

Department of Legislative Services
Maryland General Assembly
2020 Session

FISCAL AND POLICY NOTE
First Reader

Senate Bill 266 (The President, *et al.*) (By Request - Administration)
Education, Health, and Environmental Affairs

Redistricting Reform Act of 2020 – Constitutional Amendment

This Administration bill proposes a constitutional amendment that, if approved by the voters at the next general election, establishes 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. The bill repeals existing provisions pertaining to the development and adoption of the legislative districting plan and establishes procedures by which the General Assembly must consider the legislative and congressional districting plans submitted by the Redistricting Commission. The Court of Appeals has exclusive original jurisdiction to review, upon petition, an adopted legislative or congressional districting plan and establish a plan under specified circumstances. In addition, the bill alters requirements for State legislative districts and establishes requirements for congressional districts in the State.

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. In addition, the bill specifies that each legislative district:

- must respect natural boundaries and the geographic integrity and continuity of any municipal corporation, county, or other political subdivision to the extent practicable;
- must be geographically compact and include nearby areas of population to the extent practicable;
- may not account for how individuals are registered to vote, how individuals voted in the past, or the political party to which individuals belong; and
- may not account for the domicile or residence of any individual, including an incumbent officeholder or a 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.

Legislative and Congressional Redistricting and Apportionment Commission

The Legislative and Congressional Redistricting and Apportionment Commission is an independent unit of State government, established by law, consisting of members who are impartial and reasonably representative of the State's geographical, racial, and gender makeup. In the year following each decennial census, the commission must prepare, adopt, and certify a State legislative districting plan and a State congressional districting plan, as specified. The bill specifies that the State's legislative districts and delegate districts must be as nearly equal in population as practicable but may not deviate in population by more than 2%, as specified.

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. The General Assembly may not amend either plan, except as specified below. The bill prohibits the General Assembly from considering any State legislative or congressional districting plan not prepared and certified by the commission.

Legislative Approval Process

Consideration during the Regular Session: Unless the Governor convenes a special session of the General Assembly, as specified, the Presiding Officers of the General Assembly must introduce both the certified legislative and congressional redistricting plans on the first day of the regular legislative session in the year ending in the number two. The General Assembly may pass the legislative and congressional districting plan only by a three-fifths vote of the members of both the Senate and House of Delegates by the 45th day of the regular session.

Consideration during a Special 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 introduce both the certified legislative and congressional districting plans on the first day of the special session. During the special session, the General Assembly may not consider any legislation other than the specified districting plans and may pass them only by a three-fifths vote of the members of both houses by the 15th day of the special session.

Presentment to the Governor: 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 sign or veto the plan within six days of presentment. 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.

Rejected Plan: 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 notice from the Presiding Officers, the commission must review the rejected plan and return the plan, including any approved changes, to the Presiding Officers within 20 days.

Preparation and Consideration of Amendment: If the commission returns the plan with changes, the Presiding Officers must prepare the changes as an amendment to the plan within three days. 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 a three-fifths vote of the members

of both houses. 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.

The General Assembly must vote on the legislative or congressional district plan or any amendment within 15 days after the offering of the amendment. A regular or special session may be extended to allow consideration of an amended plan within the specified timeframe for passage. If the legislative or congressional district plan does not receive a vote within the specified timeframe, the plan is considered not passed.

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 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 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, 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 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. 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, eight states delegate primary authority for congressional redistricting to independent commissions (nine if Montana is apportioned more than one congressional seat after the next census).

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.

Supreme Court Ruling on Partisan Gerrymandering

In November 2018, a three-judge panel of the U.S. District Court for the District of Maryland ruled in *Benisek v. Lamone* that Maryland's 2011 congressional redistricting plan violates the First Amendment to the U.S. Constitution by burdening both the plaintiffs' representational rights and associational rights based on their party affiliation and voting history. The ruling was appealed to the U.S. Supreme Court, which agreed to hear the case and consolidated it with a partisan gerrymandering case from North Carolina, *Rucho v. Common Cause*. In June 2019, the court held that partisan gerrymandering claims present political questions beyond the reach of federal courts. Though beyond the reach of federal courts, the court noted that the issue of excessive political gerrymandering is being actively addressed by states through the establishment of independent redistricting commissions, criteria for mapmakers, or prohibitions against drawing district lines for partisan advantage.

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: HB 44 of 2019 received an unfavorable report from the House Rules and Executive Nominations Committee. Its cross file, SB 91, received a hearing in the Senate Education, Health, and Environmental Affairs Committee, but no further action was taken.

Designated Cross File: HB 341 (The Speaker, *et al.*) (By Request - Administration) - Rules and Executive Nominations.

Information Source(s): Department of Information Technology; Department of Budget and Management; Maryland Department of Planning; Maryland State Board of Elections; Baltimore City; Caroline, Howard, Montgomery, and Prince George's counties; Governor's Office; Judiciary (Administrative Office of the Courts); National Conference of State Legislatures; Department of Legislative Services

Fiscal Note History: First Reader - February 5, 2020
rh/mcr

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ANALYSIS OF ECONOMIC IMPACT ON SMALL BUSINESSES

TITLE OF BILL: Redistricting Reform Act of 2020 – Constitutional Amendment

BILL NUMBER: HB 341/SB 266

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