SB 380

Department of Legislative Services

2016 Session

FISCAL AND POLICY NOTE

First Reader

Senate Bill 380 (The President, *et al.*) (By Request - Administration)

Education, Health, and Environmental Affairs

General Assembly and Congressional Legislative Redistricting and Apportionment Commission

This Administration 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 takes effect June 1, 2016.

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 commission members for expenses 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 dollars)	FY 2016	FY 2017	FY 2018	FY 2019	FY 2020
Revenues	$0	$0	$0	$0	$0
GF Expenditure	0	0	0	0	3,000,000
Net Effect	$0	$0	$0	$0	($3,000,000)

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: The Administration has determined that this bill has minimal or no impact on small business (attached). The Department of Legislative Services (DLS) concurs with this assessment.

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 United States and Maryland Constitutions; General Assembly districts must be nearly equal in population but may not deviate more than 2% between districts. Delegates must be elected from a single-member or a three-member district. Senators must be elected from a single-member district. Each member of congress must be elected from a single-member district. In developing maps, the commission must (1) hold public hearings; (2) provide access to redistricting data and software; and (3) ensure full public participation in the redistricting process.

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 nine members. Three members must be registered with the largest political party in the State based on registration. Three members must be registered with the second largest political party in the state based on registration. The remaining three 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. A commissioner member may not (1) have been a candidate for election to or served as a member of the General Assembly or of the U.S. Congress from this state, or an immediate family member (through blood or legally), of a candidate or member, within the five years immediately preceding the date of the individual's appointment; (2) be a regulated lobbyist in this State; or (3) currently or have been a staff member or consultant under contract with or related to (by blood or legally) the Governor, a member of the General Assembly, or a member of Congress from Maryland.

The term of office of each commission member expires on the appointment of the first member of the succeeding commission. Seven members of the commission is a quorum, and six or more affirmative votes are required for any official action. The final proposed maps adopted by the commission must be approved by at least six affirmative votes.

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

Commission 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 includes definitions of the terms and standards used in drawing each final map. On adoption, the commission must submit its certified final maps and plans to the Secretary of State. The Secretary of State must forward certified final maps and plans of General Assembly legislative districts and congressional districts for the State submitted by the commission to the Presiding Officers of the General Assembly for introduction as separate bills.

Legislative Approval Process

The final certified map and plan introduced by the Presiding Officers may not be amended. A member of the General Assembly may not introduce an alternative map or plan that is different from the certified map and plan.

Three-fifths of the members in both houses of the General Assembly must vote to adopt a map and plan. On passage by the General Assembly, the bill must be presented to the Governor for signature or veto. If the Governor vetoes the bill and the General Assembly overrides the veto, the bill becomes law in accordance with the Maryland Constitution. If a map and plan fails to receive the requisite three-fifths vote from each house of the General Assembly, or if the General Assembly fails to override a gubernatorial veto, the Presiding Officers must return the bill together with any recommendations to the commission and request that commission propose an alternative map and plan.

If the General Assembly fails to pass by a three-fifths vote of each house the bill for an alternative map and plan submitted by the commission, or if the bill is vetoed by the Governor and not overridden by the General Assembly, the commission must file a petition with the Court of Appeals to review the map and plan and establish districts. Any registered voter of the State may become a party to the proceeding on approval by the Court of Appeals.

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. Upon enactment of any bill establishing General Assembly and/or congressional districts, any registered voter may file a petition for a writ of mandamus or writ of prohibition to bar the map(s) from taking effect on the grounds that the plan violates the State or U.S. Constitution, or any federal or State statute. 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 30 of the most qualified applicants, including 10 who are registered with the largest political party in the State, 10 who are registered with the second largest political party in the State, and 10 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 matter related to the nomination process or applicants 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 November 20 in each year ending in the number zero, the Legislative Auditor must randomly draw nine names from the remaining pool of applicants, as specified. These nine individuals must serve on the commission.

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 unaffiliated members to serve as the chair. 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 six or more affirmative votes. 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 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/Reimbursement of Expenses

A member of the commission may not receive compensation but is entitled to reimbursement of expenses under the standard State travel regulations, as provided in the State budget.

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 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 Consumer Price Index, 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 and Federal Redistricting Provisions

The Maryland Constitution and federal case law require State legislative district boundaries 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 Authority in Other States

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 that 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.

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; 576 U.S. ___ (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.

Maryland Redistricting Reform Commission

In August 2015, the Governor established the 11-member Maryland Redistricting Reform Commission. It is comprised of two members of the Maryland Senate appointed by the President of the Senate and the minority leader, two members of the House of Delegates appointed by the Speaker of the House and the minority leader, and seven members appointed by the Governor. The commission was charged with (1) conducting a comprehensive examination of the States' legislative and congressional redistricting process; (2) reviewing the redistricting process in other states with redistricting commissions; (3) conducting regional summits across the State to offer ideas and receive input on redistricting reform; (4) providing an electronic portal to receive citizen input; (5) developing recommendations for a constitutional amendment on congressional and legislative redistricting; and (6) promoting redistricting reform publicly statewide, to ensure fair elected representation in the State.

State Expenditures: If the proposed constitutional amendment is approved by the voters at the 2016 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;
- any costs associated with an apportionment developed by special masters if the commission's plan is invalidated; and
- online redistricting data and computer software for drawing maps**.**

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 is 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.

DLS/General Assembly: The bill requires the General Assembly to ensure ready access to an accurate database and software for drawing maps. It is not clear which of the agencies/entities involved are tasked with this requirement. In the event that DLS takes this responsibility, any server space needed could be handled with existing resources. Providing online access to redistricting software requires uploading and maintaining the State's official redistricting data within a software program that allows online map drawing. The cost for this cannot be reliably estimated at this time without further information regarding the specific software needed. Free redistricting software is available on the Internet as well as commercial software.

The Office of Legislative Audits: 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 that, under the bill, it must 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 must 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 for contractual services expenditures. CSA estimates that it received approximately 30,000 applications for its commission positions. OLA notes that, because of its smaller population, Maryland will likely receive far fewer applications for commission positions; however, the infrastructure needed to support the newly established process is still anticipated to be extensive.

Judiciary: The Judiciary advises that controversies regarding congressional redistricting are rarely heard in State court, so it has limited expertise in resolving any disputes. Moreover, 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 Board of Elections: 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 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' (SBE's) budget. Pursuant to Chapter 564 of 2001, SBE 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 Comments: The bill requires the commission to complete final maps by September 15 in each year ending in the number one. However, the State receives the required census data in February or as late as March in that same year. As noted above, Chapters 66 and 67 of 2010 require that population counts used to create legislative and congressional districts in Maryland exclude certain incarcerated individuals. This process, which took nine months during the last round of redistricting beginning in 2011, includes (1) geocoding tens of thousands of prisoner address files in coordination with the Department of Public Safety and Correctional Services; (2) updating census data; and (3) incorporating the adjusted data into the software used to complete maps. DLS anticipates that this process will likely take at least six months in 2021. Thus, it may not be feasible for the commission to meet the bill's deadline for completing its work.

Additional Information

Prior Introductions: HB 970 of 2014 received a hearing in the House Rules and Executive Nominations Committee, but no further action was taken. 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, another similar bill,

was referred to the House Rules and Executive Nominations Committee, but no further action was taken.

Cross File: HB 458 (The Speaker, *et al.*) (By Request - Administration) - Rules and Executive Nominations.

Information Source(s): Governor's Office, Secretary of State, Judiciary (Administrative Office of the Courts), Department of Budget and Management, Maryland Department of Planning, National Conference of State Legislatures, Department of Legislative Services

Fiscal Note History: First Reader - February 26, 2016
min/mcr

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ANALYSIS OF ECONOMIC IMPACT ON SMALL BUSINESSES

TITLE OF BILL: General Assembly and Congressional Legislative Redistricting and Apportionment Commission

BILL NUMBER: SB0380/HB0458

PREPARED BY: Governor's Legislative Office

PART A. ECONOMIC IMPACT RATING

This agency estimates that the proposed bill:

_X__ WILL HAVE MINIMAL OR NO ECONOMIC IMPACT ON MARYLAND SMALL BUSINESS

OR

___ WILL HAVE MEANINGFUL ECONOMIC IMPACT ON MARYLAND SMALL BUSINESSES

PART B. ECONOMIC IMPACT ANALYSIS