

Department of Legislative Services
 Maryland General Assembly
 2018 Session

FISCAL AND POLICY NOTE
 First Reader

House Bill 537 (Delegate Reznik, *et al.*)
 Rules and Executive Nominations

Potomac Compact for Fair Representation

This bill establishes (1) a Potomac Compact for Fair Representation between the State of Maryland and the Commonwealth of Virginia and (2) a Congressional Districting Commission to develop and propose a congressional districting plan. The membership of the commission consists of Department of Legislative Services (DLS) full-time staff and/or contractual employees as needed. **The bill does not take effect until the Commonwealth of Virginia has adopted a legislative districting process that is substantially similar. If the Commonwealth of Virginia does not do so by January 1, 2020, the bill terminates.**

Fiscal Summary

State Effect: If the bill’s contingency is met, general fund expenditures increase by at least \$600,000 in FY 2020 for staffing and equipment. Revenues are not affected.

(in dollars)	FY 2019	FY 2020	FY 2021	FY 2022	FY 2023
Revenues	\$0	\$0	\$0	\$0	\$0
GF Expenditure	0	600,000	0	0	0
Net Effect	\$0	(\$600,000)	\$0	\$0	\$0

Note:() = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate increase; (-) = indeterminate decrease

Local Effect: None.

Small Business Effect: None.

Analysis

Bill Summary: For purposes of determining if the bill takes effect due to a substantially similar plan adopted by Virginia, DLS must consult with the Attorney General. A process is substantially similar only if (1) a congressional districting plan is initially developed and proposed by a commission composed of employees or contractors of a nonpartisan state agency that provides nonpartisan research or analysis and are not selected by a governor, members of the legislature, or an individual selected by the governor or state legislature; (2) the state legislature is allowed to vote on the plan proposed by the commission, but is prohibited from altering it; and (3) a congressional plan prepared by the state's highest court becomes law if the state legislature fails to adopt it.

Neither Virginia nor Maryland is required to comply with the compact if:

- a commission fails to adopt a congressional plan for a compacting state; or
- the Attorney General for either state determines that the other compacting state has repealed, replaced, or failed to implement any aspect of the compact, including failing to implement the congressional district map adopted by a commission.

Congressional Districting Commission

The Executive Director of Legislative Services is responsible for determining the size and composition of the Congressional Districting Commission, including the education and experience requirements for commission members within specified limitations.

The members of the commission must include full-time employees of DLS or contractual employees if the executive director determines that the needs of the commission cannot be met by full-time employees. The commission must include, at a minimum (1) a demographer; (2) a cartographer; (3) an applied mathematician; (4) a computer scientist; and (5) a lawyer or legal expert specializing in election and redistricting law.

The term of a member of the commission begins when the member is selected and ends when a congressional districting plan is adopted by the General Assembly, or in the case of the General Assembly's failure to enact a plan, when the Court of Appeals is required to prepare a plan. A member of the commission may not be (1) an elected official; (2) an official whose appointment is subject to Senate confirmation; or (3) a candidate for elected office. Commission members may be removed under circumstances and procedures established by the bill.

Following each decennial census, the commission must hold public hearings and prepare a congressional district plan that complies with applicable federal and State law. Congressional districts must consist of adjoining territory and be compact, contiguous, and

of substantially equal population. In addition, due regard must be given to natural boundaries and the boundaries of political subdivisions.

On the first day of the regular legislative session of the General Assembly during the second year following the decennial census, the commission must present the congressional plan to the Presiding Officers of the House of Delegates and the Senate, who must introduce the plan as a joint resolution to the General Assembly. Alternatively, the Governor may call a special session for the presentation of the plan before the regular legislative session. The plan may not be amended, and a member of the General Assembly may not introduce a joint resolution or bill containing an alternate plan. The General Assembly may adopt the plan by a majority vote of both houses.

If the General Assembly fails to adopt the congressional plan on or before the seventeenth day after the opening of the regular legislative session, the commission must prepare an alternative plan and submit it to the Presiding Officers, who must introduce the plan as a joint resolution. If an alternative plan fails to receive a majority vote of both houses on or before the fifty-second day after the opening of the regular legislative session in the second year following the decennial census, the Court of Appeals must establish the congressional boundaries. The Court of Appeals has original jurisdiction to review the plan adopted by the General Assembly according to the procedure above, on petition of any registered voter, and may grant appropriate relief where it finds a congressional plan inconsistent with State or federal law.

Current Law:

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, and must be “as nearly equal in population as practicable” (*Wesberry v. Sanders*, 376 U.S. 1 (1964)). This standard is stricter than the standard the U. S. Supreme Court has set for State legislative districts, which must be “substantially equal in population.” (*Reynolds v. Sims*, 377 U.S. 533 (1964))

Congressional districts 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 the commissions vary greatly from state to state in terms of their composition, but most include appointments made by legislative leaders. Only six states (Arizona, California, Hawaii, Idaho, 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; 135 S. Ct. 2652 (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.

Background: The State of Iowa uses a similar process to establish districts as the one proposed in this bill. The nonpartisan Legislative Services Agency (LSA) prepares draft redistricting plans under criteria set almost entirely by statute. Although the Iowa legislature has the ability to reject three LSA plans and then entirely substitute its own, it has not chosen to do so since the procedure's inception in 1980. During the 2000 redistricting cycle, the legislature rejected LSA's first set of plans but adopted the second. During the 2010 cycle, it adopted the first set of plans submitted.

State Expenditures: If the bill's contingency is met, general fund expenditures for DLS increase by at least \$600,000 in fiscal 2020, which reflects the cost of hiring skilled contractual staff for the commission to prepare census data, operate geographic information system software, adjust census data in accordance with Chapters 66 and 67 of 2010, and fulfill the specific staffing requirements under the bill. Additional operating costs include specialized software and licensing as well as component hardware.

The Office of the Attorney General and the Judiciary can implement the bill with existing budgeted resources.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Office of the Attorney General; Governor's Office; Judiciary (Administrative Office of the Courts); Maryland Department of Planning; Maryland State Board of Elections; National Conference of State Legislatures; Department of Legislative Services

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