

Department of Legislative Services
Maryland General Assembly
2019 Session

FISCAL AND POLICY NOTE
First Reader

Senate Bill 91 (The President, *et al.*) (By Request - Administration)
Education, Health, and Environmental Affairs

Legislative and Congressional Redistricting and Apportionment

This Administration bill proposes a constitutional amendment that, if approved by the voters at the next general election, (1) amends requirements for State legislative districts; (2) sets forth requirements for congressional districts in the State; (3) repeals existing provisions pertaining to the development and adoption of the legislative districting plan; (4) requires an independent Legislative and Congressional Redistricting and Apportionment Commission to prepare, certify, and submit legislative and congressional districting plans for consideration by the General Assembly; (5) establishes procedures through which the General Assembly must consider the legislative and congressional districting plans submitted by the Redistricting Commission; and (6) grants the Court of Appeals exclusive original jurisdiction to review, upon petition, an adopted legislative or congressional districting plan and, upon specified circumstances, establish a legislative or congressional districting plan.

Fiscal Summary

State Effect: Any increase in State expenditures can be absorbed within existing resources, as discussed below. State revenues are not affected.

Local Effect: Any increase in local expenditures can be absorbed within existing resources, as discussed below. Local revenues are not affected.

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

Analysis

Bill Summary:

Requirements for Legislative and Congressional Districts

The bill requires the subdivision of each of the State's 47 legislative districts into three single-member delegate districts. The bill specifies that each legislative district in the State must respect natural and political boundaries, be geographically compact, and, to the extent practicable, include proximate communities. In addition, the bill specifies that legislative districts in the State may not reflect consideration of individuals' voter registration, voting history, or political party affiliation, nor may any legislative district in the State reflect consideration of the residence of any individual, including any incumbent officeholder or potential candidate for office.

Criteria for congressional districts in the State established by the bill are identical to the criteria established for legislative districts in the State.

The Legislative and Congressional Redistricting and Apportionment Commission

The bill creates an independent Legislative and Congressional Redistricting and Apportionment Commission as an independent unit of State government. Its members must be impartial and reasonably reflect the State's geographical, racial, and gender diversity. The commission must, in the year following each decennial census, prepare, adopt, and certify a State legislative districting plan and a State congressional districting plan, as specified. The bill specifies that (1) the State's legislative districts and (2) delegate districts within a legislative district must be as nearly equal in population as practicable but may not deviate in population by more than 2%.

The commission must, upon adoption and certification of a legislative districting plan and a congressional districting plan, send the certified plans to the Presiding Officers of the General Assembly, who must introduce each plan for individual consideration by the General Assembly.

Legislative Approval Process for Legislative and Congressional Redistricting Plans

Unless the Governor convenes a special session of the General Assembly, as specified, the Presiding Officers of the General Assembly must, on the first day of the regular legislative session in the year ending in the number two, introduce both the certified legislative and congressional redistricting plans for consideration by the General Assembly. The General Assembly may, upon consideration of the legislative and congressional districting plans during the regular session, pass the legislative or congressional districting plan only

by a three-fifths vote of the members of both the Senate and House of Delegates by the forty-fifth day of the regular session.

However, the Governor may, if necessary, convene a special session of the General Assembly for the purpose of considering the legislative and congressional districting plans certified and submitted by the commission. If the Governor convenes a special session, as specified, the Presiding Officers of the General Assembly must, on the first day of the special session, introduce both the certified legislative and congressional districting plans for individual consideration by the General Assembly. During the special session, the General Assembly may not consider any legislation other than the specified districting plans, and may, upon consideration of the legislative and congressional districting plans, pass them only by a three-fifths vote of the members of both houses by the fifteenth day of the special session.

Upon passage of a legislative or congressional districting plan, the General Assembly must, within one day, present the approved plan to the Governor, who must, within six days of presentment, sign or veto the plan. If the Governor signs the plan, the plan becomes law and takes immediate effect. If, by the sixth day after presentment, the Governor has neither signed nor vetoed the plan, the plan becomes law and takes effect as specified. The General Assembly may not adopt a State legislative or congressional districting plan over the veto of the Governor.

If (1) the General Assembly does not pass the certified legislative or congressional districting plan, as specified, or (2) the Governor vetoes a presented plan, the Presiding Officers of the General Assembly must, within three days, notify the commission, send the commission any recommendations of the General Assembly and/or objections of the Governor, and request that the commission prepare and submit an alternative plan. Upon specified notice from the Presiding Officers, the commission must review the rejected plan and, within 20 days, return the plan, including approved changes, if any, to the Presiding Officers.

If the commission returns the plan with changes, the Presiding Officers must, within three days, prepare the changes as an amendment to the plan. The General Assembly may pass the amendment only by a three-fifths vote of the members of both houses. Upon passage of the amendment, the General Assembly may pass the amended plan only by (1) a three-fifths vote of the members of both houses and (2) within 15 days of the introduction of the amendment. If the General Assembly does not pass the amendment, the plan returned by the commission is considered not passed. If, however, the commission returns the plan without changes, the General Assembly must reconsider the plan and may pass the plan only by a three-fifths vote of the members of both houses. A regular or special session may be extended to allow consideration of an amended plan within the specified timeframe for passage.

The bill prohibits the General Assembly from considering any State legislative or congressional districting plan not prepared and certified by the commission. In addition, with the exception of an amendment prepared by the Presiding Officers as specified, the General Assembly may not amend the legislative or congressional districting plan submitted by the commission.

Court of Appeals Jurisdiction over Redistricting Proceedings

In the event that (1) the commission fails to approve and submit a State legislative or congressional districting plan; (2) the General Assembly fails to pass a legislative or congressional districting plan as specified; or (3) the Governor vetoes a plan passed by the General Assembly, the Court of Appeals must adopt a plan.

The bill grants the Court of Appeals exclusive original jurisdiction to review, upon petition, an enacted State legislative or congressional districting plan. In a proceeding involving the State legislative or congressional districting plan, the commission – not the Attorney General – represents the State.

Current Law/ Background:

Legislative and Congressional Redistricting in Maryland

Legislative Districting: Article III of the Maryland Constitution sets forth requirements for State legislative districts and procedures for legislative redistricting. The Maryland Constitution and federal case law require that the boundaries of the State's 47 legislative districts are redrawn after each decennial census to adjust for population changes. State legislative districts must (1) consist of adjoining territory; (2) be compact in form; (3) be substantially equal in population; and (4) duly reflect natural and political boundaries. 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, on the first day of the legislative session, after conducting public hearings, submit a legislative districting plan to the Presiding Officers of the General Assembly, who introduce the plan as a joint resolution to the General Assembly. Unless the General Assembly adopts an alternative plan before the forty-fifth 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, federal statute, including the Voting Rights Act of 1965, and applicable case law. Under the Fourteenth Amendment to the U.S. Constitution, 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, federal statute, including the Voting Rights Act of 1965, and applicable case law. Under federal case law, congressional district boundaries must be redrawn after each decennial census to adjust for population changes, and they must be as closely equal in population as practicable (*Wesberry v. Sanders*, 376 U.S. 1 (1964)).

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.

Legislative and Congressional Redistricting Authority in Other States

According to the National Conference of State Legislatures (NCSL), 14 states delegate primary authority for legislative redistricting to commissions. Michigan is the most recent state to transfer responsibility for legislative redistricting to a commission; in November 2018, Michigan voters approved a constitutional amendment establishing an Independent Citizens Redistricting Commission. State legislative redistricting commissions vary significantly in terms of composition and selection process.

In 2015, the U.S. Supreme Court upheld the validity of independent congressional redistricting commissions in *Arizona State Legislature v. Arizona Independent Redistricting Commission*, 576 U.S. ___ (2015). According to NCSL, seven states, including Michigan as of November 2018, delegate authority for congressional redistricting to independent commissions.

Legal Challenges to Maryland's Sixth Congressional District

On November 7, 2018, a federal three-judge District Court found Maryland's congressional map in violation of the First Amendment to the U.S. Constitution and issued an injunction ordering the State to redraw the boundaries of the Sixth Congressional District in advance of the 2020 elections. The State must develop and submit a revised districting plan for court approval by March 7, 2019. In developing the proposed districting plan, the State may not consider citizens' party affiliation or voting history. If the State fails to submit a plan by the specified deadline, or if the court rejects the State's plan, the court will establish a commission to develop and submit a plan. On November 16, 2018, the court stayed the injunction, pending appeal in the U.S. Supreme Court, until the earlier of a Supreme Court resolution or July 1, 2019. The U.S. Supreme Court will review the three-judge District Court's ruling and hear arguments in March.

Maryland Emergency Commission on Sixth Congressional District Gerrymandering

On November 26, 2018, in response to the three-judge court's ruling, the Governor issued an executive order establishing the nine-member Emergency Commission on Sixth Congressional District Gerrymandering. The commission consists of three co-chairs appointed by the Governor and six members selected through a public application process. The commission's membership includes equal numbers of registered Democrats, registered Republicans, and individuals unaffiliated with either party.

The executive order charges the commission with preparing a new congressional map, which must revise the boundaries of the Sixth Congressional District, comply with the court order, and adhere to all applicable legal requirements. The commission, which has conducted public hearings across the State, must submit its proposed redistricting plan by March 4, 2019, for public comment and, by April 2, 2019, submit a finalized plan and report to the Governor. Per the executive order, the Governor will submit the finalized plan for introduction as emergency legislation in the 2019 session of the General Assembly.

2015 Maryland Redistricting Reform Commission

In August 2015, the Governor issued an executive order establishing the 11-member Maryland Redistricting Reform Commission. The executive order charged the commission with examining approaches to redistricting reform and, specifically, independent redistricting commissions, collecting citizen input on redistricting reform, developing recommendations for reforming the State's redistricting process, and promoting redistricting reform across the state, among other specified responsibilities. In its November 2015 report, the commission detailed its recommendations for the establishment of an independent redistricting commission.

State Expenditures: To the extent that the bill's requirement that State legislative districts are divided into single-member delegate districts necessitates a significantly greater number of unique ballot styles, expenditures for the State Board of Elections may increase due to printing costs. However, for the purposes of this fiscal and policy note, it is assumed that any such costs are absorbable within existing resources.

Local Expenditures: To the extent that the bill's requirement that State legislative districts are divided into single-member delegate districts necessitates a significantly greater number of unique ballot styles, expenditures for local boards of elections may increase due to printing costs. However, for the purposes of this fiscal and policy note, it is assumed that any such costs are absorbable within existing resources.

Additional Comments: It is unclear if or how the 15-day timeframe for the General Assembly to consider an alternative plan prepared and submitted by the Redistricting Commission upon request applies to reconsideration of a plan that has been returned by the Redistricting Commission without change; the bill specifies that the 15-day timeframe begins when the Presiding Officers introduce an amendment to the plan.

Additional Information

Prior Introductions: None.

Cross File: HB 44 (The Speaker, *et al.*) (By Request - Administration) - Rules and Executive Nominations.

Information Source(s): Department of Information Technology; Office of the Attorney General; Governor's Office; Judiciary (Administrative Office of the Courts); Department of Budget and Management; Maryland Department of Planning; Maryland State Board of Elections; Anne Arundel, Frederick, and Montgomery counties; National Conference of State Legislatures; Department of Legislative Services

Fiscal Note History: First Reader - February 27, 2019
md/mcr

Analysis by: Elizabeth J. Allison

Direct Inquiries to:
(410) 946-5510
(301) 970-5510

ANALYSIS OF ECONOMIC IMPACT ON SMALL BUSINESSES

TITLE OF BILL: Legislative and Congressional Redistricting and Apportionment

BILL NUMBER: HB 44 & SB 91

PREPARED BY: Governor's Legislative Office

PART A. ECONOMIC IMPACT RATING

This agency estimates that the proposed bill:

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