

Department of Legislative Services
Maryland General Assembly
2016 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 408 (Delegate Hill, *et al.*)
Rules and Executive Nominations

Commission to Study Legislative and Congressional Districting

This bill establishes a Commission to Study Legislative and Congressional Districting in Maryland. The Department of Legislative Services (DLS) must provide staff for the commission. The commission must report its findings and recommendations to the Governor and the General Assembly by December 31, 2016.

The bill takes effect July 1, 2016, and terminates June 30, 2017.

Fiscal Summary

State Effect: Any expense reimbursements for commission members and staffing costs for DLS are assumed to be minimal and absorbable within existing budgeted resources.

Local Effect: None.

Small Business Effect: None.

Analysis

Bill Summary: The commission is required to (1) study the State's legislative and congressional redistricting processes and (2) make recommendations regarding:

- criteria that should be used to draw legislative and congressional districts and how each criterion should be weighed;
- the entity that should draw the legislative and congressional district maps;

- ways to make the legislative and congressional districting processes nonpartisan; and
- ways to partner with other states to make congressional districting nonpartisan throughout the country.

Current Law/Background: The Maryland Constitution and federal case law require State legislative district boundaries 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 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 that 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.

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; 576 U.S. ___ (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.

Additional Information

Prior Introductions: HB 610 of 2015, a similar bill, received a hearing in the House Rules and Executive Nominations Committee, but no further action was taken. HB 698 of 2014 and HB 599 of 2012, also similar bills, were each heard by the House Rules and Executive Nominations Committee, but no further action was taken on either bill.

Cross File: None.

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

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mel/mcr

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