

Department of Legislative Services
Maryland General Assembly
2015 Session

FISCAL AND POLICY NOTE

House Bill 267 (Delegate Afzali, *et al.*)
Rules and Executive Nominations

Legislative and Congressional Districting - Standards and Processes

This proposed constitutional amendment establishes two separate bipartisan committees to develop legislative and congressional districting plans for the State. It also requires that each House legislative district contain one delegate, instead of three.

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:

Legislative Districting Committee

The Legislative Districting Committee consists of five members: one each selected by the majority party in the Senate and House of Delegates; one each selected by the minority party in the Senate and House of Delegates; and one nonaffiliated voter selected by mutual agreement of the two parties. An individual is not required to be a member of the General Assembly to be selected as a member of the committee, but the following individuals may not serve on the committee:

- the President of the Senate;
- the Speaker of the House of Delegates;
- the majority or minority leaders of either house; or
- the majority or minority whips of either house.

A member of the Congressional Districting Committee (described below) may also be a member of the Legislative Districting Committee. Committee members may not receive compensation but may be reimbursed for their expenses. A member's term ends when a legislative district plan is submitted to the Presiding Officers.

Following each decennial U.S. Census, the committee must prepare a legislative districting plan that conforms with requirements of the Maryland Constitution and gives due regard to county boundaries. Upon completion, the committee must present the plan to the Presiding Officers for consideration by the General Assembly. If the General Assembly fails to adopt its own legislative districting plan by the forty-fifth day of the legislative session, the committee's plan becomes law.

DLS staffs the committee.

Congressional Districting Committee

The selection of the five members of the Congressional Districting Committee follow the same guidelines as those for the Legislative Districting Committee, and they are subject to the same conditions of service, except that the member's term ends when a districting plan is submitted to the Governor (rather than the Presiding Officers). DLS also staffs the Congressional Districting Committee.

Following each decennial U.S. Census, the committee must prepare a plan setting forth the boundaries for congressional districts that complies with applicable federal and State law and submit the plan to the Governor.

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 (there is no explicit requirement to give due regard to *county* boundaries, which the bill adds). 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. This bill maintains the General Assembly's final authority for approving both legislative and congressional plans.

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 Comments: DLS notes that the proposed constitutional amendment does not require that the legislative districts of the Senate and House of Delegates be contiguous; this may generate confusion among voters, depending on how the districts are drawn.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Maryland Department of Planning, Governor's Office, National Conference of State Legislatures, Department of Legislative Services

Fiscal Note History: First Reader - February 20, 2015
min/lgc

Analysis by: Michael C. Rubenstein

Direct Inquiries to:
(410) 946-5510
(301) 970-5510