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SENATE JOINT RESOLUTION NO. 231

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee on Privileges and Elections)

(Patrons Prior to Substitute—Senators Hanger, Sturtevant [SJ 230], Barker [SJ 260], Deeds [SJ 269], and Lewis [SJ 280])

Senate Amendments in [] — February 6, 2017

Proposing an amendment to Section 6 of Article II of the Constitution of Virginia, relating to apportionment; Virginia Redistricting Commission; criteria for legislative and congressional districts.

RESOLVED by the Senate, the House of Delegates concurring, a majority of the members elected to each house agreeing, That the following amendment to the Constitution of Virginia be, and the same hereby is, proposed and referred to the General Assembly at its first regular session held after the next general election of members of the House of Delegates for its concurrence in conformity with the provisions of Section 1 of Article XII of the Constitution of Virginia, namely:

Amend Section 6 of Article II of the Constitution of Virginia as follows:

ARTICLE II

FRANCHISE AND OFFICERS

Section 6. Apportionment; *Virginia Redistricting Commission*.

(a) Members of the House of Representatives of the United States and members of the Senate and of the House of Delegates of the General Assembly shall be elected from electoral districts established by the General Assembly *Virginia Redistricting Commission*. Every electoral district shall be composed of contiguous and compact territory and shall be so constituted as to give, as nearly as is practicable, representation in proportion to the population of the district. The General Assembly *Virginia Redistricting Commission* shall reapportion the Commonwealth into electoral districts in accordance with this section in the year 2014 2021 and every ten years thereafter.

Any such decennial reapportionment law shall take effect immediately and not be subject to the limitations contained in Article IV, Section 13, of this Constitution.

The districts delineated in the decennial reapportionment law shall be implemented for the November general election for the United States House of Representatives, Senate, or House of Delegates, respectively, that is held immediately prior to the expiration of the term being served in the year that the reapportionment law is required to be enacted. A member in office at the time that a decennial redistricting law is enacted shall complete his term of office and shall continue to represent the district from which he was elected for the duration of such term of office so long as he does not move his residence from the district from which he was elected. Any vacancy occurring during such term shall be filled from the same district that elected the member whose vacancy is being filled.

(b) *The Virginia Redistricting Commission shall consist of seven members. No member of the Commission or member of his immediate family shall be a member or employee of the United States Congress or of the Virginia General Assembly or be employed to lobby before any of these legislative bodies. The members of the Commission shall be appointed with due consideration to geographic diversity. Of the seven members, four shall be identified as members of political parties and three shall be independent public officials whose positions require the exercise of apolitical or nonpartisan judgment and discretion.*

(1) *The members of the Commission shall be composed as follows:*

(A) *The President pro tempore of the Senate, 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 Speaker of the House of Delegates, and 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 each shall appoint a member of his political party.*

(B) *The three independent public officials shall be the Auditor of Public Accounts, the State Inspector General, and the Executive Director of the Virginia State Bar.*

(2) *The members of the Commission shall take the oath of office administered by the Chief Justice of the Virginia Supreme Court or his designee. The Commission members shall elect their chairperson by simple majority vote. [If the members are unable to achieve a majority vote, the chairperson shall be designated by the Chief Justice.] All administrative and procedural decisions by the Commission shall be by a majority vote of at least four members. Final approval or adoption of redistricting plans shall be by a majority vote of at least five of the seven members of the Commission, including at least one vote from each of the political parties represented and from among the independent members.*

(3) *Appointments shall be made on or before July 1 of the year in which the census is taken and shall be certified to the Secretary of the Commonwealth on or before July 15 of that year. The term of office of each member of the Commission shall expire upon the appointment of the first member of the*

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60 succeeding Commission. Vacancies in the membership of the Commission occurring prior to the
61 certification by the Commission of the districts for the House of Representatives, Senate, and House of
62 Delegates or during any period in which the districts established by the Commission may be or are
63 under challenge in court shall be filled in the same manner as the original appointments were made
64 within five days of their occurrence.

65 (c) In the calendar year following each decennial census of the United States, the Virginia
66 Redistricting Commission shall establish the districts for the House of Representatives of the United
67 States and for the Senate and the House of Delegates of the General Assembly and shall apportion the
68 members of the House of Representatives and the members of the Senate and the House of Delegates
69 among the districts, respectively. Every congressional and legislative district shall be constituted so as
70 to adhere to the following standards and criteria:

71 (1) Legislative and congressional districts shall be established on the basis of population. Senate and
72 House of Delegates districts shall each have a population that is as substantially equal to the population
73 of every other respective district as practicable. Congressional districts shall have populations that are
74 as nearly equal as practicable. The Commission shall be guided by the most authoritative federal and
75 state judicial decisions defining standards for equal population for the respective districts. Variations in
76 the size of districts, within the deviations permitted by applicable law, may be permitted if necessary to
77 facilitate compliance with one or more of the other standards or criteria set forth in this section.

78 (2) Districts shall be drawn in accordance with the requirements of all applicable federal and state
79 laws and judicial decisions interpreting such laws, including the Equal Protection Clause of the United
80 States Constitution, the provisions of the federal Voting Rights Act of 1965, as amended, and any other
81 such laws addressing racial and ethnic fairness.

82 (3) Each legislative and congressional district shall be composed of contiguous territory. A district
83 shall be deemed contiguous if it is possible to travel from one point in the district to any other point in
84 the district without crossing the boundary of the district. Territory that touches the rest of a district only
85 by a point shall not be deemed contiguous territory. Districts divided by water shall be deemed
86 contiguous if a common means of transport, such as a bridge or ferry, connects the two parts of the
87 district or, if the water were to be removed, the land on one side of the water would be contiguous with
88 the land on the opposite side of the water. Connections by water running downstream or upriver are not
89 permissible.

90 (4) Each legislative and congressional district shall be composed of compact territory, such that
91 nearby areas of population are not bypassed for more distant populations. Districts shall not be oddly
92 shaped or have irregular or contorted boundaries, unless justified because the district adheres to
93 political subdivision lines or well recognized communities of interest. Fingers or tendrils extending from
94 a district core shall be avoided, as shall thin and elongated districts and districts with multiple core
95 populations connected by thin strips of land or water. The Commission shall employ one or more
96 standard numerical measures of individual and average district compactness to provide an objective
97 assessment of a districting plan's compactness, both statewide and district-by-district.

98 (5) Existing political boundaries shall be respected to the maximum extent possible and departures
99 from existing political boundaries may be permitted only if necessary to comply with one or more of the
100 other standards or criteria set forth in this section. Political boundaries shall include the boundaries of
101 counties, cities, towns, county magisterial and election districts, municipal councilmanic districts, and
102 voting precincts. If a departure from existing political boundaries is necessary in order to comply with
103 other districting criteria, the district lines shall be drawn utilizing clearly observable physical
104 boundaries such as highways, roads, railroad lines, rivers, streams, and other natural or man-made
105 features observable on official maps.

106 (6) Existing communities of interest shall be respected to the maximum extent practicable. Districts
107 should be drawn in such a way as to avoid dividing communities of interest without violating the
108 requirements of the preceding subsections. District lines shall not be drawn to divide homogeneous
109 neighborhoods or any geographically defined group of people living in an area who share similar
110 social, cultural, and economic interests. Other examples of communities of interest are recognized
111 minority and ethnic enclaves, residential subdivisions, and recognized but unincorporated areas. A
112 community of interest does not include a community based upon political affiliation or relationship with
113 a political party, elected official, or candidate for office.

114 (d) No district shall be drawn for the purpose of favoring or disfavoring any political party,
115 incumbent legislator or member of Congress, or potential candidate. Political data, including addresses
116 of incumbent legislators or members of Congress, political affiliations of voters, or previous election
117 results, shall not be used in the drawing of any legislative or congressional district, except as may be
118 necessary to ensure that racial or ethnic minorities are able to elect a preferred candidate of choice in
119 a district drawn pursuant to subdivision (c) (2).

120 (e) The Commission, by a majority vote of at least five of its seven members as prescribed in
121 subdivision (b) (2), shall certify the establishment of House of Delegates districts and Senate districts to

the Secretary of the Commonwealth within thirty days of receipt by the Governor of the official decennial census redistricting numbers for Virginia or by the first day of June of the year following the year in which the census is taken, whichever occurs later. The Commission, by the same majority vote, shall certify the establishment of House of Representatives districts to the Secretary of the Commonwealth within sixty days of receipt by the Governor of the official decennial census redistricting numbers for Virginia or by the first day of July following the year in which the census is taken, whichever occurs later. The Commission may solicit, receive, and consider redistricting plans from the general public in establishing electoral districts.

If the Commission is unable to certify the establishment of districts within the prescribed time by a majority vote as prescribed in subdivision (b) (2), the three independent members of the Commission shall vote on the redistricting plans. The plan receiving the greatest number of votes among the three independent members shall be the plan adopted, and the districts shall be so certified.

(f) The Commission shall hold at least three public hearings in different parts of the Commonwealth to receive and consider comments from the public on the various plans subject to consideration. The Commission shall conduct its meetings and certify the adoption of plans in an open public meeting or meetings located in the City of Richmond, allowing for comment and input from the public in its consideration of proposed redistricting plans. The Commission shall give notice of its public hearings and meetings at least forty-eight hours in advance in either print or electronic media, or both.

(g) The General Assembly shall provide all such funds as may be necessary for the efficient and independent operation of the Commission, including sums sufficient to hire legal counsel, demographic experts, and such other staff as may be necessary to provide for the day-to-day operations of the Commission.

(h) Notwithstanding any provision of this Constitution to the contrary and except as otherwise required by the Constitution or laws of the United States, no court of the Commonwealth other than the Supreme Court of Virginia shall have jurisdiction over any judicial proceeding challenging the appointment of the members to the Commission or an action of the Commission, including the establishment of districts. The Supreme Court of Virginia shall have original jurisdiction in mandamus or prohibition to address any of the aforementioned issues, or any act, or failure to act in a timely manner, as may be alleged against the Commission. In any such cases, the Supreme Court shall give priority on the docket, and may expedite any such claim, including by deciding the matter on the papers without argument as may be deemed appropriate by the Court.

(i) If a plan certified by the Commission is declared unlawful, the Commission shall reconvene and adopt another district plan within such shorter period of time as prescribed by the Court or as otherwise may be necessary to ensure that the new plan is effective for the next succeeding primary and general election for all members of the House of Representatives, Senate, and House of Delegates.