

Department of Legislative Services
Maryland General Assembly
2016 Session

FISCAL AND POLICY NOTE
First Reader

Senate Bill 474 (Senator Pinsky)
Education, Health, and Environmental Affairs

Congressional Districting Process

This bill establishes a Temporary Redistricting Commission to prepare and adopt decennial districting plans for congressional districts in the State.

The bill is contingent on the enactment of a nonpartisan congressional districting process by any other state (1) that has between 6 and 10 seats in the U.S. House of Representatives and (2) in which both houses of that state's legislature are controlled by a party other than the party that controls the General Assembly of Maryland. The Secretary of State must monitor the enactment of districting legislation by other states and notify the Department of Legislative Services (DLS) within five days if the contingency is met. If the contingency is not met by December 31, 2022, the bill is void.

Fiscal Summary

State Effect: The bill's requirements can be absorbed within existing budgeted resources. No effect on revenues.

Local Effect: None.

Small Business Effect: None.

Analysis

Bill Summary:

Composition and Staffing of the Commission: The commission consists of five members. The President of the Senate, the Speaker of the House of Delegates, and the minority leaders of the Senate and the House of Delegates must each appoint one member by

February 1 of the first year following the U.S. census. By March 1, commission members must select a fifth member, who will serve as chair, by vote of at least three of the members. If the commission is unable to select the fifth member, the Chief Judge of the Court of Appeals must make the appointment. DLS must provide staff and technical support for the commission.

Members of the commission must be registered voters in the State and may not:

- hold an elective or appointive office in the executive or legislative branch of the federal, State, or local government;
- hold a political party office; or
- receive a salary for their work on the commission but may be reimbursed for their expenses.

Members cease being members of the commission when the districting plan they approve is filed with the Secretary of State.

Districting Process: In the year following the decennial U.S. census, DLS must obtain and adjust the census data in accordance with State law and provide it to the commission within 30 days after it has finished making the necessary adjustments.

The commission must use the census data to prepare and adopt a congressional districting plan within 90 days of the appointment of the members or receipt of the census data, whichever is later. An affirmative vote by a majority of the total number of commission members is necessary for adoption of the plan, which must be filed with the Secretary of State within seven days of its adoption. The plan becomes effective on the filing of the plan with the Secretary of State and remains effective until the adoption of a new plan after the next decennial census.

Current Law/Background: Following the 2010 census, the U.S. Census Bureau apportioned eight congressional seats to Maryland, each of which had to have 721,529 residents, according to 2010 census figures. Because the adjusted State population was not divisible by eight, one district had one fewer resident than the required number.

Chapters 66 and 67 of 2010 require that population counts used to create 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.

Additional Information

Prior Introductions: SB 814 of 2015 received a hearing in the Senate Education, Health and Environmental Affairs Committee, but no further action was taken. SB 99 of 2015 received a hearing in the Senate Education, Health, and Environmental Affairs Committee but was subsequently withdrawn. SB 361 of 2013 received a hearing in the Senate Education, Health and Environmental Affairs Committee, but no further action was taken. Its cross file, HB 832, received a hearing in the House Rules and Executive Nominations Committee, but no further action was taken.

Cross File: None.

Information Source(s): Secretary of State, Judiciary (Administrative Office of the Courts), Maryland Department of Planning, Department of Legislative Services

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Analysis by: Michelle Davis

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