

**Department of Legislative Services**  
Maryland General Assembly  
2024 Session

**FISCAL AND POLICY NOTE**  
**First Reader**

House Bill 182 (Delegate Bouchat)  
Rules and Executive Nominations

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**Districting - Single Member Districts and Legislative and Congressional  
Redistricting and Apportionment Convention**

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This proposed constitutional amendment, if approved by the voters at the next general election, (1) requires each legislative district to consist of one senator and three one-member delegate districts; (2) requires the General Assembly to enact legislation to establish the Legislative and Congressional Redistricting and Apportionment Convention; (3) specifies the membership, duties, and procedures of the convention; and (4) specifies procedures for judicial review of a State legislative or congressional districting plan by the Supreme Court of Maryland. Contingent on the passage of the proposed amendment, and its ratification by the voters, the bill establishes statutory requirements for (1) membership and staffing of the convention; (2) procedures for the development of redistricting plans; and (3) legislative and judicial review of the plans developed by the convention.

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**Fiscal Summary**

**State Effect:** No effect on State operations or finances during the five-year period covered by this fiscal and policy note. General fund expenditures may increase, potentially significantly, beginning in fiscal 2030 for contractual expenses for the Office of the Attorney General (OAG) and the Department of Legislative Services (DLS), as discussed below. Revenues are not affected.

**Local Effect:** None.

**Small Business Effect:** None.

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## Analysis

**Bill Summary:** The following sections summarize the provisions of the proposed constitutional amendment.

*Legislative and Congressional Redistricting and Apportionment Convention:* The proposed constitutional amendment requires the General Assembly to enact a law establishing and governing a Legislative and Congressional Redistricting and Apportionment Convention. By March 1 of the year immediately following the decennial census, the convention must be elected by qualified voters of the State on a date determined by the State Board of Elections (SBE). The convention must consist of 188 members. By July 1 of the year of the decennial census, SBE must apportion the number of seats for the convention among the counties according to each county's population count in the immediately preceding decennial census. Each county must have at least three seats in the convention. Each member of the convention must be elected at large by the qualified voters in the county that the member seeks to represent.

*Minimum Qualifications:* To be a candidate for member of the convention, an individual must (1) be a registered voter who, for at least three years immediately preceding the date of election, has been continuously registered in the State with the same political party, or continuously not registered with a principal political party; (2) be at least 21 years old at the time of election; (3) have resided in the State for at least one year immediately preceding the date of the member's last election; and (4) reside and maintain a place of residence in the county that the individual seeks to represent for at least six months immediately preceding the date of the election.

An individual is not qualified to be a candidate for the convention if the individual is:

- a member of or candidate for election to the U.S. Congress from the State;
- a member of or candidate for election to the General Assembly;
- an elected local government official or a candidate for an elected local government office;
- an officer or employee of a political party or political committee;
- a contractor providing professional services to a specified officeholder or candidate for a specified office;
- a current or former employee of or consultant to a specified contractor;
- an immediate family member of a specified officeholder, candidate for a specified office, or specified contractor;
- a staff member of a specified officeholder or candidate for a specified office; or
- a current or former registered lobbyist.

A member of the convention may not be elected or appointed as a representative in the U.S. Congress or member of the General Assembly during the first term of office for which the congressional or legislative plan certified by the convention takes effect.

*Presentment, Adoption, and Challenges:* By October 1 of each year immediately following the decennial census, the convention must adopt plans setting forth the boundaries of the legislative districts for electing the members of the Senate and the House of Delegates, in addition to the congressional districts for electing representatives to the U.S. Congress.

On adoption of a plan, the convention must certify the plan and send the certified plan to the presiding officers of the General Assembly. On receipt of a certified plan, the presiding officers must prepare the plan for consideration by the General Assembly. By a majority vote of each of the two houses, the General Assembly may challenge the legality of the plan.

If the General Assembly votes to challenge the certified plan, the Supreme Court of Maryland must (1) consider the challenge, and (2) within 30 days after the General Assembly vote, issue a decision that affirms the plan as meeting all constitutional and statutory requirements or rejects the plan as failing to meet constitutional and statutory requirements. If the Supreme Court of Maryland rejects the plan, the convention must adopt and certify a new plan that addresses the ruling of the Supreme Court of Maryland.

A plan considered by the General Assembly must be treated in the same manner as a bill for purposes of publication, codification, nomination, and distribution. A plan certified by the convention must become law (1) on the 31st day after certification if the General Assembly does not challenge the plan or (2) on the day that the Supreme Court of Maryland issues a decision affirming the plan if the General Assembly challenged the plan.

If the convention fails to adopt and certify a plan, it must petition the Supreme Court of Maryland to establish legislative districts or congressional districts according to the standards set forth under the bill and Article III of the Maryland Constitution.

Similar to existing provisions under the Maryland Constitution regarding the Supreme Court of Maryland having original jurisdiction to review the legislative districting of the State, this mandate is expanded to include congressional districting of the State.

*Expanded Original Jurisdiction for the Supreme Court of Maryland:* Exclusive among the State courts, the Supreme Court of Maryland must have original jurisdiction (1) to establish the legislative district plan and congressional district plan in the event that a plan is not enacted and (2) to consider a petition seeking review of the legality of a plan to establish legislative or congressional districts, as specified under the bill.

## *Statutory Requirements for the Legislative and Congressional Redistricting and Apportionment Convention*

The following sections summarize statutory provisions that (1) are contingent on the passage of the proposed constitutional amendment and its passage by the voters and (2) are in addition to the requirements established by the proposed constitutional amendment.

*Election of Convention Members:* By March 1, 2031, and each year ending in the numeral 1 thereafter, the convention must be elected by qualified voters of the State on a date determined by SBE. The term of a member of the convention continues until the legislative and congressional plans become law, and a member of the convention is eligible for reelection. Each member of the convention must apply the provisions established under the bill in a manner that is impartial and that reinforces public confidence in the integrity of the redistricting process. A member of the convention may not receive compensation as a member of the convention but is entitled to reimbursement for expenses.

*Terms, Vacancies, and Removal of Convention Members:* The 188 members must serve as the members of the convention beginning on the date they are elected until the date on which the legislative and congressional districting plans become law. If there is a vacancy, the losing candidate from the same county who received the next highest number of votes must fill the vacancy for the remainder of the term.

The convention may remove a member (1) for neglect of duty; (2) for misconduct in office; (3) for a disability that makes the member unable to discharge the powers and duties of office; (4) for failing to maintain the qualifications established under the bill; or (5) if the member is convicted of or pleads guilty or *nolo contendere* with respect to a felony or crime involving moral turpitude, whether or not any appeal or other proceeding is pending to have the convention or plea set aside. Before removing a member of the convention, the convention must give the member written notice of the charges and an opportunity to answer the charges. A majority vote of the members of the convention must be required to remove a member of the convention.

*Quorum, Leadership, and Staffing:* A majority of the members elected to the convention is a quorum. From among its members, the convention must elect a chair and vice chair. OAG and DLS jointly must staff the convention.

*Transparency, Open Meetings, and Public Information:* The convention must (1) conduct a process that is open and transparent to enable full public consideration of and comment of the establishment of legislative districts and congressional districts; (2) establish legislative districts and congressional districts according to the standards established by the bill and federal and State law; and (3) conduct business with integrity and fairness. The activities of the convention are subject to the Open Meetings Act (OMA) and the

Public Information Act (PIA). The meetings of the convention must be live-streamed to allow members of the public to observe the proceedings of the convention.

The members of each county delegation to the convention must hold at least one hearing in the county that is open to the public for public input and deliberation that is subject to public notice and designed to encourage citizen outreach and to solicit broad public participation in the redistricting process. Each hearing must be scheduled before the consideration of any plan by the redistricting convention.

*Adoption and Challenging of Legislative and Congressional District Maps:* In the year following each decennial census of the United States, or when otherwise required by law, the convention shall adopt plans to establish legislative districts and congressional districts in conformance with the standards and processes established under the bill, the Maryland Constitution, and federal law. By October 1 each year ending in the numeral 1, the convention must approve two plans (1) one plan must describe the district boundary lines for the election of members of the Senate and House of Delegates; and (2) one plan must describe the district boundary lines for the State's representatives in the U.S. Congress.

The convention must issue with each plan maps showing the legislative districts and congressional districts, and a report that (1) explains the basis on which the convention made its decisions to achieve compliance with the criteria established under the bill and (2) includes definitions of the terms and standards used in drawing each plan.

On the enactment of a legislative district plan or a congressional district plan, any registered voter in the State may file a petition with the Supreme Court of Maryland to bar the plan from taking effect on the grounds that the plan violates the Maryland Constitution, the U.S. Constitution, or a federal or State statute. The convention must be the defendant, as specified.

Subject to the Maryland Rules, any registered voter of the state may participate in the proceedings as an *amicus curiae*. If a petition is filed, the Supreme Court of Maryland (1) must set deadlines for the filing of pleadings and *amicus curiae* briefs and (2) may appoint a special master to make recommendations. If appointed, a special master must (1) hold a hearing; (2) consider a plan approved by the convention, if any; and (3) make recommendations to the Supreme Court of Maryland. Within the specified time period established by the Supreme Court of Maryland, a party may file exceptions to the recommendations of the special master.

Before ordering any relief, the Supreme Court of Maryland must (1) hold a hearing, (2) consider a plan approved by the convention, if any; and (3) consider any recommendations of a special master. The Supreme Court of Maryland may order any

relief considered appropriate. In ordering relief (1) if the convention adopted and certified a plan, the Supreme Court of Maryland may approve, modify, or adopt a new plan or (2) if the convention has not adopted a certified plan, the Supreme Court of Maryland must establish legislative districts and congressional districts, as specified.

### **Current Law:**

#### *Legislative and Congressional Redistricting in Maryland*

*Legislative Redistricting:* 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, after conducting public hearings, submit a legislative districting plan to the Presiding Officers of the General Assembly on the first day of the legislative session. The Presiding Officers must introduce the plan as a joint resolution to the General Assembly. Unless the General Assembly adopts an alternative plan before the 45th day of the session, the Governor's plan becomes law. The Supreme Court of Maryland 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, the Voting Rights Act of 1965, and applicable case law. 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, the Voting Rights Act of 1965, and federal case law. Congressional district boundaries must be redrawn after each decennial census to adjust for population changes, and they must be as nearly 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 addressed the allocation of the State's prison population among congressional districts in the State.

### *Open Meetings Act, Generally*

Under OMA, with limited exceptions, a public body must (1) meet in open session in places reasonably accessible to potential attendees and (2) provide reasonable advance notice of the time and location of meetings, including, when appropriate, whether any portion of a meeting will be in closed session. A "public body" is any entity that (1) consists of at least two individuals and (2) is created by the Maryland Constitution; a State statute; a county or municipal charter; a memorandum of understanding or a master agreement to which a majority of the county boards of education and the Maryland State Department of Education are signatories; an ordinance; a rule, resolution, or bylaw; or an executive order of the Governor or of the chief executive authority of a political subdivision. Exclusions from the definition of "public body" include juries, the Governor's cabinet and Executive Council, judicial nominating commissions, and single-member entities, among others.

Guidance provided by OAG indicates that when the meeting "place" is a conference call, the public can be provided access through a call-in number or by access to a meeting room with a speakerphone.

### *Maryland's Public Information Act, Generally*

PIA establishes that all persons are entitled to have access to information about the affairs of government and the official acts of public officials and employees. Each governmental unit that maintains public records must identify a representative whom a member of the public may contact to request a public record. OAG must post all such contact information on its website and in any *Public Information Act Manual* published by OAG.

**State Expenditures:** Any costs associated with the proposed constitutional amendment and contingent legislation likely do not begin until fiscal 2030, concurrent with the next decennial census, and therefore are outside the five-year period covered by this fiscal and

policy note. Although outside of its normal duties, SBE can likely apportion the 188 members of the convention with existing resources once the census population figures are available.

OAG and DLS anticipate handling the staffing responsibilities required under the bill within existing budgeted resources. However, DLS advises that to the extent that research or administrative demands of the convention are significant, it may require additional general fund expenditures to retain contractual staff and/or consultants to complete the work of the convention.

**Additional Comment:** The proposed constitutional amendment requires the General Assembly to *enact* a law. However, the General Assembly *passes* legislation, which is enacted only when the Governor approves it.

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### **Additional Information**

**Recent Prior Introductions:** Similar legislation has not been introduced within the last three years.

**Designated Cross File:** None.

**Information Source(s):** Maryland Association of Counties; Office of the Attorney General; Governor's Office; Judiciary (Administrative Office of the Courts); Maryland Department of Planning; Maryland State Board of Elections; Department of Legislative Services

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