

Department of Legislative Services
2014 Session

FISCAL AND POLICY NOTE

House Bill 970 (Delegate Hogan)
Rules and Executive Nominations

General Assembly and Congressional Legislative Redistricting and Apportionment Commission

This bill proposes a constitutional amendment that, if approved by the voters at the next general election, repeals existing constitutional provisions relating to the legislative redistricting process and requires the appointment of a General Assembly and Congressional Legislative Redistricting 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 bill also includes implementing provisions related to the appointment of members of the commission, the process for developing redistricting plans, and funding for the commission.

The bill take effect June 1, 2014.

Fiscal Summary

State Effect: If the proposed constitutional amendment is approved by Maryland voters, general fund expenditures for multiple agencies increase by at least \$3.0 million in FY 2020 to reimburse members of the commission and to provide staff and other resources to the commission and related agencies. Revenues are not affected. **This bill establishes a mandated appropriation for FY 2020.**

(\$ in millions)	FY 2020	FY 2021	FY 2022	FY 2023	FY 2024
Revenues	\$0	\$0	\$0	\$0	\$0
GF Expenditure	3.0	0	0	0	0
Net Effect	(\$3.0)	\$0	\$0	\$0	\$0

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

Local Effect: None. It is assumed that the potential for increased costs to notify voters of any constitutional amendments proposed by the General Assembly, and to include any proposed constitutional amendments on the ballot at the next general election, will have been anticipated in local boards of elections' budgets.

Small Business Effect: None.

Analysis

Bill Summary:

General Assembly and Congressional Legislative Redistricting and Apportionment Commission

The commission must (1) conduct an open and transparent process enabling full public consideration of and comment on the drawing of district lines; (2) draw district lines according to the specified redistricting criteria; and (3) conduct itself with integrity and fairness.

Duties of the Commission

In the year following the year in which the national census is taken or when required by the United States or by court order, the commission must be appointed to (1) divide the State into consecutively numbered General Assembly legislative districts that conform to specified standards and (2) divide the State to create as many congressional districts as there are representatives in Congress apportioned to the State. Each General Assembly and congressional legislative district must be established in accordance with the U.S. and Maryland Constitutions; General Assembly legislative districts must be nearly equal in population, but may not deviate more than 10% between districts.

Commission Membership and Qualifications

The selection process for the commission specified in further detail below is designed to produce a commission that is independent from legislative influence and reasonably representative of the State's diversity. The commission must consist of 14 members. Five members must be registered with the largest political party in the State based on registration. Five members must be with the second largest political party in the State based on registration. The remaining four members must not be registered with either of the two largest political parties.

Each commission member must be a voter who has been registered continuously in the State with the same political party or unaffiliated with a political party and who has not

changed party affiliation within the five years immediately preceding the date of the individual's appointment. The individual also must have voted in two of the last three statewide general elections immediately preceding the individual's application.

The term of office of each commission member expires on the appointment of the first member of the succeeding commission. Nine members of the commission is a quorum, and nine or more affirmative votes are required for any official action. The final proposed maps adopted by the commission must be approved by at least nine affirmative votes which must include at least three votes of members registered from each of the two largest political parties in the State and three votes from members who are not registered with either of these two political parties.

Each commission member must (1) apply the provisions of applicable law in a manner that is impartial and that reinforces public confidence in the integrity of the redistricting process; (2) be ineligible for a period of five years beginning from the date of appointment to hold elective public office at the federal, State, county, or city level in the State; and (3) be ineligible for a period of five years beginning from the date of appointment to hold appointive federal, State, or local public office, to serve as paid staff for the General Assembly or any individual legislator, or to register as a federal, State, or local lobbyist in the State.

Legislative and Congressional Districts

Each General Assembly legislative district must comply with relevant sections of the Maryland Constitution. Each congressional district must (1) comply with the U.S. Constitution; (2) be equal in population, except where deviation is required or allowed by law; (3) comply with the federal Voting Rights Act; (4) be geographically contiguous; (5) without violating these requirements, respect the geographic integrity of any city or county, to the extent possible; and (6) to the extent practicable, and where this does not conflict with the criteria above, be drawn to encourage geographical compactness such that nearby areas of population are not bypassed for more distant population. The place of residence of any incumbent or political candidate may not be considered in the creation of a map. A district may not be drawn for the purpose of favoring or discriminating against an incumbent, political candidate, or political party.

Approval and Certification Process

By September 15 of each year ending in the number one, the commission must approve separate maps that set forth the district boundary lines for the members of the U.S. Congress of the State and for members of the General Assembly. The commission must issue, with each of the final maps, a report that explains the basis on which the commission made its decisions in achieving compliance with the specified criteria, and

that includes definitions of the terms and standards used in drawing each final map. On approval, the Secretary of State must immediately petition the Court of Appeals for review and ask for a declaratory ruling on the validity of each map.

If the commission does not approve a final map by at least the requisite votes, or if the Court of Appeals does not approve a final map, the Secretary of State must immediately petition the Court of Appeals and ask for the appointment of special masters to adjust the boundary lines of that map in accordance with the redistricting criteria and requirements set forth in the bill's provisions. On the court's approval of the masters' map, the court must certify the resulting map to the Secretary of State. This map constitutes the certified final map for the congressional districts. Final maps certified by the Court of Appeals are not subject to public referendum.

Legal Challenges

The commission has the sole legal standing to defend any action regarding a certified final map, and must inform the General Assembly if the commission determines that funds or other resources provided for the operation of the commission are not adequate. The General Assembly must provide adequate funding to defend any action regarding a certified map. The commission has sole authority to determine whether the Attorney General or other legal counsel retained by the commission must assist in the defense of a certified final map.

The Court of Appeals has original and exclusive jurisdiction in all proceedings in which a certified final map is challenged. Within 45 days after the commission has certified a final map to the Secretary of State, any registered voter in the State may file a petition for a writ of mandamus or writ of prohibition to bar the Secretary of State from implementing the plan on the grounds that the filed plan violates the State or U.S. Constitutions or any federal or State statute. The Court of Appeals must give priority to ruling on a petition for a writ of mandamus or a writ of prohibition filed under these provisions. If the court determines that a final certified map is in violation of these requirements, the court must establish the relief that it deems appropriate.

Amending the Statute

The bill also specifies criteria that must be met in order for the General Assembly to amend the provisions set forth in the bill, which involves a super majority in both houses of the General Assembly.

Duties of Legislative Auditor/Selection of Commission Members

In each year ending in the number zero, the Legislative Auditor must initiate an application process, which must be open to all registered voters in the State in a manner that promotes a diverse and qualified applicant pool. The Legislative Auditor must remove from the applicant pool individuals with specified conflicts of interest.

The Legislative Auditor must establish an applicant review panel, consisting of three “qualified independent auditors” to screen applicants. A “qualified independent auditor” means an auditor who is currently licensed by the State and has been a practicing independent auditor for at least 10 years before appointment to the applicant review panel. The names of three qualified independent auditors must be randomly drawn from a pool consisting of all auditors employed and licensed by the State at the time of the drawing. The Legislative Auditor must draw until the names of three auditors have been drawn, including one who is registered with the largest political party in the State based on party registration, one who is registered with the second largest political party, and one who is not registered with either.

After the drawing, the Legislative Auditor must notify the three qualified independent auditors whose names have been drawn that they have been selected. If any of the auditors decline to serve on the panel, the random drawings must resume until three qualified independent auditors who meet the requirements specified have agreed to serve on the panel. A member of the panel is subject to the conflict of interest provisions set forth in the bill.

After removing individuals with conflicts of interest from the applicant pool, the Legislative Auditor must publicize, no later than August 1 in each year ending in the number zero, the names in the applicant pool and provide copies of their applications to the applicant review panel. From the applicant pool, the panel must select 60 of the most qualified applicants, including 20 who are registered with the largest political party in the State, 20 who are registered with the second largest political party in the State, and 20 who are not registered with either of the two largest political parties. The subpools must be created on the basis of relevant analytical skills, ability to be impartial, and appreciation for the State’s diverse demographics and geography. The members of the panel may not communicate with any member of the General Assembly or Congress, or their representatives, about any related matter before the presentation by the panel of the pool of recommended applicants to the Secretary of the Senate and the Chief Clerk of the House.

By October 1 of each year ending in the number zero, the applicant review panel must present its pool of recommended applicants to the Secretary of the Senate and the Chief

Clerk of the House. By November 15 in each year ending in the number zero, the President of the Senate, the Speaker of the House, and the minority floor leaders in the Senate and the House may each strike up to two applicants from each subpool of 20 for a total of eight possible strikes per subpool. Once all legislative leaders have exercised their strikes, the Secretary of the Senate and the Chief Clerk of the House must jointly present the pool of remaining names to the Legislative Auditor.

By November 20 in each year ending in the number zero, the Legislative Auditor must randomly draw eight names from the remaining pool of applicants, as specified. These eight individuals must serve on the commission. By December 31 in each year ending in the number zero, the eight commissioners must review the remaining names in the pool of applicants and appoint six applicants, as specified. The six appointees must be chosen to ensure that the commission reflects the State's diversity. Applicants must also be chosen based on their relevant analytic skills and the ability to be impartial.

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 two-thirds of the members of the Senate 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 the 30 days after the vacancy occurs, from the pool of applicants of the same voter registration category as the vacating nominee that was remaining as of November 20 in the year in which that pool was established. If none of the remaining applicants are available for service, the Legislative Auditor must fill the vacancy from a new pool created for the same voter registration category in accordance with the procedures specified above.

Activities and Staffing of Commission

The activities of the 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, except that meetings held in September in the year ending in the number one may be held with three days' notice.

Commission members and staff may not communicate with or receive communications about redistricting matters from anyone outside of a public hearing. However,

communications between commission members, staff, legal counsel, and consultants retained by the commission is allowed.

The commission must select one of its members to serve as the chair and one to serve as vice chair. The Department of Legislative Services (DLS) serves as primary staff to the commission. The commission may hire staff, legal counsel, and consultants as needed. The commission must establish clear criteria for the hiring and removal of these individuals, communication protocols, and a code of conduct. The commission must require that at least one of the legal counsels hired by the commission has demonstrated extensive experience and expertise in implementation and enforcement of the federal Voting Rights Act of 1965.

The commission must make hiring, removal, or contracting decisions on staff, legal counsel, and consultants by nine or more affirmative votes including at least three votes of members registered from each of the two largest parties and three votes from members who are not registered with either of the two largest political parties in the State. An employer may not discharge, threaten to discharge, intimidate, coerce, or retaliate against any employee by reason of such employee's attendance or scheduled attendance at any meeting of the commission.

Hearing Process and Public Involvement

The commission must establish and implement an open hearing process for public input and deliberation that is subject to public notice and designed to encourage citizen promoted through a thorough 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 hearings following the drawing and display of any commission maps. Hearings must be supplemented with other activities as appropriate to further increase opportunities for the public to observe and participate. The commission must display the maps for public comment in a manner designed to achieve the widest public access reasonably possible. Public comment must be taken for at least 14 days from the date of public display of any map.

The General Assembly must take all steps necessary to ensure that a complete and accurate computerized database is available for redistricting, and that procedures are in place to provide the public ready access to redistricting data and computer software for drawing maps.

Commission Compensation

Each member of the commission must be compensated at a rate of \$300 for each day the member is engaged in commission business. For each succeeding commission, the rate of compensation must be adjusted in each year ending in the number nine by the cumulative change in the Maryland Consumer Price Index (CPI) or its successor. Members of the panel and the commission are eligible for reimbursement of personal expenses incurred in connection with the duties in accordance with the standard State travel regulations.

Mandated funding

In each year ending in the number nine, the Governor must include in the State budget funding for the Legislative Auditor, the commission, the Secretary of State, and DLS that is sufficient to meet the estimated expenses of each of the officers or entities in implementing the redistricting process required for a three-year period, including adequate funding for a statewide outreach program to solicit broad public participation in the redistricting process. The Governor must also make adequate office space available for the operation of the commission. The General Assembly must make the necessary appropriation in the State budget, and the appropriation must be available during the entire three-year period. The appropriation must be made equal to the greater of \$3.0 million, or the amount expended in the immediately preceding redistricting process, as each amount is adjusted by the cumulative change in the Maryland CPI, or its successor, since the date of the immediately preceding appropriation. The commission, with fiscal oversight from the Department of Budget and Management, must have procurement and contracting authority and may hire staff and consultants, including legal representation.

Current Law/Background: State legislative district boundaries are required under the Maryland Constitution and federal case law to be redrawn every 10 years after the decennial census to adjust for population changes. The Maryland Constitution provides for 47 legislative districts. Article III, Section 4 requires that State legislative districts consist of adjoining territory, be compact in form and of substantially equal population, and that natural boundaries and the boundaries of political subdivisions be given due regard. Legislative districts can be subdivided for the purpose of electing one or two delegates from a subdistrict. Creation of legislative boundaries falls under the requirements of the U.S. Constitution's Fourteenth Amendment, which requires districts to be equally populated.

Article III, Section 5 of the Maryland Constitution requires public hearings to be held before the Governor prepares a legislative redistricting plan. In 2011, the Governor

appointed a Redistricting Advisory Committee to conduct public hearings around the State as required by the State Constitution. Consistent with prior practice in previous redistricting phases, the public hearings addressed both legislative and congressional redistricting. The Governor must present a legislative districting plan to the General Assembly by the first day of session in the second year following the decennial census and after the public hearings. If the General Assembly does not pass an alternative plan before the forty-fifth day of session, the Governor's plan becomes law. The current legislative districting plan was enacted as Joint Resolution 2 of the General Assembly in 2012.

Chapters 66 and 67 of 2010 require that population counts used to create legislative and congressional 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.

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 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. Similar legislation, the "Voters FIRST Act of 2008", was enacted in California.

State Expenditures: If the proposed constitutional amendment is approved by the voters at the 2014 general election, general fund expenditures increase by a minimum of \$3.0 million in fiscal 2020 due to the mandated appropriation included in the bill to provide:

- staff for various agencies specified in the bill, plus the Judiciary;
- software used to develop redistricting plans;
- computer, printing, map plotting, and other equipment;
- materials and supplies;
- office space;
- public hearings;
- potential legal services and consultant/technical assistance; and
- any costs associated with an apportionment developed by special masters if the commission's plan is invalidated.

The bill specifies that the appropriation must be available during the entire three-year period, even though some of the activities required by the bill and associated expenditures occur after fiscal 2020. The bill also specifies that the appropriation must be included in each year ending in the number "nine." It is assumed that the first applicable year referred to in the bill is calendar 2019, and that the money would be included in the fiscal 2020 State budget. The appropriation is to provide funding for the Legislative Auditor, the newly established commission, the Secretary of State, DLS, and the Judiciary to implement the redistricting process as established under the bill's provisions. Actual expenditures specific to each of the individual entities cannot be more specifically estimated beforehand for a number of reasons. Because the commission is not yet formed and there are no specific staffing standards, it is not possible to reliably predict the staff that is needed in order for the commission to carry out its responsibilities.

The Office of Legislative Audits (OLA) advises that it is also unable to provide a reliable estimate of costs, as the work required under the bill is dissimilar to its current audit responsibilities. OLA does indicate that most of the work needed to implement the bill likely needs to be performed by independent contractors and/or contractual employees; because the work related to the bill is limited to three years (per the congressional redistricting cycle), it may not be practical to hire full-time positions.

OLA also indicates that it communicated with the California's State Auditor (CSA) in order to get information on CSA's experience in facilitating the redistricting process as required by California law. CSA advises that it relied significantly on legal representation in developing the initial process and establishing regulations, and up to four attorneys were used for CSA's redistricting work. OLA advises it would need to rely on the Office of the Attorney General for any legal advice and services, which may increase expenditures for that office, particularly within the first redistricting cycle when new procedures will have to be established.

According to OLA, CSA advises that its expenditures for the three-year period relating to redistricting work totaled approximately \$4.0 million (approximately \$2.0 million for salaries and benefits for CSA staff and \$2.0 million for contractual services). Costs related to public relations and outreach accounted for approximately \$1.7 million of the \$2.0 million in contractual services expenditures. CSA estimates that it received approximately 30,000 applications for its commission positions. OLA notes that Maryland will likely receive far fewer applications for commission positions; however, the infrastructure needed to support the newly established process will still be extensive.

The Judiciary advises that controversies regarding congressional redistricting are rarely heard in State court and there is no provision in current law for the appointment of special masters to adjust the boundary lines of a congressional or legislative districting map. While it is assumed that clerical assistance, including law clerks, are necessary, the Judiciary is unable to reliably estimate expenditures at this time.

State costs of printing absentee and provisional ballots may increase to the extent inclusion of the proposed constitutional amendment on the ballot at the next general election would result in a need for a larger ballot card size or an additional ballot card for a given ballot (the content of ballots varies across the State, depending on the offices, candidates, and questions being voted on). Any increase in costs, however, is expected to be relatively minimal, and it is assumed that the potential for such increased costs will have been anticipated in the State Board of Elections' budget. Pursuant to Chapter 564 of 2001, the State Board of Elections shares the costs of printing paper ballots with the local boards of elections.

Local Expenditures: Local boards of elections' printing and mailing costs may increase to include information on the proposed constitutional amendment with specimen ballots mailed to voters prior to the next general election and to include the proposed amendment on absentee and provisional ballots. It is assumed, however, that the potential for such increased costs will have been anticipated in local boards of elections' budgets.

Additional Information

Prior Introductions: HB 1199 of 2013, a similar bill, was heard by the House Rules and Executive Nominations Committee, but no further action was taken. HB 14 of the 2012 second special session, a similar bill, was referred to the House Rules and Executive Nominations Committee, but no further action was taken.

Cross File: None.

Information Source(s): Governor's Office, Judiciary (Administrative Office of the Courts), National Conference of State Legislatures, Department of Legislative Services

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