

Department of Legislative Services
 Maryland General Assembly
 2019 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 67 (Delegate Reznik)
 Rules and Executive Nominations

Potomac Compact for Fair Representation

This bill (1) establishes a Potomac Compact for Fair Representation between the State of Maryland and the Commonwealth of Virginia; (2) establishes a Congressional Districting Commission; (3) specifies the membership and duties of the commission; (4) sets forth the procedures for consideration and adoption by the General Assembly of a congressional districting plan; and (5) grants the Court of Appeals original jurisdiction to review and/or establish a congressional districting plan. **The bill takes effect only if the Commonwealth of Virginia adopts a substantially similar process by January 1, 2020. If the Commonwealth of Virginia does not do so by January 1, 2020, the bill does not take effect.**

Fiscal Summary

State Effect: If the bill’s contingency is met, general fund expenditures increase by a combined total of at least \$600,000 in FY 2021 and 2022. Revenues are not affected.

(in dollars)	FY 2020	FY 2021	FY 2022	FY 2023	FY 2024
Revenues	\$0	\$0	\$0	\$0	\$0
GF Expenditure	0	400,000	200,000	0	0
Net Effect	\$0	(\$400,000)	(\$200,000)	\$0	\$0

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

Local Effect: None.

Small Business Effect: None.

Analysis

Bill Summary:

Congressional Districting Commission

The Executive Director of Legislative Services is responsible for determining the size and composition of the Congressional Districting Commission, including the education and experience requirements for commission members within specified limitations.

The members of the commission must include full-time employees of the Department of Legislative Services (DLS) or contractual employees if the executive director determines that the needs of the commission cannot be met by full-time employees. The commission must include, at a minimum, (1) a demographer; (2) a cartographer; (3) an applied mathematician; (4) a computer scientist; and (5) a lawyer or legal expert specializing in election and redistricting law.

The term of a member of the commission begins when the member is selected and ends when a congressional districting plan is adopted by the General Assembly or, in the case of the General Assembly's failure to enact a plan, when the Court of Appeals is required to prepare a plan. A member of the commission may not be (1) an elected official; (2) an official whose appointment is subject to Senate confirmation; or (3) a candidate for elected office. Commission members may be removed under circumstances and procedures established by the bill.

Following each decennial census, the commission must hold public hearings and prepare a congressional district plan that complies with applicable federal and State law. Congressional districts must consist of adjoining territory and be compact and of substantially equal population. In addition, due regard must be given to natural boundaries and the boundaries of political subdivisions.

Consideration of a Congressional District Plan by the General Assembly

No later than the first day of the regular legislative session of the General Assembly during the second year following the decennial census, the commission must present the congressional plan to the Presiding Officers of the House of Delegates and the Senate, who must introduce the plan as a joint resolution to the General Assembly. Alternatively, the Governor may call a special session for the presentation of the plan before the regular legislative session. The plan may not be amended, and a member of the General Assembly may not introduce a joint resolution or bill containing an alternate plan. The General Assembly may adopt the plan by a majority vote of both houses.

If the General Assembly fails to adopt the congressional plan by the seventeenth day after the opening of the regular legislative session, the commission must prepare an alternate plan and submit it to the Presiding Officers, who must introduce the plan as a joint resolution. If an alternate plan fails to receive a majority vote of both houses by the fifty-second day after the opening of the regular legislative session in the second year following the decennial census, the Court of Appeals must establish the congressional district boundaries. The Court of Appeals has original jurisdiction to review the plan adopted by the General Assembly according to the procedure above, on petition of any registered voter, and may grant appropriate relief where it finds a congressional plan inconsistent with State or federal law.

Potomac Compact for Fair Representation

The bill's provisions take effect only upon determination by DLS, in consultation with the Attorney General, that the Commonwealth of Virginia has adopted a substantially similar congressional districting process. A process is substantially similar only if (1) a congressional districting plan is initially developed and proposed by a commission composed of individuals who are (a) employees or contractors of a nonpartisan state agency that provides nonpartisan research or analysis and (b) not selected by a governor, members of the legislature, or an individual selected by the governor or state legislature; (2) the state legislature is allowed to vote on the plan proposed by the commission but is prohibited from altering it; and (3) a congressional plan prepared by the state's highest court becomes law if the state legislature fails to adopt it.

A compacting state is not required to comply with the terms of the Compact if (1) a compacting state's commission fails to adopt a congressional districting plan or (2) the state's attorney general determines that the other compacting state has repealed, replaced, or failed to implement any term of the Compact.

Current Law/Background:

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 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.

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.

Iowa Redistricting Process

The State of Iowa has implemented a similar process for congressional redistricting in the state. In Iowa, the nonpartisan Legislative Services Agency (LSA) is responsible for preparing congressional districting plans, which the Iowa General Assembly must consider according to specified procedures. The Iowa General Assembly has limited authority to amend a plan prepared by LSA.

State Expenditures: If the bill's contingency is met, general fund expenditures for DLS increase by at least \$400,000 in fiscal 2021 and by at least \$200,000 in fiscal 2022, which reflects the cost of hiring skilled contractual staff for the commission to prepare census data, operate geographic information system software, adjust census data in accordance with Chapters 66 and 67 of 2010, and fulfill the specific staffing requirements under the bill. Additional operating costs include specialized software and licensing as well as component hardware. Expenditures and contractual staffing terminate in fiscal 2023 after the redistricting process is complete.

Additional Information

Prior Introductions: HB 537 of 2018 received an unfavorable report from the House Rules and Executive Nominations Committee.

Cross File: None.

Information Source(s): Governor's Office; Judiciary (Administrative Office of the Courts); Maryland Department of Planning; Maryland State Board of Elections; National Conference of State Legislatures; State of Iowa; Department of Legislative Services

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