

Department of Legislative Services
Maryland General Assembly
2017 Session

FISCAL AND POLICY NOTE
Third Reader - Revised

Senate Bill 1023

(Senator Zucker, *et al.*)

Education, Health, and Environmental Affairs

Rules and Executive Nominations

**Independent Congressional Redistricting Commission - Mid-Atlantic States
Regional Districting Process**

This bill establishes a Temporary Redistricting Commission to prepare and adopt decennial districting plans for congressional districts in the State. The bill is contingent on the enactment of a nonpartisan congressional districting process that is substantially similar to the process and criteria outlined in the bill in *each* of the following mid-Atlantic region states: New York, New Jersey, Pennsylvania, Virginia, and North Carolina. The Secretary of State (SOS) must monitor the enactment of districting legislation by these states and, after consultation with the Attorney General, notify the Department of Legislative Services (DLS) within five days if the contingency is met. If the contingency is not met by December 31, 2020, the bill has no effect on the redistricting process resulting from the 2020 Census. The bill terminates if the contingency is not met by December 31, 2032.

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: A districting plan for another state is considered “substantially similar” for the purposes of the bill if DLS determines that the redistricting plan in that state is developed and proposed by (1) an independent districting commission that uses a process

and criteria, as specified in the bill, to establish congressional districts; (2) the plan developed and proposed by the independent redistricting commission in that state becomes effective on the filing of the plan with the chief election official in that state; or (3) the state legislature is allowed to vote on the redistricting plan proposed by the commission, but is prohibited from altering the plan.

Composition and Staffing of the Commission

The commission consists of nine members. The President of the Senate, the Speaker of the House of Delegates, and the minority leaders of the Senate and the House of Delegates must each appoint two members by February 1 of the first year following the U.S. Census. By March 1, commission members must select a ninth member, who serves as chair, by vote of at least five of the members. The individual appointed chair may not be affiliated with either of the principal political parties in the State. If the commission is unable to select the ninth member, the commission must submit a list of three names for appointment as chair to (1) the chief administrative law judge of the Office of Administrative Hearings; (2) the chair of the State Ethics Commission; and (3) the co-chairs of the Joint Committee on Legislative Ethics. Those entities must select the ninth member and chair of the commission within 10 days of receipt of the list. DLS must provide staff and technical support for the commission.

Commission members may not receive salaries but are entitled to reimbursement of expenses under the standard State travel regulations, as provided in the State budget. The term of office of each redistricting commission member expires on the appointment of the first member of the succeeding commission. Seven members of the commission is a quorum, and six or more affirmative votes are required for any official action, including the adoption of final proposed maps. Membership ceases upon filing the districting plan with SOS.

Commissioner Qualifications

Each redistricting commission member must be a voter who, for the five years immediately preceding the date of the individual's appointment, has voted in at least two elections, has been registered continuously in the State with the same political party, or has been unaffiliated with a political party, and who has not changed party affiliation during the five-year period. A commission member may not have been (1) a candidate for election to or served as Governor, a member of the General Assembly, or a member of the U.S. Congress from Maryland or (2) an immediate family member (by blood or legally) of a candidate or member, within the five years immediately preceding the date of the individual's appointment. A commission member may not:

- be registered as a regulated lobbyist in the State or registered as a regulated lobbyist for a county, municipal, or federal government;
- be currently serving, or have previously served, as staff or consultant to a person under contract with or related to (by blood or legally) the Governor, a member of the General Assembly, or a member of Congress from Maryland;
- hold an appointive office in the executive branch or legislative branch of the federal, State, or a local government; and
- have made a contribution of \$2,000 or more to a political committee for electoral purposes for a congressional, State, or local government election in the State in any year. The maximum contribution limit amount must be adjusted every 10 years by the cumulative change in the Maryland consumer price index or its successor.

Removal and Vacancies

In the event of substantial neglect of duty, gross misconduct in office, or inability to discharge the duties of office, a member of the commission may be removed by the Governor with the concurrence of the Legislative Policy Committee after having been served written notice and provided with an opportunity for a response. A finding of substantial neglect of duty or gross misconduct in office may result in referral to the Attorney General for criminal prosecution or the appropriate administrative agency for investigation. A vacancy in a commission position, whether created by removal, resignation, or absence, must be filled within 30 days after the vacancy occurs.

Redistricting Process and Public Participation

In the year following the decennial U.S. Census, DLS must obtain the adjusted census data for the State and provide it to the commission within 30 days after it receives the data.

The activities of the redistricting commission are subject to applicable State law governing open meetings and access to public information. The commission must provide at least 14 days' public notice for each meeting. The redistricting commission must establish and implement an open hearing process for public input and deliberation that is designed to encourage citizen outreach and solicit broad public participation in the redistricting public review process.

The hearing process must include hearings to receive public input *before* the commission draws any maps and at least one hearing following the drawing and display of any commission maps. The redistricting commission must (1) display the maps for public

comment in a manner designed to achieve the widest public access reasonably possible and (2) take public comment for at least 14 days from the date of public display of any map.

Redistricting commission members and staff may not communicate with or receive communications about redistricting matters from anyone outside of a public hearing. However, communication between commission members, staff, legal counsel, and consultants retained by the commission is allowed.

Timeline for Public Hearings and Preparation of Districting Plan and Map

The commission must convene its first meeting by March 1 of the year following each decennial census. At its first meeting, or within 30 days of receiving the adjusted census data from DLS, whichever is later, the commission must begin a series of at least six public hearings throughout the State to receive public testimony concerning a redistricting plan; the public hearings must be held by July 1. The hearings must be held at times that are likely to maximize public participation and in locations that encompass the geographic, racial, and ethnic diversity of the State.

Following the conclusion of the public hearings, but no later than September 30 of the year that the commission receives the adjusted census data from DLS, the commission must prepare and adopt a districting plan and map for congressional districts.

By October 30 of that year, the commission must:

- publish the proposed final districting plan and map on the DLS website;
- issue a report with the proposed final districting plan and map that (1) explains the basis on which the commission made the decisions in compliance with the criteria outlined in the bill and (2) includes definitions of the terms and standards the commission used in preparing the proposed final districting plan and map;
- hold at least one public hearing on the proposed final districting plan and map to receive public testimony; and
- allow the public to submit comments to the commission through the DLS website concerning the proposed final districting plan and map.

The commission must publish a final congressional districting plan and map on the DLS website on or before the second Tuesday in November of the year the commission receives the adjusted census data from DLS.

District Requirements

Congressional districts must be established on the basis of population. Each congressional district must (1) comply with the U.S. Constitution; (2) comply with the federal Voting Rights Act; (3) be equal in population, except where deviation is required to comply with the federal Voting Rights Act or is allowed by law; (4) without violating the aforementioned requirements, respect the geographic integrity of any municipal corporation or county, to the extent possible; (5) be geographically contiguous; and (6) to the extent practicable, and where this does not conflict with the criteria above, be drawn to encourage geographical compactness.

The commission may not draw a congressional district:

- to favor a political party, an elected official, or any other person or group, or for the purpose of augmenting or diluting the voting strength of a language or racial minority group; or
- using the addresses of elected officials, political affiliations of registered voters, polling data, proposed districting maps prepared by persons not employed by the department, and any demographic information, other than population head counts, except as required by the Constitution or laws of the United States.

The Chesapeake Bay may not be considered to be a barrier to contiguity. However, areas that meet only at the points of adjoining corners are not contiguous.

Filing of Districting Plan

The districting plan for congressional districts prepared and adopted by the commission is the districting plan for the State. The plan (1) must be filed with SOS within seven days of being adopted by the commission; (2) becomes effective on the filing of the plan; and (3) remains effective until the adoption of a new plan after the next decennial census.

Current Law/Background: Following the 2010 Census, the U.S. Census Bureau apportioned eight congressional seats to Maryland, each of which had to consist of 721,529 residents, according to 2010 Census figures. Because the adjusted State population was not divisible by eight, one district had one fewer resident than the required number.

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 that 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.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Secretary of State; Judiciary (Administrative Office of the Courts); Maryland Department of Planning; Department of Legislative Services

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