

Department of Legislative Services  
Maryland General Assembly  
2018 Session

FISCAL AND POLICY NOTE  
First Reader

House Bill 477 (Delegate Carr, *et al.*)  
Rules and Executive Nominations

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Potomac Compact for Fair Representation

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This bill establishes the Potomac Compact for Fair Representation between the State of Maryland and the Commonwealth of Virginia and other designated states who agree to the creation of a single bipartisan Independent Congressional Districting Commission to establish congressional districts using a proportional voting method. **The bill is contingent on (1) the U.S. Congress approving multiseat congressional districts by January 1, 2022, and (2) either the Commonwealth of Virginia enacting a similar law by January 1, 2020, or other specified states enacting a similar law on or after January 1, 2020. If those contingencies are not met, the bill terminates.**

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Fiscal Summary

**State Effect:** Assuming the bill's contingencies are met, general fund expenditures for the State Board of Elections (SBE) increase by at least \$2.3 million for software programming, additional voting equipment, and additional paper ballots. The timing of those costs is unclear, however, and additional costs may be incurred. Revenues are not affected.

**Local Effect:** Assuming the bill's contingencies are met, county expenditures increase by at least \$2.3 million for software programming, additional voting equipment, and additional paper ballots. The timing of those costs is unclear, however, and additional costs are likely incurred. Local revenues are not affected.

**Small Business Effect:** None.

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## Analysis

**Bill Summary:** The bill establishes an Independent Congressional Districting Commission that includes representation from each state that is party to the compact. A state is not required to comply with the compact if the commission fails to adopt a congressional plan for that state, or if the state's Attorney General determines that a party state has (1) repealed, replaced, or failed to implement the compact or (2) failed to use a substantially similar proportional voting method whereby a candidate is guaranteed to win if the candidate receives more votes than the total number of valid votes cast divided by the sum of one plus the number of members to be elected in the congressional district in which the individual is a candidate.

*Commission Membership:* The commission consists of the following members from each party state: (1) two members of the majority party in the state; (2) two members of the minority party in the state; (3) two members who are unaffiliated with either the majority or minority party in the state; and (4) one member selected by a majority of the members of the commission, who is not a resident of the state and is a prominent academic, former government official, or civic leader known for political independence in judgment.

Any state that is a party to the compact must designate or establish a nonpartisan state agency to solicit applications for membership. An individual is not eligible for membership on the commission if that individual (1) holds public office; (2) is a candidate for public office; (3) serves as an officer, employee, or paid consultant of a political party or candidate campaign; or (4) is a registered lobbyist.

The nonpartisan state agency must select from the applicants a pool of 30 individuals consisting of 10 members each from applicants affiliated with the majority party, the minority party, and those unaffiliated. The nonpartisan state agency must then select 2 members at random from each of the three categories who will serve as members on the commission. Two co-chairs must be selected by commission members, each from a different state that is a party to the compact. Commissioners serve 10-year terms.

*Commission Duties:* The commission must consider the adoption of a multiseat congressional districting plan for each state that is a party to the compact. It must implement a congressional districting plan no later than 30 days before a state that is party to the compact is required to implement a congressional districting plan. In doing so, the commission members must operate in a transparent manner and solicit public feedback in drawing a plan. A plan adopted by the commission must:

- have equal population per representative to the extent practicable;
- be consistent with the federal Voting Rights Act and any other applicable federal or state law;

- lead to a state congressional delegation that reflects and represents generally the political preferences of the people of the state;
- be contiguous and compact, and respect existing political boundaries and communities of interest; and
- follow visible geographic features.

*Plan Adoption:* A majority of the full commission must vote for adoption of a plan, including at least one member in each affiliated/unaffiliated category who is from the state in which the plan is being adopted.

The state legislature in each party state must vote on the commission's plan for that state at least 30 days before the state's deadline for adopting a congressional plan. The commission plan may not be amended, but the state is not required to implement the plan until at least one other state that is party to the compact adopts a plan offered by the commission.

*Multiseat Congressional Districts:* If the commission draws and adopts a multiseat congressional plan for Maryland, the State must be divided into two multiseat districts, each with four representatives. If Virginia becomes a party state, Virginia must be divided into three multiseat districts with two districts each electing three of that state's representatives in Congress and one district electing five representatives. The compact requires any state that is party to the compact that has five or fewer congressional representatives to elect the state's congressional representatives at-large. If a state other than Maryland or Virginia with six or more representatives becomes a party to the compact, it must be divided into multiseat districts in which at least three but no more than five representatives are elected.

*Contingencies:* The bill does not take effect unless Congress approves the use of multiseat congressional districts before January 1, 2022, and until a similar act is enacted by Virginia by January 1, 2020. If Virginia does *not* enact similar legislation by that deadline, the bill takes effect if Arkansas, Indiana, Kansas, Michigan, Missouri, North Carolina, Oklahoma, Pennsylvania, Utah, West Virginia, or Wisconsin enacts similar legislation on or after January 1, 2020.

**Current Law:** Congressional districts are required to be single-member by federal law (2 U.S. Code § 2c).

*Congressional Districts:* 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 fall 2011. The current districts were established under Chapter 1 of the 2011 special session.

*Prisoner Allocation:* Chapters 66 and 67 of 2010 require that population counts used to create legislative, congressional, county, and municipal 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.

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

**Background:** The bill proposes the use of ranked choice voting (RCV), also called "instant runoff voting," which describes voting systems that allow voters to rank candidates in order of preference and then uses those rankings to elect candidates who have a combination of first-, second-, and third-choice support. Voters can rank as many candidates as they want, and those ranked choices count toward determining the sole winner in a single-seat election or multiple winners in a multiseat election. How votes are counted using RCV depends on whether the election is for a single office or for more than one candidate in a district.

*Single-seat Elections:* If a candidate receives more than half of the votes based on first choices, that candidate wins. If no candidate receives more than half of those votes, then the candidate with the fewest first choices is eliminated. The voters who selected the defeated candidate as a first choice will then have their votes added to the totals of their next choice. This process continues until a candidate has more than half of the active votes, or only two candidates remain. The candidate with a majority among the active candidates is declared the winner.

*Multiseat Elections:* Candidates who receive a certain share of votes will be elected; this share of votes is called the "threshold." A candidate who reaches the threshold is elected, and any excess votes over the threshold are then counted for the voters' second choices. Then, after excess votes are counted, the candidate with the fewest votes is eliminated. The

voters who selected the defeated candidate as a first choice will then have their votes counted for their second choice. This process continues until all seats are filled.

**State Expenditures:** If the State adopts an RCV system for congressional elections, general fund expenditures for SBE increase by at least \$2,325,587 for additional tabulation equipment, additional paper ballots, and software programming required to implement RCV for congressional elections, as discussed below. The timing of the increase in general fund expenditures is unknown; it depends on when the State adopts an RCV system. Pursuant to Chapter 564 of 2001, the State shares costs of the statewide voting system with the counties, including the cost of printing ballots. This estimate assumes that SBE and county boards of election share evenly in the costs of conducting multiseat congressional elections.

*Tabulation Equipment:* It is expected that the State's voting system can be used for an election using RCV, but that ballot information needs to be independently tabulated. SBE advises that it will likely tabulate the results using additional scanner equipment capable of RCV tabulation. At least one unit is required for each of the State's approximately 1,700 polling places. The current cost of an individual tabulation unit is \$2,057. Accordingly, SBE expenditures increase by at least \$1,748,450 to purchase tabulation equipment, which reflects half the estimated costs of such equipment. Additional tabulation units may be required depending on polling place turnout.

SBE may not certify a voting system unless it determines that, among other things, the system has been examined by an independent testing laboratory that is approved by the U.S. Election Assistance Commission and shown by the testing laboratory to meet the performance and test standards for electronic voting systems established by the Federal Election Commission or the U.S. Election Assistance Commission. While it is not certain whether a separate tabulation system would meet existing certification requirements, this estimate assumes that such a system would.

*Ballot Cards:* The estimated increase in general fund expenditures also assumes that an additional ballot card (\$0.215 per card) needs to be added to each voter's ballot in order to separate the RCV races from other races on the ballot. Based on the number of registered voters in the State, SBE expenditures for additional ballots increase by at least \$419,637, which reflects half the estimated costs of the additional ballot cards needed.

*Software Programming:* SBE needs to reprogram its current election management system to accommodate RCV. There is no way to reliably estimate the number of programming hours that are required; however, SBE advises that similar programming changes to facilitate RCV for a single county was estimated by its contractor to total at least \$315,000, which includes costs for programmers, testing, and project management. Assuming this

cost is also shared with local jurisdictions, SBE expenditures increase by at least \$157,500; however, costs may be more to program the system for the entire State.

State expenditures may increase further due to additional costs for (1) any additional software programming needed; (2) specimen ballots; (3) election judges; (4) transportation of equipment; (5) training; and (6) voter education and outreach.

The Maryland Department of Planning and the Department of Legislative Services can handle the bill's requirements with existing resources.

**Local Expenditures:** Local expenditures increase by approximately \$2,325,587, reflecting county costs associated with establishing the RCV system. As mentioned above, this assumes that SBE and the county boards of election evenly divide the total cost of additional voting equipment, ballots, and software programming. Again, the timing of these costs is uncertain.

County expenditures increase further for voter outreach prior to each congressional election to educate voters about the RCV system. The cost to conduct voter outreach likely varies by county.

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### **Additional Information**

**Prior Introductions:** HB 622 of 2017 received a hearing in the House Rules and Executive Nominations Committee, but no further action was taken. SB 762 of 2016 received a hearing in the Senate Education, Health, and Environmental Affairs Committee, but no further action was taken.

**Cross File:** None.

**Information Source(s):** Carroll and Montgomery counties; Maryland Department of Planning; State Board of Elections; Department of Legislative Services

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