

Department of Legislative Services
Maryland General Assembly
2017 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 367 (Delegate Reznik, *et al.*)
Rules and Executive Nominations

Legislative and Congressional Districting - Standards and Processes

This proposed constitutional amendment establishes two separate commissions to develop legislative and congressional districting plans for the State. The membership of both commissions consists of Department of Legislative Services (DLS) full-time staff and/or contractual employees as needed.

If approved by the voters in the 2018 general election, the amendment does not take effect until the state of Virginia has adopted a legislative districting process that is substantially similar.

Fiscal Summary

State Effect: Should the proposed constitutional amendment be ratified by the voters at the November 2018 general election and the bill's contingency is met, general fund expenditures for DLS increase by at least \$600,000 in FY 2020 for staffing and equipment. Revenues are not affected.

Local Effect: None. It is assumed that the potential for increased costs to notify voters of any constitutional amendments proposed by the General Assembly, and to include any proposed constitutional amendments on the ballot at the next general election, will have been anticipated in local boards of elections' budgets irrespective of this bill.

Small Business Effect: None.

Analysis

Bill Summary: For purposes of determining if the amendment takes effect due to a substantially similar plan adopted by Virginia, DLS must consult with the Attorney General. A process is substantially similar if (1) a legislative or congressional districting plan is initially developed and proposed by a commission composed of employees or contractors of a nonpartisan state agency that provides nonpartisan research or analysis and are not selected by a governor, members of the legislature, or an individual selected by the governor or state legislature; (2) the state legislature is allowed to vote on the plan proposed by the commissions, but is prohibited from altering it; and (3) a plan prepared by the state's highest court becomes law if the State legislature fails to adopt it.

Legislative Districting Commission and Congressional Districting Commission

The proposed constitutional amendment establishes two separate redistricting commissions for legislative and congressional plans. The Executive Director of Legislative Services is responsible for determining the size and composition of the commissions, including the education and experience requirements for staff within specified limitations.

The members of the commissions must include full-time employees of DLS or contractual employees if the executive director determines that the needs of each commission cannot be met by full-time employees. Each commission must include, at a minimum (1) a demographer; (2) a cartographer; (3) an applied mathematician; (4) a computer scientist; and (5) a lawyer or legal expert specializing in election and redistricting law. A member of either commission may serve concurrently on the other commission.

The term of a member on either commission begins when selected and ends when a legislative/congressional districting plan is adopted by the General Assembly, or in the case of the General Assembly's failure to enact a plan, when the Court of Appeals is required to prepare a plan. A member on either commission may not be (1) an elected official; (2) an official whose appointment is subject to Senate confirmation; or (3) a candidate for elected office. Commission members may be removed under circumstances and procedures established by the bill.

Following each decennial census, the commissions must hold public hearings and prepare a legislative and congressional district plan, respectively, that complies with federal and State law. Congressional districts must also consist of adjoining territory and be compact, contiguous, and of substantially equal population. On the first day of the regular legislative session of the General Assembly during the second year following the decennial census, the commissions must present the legislative and congressional plans to the Presiding Officers of the House of Delegates and the Senate, who must introduce the plans as joint resolutions to the General Assembly. The plans may not be amended, and a member of the

General Assembly may not introduce a joint resolution or bill containing an alternate plan. The General Assembly may adopt each plan separately by a majority vote of both houses.

The Governor may call a special session for the presentation of the plans before the regular legislative session.

If the General Assembly fails to adopt the legislative or the congressional plan on or before the seventeenth day after the opening of the regular legislative session, the commission must prepare an alternative plan and submit it to the Presiding Officers, who must introduce the plan(s) as a joint resolution. If an alternative plan fails to receive a majority vote of both houses on or before the fifty-second day after the opening of the regular legislative session in the second year following the decennial census, the Court of Appeals must establish the legislative and/or congressional boundaries. The Court of Appeals has original jurisdiction to review either plan adopted by the General Assembly according to the procedure above, on petition of any registered voter, and may grant appropriate relief where it finds a legislative or congressional plan inconsistent with State or federal law.

Current Law:

State Legislative Districts: State legislative district boundaries are required under the Maryland Constitution and federal case law to be redrawn every 10 years after the decennial census to adjust for population changes. The Maryland Constitution provides for 47 legislative districts. Article III, Section 4 requires that State legislative districts consist of adjoining territory, be compact in form and of substantially equal population, and that natural boundaries and the boundaries of political subdivisions be given due regard. Legislative districts can be subdivided for the purpose of electing one or two delegates from a subdistrict. Creation of legislative boundaries falls under the requirements of the U.S. Constitution's Fourteenth Amendment, which requires districts to be equally populated.

Public Hearings: Article III, Section 5 of the Maryland Constitution requires public hearings to be held before the Governor prepares a legislative redistricting plan. In 2011, the Governor appointed a Redistricting Advisory Committee to conduct public hearings around the State as required by the State Constitution. Consistent with prior practice in previous redistricting phases, the public hearings addressed both legislative and congressional redistricting. The Governor must present a legislative districting plan to the General Assembly by the first day of session in the second year following the decennial census and after the public hearings. If the General Assembly does not pass an alternative plan before the forty-fifth day of session, the Governor's plan becomes law. The current legislative districting plan was enacted as Joint Resolution 2 of the General Assembly in 2012.

Prisoner Allocation: Chapters 66 and 67 of 2010 require that population counts used to create legislative, congressional, county, and municipal districts in Maryland exclude incarcerated individuals who were not State residents prior to their incarceration in either State or federal correctional facilities that are located in the State. If incarcerated individuals were State residents prior to their incarceration, Chapters 66 and 67 require that they be counted as residents of their last known address before their incarceration in a State or federal facility.

Congressional Districts: Under federal case law, congressional district boundaries must be redrawn every 10 years after the decennial census to adjust for population changes; they must also conform to the requirements of the Voting Rights Act of 1965 and related case law. Congress has left to the states the task of redrawing congressional boundaries. The Governor has traditionally introduced a congressional map along with the State legislative district plan that is required by the State Constitution. The General Assembly may pass its own congressional plan in lieu of the Governor's, but unlike with the legislative plan, there is no deadline set in statute for this to happen. In order to finalize congressional districts for the 2012 primary election cycle, a special session took place in the fall of 2011. The current districts were established under Chapter 1 of the 2011 special session.

Redistricting Commissions: According to the National Conference of State Legislatures (NCSL), there are 13 states that give first and final authority for legislative redistricting to a group other than the legislature. NCSL indicates the commissions vary greatly from state to state in terms of their composition, but most include appointments made by legislative leaders. Only six states (Arizona, California, Hawaii, Idaho, New Jersey, and Washington) give first and final authority for congressional redistricting to a commission.

In 2000, Arizona voters passed an amendment to the state constitution that transferred the redistricting power from the state legislature, which had previously controlled it, to an independent commission. The Arizona legislature sued on the basis that the U.S. Constitution's Elections Clause prevented voters from removing authority from the legislature to redistrict congressional districts. In July 2015, the U.S. Supreme Court in *Arizona State Legislature v. Arizona Independent Redistricting Commission*, 997 F. Supp. 2d 1047; 135 S. Ct. 2652 (2015), upheld the validity of independent redistricting commissions. The congressional and legislative maps drawn by the California Citizens Redistricting Commission have been challenged and upheld in both federal and state courts.

Background: The State of Iowa uses a similar process to establish districts as the one proposed in this bill. The nonpartisan Legislative Services Agency (LSA) prepares draft redistricting plans under criteria set almost entirely by statute. Although the Iowa legislature has the ability to reject three LSA plans and then entirely substitute its own, it has not chosen to do so since the procedure's inception in 1980. During the

2000 redistricting cycle, the legislature rejected LSA's first set of plans but adopted the second. During the 2010 cycle, it adopted the first set of plans submitted.

State Expenditures:

Department of Legislative Services: Should the proposed constitutional amendment be ratified by the voters at the November 2018 general election and the bill's contingency is met, general fund expenditures for DLS increase by at least \$600,000 in fiscal 2020 for the cost of hiring skilled contractual staff for both commissions to prepare census data, operate GIS software, adjust census data in accordance with Chapters 66 and 67 of 2010, and fulfill the specific staffing requirements under the amendment. Additional operating costs include specialized software and licensing as well as component hardware.

State Board of Elections: State costs of printing ballots may increase to the extent inclusion of the proposed constitutional amendment on the ballot at the next general election would result in a need for a larger ballot card size or an additional ballot card for a given ballot (the content of ballots varies across the State, depending on the offices, candidates, and questions being voted on). However, it is assumed that the potential for such increased costs resulting from any proposed constitutional amendments will have been anticipated in the State Board of Elections' budget irrespective of this bill. Pursuant to Chapter 564 of 2001, the State Board of Elections shares the costs of printing paper ballots with the local boards of elections.

Local Expenditures: Local boards of elections' printing and mailing costs may increase to include information on the proposed constitutional amendment with specimen ballots mailed to voters prior to the next general election and to include the proposed amendment on ballots. It is assumed, however, that the potential for such increased costs resulting from any proposed constitutional amendments will have been anticipated in local boards of elections' budgets irrespective of this bill.

Additional Information

Prior Introductions: HB 467 of 2016 received a hearing in the House Rules and Executive Nominations Committee, but no further action was taken.

Cross File: None.

Information Source(s): Governor's Office; Judiciary (Administrative Office of the Courts); Maryland Department of Planning; National Conference of State Legislatures; Iowa Legislative Services Agency; Department of Legislative Services

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