

Department of Legislative Services
2011 Session

FISCAL AND POLICY NOTE

House Bill 997 (Delegate Schuh, *et al.*)
Rules and Executive Nominations

Election Law - Legislative Districting and Apportionment Commission

This proposed constitutional amendment requires the appointment of a legislative districting and apportionment commission in the year following each decennial census of the United States or when required by the United States or by court order. The commission must divide the State into consecutively numbered legislative districts that conform to existing constitutional provisions and must divide the State to create as many congressional districts as there are representatives in Congress apportioned to Maryland. The constitutional amendment specifies procedures and requirements applicable to the appointment of the commission and the establishment of redistricting/apportionment plans. The commission must have staff and other resources as provided in the State budget.

Fiscal Summary

State Effect: If the proposed constitutional amendment is approved by Maryland voters, general fund expenditures may increase in FY 2021 and 2022 to provide staff and resources to the commission, perhaps significantly. Expenditures by the Department of Legislative Services (DLS) and Maryland Department of Planning (MDP) may decrease.

Local Effect: If approved by the General Assembly, this constitutional amendment will be submitted to the voters at the 2012 general election. It should not result in additional costs for the local boards of elections.

Small Business Effect: None.

Analysis

Bill Summary:

Composition of Commission

The commission consists of seven members. Each member must be a registered voter for at least three years preceding appointment and, during the three years immediately preceding appointment to the commission, must not have been appointed to, elected to, or been a candidate for any other public office; and must not have served as an officer in a political party, as an officer of a campaign entity, or as a registered lobbyist.

Appointment of Members

On or before January 1 in the year following a decennial census, the Court of Appeals must nominate a specified pool of 30 candidates for the commission. On or before February 1 of that year, or within 15 days after legislative apportionment or congressional districting is required by law or court order, the President of the Senate, the Speaker of the House of Delegates, the Minority Leader of the Senate, and the Minority Leader of the House of Delegates must each appoint one member to the commission from the nominated pool of candidates. The four appointed members then select, by majority vote, three additional members from the nominated pool of candidates. The three additional members may not result in the commission having more than two members who are affiliated with the same political party or who are not affiliated with any political party.

Operation of and Requirements/Procedures Applicable to the Commission

The commission elects its chair and must establish its own rules and procedures to govern its operations. The constitutional amendment specifies other requirements/procedures with respect to votes required for an official act of the commission, applicability of State law governing open meetings and access to public information to meetings and records of the commission, removal of a member, and filling of any vacancy on the commission.

District Requirements

Legislative districts must be established in accordance with the U.S. Constitution and the Maryland Constitution and be as nearly equal in population as practical, not deviating more than 1% in population between districts.

Establishment of Redistricting/Apportionment Plans

The commission must file its final report, including all required redistricting plans, with the Secretary of State, within 180 days of being certified to the Secretary of State. The Court of Appeals subsequently reviews and determines the validity of the plans and, if the required plans are determined to be valid, the commission is dissolved. If the commission does not file its final report, including all required plans, in a timely manner, it is dissolved and the Court of Appeals makes the apportionment.

In the event the Court of Appeals determines the apportionment made by the commission is invalid, procedures for the filing of an amended plan by the commission are specified. If an amended plan is not filed, or the Court of Appeals determines that the amended plan is invalid, the Court of Appeals makes the apportionment.

A judgment of the Court of Appeals determining the commission's apportionment is valid, or ordering judicial apportionment, is binding on all citizens of the State.

Current Law: The State constitution provides for 47 legislative districts. Each elects one senator and three delegates. A legislative district is required to be contiguous, compact, and of substantially equal population. Due regard is to be given to natural boundaries and the boundaries of political subdivisions. Legislative districts can be subdivided for the purpose of electing delegates from single-member or multi-member subdistricts.

In the second year following the federal decennial census, and after public hearings, the Governor presents a legislative districting plan to the President of the Senate and the Speaker of the House of Delegates. The plan is then introduced as a joint resolution to the General Assembly not later than the first day of the regular session. If the General Assembly does not pass an alternative plan before the forty-fifth day of the session, the Governor's plan becomes law. Any registered voter may petition the Court of Appeals to review the plan for consistency with the federal and State constitutions.

Background: The current legislative districting plan was promulgated and adopted by the Court of Appeals in June 2002 after the court invalidated the plan enacted in the 2002 General Assembly session. Congressional district boundaries are required under federal case law to be redrawn every 10 years after the decennial census to adjust for population changes. The current districts were established under Chapter 340 of 2002.

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

State Fiscal Effect: If the proposed constitutional amendment is approved by the General Assembly, it will be voted on during the 2012 general election, so it will not likely affect redistricting until after the 2020 Census. In fiscal 2021 and 2022, therefore, general fund expenditures may increase to provide staff and resources to the commission. The extent of any expenditure increase cannot be reliably estimated at this time but may be significant. For example, DLS budgets between \$200,000 and \$250,000 to support the General Assembly in the redistricting process, which does not include staff costs. In addition to personnel costs for commission staff, costs may include those associated with:

- software used to develop redistricting plans;
- computer, printing, map plotting, and other equipment;
- materials and supplies;
- office space;
- potential consultant services/technical assistance;
- any public hearings held by the commission; and
- any costs associated with an apportionment developed by the Court of Appeals if the commission's amended plan is invalidated.

To the extent existing State resources are used to support the commission, including those within MDP and DLS, any additional costs for the redistricting process may be reduced. To the extent such revenues are not utilized by the commission, MDP and DLS expenditures decrease.

Costs associated with any litigation following the development of redistricting plans may also be incurred; however, it is unclear what effect the transfer of the redistricting responsibility to the commission may have on the potential for litigation regarding developed plans and associated costs.

Local Fiscal Effect: The Maryland Constitution requires that proposed amendments to the constitution be publicized either (1) in at least two newspapers in each county, if available, and in at least three newspapers in Baltimore City once a week for four weeks immediately preceding the general election; or (2) by order of the Governor in a manner provided by law. State law requires local boards of elections to publicize proposed amendments to the constitution either in newspapers or on specimen ballots; local boards of elections are responsible for the costs associated with these requirements. It is anticipated that the budgets of local election boards will contain funding for notifying

qualified voters about proposed constitutional amendments for the 2012 general election in newspapers or on specimen ballots.

Additional Information

Prior Introductions: HB 284 of 2009 was referred to the House Rules and Executive Nominations Committee, but no further action was taken on the bill. Its cross file, SB 847, received a hearing in the Senate Education, Health, and Environmental Affairs Committee, but no further action was taken on the bill.

Cross File: None.

Information Source(s): Office of the Attorney General, Judiciary (Administrative Office of the Courts), Secretary of State, Department of Legislative Services

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