

Department of Legislative Services
Maryland General Assembly
2015 Session

FISCAL AND POLICY NOTE

House Bill 906 (Delegate Miele, *et al.*)
Rules and Executive Nominations

Legislative and Congressional Districting - Standards and Processes

This proposed constitutional amendment establishes a Nonpartisan Districting Commission to develop and *adopt* decennial legislative and congressional redistricting plans. It also alters the criteria for the shape and design of legislative and congressional districts in the State.

Fiscal Summary

State Effect: As expenses related to legislative and congressional redistricting will generally not be incurred until FY 2021, the bill has no effect on governmental finances during the five-year period covered by this fiscal and policy note. In FY 2021 and 2022, if approved by the voters, the bill is not expected to require any additional expenditures by the Department of Legislative Services (DLS) or the Maryland Department of Planning above those they normally incur to provide support to the General Assembly during the redistricting process. No effect on revenues.

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.

Small Business Effect: None.

Analysis

Bill Summary:

Nonpartisan Districting Commission

The commission consists of nine members appointed within 90 days of the data from the decennial U.S. Census becoming available, including:

- four members of the General Assembly (one Republican and one Democrat from each house);
- two individuals selected by the Governor through a lottery, one from each party; and
- three unaffiliated registered voters selected by the Governor through a lottery.

State employees and individuals who have changed their party registration within the past four years may not be included in the lotteries conducted by the Governor; otherwise, any registered voter may request to be included in the lottery.

Public members of the commission may not receive compensation but are entitled to reimbursement for expenses. A commission member's term ends when the legislative and congressional plans are approved by the commission or when any appeals related to the plans have been exhausted, whichever is later.

The Executive Director of Legislative Services chairs the commission as a nonvoting, *ex officio* member. DLS staffs the commission.

Legislative Districts

Each Senate legislative district must be subdivided into three House of Delegates legislative districts, with each containing one delegate. Each district must be drawn, to the extent practicable, in the shape of a square and in a manner that keeps communities of similar interests together. Each legislative district must also be concise in form. When drawing legislative district lines, the commission must begin with the southeastern-most corner of the State.

A majority of members of the commission is required to adopt a legislative districting plan, which must conform to constitutional requirements. If a majority of members cannot agree on a plan, a majority of the commission's unaffiliated members adopts a plan. Any registered voter or the General Assembly may petition an adopted plan to the Court of Appeals; if the court finds that a plan does not meet constitutional requirements, it must require the commission to prepare and adopt an alternative plan. The petitioning party has

the burden of proving that a plan is not consistent with the requirements of either the U.S. or Maryland Constitution.

Congressional Districts

Each congressional district must (1) consist of adjoining territory; (2) be compact and concise in form; (3) be of substantially equal population; and (4) be drawn, to the extent practicable, in the shape of a square and in a manner that keeps communities with similar interests together. Due regard must be given to natural boundaries and the boundaries of political subdivisions. When drawing congressional boundaries, the commission must begin with the southeastern-most corner of the State.

A majority of members of the commission is required to adopt a congressional districting plan, which must conform to constitutional requirements. If a majority of members cannot agree on a plan, a majority of the commission's unaffiliated members adopts a congressional districting plan. Any registered voter or the General Assembly may petition an adopted plan to the Court of Appeals; if the court finds that a plan does not meet constitutional requirements, it must require the commission to prepare and adopt an alternative congressional plan. The petitioning party has the burden of proving that a plan is not consistent with the requirements of either the U.S. or Maryland Constitution.

Current Law/Background: 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.

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.

Chapters 66 and 67 of 2010 require that population counts used to create legislative and congressional 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.

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 congressional districts were established under Chapter 1 of the 2011 special session.

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 seven states (Arizona, California, Hawaii, Idaho, Montana, New Jersey, and Washington) give first and final authority for congressional redistricting to a commission.

State Fiscal Effect: 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 will have been anticipated in the State Board of Elections' budget. 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 Fiscal Effect: 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 will have been anticipated in local boards of elections' budgets.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Maryland Department of Planning, Governor's Office,
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