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HOUSE BILL NO. 2082

Offered January 13, 2021

Prefiled January 12, 2021

A BILL to amend and reenact §§ 24.2-314, 30-396, and 30-399 of the Code of Virginia, relating to redistricting; Virginia Redistricting Commission; transparency in the redistricting process; reallocation of prison population.

Patrons—Levine, Ayala, Bagby, Carter, Cole, J.G., Kory, Price, Rasoul, Samirah, Simonds and Tran

Referred to Committee on Privileges and Elections

Be it enacted by the General Assembly of Virginia:

1. That §§ 24.2-314, 30-396, and 30-399 of the Code of Virginia are amended and reenacted as follows:

§ 24.2-314. Population data; reallocation of prison populations.

A. Persons incarcerated in federal correctional facilities and in state and local correctional facilities, as those terms are defined in § 53.1-1, shall be counted and reallocated for redistricting and reapportionment purposes in accordance with the provisions of this section and the following:

1. A person incarcerated in a federal, state, or local correctional facility whose address at the time of incarceration was located within the Commonwealth shall be deemed to reside at such address.

2. A person incarcerated in a federal, state, or local correctional facility whose address at the time of incarceration was located outside of the Commonwealth or whose address at the time of incarceration cannot be determined shall be deemed to reside at the location of the facility in which he is incarcerated not be included in the population count for the locality in which the facility is located and instead shall be allocated to a state unit not tied to a specific determined geographic location in the same manner as other state residents with an unknown address are allocated.

B. By July 1 of any year in which the decennial census is taken, the Department of Corrections and the State Board of Local and Regional Jails shall provide to the Division of Legislative Services, in a format specified by the Division of Legislative Services, the following information for each person who was incarcerated in a state or local correctional facility on April 1 of that year:

1. A unique identifier, other than his name or offender identification number, assigned by the Department of Corrections or the State Board of Local and Regional Jails for this purpose;

2. His residential street address at the time of incarceration, or other legal residence, if known;

3. His race, his ethnicity as identified by him, and whether he is 18 years of age or older; and

4. The street address of the correctional facility in which he was incarcerated on April 1 of that year.

C. The Division of Legislative Services shall request each agency operating a federal correctional facility in the Commonwealth that incarcerates persons convicted of a criminal offense to provide to the Division of Legislative Services by July 1 of any year in which the decennial census is taken a record containing the information specified in subsection B for each person who was incarcerated in the facility on April 1 of that year. Any person incarcerated in a federal correctional facility for whom a record is not received by the Division of Legislative Services shall be deemed to have an address at the time of incarceration that cannot be determined.

D. The Division of Legislative Services shall prepare adjusted population data, including race and ethnicity data, in a manner that reflects the inclusion of incarcerated persons in the population count of the locality in which he is deemed to reside pursuant to subdivision A 1 or 2.

This adjusted population data shall be used for purposes of redistricting and reapportionment and shall be the basis for congressional, state Senate, House of Delegates, and local government election districts. This adjusted population data shall not be used in the distribution of any federal or state aid.

E. The Division of Legislative Services shall make the adjusted population data available no later than 30 days following receipt of population data from the United States Bureau of the Census pursuant to P.L. 94-171. In making this data available, the Division of Legislative Services shall ensure no information regarding a specific incarcerated person's address at the time of incarceration is made public.

§ 30-396. Public participation in redistricting process.

A. All meetings and hearings held by the Commission shall be adequately advertised open to the public and planned to ensure that the public is able to attend and participate fully, including being held at convenient times and places. Meetings and hearings shall be adequately advertised and shall be in multiple languages as practicable and appropriate.

B. All meetings and hearings required to be held by the Commission pursuant to this section may be held virtually. Meetings and hearings that are held in person shall be conducted in different regions of

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59 *the Commonwealth, including the Northern Virginia region, the Central Virginia region, the Hampton*
60 *Roads region, the Southside region, and the Southwest region of Virginia. All meetings and hearings,*
61 *whether held virtually or in person, shall be livestreamed and allow for public comment.*

62 C. Prior to proposing any plan for districts for the United States House of Representatives, the
63 Senate, or the House of Delegates ~~and prior to voting to submit such plans to the General Assembly,~~ the
64 Commission shall hold at least three public hearings in order to receive and consider comments from the
65 public. ~~Public hearings may be held virtually and any public hearings that are held in person shall be~~
66 ~~conducted in different parts of the Commonwealth.~~

67 D. Prior to voting to submit any plan for districts for the United States House of Representatives, the
68 Senate, or the House of Delegates, the Commission shall publish the proposed plan or plans on its
69 website and shall hold at least three public hearings in order to receive and consider comments from
70 the public. A proposed plan may be adjusted in response to public comment received. If adjustments are
71 so made, the Commission shall publish the adjusted proposed plan on its website. At least one public
72 hearing shall be held after any adjustments are made and prior to voting to submit the proposed plan.

73 E. In the event that the Commission is required to submit a new plan for districts following the
74 General Assembly's failure to adopt the initial plan submitted, the Commission shall publish the new
75 proposed plan on its website and shall hold at least one public hearing in order to receive and consider
76 comments from the public. A proposed plan may be adjusted in response to public comment received. If
77 adjustments are so made, the Commission shall publish the adjusted proposed plan on its website. At
78 least one public hearing shall be held after any adjustments are made and prior to voting to submit the
79 proposed plan.

80 ~~C. F.~~ F. The Commission shall establish and maintain a website or other equivalent electronic platform.
81 The website shall be available to the general public and shall be used to disseminate information about
82 the Commission's activities, *including information about upcoming meetings. All meetings of the*
83 *Commission shall be video recorded and transcribed, and archived videos and transcripts of all*
84 *meetings shall be available on the Commission's website.* The website shall be capable of receiving
85 comments and proposals by citizens of the Commonwealth. ~~Prior to voting on any proposed plan, the~~
86 ~~Commission shall publish the proposed plans on the website. All comments submitted to the Commission~~
87 ~~through its website or other means shall be made available on its website along with the identity of the~~
88 ~~person submitting the comment.~~

89 ~~D.~~ G. All data used by the Commission in the drawing of districts shall be available to the public on
90 its website. Such data, including census data, precinct maps, election results, and shapefiles, shall be
91 posted within three days of receipt by the Commission.

92 **§ 30-399. Establishment of districts by the Supreme Court of Virginia.**

93 A. In the event *that* the Commission fails to submit a plan for districts by the deadline set forth in
94 subsection A or B of § 30-397, or the General Assembly fails to adopt a plan for districts by the
95 deadline set forth in subsection C or D of § 30-398, the Supreme Court of Virginia (the Court) shall be
96 responsible for establishing the districts.

97 B. The Court shall, not later than March 1 of a year ending in one, enact rules and procedures as
98 may be necessary for implementing the requirements of Article II, Section 6-A of the Constitution of
99 Virginia, empowering the Court to establish congressional or state legislative districts as provided for in
100 that section. In enacting such rules and procedures, the Court shall follow the provisions of this section.

101 C. Public participation in the Court's redistricting deliberations shall be permitted. Such public
102 participation may be through briefings, written submissions, ~~hearings in open court,~~ or any other means
103 as may be prescribed by the Court. *All meetings and hearings of the Court regarding the establishment*
104 *of districts shall be open to the public. All deliberations of the Court related to the establishment of*
105 *districts, including plans submitted to it by the special masters, shall be public. Prior to voting on a*
106 *plan submitted by the special masters pursuant to subsection F, the Court shall hold a public hearing*
107 *and may direct the special masters to make changes to the proposed plan in response to public comment*
108 *received at this hearing. If changes are so made, the Court shall hold an additional public hearing*
109 *prior to voting on the plan.*

110 D. The Division of Legislative Services shall make available staff support and technical assistance to
111 the Court to perform those duties as may be requested or assigned to it by the Court.

112 E. Any plan for congressional or state legislative districts established by the Court shall *be developed*
113 *and submitted to it by the special masters pursuant to subsection F and shall adhere to the standards*
114 *and criteria for districts set forth in Article II, Section 6 of the Constitution of Virginia and*
115 *§ 24.2-304.04.*

116 F. The Court shall appoint two special masters to assist the Court in the establishment of districts.
117 ~~The two~~ *These* special masters shall work together to develop ~~any~~ *a* redistricting plan to be submitted to
118 the Court for its consideration *and adoption.* Any plan submitted to the Court shall be affirmed by both
119 special masters to be a product of their cooperation and their collaboration, and only a plan so
120 affirmed may be adopted by the Court. In the event that the two special masters are unable to agree on

121 *a redistricting plan to submit, the Governor shall appoint a third special master to serve as a*
122 *tie-breaker.*

123 *G. Within one week of the Commission's failure to submit plans or the General Assembly's failure to*
124 *adopt plans, the leaders in the House of Delegates having the highest and next highest number of*
125 *members in the House of Delegates and the leaders in the Senate of Virginia having the highest and*
126 *next highest number of members in the Senate of Virginia shall each submit to the Court a list of three*
127 *or more nominees, along with a brief biography and resume for each nominee, including the nominee's*
128 *particular expertise or experience relevant to redistricting. The Court shall then select, by a majority*
129 *vote, one special master from the lists submitted by the legislative leaders of the political party having*
130 *the highest number of members in their respective chambers and one special master from the lists*
131 *submitted by the legislative leaders of the political party having the next highest number of members in*
132 *their respective chambers. The persons appointed to serve as special masters shall have the requisite*
133 *qualifications and experience to serve as a special master and shall have no conflicts of interest. In*
134 *making its appointments, the Court shall consider any relevant redistricting experience in the*
135 *Commonwealth and any practical or academic experience in the field of redistricting. The Court shall be*
136 *reimbursed by the Commonwealth for all costs, including fees and expenses, related to the appointment*
137 *or work of the special master from funds appropriated for this purpose.*

138 *H. All meetings and records of the Court and the special masters related to the establishment of*
139 *districts pursuant to this section shall be subject to the Virginia Freedom of Information Act (§ 2.2-3700*
140 *et seq.). All records and documents of the Court or the special masters, or any individual or group*
141 *performing delegated functions for the Court or the special masters, related to the establishment of*
142 *districts pursuant to this section, including internal communications, shall be considered public*
143 *information.*

144 *I. The Court, the special masters, any Division of Legislative Services staff requested or assigned to*
145 *assist the Court or the special masters in the establishment of districts pursuant to this section, and any*
146 *other advisor or consultant shall not communicate with any other person about matters related to the*
147 *establishment of districts pursuant to this section outside of a public meeting or hearing.*

148 *G. J. Any justice who is a parent, spouse, child, sibling, parent-in-law, child-in-law, or sibling-in-law*
149 *of, or a cohabitating member of a household with, a member of the Congress of the United States or of*
150 *the General Assembly shall recuse himself from any decision made pursuant to this section, and no*
151 *senior justice designated pursuant to § 17.1-302 shall be assigned to the case or matter to serve in his*
152 *place.*