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HOUSE BILL NO. 638

Offered January 13, 2010

Prefiled January 12, 2010

A BILL to amend the Code of Virginia by adding in Chapter 3 of Title 24.2 an article numbered 1.1, consisting of sections numbered 24.2-301.2, 24.2-301.3, and 24.2-301.4, relating to preparation of and standards for state legislative and congressional redistricting plans; establishment of the Bipartisan Redistricting Commission.

Patrons—Armstrong, Abbott and Kory

Referred to Committee on Privileges and Elections

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding in Chapter 3 of Title 24.2 an article numbered 1.1, consisting of sections numbered 24.2-301.2, 24.2-301.3, and 24.2-301.4, as follows:

Article 1.1.

The Bipartisan Redistricting Commission Act.

§ 24.2-301.2. The Bipartisan Redistricting Commission Act.

This article shall be known as the Bipartisan Redistricting Commission Act.

§ 24.2-301.3. Establishment of the Commission; standards for redistricting.

A. Commission. House of Delegates, state Senate, and congressional district lines shall be drawn by the Bipartisan Redistricting Commission (the Commission) and then presented to the General Assembly for enactment in accordance with the Constitution of Virginia. The Commission shall be constituted in each year ending in zero, perform its duties as stated herein, and be dissolved in the following year ending in one.

B. Commission membership. The Commission shall consist of seven members, none of whom shall be a member or employee of the Congress of the United States or of the General Assembly. The members of the Commission shall be appointed with due consideration to geographic diversity and in the manner provided herein.

There first shall be appointed six members, one each by: the President pro tempore of the Senate; the Speaker of the House of Delegates; the leader in the Senate of the political party holding the most seats in the Senate other than the political party of the President pro tempore; the leader in the House of Delegates of the political party holding the most seats in the House of Delegates other than the political party of the Speaker; the chairman of the state committee of the political party whose candidate for the office of Governor received the largest number of votes at the most recent gubernatorial election; and the chairman of the state committee of the political party whose candidate for the office of Governor received the next largest number of votes in that election. These six appointing authorities shall be referred hereafter as "Appointing Authorities."

Appointments to the Commission under this subsection shall be made on or before August 15 of the year in which such census is taken and shall be certified to the Secretary of the Commonwealth on or before September 1 of that year. Each partisan delegation so appointed shall appoint one of its members as its chairman who shall have authority to make such certifications and to perform such other tasks as the members of that delegation shall reasonably require.

There then shall be appointed one member, to serve as an independent member, who shall have been for the preceding five years a resident of the Commonwealth, but who shall not during that period have held public or political party office in the Commonwealth. The independent member shall be appointed upon the vote of at least four of the previously appointed members of the Commission on or before October 1 of the year in which the census is taken, and those members shall certify that appointment to the Secretary of the Commonwealth on or before October 5 of that year. If the previously appointed members are unable to appoint an independent member within the time allowed therefor, they shall so certify to the Supreme Court not later than that October 5 and shall include in that certification the names of the two persons who, in the members' final vote upon the appointment of the independent member, received the greatest number of votes. Not later than November 1 following receipt of that certification, the Supreme Court shall by majority vote of its full authorized membership select, of the two persons so named, the one more qualified by education and occupational experience, by prior public service in government or otherwise, and by demonstrated ability to represent the best interests of the people of the Commonwealth, to be the independent member. The Court shall certify that selection to the Secretary of the Commonwealth not later than the following November 5.

Vacancies in the membership of the Commission shall be filled in the same manner as the original

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appointments were made within five days of their occurrence. In the case of a vacancy in the membership of the independent member, if the other members of the Commission are unable to fill that vacancy within that five-day period, they shall transmit certification of such inability within three days of the expiration of the period to the Supreme Court, which shall select the person to fill the vacancy within five days of receipt of that certification.

The independent member shall serve as the chairman of the Commission.

C. Standards for Redistricting. The Commission shall draw district lines in accordance with the following Standards for Redistricting (hereafter referred to as Standards):

1. All districts shall be composed of contiguous and compact territory and shall be as equal in population as is practicable and in compliance with federal law. No district shall be composed of territories contiguous only at a point.

2. All districts shall be drawn to comply with the Virginia and United States Constitutions, federal law, the federal Voting Rights Act, as amended, and relevant case law.

3. All districts, to the extent practicable, shall respect the boundary lines of existing political subdivisions. More populous subdivisions shall be divided between or among districts before less populous subdivisions are divided. The number of counties and cities divided among multiple districts shall be as few as practicable.

4. All districts shall encompass communities of interest.

5. No district shall be drawn with consideration for the impact on incumbent legislators, members of Congress, or known candidates for office.

6. No district shall be drawn to promote, or for the purpose of favoring, the interests of a political party.

7. All district boundaries shall be drawn to promote competitiveness to the extent practicable; however, no district shall be made artificially competitive in violation of other Standards.

8. All district boundaries may be drawn to maintain the core geographical areas of existing districts, to the extent not in conflict with other Standards.

D. Commission staff and advisory board. The Division of Legislative Services shall provide to the Commission sufficient staff with the requisite expertise and other support as shall be reasonably requested by the Commission. The staff of the Commission shall be under the control of the Chairman of the Commission from the time of the appointment of staff to the dissolution of the Commission. The staff of the Commission shall not be deprived of their employment during this period of time without the express consent of the Commission. The Commission may request the assistance of outside counsel or experts as it shall deem necessary.

1. Outside counsel or experts shall be certified by the Commission as nonpartisan at a public meeting. Each outside counsel or expert shall pledge in writing that he will not, for at least five years from the date of certification by the Commission, run for election in the congressional, Senate, and House of Delegates districts drawn pursuant to this article.

2. No outside counsel or expert shall be appointed by the Commission who is related to any Appointing Authority, member of the General Assembly, or member of the Virginia delegation to the United States Congress as father, mother, son, daughter, brother, sister, uncle, aunt, first cousin, nephew, niece, husband, wife, grandfather, grandmother, grandson, granddaughter, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, stepfather, stepmother, stepson, stepdaughter, stepbrother, stepsister, half-brother, or half-sister.

3. Outside counsel or experts shall never have held elected partisan public office or political party office and shall not have received income during the past 12 months from the General Assembly, a committee thereof, the United States Congress, a committee thereof, a political party, a partisan candidate, or a committee controlled by a partisan candidate. No individual who is, or was in the past five years, a registered lobbyist under Article 3 (§ 2.2-418 et seq.) of Chapter 4 of Title 2.2 may serve as outside counsel or expert to the Commission. Restrictions on previous employment by the Commonwealth shall not be construed to prevent an employee of a Virginia institution of higher education from becoming an outside counsel or expert.

4. The Commission shall maintain a 12-member Citizens Advisory Board. The Appointing Authorities shall each appoint two citizens of the Commonwealth to this Advisory Board. One of each two shall be a former member of the House of Delegates or state Senate. Appointments shall be made so as to reflect the geographic, cultural, gender, and racial composition of the Commonwealth. The Commission may, at its discretion, request that the Advisory Board provide advice to it on its duties and decisions to be made during the district map creation process. All such requests shall be made in writing. However, the Commission shall not delegate authority to the Advisory Board or any other body, group, or individual for the creation of district maps.

§ 24.2-301.4. The district map creation process.

A. General. All deadlines defined in this section, excepting the public meeting of the Commission at which it decides on operating procedures and other rules, may, at the discretion of the Commission, be

extended by the number of days after January 1 in the year ending in one before the Commonwealth is provided with the enumeration data and census geography provided by the Bureau of the Census pursuant to Public Law § 94-171. Notwithstanding this subsection, the Commission shall provide the First Official District Plan to the General Assembly no later than May 15 of the year ending in one. If the Commission so decides, it may create and deliver the district plans for the General Assembly and the United States Congress as separate bills.

B. Rulemaking. The Commission shall, before December 1 of the year ending in zero, hold a public meeting at which it shall decide upon and cause to be published on paper and on the Internet, the operating procedures and other rules under which it will perform its duties. It will also publish a schedule of public meetings to be held during the map creation process. All district maps produced by the Commission shall be in accordance with the Standards set out in § 24.2-301.3. The Commission shall keep records of its decisions, directions given to staff, and all other actions and activities as may be required to comply with the federal Voting Rights Act as amended and relevant laws and cases.

C. Initial map creation with data restrictions. Upon the receipt of census data, the Commission and its staff shall create initial district maps. No individuals other than the Commission members, its staff, and its certified counsel and experts shall be allowed to participate in the creation of initial maps. Initial maps shall be released to the public via the Internet and other means as determined by the Commission. Initial maps shall be created without the use of any of the following restricted data:

1. Data, hereafter Type 1, regarding election outcomes, voting history, voting trends or patterns, or the partisan affiliation of voters.

2. Data, hereafter Type 2, regarding the place of residence of incumbent legislators, members of Congress, or known candidates for said offices.

3. Data, hereafter Type 3, regarding demographic information, except that provided to the public generally by the Bureau of the Census or required by the federal Voting Rights Act as amended or other law.

D. Plan testing. Once an initial map or multiple initial maps have been created, the Commission may access restricted data of Types 1 and 2, only as provided to the Commission by the State Board of Elections on the request of the Commission, for the purpose of ensuring that the initial plans comply fully with the Standards using this data. In no case shall such data be provided by an Appointing Authority, the General Assembly, a member or committee thereof, a member of the United States Congress, an official of a political party, a partisan candidate, a current partisan office holder, a member or official of a committee controlled by a partisan candidate, any of their employees, agents, or contractors, or any individual who is, or has in the past five years been, a registered lobbyist under Article 3 (§ 2.2-418 et seq.) of Chapter 4 of Title 2.2.

E. Release of plan for public comment. When the initial plans have been conformed to the Standards, and no later than April 1 of the year ending in one, the Commission shall hold a public meeting at which it shall certify a single district map plan as the Plan for Public Comment. All relevant details of the Plan and information on the Standards shall be released at the public meeting and on the Internet.

F. Public comment period. During a period of time of no fewer than 15 days, the Commission shall hold at least five public meetings at which it will receive public comment on the Plan for Public Comment. Each meeting shall be held in a different congressional district. These meetings shall be publicized as the Commission determines, attended by all Commission members, held at times convenient for the public to attend, held for no less than three hours each, and held in geographically disparate areas of the Commonwealth. A record of each meeting shall be made, and the Commission shall cause the comments or a reasonable summary thereof to be published on the Internet and by such other means as the Commission determines.

G. Modifications of Plan. At the conclusion of the public comment period, the Commission may modify the Plan for Public Comment to account for the comments, and the modified Plan shall comply with the Standards.

H. Submission of Plan to General Assembly. Within 15 days of the completion of the public comment period, the Commission shall hold a public meeting at which it certifies a Bipartisan Redistricting Commission Plan. It shall cause its Plan to be submitted to each of the Appointing Authorities in the form of a bill for introduction.

I. Legislative process.

1. The bill to enact the Commission Plan and any other bill to delineate House of Delegates, state Senate, or congressional district boundaries shall be considered by the appropriate standing committee of the House and Senate (hereafter referred to as Committee).

2. If the Committee votes to report the Commission Plan bill without amendment, it shall report the bill. If the Committee votes to report the Commission Plan bill with amendments or any other bill with or without amendments, it shall cause its action to be communicated to the Commission. Within seven days the Commission shall make a recommendation to the General Assembly whether or not the General

Assembly should agree to the Committee's report. The house receiving the Committee's report shall not vote on the bill reported by the Committee until it has received the recommendation of the Commission.

3. If the Commission Plan bill is rejected by the Committee or the General Assembly, the Commission may, at the discretion of the Chairman, prepare and release a new plan in accordance with the Standards in the form of a bill and present it to the Appointing Authorities for their consideration and introduction.

4. If the house of origin passes the Commission Plan bill without amendment, the bill shall be communicated to the second house. If the house of origin passes the Commission Plan with amendments or passes any other bill with or without amendments, it shall cause its action to be communicated to the Commission. Within seven days the Commission shall make a recommendation to the second house whether or not it should agree to the bill as passed by the first house.

5. The process outlined in subdivisions 2 and 4 shall apply to consideration in the second house. When any bill is adopted by both houses and transmitted to the Governor, the Commission shall review the bill and make its recommendation to the Governor as to his actions on the bill.

6. If the Governor proposes amendments to the bill, the Commission shall review his amendments and make recommendations to the General Assembly as to whether or not it should agree to the Governor's amendments at least one day prior to the General Assembly's consideration of the amendments.

7. The Commission, when required to submit a recommendation, shall evaluate the outcome of implementing the bill or amendment and determine if the bill or amendment has been drafted in accordance with the Standards set forth in subsection B of § 24.2-301.3. When reviewing any bill or amendment for recommendation, the Commission may use any data it deems necessary to analyze the measure's outcome. If the Commission decides, by a majority vote, that the proposed bill or amendment is not in accordance with the Standards, the Commission shall delineate the manner in which the proposed bill or amendment deviates from the Standards and report such to the Appointing Authorities, the Clerk of the House, and the Clerk of the Senate within the required time. The Commission may, at its discretion, propose changes to the measure in question that would conform the measure to the Standards. Meetings at which the Commission votes to make a recommendation shall be public and allow for public participation.

J. Submission under § 5 of the Voting Rights Act. On passage of a bill, and its enactment into law, to define the election districts for the General Assembly and the United States House of Representatives, the Commission shall cooperate with and assist the Attorney General or other relevant authority to the extent necessary to complete the submission of the bill pursuant to § 5 of the Voting Rights Act.

K. Dissolution. On notification of clearance as required by the Voting Rights Act, the Commission shall be dissolved. The Commission shall be reconstituted with the identical membership in any case where the federal government or a court determines that modifications to the plan are required. The reconstituted Commission shall follow, as closely as practicable, the process set out in this article to meet the requirements of the government or court.