

Department of Legislative Services
 Maryland General Assembly
 2020 Session

FISCAL AND POLICY NOTE
 First Reader

Senate Bill 204 (Senators Elfreth and Lam)
 Education, Health, and Environmental Affairs

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 bill specifies the membership and duties of the commission, sets forth procedures for consideration of a congressional districting plan by the General Assembly, and grants the Court of Appeals original jurisdiction to review and/or establish a congressional districting plan. **The bill takes effect only if the Commonwealth of Virginia adopts a substantially similar process by January 1, 2021.**

Fiscal Summary

State Effect: If the bill’s contingency is met, general fund expenditures increase by a combined total of at least \$600,000 in FY 2021 and 2022 (and every 10 years thereafter), as discussed below. Revenues are not affected.

(in dollars)	FY 2021	FY 2022	FY 2023	FY 2024	FY 2025
Revenues	\$0	\$0	\$0	\$0	\$0
GF Expenditure	400,000	200,000	0	0	0
Net Effect	(\$400,000)	(\$200,000)	\$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:

Potomac Compact for Fair Representation

The bill does not take effect unless the Department of Legislative Services (DLS) determines, in consultation with the Attorney General, that the Commonwealth of Virginia has adopted a substantially similar congressional districting process. A process is considered substantially similar if:

- a congressional districting plan is initially developed and proposed by a commission composed of individuals who are (1) employees of or contracted by a nonpartisan state agency that provides nonpartisan research or analysis and (2) not selected by the governor of the state, members of the state legislature, or an individual selected by the governor or state legislature;
- the state legislature is allowed to vote on the plan proposed by the commission but is prohibited from altering it; and
- a plan prepared by the compacting state's highest court becomes law if the state legislature fails to adopt the plan proposed by the commission.

A compacting state is not required to comply with the compact if (1) a compacting state's commission fails to adopt a congressional districting plan or (2) a compacting state's attorney general determines that the other compacting state has repealed, replaced, or failed to implement any term of the compact.

Congressional Districting Commission

The Executive Director of Legislative Services must determine (1) the size and composition of the commission and (2) the education and experience requirements for membership on the commission, as specified.

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

The term of a member 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.

While serving on the commission, a member may not be (1) an elected official; (2) an official whose appointment is subject to Senate confirmation; or (3) a candidate for elected office. A commission member may be removed under specified circumstances and procedures.

Following each decennial census, the commission must, after public hearings, prepare a congressional districting plan that complies with applicable federal and State law.

Requirements for Congressional Districts

Each congressional district must consist of adjoining territory, be compact in form, and be of substantially equal population. In addition, due regard must be given to natural boundaries and the boundaries of political subdivisions.

Consideration of a Plan by the General Assembly

The commission must present the plan to the Presiding Officers of the General Assembly, who must introduce the plan as a joint resolution to the General Assembly no later than the first day of the regular session in the second year following the decennial census. Alternatively, the Governor may call a special session for the presentation of the plan before the regular 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 plan by the 17th day after the opening of the regular session, the commission must prepare an alternate plan and submit it to the Presiding Officers, who must introduce the plan as a joint resolution. If the alternate plan fails to receive a majority vote of both houses by the 52nd day after the opening of the regular session, the Court of Appeals must establish the congressional district boundaries.

Judicial Review

The Court of Appeals has original jurisdiction to review a congressional districting plan adopted by the General Assembly on petition of any registered voter and may grant appropriate relief if it finds that the plan is inconsistent with federal and State law.

Current Law/Background:

Congressional Redistricting

Congressional redistricting is governed by the U.S. Constitution, the Voting Rights Act of 1965, and federal case law. Congressional district boundaries must be redrawn after each decennial census to adjust for population changes, and they must be “as nearly equal in population as practicable.” *Wesberry v. Sanders*, 376 U.S. 1 (1964).

Congress has left to the states the task of redrawing congressional district boundaries. Traditionally, the Governor has submitted a new congressional map to the General Assembly at the same time as a legislative redistricting plan. The General Assembly may adopt an alternative congressional map and is subject to no deadline after which the Governor’s plan becomes law. In 2011, the Governor convened a special session to finalize congressional districts for the 2012 primary elections. The General Assembly adopted the current congressional districting plan under Chapter 1 of the 2011 special session.

The Maryland Constitution does not explicitly address congressional districting. Chapters 66 and 67 of 2010 addressed the allocation of the State’s prison population among congressional districts in the State.

2015 Maryland Redistricting Reform Commission

In August 2015, the Governor issued an executive order establishing the 11-member Maryland Redistricting Reform Commission. The executive order charged the commission with examining approaches to redistricting reform and, specifically, independent redistricting commissions, collecting citizen input on redistricting reform, developing recommendations for reforming the State’s redistricting process, and promoting redistricting reform across the State, among other specified responsibilities. In its November 2015 [report](#), the commission detailed its recommendations for the establishment of an independent redistricting commission.

Supreme Court Ruling on Partisan Gerrymandering

In November 2018, a three-judge panel of the U.S. District Court for the District of Maryland ruled in *Benisek v. Lamone* that Maryland’s 2011 congressional redistricting plan violates the First Amendment to the U.S. Constitution by burdening both the plaintiffs’ representational rights and associational rights based on their party affiliation and voting history. The ruling was appealed to the U.S. Supreme Court, which agreed to hear the case and consolidated it with a partisan gerrymandering case from North Carolina, *Rucho v. Common Cause*. In June 2019, the court held that partisan gerrymandering claims present

political questions beyond the reach of federal courts. Though beyond the reach of federal courts, the court noted that the issue of excessive political gerrymandering is being actively addressed by states through the establishment of independent redistricting commissions, criteria for mapmakers, or prohibitions against drawing district lines for partisan advantage.

Iowa Redistricting Process

The State of Iowa has implemented a similar process for congressional redistricting in the state. In Iowa, the nonpartisan Legislative Services Agency (LSA) is responsible for preparing congressional districting plans, which the Iowa General Assembly must consider according to specified procedures. The Iowa General Assembly has limited authority to amend a plan prepared by LSA.

State Fiscal Effect: If the bill's contingency is met, general fund expenditures for DLS increase by at least \$400,000 in fiscal 2021 and by at least \$200,000 in fiscal 2022, 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. Expenditures and contractual staffing terminate in fiscal 2023 after the redistricting process is complete. Similar costs are incurred every 10 years, reflecting future redistricting processes.

Additional Information

Prior Introductions: HB 67 of 2019 and HB 537 of 2018 received unfavorable reports from the House Rules and Executive Nominations Committee.

Designated Cross File: HB 182 (Delegate Reznik, *et al.*) - Rules and Executive Nominations.

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

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