

Department of Legislative Services
Maryland General Assembly
2020 Session

FISCAL AND POLICY NOTE
First Reader

Senate Bill 967 (Senator Washington, *et al.*)
Education, Health, and Environmental Affairs

Legislative and Congressional Districts – Criteria and Open Hearing Process
(Fair Maps Act)

This proposed constitutional amendment requires State legislative districts and congressional districts to comply with the U.S. Constitution and the federal Voting Rights Act or its successor and establishes specified criteria for legislative and congressional districts. The bill includes uncodified language requiring the General Assembly to establish and implement an open hearing process for public input and deliberation in the redistricting process, as specified.

Fiscal Summary

State Effect: The bill does not materially affect governmental operations or finances.

Local Effect: None.

Small Business Effect: None.

Analysis

Bill Summary: Legislative and congressional districts must, in the following order of priority:

- be of substantially equal population (for congressional districts, equal population);
- be geographically contiguous;

- provide racial, ethnic, and language groups with an equal opportunity to participate in the political process, and not dilute or diminish their ability to elect candidates of choice whether alone or in a coalition with others;
- respect the integrity of areas with recognized similarities of interests, including but not limited to racial, ethnic, economic, social, cultural, geographic, or historical identities, but not based on common relationships with political parties or political candidates;
- respect natural boundaries and the boundaries of political subdivisions; and
- be compact in form.

In addition, the bill sets forth requirements for congressional districts that are similar to existing requirements for legislative districts under the Maryland Constitution. Accordingly, congressional districts must consist of adjoining territory, be compact in form, and be of equal population. Additionally, due regard must be given to natural boundaries and the boundaries of political subdivisions.

Current Law/Background:

Legislative Redistricting

Article III of the Maryland Constitution sets forth requirements for State legislative districts and procedures for legislative redistricting. The boundaries of the State's 47 legislative districts must be redrawn after each decennial census to adjust for population changes. State legislative districts must consist of adjoining territory, be compact in form, and be of substantially equal population. Additionally, due regard must be given to natural boundaries and the boundaries of political subdivisions. Legislative districts may be subdivided into single-member and/or multi-member districts for the purpose of electing delegates. Chapters 66 and 67 of 2010 address the allocation of the State's prison population among legislative districts.

In the second year following the decennial census, the Governor must, after conducting public hearings, submit a legislative districting plan to the Presiding Officers of the General Assembly on the first day of the legislative session. The Presiding Officers must introduce the plan as a joint resolution to the General Assembly. Unless the General Assembly adopts an alternative plan before the 45th day of the session, the Governor's plan becomes law. The Court of Appeals has original jurisdiction to review, upon petition by a registered voter, the legislative districting plan and grant relief.

In 2011, in concurrence with recent practice, the Governor established a Redistricting Advisory Committee to conduct public hearings around the State on legislative and

congressional districting. The General Assembly adopted the Governor's 2011 legislative districting plan under Joint Resolution 2 of 2012.

State legislative boundaries are governed by the U.S. Constitution, the Voting Rights Act of 1965, and applicable case law. State legislative districts must be "substantially equal in population." *Reynolds v. Sims* 377 U.S. 533 (1964).

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). 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). Following the 2010 U.S. Census, the U.S. Census Bureau apportioned eight congressional seats to Maryland.

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.

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.

Additional Information

Prior Introductions: None.

Designated Cross File: HB 1431 (Delegate Wilkins, *et al.*) - Rules and Executive Nominations.

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

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