

Department of Legislative Services
Maryland General Assembly
2017 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 622 (Delegate Carr, *et al.*)
Rules and Executive Nominations

Potomac Compact for Fair Representation

This bill establishes the Potomac Compact for Fair Representation between the State of Maryland and Virginia and other designated states who agree to the creation of a single bipartisan commission to establish congressional districts using a proportional voting method. The bill also establishes an Independent Congressional Districting Commission.

The bill is contingent on the U.S. Congress approving multiseat congressional districts before a specified deadline. In addition, the bill may not take effect until a similar Act is enacted by Virginia or other specified states, as specified. The bill's provisions expire on January 1, 2020, if no state concurs with the compact or if Congress fails to approve the use of multiseat congressional districts.

Fiscal Summary

State Effect: Assuming the bill's contingencies are met, general fund expenditures for the State Board of Elections (SBE) increase by at least \$25,000 for contractual services upon adoption of a ranked choice voting (RCV) system for State congressional elections. The timing of those costs is unclear, however. General fund expenditures may increase further for ballot tabulation and related costs, but a reliable estimate is not feasible at this time. Revenues are not affected.

Local Effect: Assuming the bill's contingencies are met, county expenditures increase by at least \$25,000 for contractual services upon adoption of an RCV system for congressional elections. The timing of those costs is unclear, however. Additional expenditures are required for voter outreach prior to a congressional election. Local revenues are not affected.

Small Business Effect: None.

Analysis

Bill Summary: The bill establishes an Independent Congressional Districting Commission that includes representation from each state that is party to the compact. A state is not required to comply with the compact if the commission fails to adopt a congressional plan for that state, or if the state's Attorney General determines that a party state has (1) repealed, replaced, or failed to implement the compact or (2) failed to use a substantially similar proportional voting method whereby a candidate is guaranteed to win if the candidate receives more votes than the total number of valid votes cast divided by the sum of one plus the number of members to be elected in the congressional district in which the individual is a candidate.

Commission Membership: The commission consists of the following members from each party state: (1) two members of the majority party in the state; (2) two members of the minority party in the state; (3) two members who are unaffiliated with either the majority or minority party in the state; and (4) one member selected by a majority of the members of the commission, who is not a resident of the state and is a prominent academic, former government official, or civic leader known for political independence in judgment.

Any state that is a party to the compact must designate or establish a nonpartisan state agency to solicit applications for membership. An individual is not eligible for membership on the commission if that individual (1) holds public office; (2) is a candidate for public office; (3) serves as an officer, employee, or paid consultant of a political party or candidate campaign; or (4) is a registered lobbyist.

The nonpartisan state agency must select from the applicants a pool of 30 individuals consisting of 10 members each from applicants affiliated with the majority party, the minority party, and those unaffiliated. The nonpartisan state agency must then select 2 members at random from each of the three categories who will serve as members on the commission. Two co-chairs must be selected by commission members, each from a different state that is a party to the compact. Commissioners serve 10-year terms.

Commission Duties: The commission must consider the adoption of a multiseat congressional districting plan for each state that is a party to the compact. It must implement a congressional districting plan no later than 30 days before a state that is party to the compact is required to implement a congressional districting plan. In doing so, the commission members must operate in a transparent manner and solicit public feedback in drawing a plan. A plan adopted by the commission must:

- have equal population per representative to the extent practicable;
- be consistent with the federal Voting Rights Act and any other applicable federal or state law;

- lead to a state congressional delegation that reflects and represents generally the political preferences of the people of the state;
- be contiguous and compact, and respect existing political boundaries and communities of interest; and
- follow visible geographic features.

Plan Adoption: A majority of the full commission must vote for adoption of a plan, including at least one member in each affiliated/unaffiliated category who is from the state in which the plan is being adopted.

The state legislature in each party state must vote on the commission's plan for that state at least 30 days before the state's deadline for adopting a congressional plan. The commission plan may not be amended, but the state is not required to implement the plan until at least one other state that is party to the compact adopts a plan offered by the commission.

Multiseat Congressional Districts: If the commission draws and adopts a multiseat congressional plan for Maryland, the State must be divided into two multiseat districts, each with four representatives. If Virginia becomes a party state, Virginia must be divided into three multiseat districts with two districts each electing three of that state's representatives in Congress and one district electing five representatives. The compact requires any state that is party to the compact that has five or fewer congressional representatives to elect the state's congressional representatives at-large. If a state other than Maryland or Virginia with six or more representatives becomes a party to the compact, it must be divided into multiseat districts in which at least three but no more than five representatives are elected.

Contingencies: The bill does not take effect unless Congress approves the use of multiseat congressional districts, and until a similar act is enacted by Virginia before January 1, 2019. If Virginia does *not* enact similar legislation before the 2019 deadline, the bill takes effect if Arkansas, Indiana, Kansas, Michigan, Missouri, North Carolina, Oklahoma, Pennsylvania, Utah, West Virginia, or Wisconsin enacts similar legislation on or after January 1, 2019.

Current Law:

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.

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.

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

Background: The bill proposes the use of RCV, also called “instant runoff voting,” which describes voting systems that allow voters to rank candidates in order of preference and then uses those rankings to elect candidates who have a combination of first-, second- and third-choice support. Voters can rank as many candidates as they want, and those ranked choices count toward determining the sole winner in a single-seat election or multiple winners in a multiseat election. How votes are counted using RCV depends on whether the election is for a single office or for more than one candidate in a district.

Single-seat Elections: If a candidate receives more than half of the votes based on first choices, that candidate wins. If no candidate receives more than half of those votes, then the candidate with the fewest first choices is eliminated. The voters who selected the defeated candidate as a first choice will then have their votes added to the totals of their next choice. This process continues until a candidate has more than half of the active votes or only two candidates remain. The candidate with a majority among the active candidates is declared the winner.

Multiseat Elections: Candidates who receive a certain share of votes will be elected; this share of votes is called the “threshold.” A candidate who reaches the threshold is elected, and any excess votes over the threshold are then counted for the voters' second choices. Then, after excess votes are counted, the candidate with the fewest votes is eliminated. The voters who selected the defeated candidate as a first choice will then have their votes counted for their second choice. This process continues until all seats are filled.

State Expenditures: If the State adopts an RCV system for congressional elections, general fund expenditures increase by at least \$25,000 for contractual services associated with establishing procedures for RCV. This estimate assumes that SBE and county boards of election share the cost of at least \$50,000 in contractual services, although this is unclear. The timing of the increase in general fund expenditures is unknown; it depends on when the State adopts an RCV system.

It is expected that the State's voting system can be used for an election using RCV, but that ballot information needs to be exported from the system and independently tabulated, whether by State or local elections staff or through contractual services. It is uncertain at this time whether, and to what extent, State expenditures may increase further due to costs associated with the tabulation of results and increased ballot costs.

Local Expenditures: County expenditures increase by at least \$25,000 for contractual services associated with establishing procedures for an RCV special election. As mentioned above, this assumes that SBE and the county boards of election share the total cost of contractual services. Again the timing of these costs is uncertain.

County expenditures also increase for voter outreach prior to each congressional election to educate voters about the RCV system. The cost to conduct voter outreach likely varies by county. It is uncertain at this time whether, and to what extent, county expenditures for the tabulation of results during an election may increase.

Additional Information

Prior Introductions: SB 762 of 2016 received a hearing in the Senate Education, Health, and Environmental Affairs Committee, but no further action was taken.

Cross File: None.

Information Source(s): Baltimore, Dorchester, Garrett, and Montgomery counties; Maryland Department of Planning; Maryland State Board of Elections; Department of Legislative Services

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