the political party with the
17 second greatest number of seats in that
18 house.

19 (iii) Members appointed by a member
20 of the lower house of the State legislature
21 who represents the political party with the
22 greatest number of seats in that house.

23 (iv) Members appointed by a member
24 of the lower house of the State legislature
25 who represents the political party with the

1 second greatest number of seats in that
2 house.

3 (2) SPECIAL RULE FOR STATES WITH UNICAM-
4 ERAL LEGISLATURE.—In the case of a State with a
5 unicameral legislature, the independent redistricting
6 commission established under this subsection shall
7 be composed of—

8 (A) a chair, who shall be appointed by ma-
9 jority vote of the other members of the commis-
10 sion; and

11 (B) an equal number of members (but not
12 fewer than 2) from each of the following cat-
13 egories:

14 (i) Members appointed by a member
15 of the legislature who shall be selected by
16 the chair of the Government Affairs Com-
17 mittee of the legislature to represent the
18 State political party whose candidate for
19 chief executive of the State received the
20 greatest number of votes on average in the
21 3 most recent general elections for that of-
22 fice.

23 (ii) Members appointed by a member
24 of the legislature who shall be selected by
25 the chair of the Government Affairs Com-

1 mittee of the legislature to represent the
2 State political party whose candidate for
3 chief executive of the State received the
4 second greatest number of votes on aver-
5 age in the 3 most recent general elections
6 for that office.

7 (3) ELIGIBILITY.—An individual is eligible to
8 serve as a member of an independent redistricting
9 commission if—

10 (A) as of the date of appointment, the in-
11 dividual is registered to vote in elections for
12 Federal office held in the State, and was reg-
13 istered to vote in the 2 most recent general
14 elections for Federal office held in the State;

15 (B) the individual did not hold public office
16 or run as a candidate for election for public of-
17 fice, or serve as an employee of a political party
18 or candidate for election for public office, at
19 any time during the 4-year period ending on the
20 December 31 preceding the date of appoint-
21 ment; and

22 (C) the individual certifies that he or she
23 will not run as a candidate for the office of
24 Representative in the Congress until after the
25 next apportionment of Representatives under

1 section 22(a) of the Act entitled “An Act to
2 provide for the fifteenth and subsequent decen-
3 nial censuses and to provide for an apportion-
4 ment of Representatives in Congress”, approved
5 June 18, 1929 (2 U.S.C. 2a).

6 (4) VACANCY.—A vacancy in the commission
7 shall be filled in the manner in which the original
8 appointment was made.

9 (5) DEADLINE.—Each State shall establish a
10 commission under this section, and the members of
11 the commission shall appoint the commission’s chair,
12 not later than the first February 1 which occurs
13 after the chief executive of a State receives the State
14 apportionment notice.

15 (6) APPOINTMENT OF CHAIR REQUIRED PRIOR
16 TO DEVELOPMENT OF REDISTRICTING PLAN.—The
17 commission may not take any action to develop a re-
18 districting plan for the State under subsection (b)
19 until the appointment of the commission’s chair in
20 accordance with paragraph (1)(E).

21 (b) DEVELOPMENT OF REDISTRICTING PLAN.—

22 (1) CRITERIA.—The independent redistricting
23 commission of a State shall develop a redistricting
24 plan for the State in accordance with the following
25 criteria:

1 (A) Adherence to the “one person, one
2 vote” standard and other requirements imposed
3 under the Constitution of the United States.

4 (B) To the greatest extent mathematically
5 possible, ensuring that the population of each
6 Congressional district in the State does not
7 vary from the population of any other Congres-
8 sional district in the State (as determined on
9 the basis of the total count of persons of the
10 most recent decennial census conducted by the
11 Bureau of the Census).

12 (C) Consistency with any applicable re-
13 quirements of the Voting Rights Act of 1965
14 and other Federal laws.

15 (D) To the greatest extent practicable, the
16 maintenance of the geographic continuity of the
17 political subdivisions of the State which are in-
18 cluded in the same Congressional district, in the
19 following order of priority:

20 (i) The continuity of counties or par-
21 ishes.

22 (ii) The continuity of municipalities.

23 (iii) The continuity of neighborhoods
24 (as determined on the basis of census
25 tracts or other relevant information).

1 (E) To the greatest extent practicable,
2 maintaining compact districts (in accordance
3 with such standards as the commission may es-
4 tablish).

5 (F) Ensuring that districts are contiguous
6 (except to the extent necessary to include any
7 area which is surrounded by a body of water).

8 (2) FACTORS PROHIBITED FROM CONSIDER-
9 ATION.—In developing the redistricting plan for the
10 State, the independent redistricting commission may
11 not take into consideration any of the following fac-
12 tors, except to the extent necessary to comply with
13 the Voting Rights Act of 1965:

14 (A) The voting history of the population of
15 a Congressional district, except that the com-
16 mission may take such history into consider-
17 ation to the extent necessary to comply with
18 any State law which requires the establishment
19 of competitive Congressional districts.

20 (B) The political party affiliation of the
21 population of a district.

22 (C) The residence of incumbent Members
23 of the House of Representatives in the State.

24 (3) PUBLIC NOTICE AND INPUT.—

1 (A) PUBLIC HEARINGS; SOLICITATION
2 INPUT FROM PUBLIC.—The commission shall
3 hold each of its meetings in public, and shall so-
4 licit and take into consideration comments from
5 the public in developing the redistricting plan
6 for the State.

7 (B) NOTICE OF PLANS.—At the time the
8 commission submits a redistricting plan to the
9 legislature of the State under subsection (c)(1),
10 the commission shall notify the public through
11 the publication of notice in newspapers of gen-
12 eral circulation throughout the State, and shall
13 publish a detailed version of the plan (including
14 a map showing each Congressional district es-
15 tablished under the plan and the voting age
16 population by race of each such district) on a
17 public Internet site of the State government.

18 (c) SUBMISSION OF PLANS TO LEGISLATURE.—

19 (1) IN GENERAL.—At any time prior to the
20 first November 1 which occurs after the chief execu-
21 tive of the State receives the State apportionment
22 notice, the commission may submit redistricting
23 plans developed by the commission under this sec-
24 tion to the legislature of the State.

1 (2) CONSIDERATION OF PLAN BY LEGISLA-
2 TURE.—After receiving any redistricting plan under
3 paragraph (1), the legislature of a State may—

4 (A) approve the plan as submitted by the
5 commission without amendment and forward
6 the plan to the chief executive of the State; or

7 (B) reject the plan.

8 (3) ENACTMENT OF PLAN.—

9 (A) IN GENERAL.—A redistricting plan de-
10 veloped by the commission shall be considered
11 to be enacted into law only if the plan is for-
12 warded to the chief executive of the State pur-
13 suant to paragraph (2)(A) and—

14 (i) the chief executive approves the
15 plan as forwarded by the legislature with-
16 out amendment; or

17 (ii) the chief executive vetoes the plan
18 and the legislature overrides the veto in ac-
19 cordance with the applicable law of the
20 State, except that at no time may the plan
21 be amended.

22 (B) SPECIAL RULE.—In the case of a
23 State in which the chief executive is prohibited
24 under State law from acting on a redistricting
25 plan, a redistricting plan developed by the com-

1 mission shall be considered to be enacted into
2 law if—

3 (i) the plan is submitted to the legisla-
4 ture of the State; and

5 (ii) the legislature approves the plan
6 as submitted by the commission without
7 amendment.

8 (d) REQUIRING MAJORITY APPROVAL FOR AC-
9 TIONS.—The independent redistricting commission of a
10 State may not submit a redistricting plan to the State leg-
11 islature, or take any other action, without the approval
12 of at least a majority of its members given at a meeting
13 at which at least a majority of its members are present.

14 (e) TERMINATION.—

15 (1) IN GENERAL.—The independent redis-
16 tricting commission of a State shall terminate on the
17 day after the date of the first regularly scheduled
18 general election for Federal office which occurs after
19 the chief executive of the State receives the State
20 apportionment notice.

21 (2) PRESERVATION OF RECORDS.—The State
22 shall ensure that the records of the independent re-
23 districting commission are retained in the appro-
24 priate State archive in such manner as may be nec-
25 essary to enable the State to respond to any civil ac-

1 tion brought with respect to Congressional redistricting in the State.

3 **SEC. 5. SELECTION OF PLAN BY COURTS.**

4 (a) STATE COURT.—

5 (1) SUBMISSION AND SELECTION OF PLAN.—If
6 a redistricting plan developed by the independent redistricting commission of a State is not enacted into
7 law under section 4(c)(3) by the first November 1
8 which occurs after the chief executive of the State
9 receives the State apportionment notice, the commission may submit redistricting plans developed by the
10 commission in accordance with section 4 to the highest court of the State, which may select and publish
11 one of the submitted plans to serve as the redistricting plan for the State.

12 (2) NO MODIFICATION OF PLAN PERMITTED.—
13 The highest court of a State may not modify any redistricting plan submitted under this subsection.

14 (b) FEDERAL COURT.—

15 (1) FAILURE OF STATE COURT TO SELECT
16 PLAN.—

17 (A) NOTICE TO COURT IF PLAN NOT SELECTED BY STATE COURT.—If a State court to
18 whom redistricting plans have been submitted
19 under subsection (a) does not select a plan to

1 serve as the redistricting plan for the State
2 under such subsection on or before the first De-
3 cember 1 which occurs after the chief executive
4 of the State receives the State apportionment
5 notice, the State shall file a notice with the
6 United States district court for the district in
7 which the capital of the State is located.

8 (B) DEVELOPMENT AND SELECTION OF
9 PLAN BY FEDERAL COURT.—Not later than 30
10 days after receiving a notice from a State under
11 subparagraph (A), the court shall develop and
12 publish a final redistricting plan for the State.

13 (2) FAILURE OF STATE TO ESTABLISH COMMIS-
14 SION.—

15 (A) IN GENERAL.—If a State does not es-
16 tablish an independent redistricting commission
17 under section 4 by the first September 1 which
18 occurs after the chief executive of the State re-
19 ceives the State apportionment notice—

20 (i) the State may not establish the
21 commission; and

22 (ii) the United States district court
23 for the district in which the capital of the
24 State is located shall develop and publish
25 a final redistricting plan for the State not

1 later than the first December 1 which oc-
2 curs after the chief executive of the State
3 receives the State apportionment notice.

4 (B) DETERMINATION OF FAILURE TO ES-
5 TABLISH COMMISSION.—For purposes of sub-
6 paragraph (A), a State shall be considered to
7 have failed to establish an independent redistricting
8 commission by the date referred to in
9 such subparagraph if a chair of the commission
10 has not been appointed on or before such date.

11 (3) CRITERIA.—It is the sense of Congress
12 that, in developing a redistricting plan for a State
13 under this subsection, the district court should ad-
14 here to the same terms and conditions that applied
15 to the development of the plan of the commission
16 under section 4(b).

17 (c) ACCESS TO INFORMATION AND RECORDS OF
18 COMMISSION.—A court which is required to select, pub-
19 lish, or develop a redistricting plan for a State under this
20 section shall have access to any information, data, soft-
21 ware, or other records and material used by the inde-
22 pendent redistricting commission of the State in carrying
23 out its duties under this Act.

1 **SEC. 6. SPECIAL RULE FOR REDISTRICTING CONDUCTED**
2 **UNDER ORDER OF FEDERAL COURT.**

3 If a Federal court requires a State to conduct redis-
4 tricting subsequent to an apportionment of Representa-
5 tives in the State in order to comply with the Constitution
6 or to enforce the Voting Rights Act of 1965, sections 4
7 and 5 shall apply with respect to the redistricting, except
8 that—

9 (1) the deadline for the establishment of the
10 independent redistricting commission and the ap-
11 pointment of the commission's chair (as described in
12 section 4(a)(5)) shall be the expiration of the 30-day
13 period which begins on the date of the final order of
14 the Federal court to conduct the redistricting;

15 (2) the deadline for the submission of redis-
16 tricting plans to the legislature by the commission,
17 and the date of the termination of the commission
18 (as described in section 4(c)(1) and section 4(e))
19 shall be the expiration of the 150-day period which
20 begins on the date of the final order of the Federal
21 court to conduct the redistricting;

22 (3) the deadline for the selection and publica-
23 tion of the plan by the highest court of the State (as
24 described in section 5(a)) shall be the expiration of
25 the 180-day period which begins on the date of the

1 final order of the Federal court to conduct the redistricting; and

2
3 (4) the deadline for the selection and publication of the plan by the district court of the United States (as described in section 5(b)) shall be the expiration of the 210-day period which begins on the date of the final order of the Federal court to conduct the redistricting.

9 **SEC. 7. PAYMENTS TO STATES FOR CARRYING OUT REDISTRICTING.**

10
11 (a) **AUTHORIZATION OF PAYMENTS.**—Subject to subsection (d), not later than 30 days after a State receives a State apportionment notice, the Election Assistance Commission shall make a payment to the State in an amount equal to the product of—

12
13 (1) the number of Representatives to which the State is entitled, as provided under the notice; and

14
15 (2) \$150,000.

16
17 (b) **USE OF FUNDS.**—A State shall use the payment made under this section to establish and operate the State’s independent redistricting commission, to implement the State redistricting plan, and to otherwise carry out Congressional redistricting in the State.

18
19 (c) **NO PAYMENT TO STATES WITH SINGLE MEMBER.**—The Election Assistance Commission shall not

1 make a payment under this section to any State which
2 is not entitled to more than one Representative under its
3 State apportionment notice.

4 (d) REQUIRING ESTABLISHMENT OF COMMISSION AS
5 CONDITION OF PAYMENT.—The Election Assistance Com-
6 mission may not make a payment to a State under this
7 section until the State certifies to the Commission that
8 the State has established an independent redistricting
9 commission, and that a chair of the commission has been
10 appointed, in accordance with section 4.

11 (e) AUTHORIZATION OF APPROPRIATIONS.—There
12 are authorized to be appropriated such sums as may be
13 necessary for payments under this section.

14 **SEC. 8. STATE APPORTIONMENT NOTICE DEFINED.**

15 In this Act, the “State apportionment notice” means,
16 with respect to a State, the notice sent to the State from
17 the Clerk of the House of Representatives under section
18 22(b) of the Act entitled “An Act to provide for the fif-
19 teenth and subsequent decennial censuses and to provide
20 for an apportionment of Representatives in Congress”, ap-
21 proved June 18, 1929 (2 U.S.C. 2a), of the number of
22 Representatives to which the State is entitled.

23 **SEC. 9. EFFECTIVE DATE.**

24 This Act and the amendments made by this Act shall
25 apply with respect to any Congressional redistricting

- 1 which occurs after the regular decennial census conducted
- 2 during 2010.

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