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Sen. Delcollo & Rep. K. WilliamsSens. Bushweller, Henry, Sokola,
Hansen; Reps. Baumbach, Bentz,
Kowalko, Osienski, Spiegelman,
Bolden, LynnDELAWARE STATE SENATE
149th GENERAL ASSEMBLY

SENATE BILL NO. 27

AN ACT TO AMEND TITLE 29 OF THE DELAWARE CODE RELATING TO THE REDISTRICTING OF THE GENERAL ASSEMBLY.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend §§ 804 and 804A, Title 29 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 804. Determining district boundaries; criteria.

In determining the boundaries of the several representative and senatorial districts within the State, the ~~General Assembly~~ Independent Redistricting Commission for the State of Delaware shall use the following criteria. Each district shall, insofar as is possible:

- (1) Be formed of contiguous territory;
- (2) Be nearly equal in population;
- (3) Be bounded by major roads, streams or other natural boundaries; and
- (4) Not be created so as to unduly favor any person or political party.

§ 804A. Determining district boundaries for incarcerated individuals; criteria.

(a) The ~~General Assembly~~ Independent Redistricting Commission for the State of Delaware, in determining the reapportionment and redistricting for the State, applying the criteria set forth in § 804 of this title, and using the official reporting of the federal decennial census as set forth in § 805 of this title, shall not count as part of the population in a given district boundary any incarcerated individual who:

- (1) Was incarcerated in a state or federal correctional facility, as determined by the decennial census; and
- (2) Was not a resident of the State before the person's incarceration.

(b) The ~~General Assembly~~ Independent Redistricting Commission for the State of Delaware, in determining the reapportionment and redistricting for the State as provided in this subchapter, shall count as part of the population in a given district boundary any individual incarcerated in a state or federal correctional facility, as determined by the decennial census, if the individual was a resident of the State prior to incarceration. Such individual shall be counted for reapportionment and redistricting purposes at the individual's last known residence prior to incarceration.

Section 2. Amend §805, Title 29 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows, and by redesignating accordingly:

§805. Redistricting after federal decennial census.

~~The apportionment provided for by this chapter shall continue in effect until the official reporting by the President of the United States of the next federal decennial census. After the official reporting of the 2020 federal decennial census by the President to Congress, the General Assembly shall, not later than June 30, 2021, reapportion and redistrict the State, wherever necessary, for the general election of 2022 and thereafter in such a manner that the several representative and senatorial districts shall comply, insofar as possible, with the criteria set forth in § 804(1)-(4) of this title. Such apportionment shall thence continue in effect until the next succeeding federal decennial census.~~

§ 805. Redistricting after federal decennial census; authorization of independent redistricting commission.

(a) Findings and Purpose. The General Assembly finds that the establishment of an Independent Redistricting Commission to redistrict the State legislative districts following each decennial federal census will advance the principle of fair and equal representation upon which our system of government is based.

(b) The apportionment provided for by this chapter shall continue in effect until the official reporting by the President of the United States of the next federal decennial census. After the official reporting of the 2020 federal decennial census by the President to Congress, and each decade thereafter, a Commission organized pursuant to this subchapter shall be authorized to redistrict the legislative districts of the State Senate and the House of Representatives. The Commission shall be known as “The Independent Redistricting Commission for the State of Delaware.”

§ 806. Establishment of the Commission.

(a) By February 10 of each year ending in the number 1, the Commission shall be established to provide separate districting plans for the Senate and House of Representatives.

(b) Within 10 days of the establishment of the Commission, the names and addresses of the members of the Commission shall be prominently published in at least 2 Delaware newspapers of general circulation.

§ 807. Selection of Candidates by a Judicial Panel.

(a) By January 8 of each year ending in the number 1, a judicial panel consisting of the Chancellor of the State of Delaware and a Superior Court Judge, which Judge shall be appointed by the President Judge of the Delaware Superior Court, and shall be of a different political party than the Chancellor, shall establish a pool of candidates to serve on the Commission.

(b) The pool shall consist of retired federal and state judges, members of the Delaware Bar and other citizens, who have filed a public application indicating their willingness to serve, are qualified for appointment to the Commission and have an application on file with the Commissioner of Elections for public inspection.

(c) The pool shall consist of 24 candidates. Eight candidates shall be retired judges or Delaware attorneys and 16 candidates shall be other citizens, with 8 candidates from each of the two largest political parties in Delaware based on party registration, and 8 who are not registered with either of the two largest political parties in Delaware.

(d) The judicial panel shall assure that the men and women chosen for the pool shall be generally representative of the geographic, gender, racial, and ethnic diversity of Delaware and where feasible, shall be selected on the basis of civic involvement, knowledge of redistricting policy, civil rights, political science, demographics or statistics, elections expertise, or voting rights law.

§ 808. Composition of the Commission and Selection of the Commissioners.

(a) The Commission shall be composed of 3 retired judges or Delaware attorneys and 6 other citizens. The commissioners shall be chosen as follows:

(1) At least 7 days before the deadline for establishment of the Commission, the Speaker of the House, the House Minority Leader, the President Pro Tempore of the Senate, and the Senate Minority Leader may each strike the name of 1 candidate of the pool.

(2) From the remaining candidates, the Secretary of State shall draw by lot 3 members of the largest political party in Delaware, 3 members of the second largest political party in Delaware, and 3 members who are not registered with either of the 2 largest political parties in Delaware.

(3) If more than 3 of the 9 commissioners are retired judges or Delaware attorneys, or if more than 6 of the 9 commissioners are citizens who are not retired judges or Delaware attorneys, the Secretary of State shall randomly select and excuse prospective commissioners until:

a. There are 3 retired judges or Delaware attorneys and 6 other citizens on the Commission; and

b. The overall partisan balance of the Commission equals 3 members of the largest political party in Delaware, 3 members of the second largest political party in Delaware, and 3 members who are not registered with either of the two largest political parties in Delaware.

§ 809. Commissioners – qualifications, conditions, and compensation.

(a) To serve on the commission, a commissioner must meet the following qualifications and conditions.

(1) A commissioner shall be a resident of the State and a qualified voter. A commissioner may not have changed his or her party affiliation in the 3 years prior to appointment.

(2) A commissioner may not be and may not have in the 5 years prior to appointment been:

a. A federal or state lobbyist.

b. An officer of a federal or state political party.

c. An officer of a campaign committee.

d. An elected federal or state official.

(3) A commissioner may not run for the General Assembly in the election following the redistricting.

(b) Each member of the Commission shall attest under oath that he or she:

(1) Is willing to serve as a member of the Commission.

(2) Is able to serve in a fair and impartial manner.

(3) Shall not allow personal, financial, or partisan political interests to affect his or her decisions as a member of the Commission.

(4) Agrees to abide by the provisions of Delaware law, the federal Voting Rights Act, the duly adopted rules of the Commission, and any other applicable law.

(5) Will not be a candidate for the General Assembly in the election following the redistricting.

(6) Will not register as a federal or state lobbyist for 5 years following his or her term as a Commissioner.

(c) In order to familiarize the commissioners with the redistricting process, each commissioner shall attend a program on the redistricting process conducted by the Commissioner of Elections.

(d) Each commissioner shall be compensated at the rate of \$150 per day they are involved in the conduct of the Commission's business. Each commissioner shall be reimbursed for reasonable expenses incurred in the conduct of the Commission's business, including lodging and travel.

§ 810. Removal of Commissioners.

(a) A commissioner may only be removed for a substantial neglect of duty, gross misconduct in the performance of the duties as a member of the Commission, or inability to discharge the duties as a member of the Commission, and such a determination may only be made by a vote of a majority of the other members of the Commission.

(b) Should any member of the Commission resign, be removed, or become unable to discharge the duties of a commissioner for any reason before the work of the Commission is completed, the Secretary of State shall immediately thereafter draw by lot from the original pool (excluding those whose names were struck) a replacement who satisfies the composition requirements for the Commission under this subchapter.

§ 811. Conducting Business of the Commission.

(a) The Commission shall have the power to adopt and amend rules related to its operations and the redistricting process. If, for any reason, the Commission is unable to adopt rules, it shall use *Mason's Manual of Legislative Procedure* as a guide.

(b) Five members of the Commission shall constitute a quorum for purposes of convening and conducting a hearing. A vote to adopt a final plan shall require at least 6 votes, including the vote of at least one Commission member not registered with either of the state's two largest political parties. All other actions taken by the Commission, including approval of a preliminary plan, shall require a majority vote.

(c) The Commission may retain the services of 1 or more attorneys. Any attorney retained by the Commission must also meet the requirements of § 809 which apply to commissioners.

§ 812. Ex Parte Communications Prohibited.

Commissioners shall be prohibited from all ex parte communications with members of the legislature, other elected officials, former elected officials, staff members and consultants to elected officials, candidates for office, representatives of political parties and registered lobbyists regarding the subject of redistricting. The Commission may adopt regulations adding other groups of individuals, who shall be barred from engaging in ex parte communications.

§ 813. Transparency and Public Accountability.

(a) The Commission shall conduct an open and transparent redistricting process enabling full public consideration of, and comment on, the drawing of district lines and the Commission members shall conduct themselves with integrity and fairness.

(b) The Commission shall establish a public schedule and deadline to receive and consider proposed plans from any member of the legislature. Any member of the legislature may submit a complete or partial plan.

(c) At least 7 days' notice shall be provided for all regular meetings of the Commission. Notice of the Commission's meetings and hearings shall be prominently published in at least 2 Delaware newspapers of general circulation.

(d) All meetings of the Commission shall be open to the public and the Commission shall be subject to the provisions of the Freedom of Information Act, Title 29 of the Delaware Code, Chapter 100.

(e) A website shall be created for review by the public and shall contain such information as will assist the public in reviewing, understanding, evaluating, and commenting upon the work of the Commission. The website shall, at a minimum, include:

1. The names and addresses of all Commission members.
2. The location and schedule for Commission meetings.
3. The agenda for each Commission meeting.
4. Any rules adopted by the Commission.
5. Approved minutes of all Commission meetings.

6. The district maps from the previous redistricting of the State Senate and the House of Representatives.

7. Preliminary district maps for the redistricting being conducted by the Commission.

8. Revised district maps prepared by the Commission. .

§ 814. Standards and Criteria for a Redistricting Plan.

(a) Each redistricting plan shall provide fair and effective representation for all citizens of the State, including racial, ethnic, and language minorities.

(b) In redistricting the Senate and House of Representatives, the Commission shall comply with the provisions of § 804 and §804A of this subchapter and all standards mandated by U.S. law, including the federal Voting Rights Act (42 U.S.C. §§1971 *et. seq.*) or any successor act. .

(c) No redistricting plan adopted pursuant to this subchapter shall alter the composition of the General Assembly or provide for a number of legislative districts different than that established by the General Assembly.

(d) Party registration and voting history data shall be excluded from the initial phase of the mapping process but may be used to test plans for compliance with the goals set forth in this section. The places of residence of incumbents or candidates may not be identified or considered by the Commission.

§ 815. Preliminary Redistricting Plan and Report.

(a) The Preliminary Redistricting Plan and Report for the districts of the State Senate and the House of Representatives shall be prepared for public distribution and comment no later than the 2nd Monday in May of each year ending in the number 1, unless that date is extended by a majority of the members of both houses of the General Assembly.

(b) The Preliminary Redistricting Plan and Report shall comply with the standards and criteria set forth in § 814 of this subchapter.

(c) The Preliminary Redistricting Plan and Report shall be approved by the Commission and shall include all of the following:

(1) The population and percentage deviation from the average district population for every district.

(2) An explanation of the criteria used in developing the plan.

(3) The majority and minority population (separately reporting each minority to the extent permitted by census and demographic data) of each district.

(4) The voting age population and majority and minority voting age population (separately reporting each minority to the extent permitted by census and demographic data) of each district.

(5) Such other data and information as will permit the public to evaluate whether the Plan complies with Delaware law and the federal Voting Rights Act.

(d) Four public hearings shall be held upon completion of the Commission's Preliminary Redistricting Plan and Report, 1 in each county and 1 in the City of Wilmington, to review the Preliminary Redistricting Plan. Each of the 4 hearings shall be open to the public, shall allow for both comments and questions from the public, and live video of the hearings shall be available for the public. At least 7 days' notice shall be given for each hearing.

§ 816. Final Redistricting Plan and Report.

(a) The Commission shall approve the Final Redistricting Plan and Report by June 30 —of each year ending in the number 1, unless that date is extended by a majority of the members of both houses of the General Assembly. The date shall not be extended past August 1 of the same year.

(b) The Final Redistricting Plan and Report shall comply with the standards and criteria set forth in § 814 of this subchapter.

(c) The Final Redistricting Plan and Report shall include all of the following:

(1) The population and percentage deviation from the average district population for every district.

(2) An explanation of the criteria used in developing the plan.

(3) The majority and minority population (separately reporting each minority to the extent permitted by census and demographic data) of each district.

(4) The voting age population and majority and minority voting age population (separately reporting each minority to the extent permitted by census and demographic data) of each district.

(5) Such other data and information as will permit the public to evaluate whether the Plan complies with Delaware law and the federal Voting Rights Act.

§ 817. Judicial Review.

(a) The Delaware Supreme Court shall have original and exclusive jurisdiction to review a plan adopted by the Commission. Any petition for mandamus or other review shall be filed by a resident of the State within 30 days after the adoption of the plan.

(b) If the Commission fails to adopt a redistricting plan by August 1 of each year ending in the number 1, or if the redistricting plan is adjudicated as unconstitutional or in violation of federal law, the redistricting of the General Assembly shall then be completed by a judicial panel consisting of the Chancellor the State of Delaware and a Superior Court Judge, which Judge shall be appointed by the President Judge of the Delaware Superior Court, and shall be of a different political party than the Chancellor. The judicial plan of redistricting shall comply with the standards and criteria set forth in § 814 of this subchapter. In preparing the judicial plan of redistricting, the Chancellor and the Superior Court Judge may conduct such proceedings as they deem appropriate in their discretion. The judicial redistricting plan shall be made public by November 30 of the same year and shall be final and lawfully binding. The judicial plan shall not be subject to any appellate process.

§ 818. Assistance and Funding of the Commission.

(a) Operations of the Commission shall be funded by the General Assembly. The State of Delaware shall provide the Commission with such support staff, consultants, equipment, computer software, materials, and other resources that are needed to complete the redistricting process. The State of Delaware shall also provide office space for the Commission, its support staff, its records, and its equipment.

(b) The General Assembly shall take all necessary steps to ensure that a complete and accurate computerized database is available for redistricting, and that procedures are in place to provide the public ready access to redistricting data and computer software for drawing district maps. Upon the Commission's formation and until it ceases operations, the General Assembly shall coordinate these efforts with the Commission.

(c) The Commissioner of Elections and the Commission shall work together to ensure that coordination with local and county redistricting efforts is maintained throughout the process. The Commissioner of Elections and the county offices shall make their personnel (including those familiar with the redistricting process) and resources (including computer software) readily available to assist the Commission.

§ 819. Report to the Commissioner of Elections.

In order to assist the work of future redistricting Commissions, by December 1st of each year ending in the number 1, the Commission shall submit a written report to the Commissioner of Elections with recommendations for improvements to the redistricting

process.

§ 820. Cessation of the Commission.

(a) The Commission shall continue in existence until a final redistricting plan for the next election cycle becomes law, or until it issues its written report to the Commissioner of Elections, whichever is later.

(b) When the Commission has completed its work, the Commission shall take all necessary and reasonable steps to conclude its business and cease operations. The Commission shall prepare a financial statement disclosing all expenditures made by the Commission. The official records of the Commission shall contain all relevant information developed by the Commission pursuant to carrying out its duties, including maps, data collected, minutes, transcripts and recordings of meetings, written communications, public notices, and other information of a similar nature.

(c) Once the Commission ceases to exist, the Commissioner of Elections shall be the custodian of the Commission's records, which shall be preserved for a period of at least 20 years. When the Commission has completed its work and ceased operations, any budget surplus shall revert to the State General Fund.

Section 3. If any provision of this Act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the Act which can be given effect without the invalid provision or application, and to that end the provisions of this Act are declared to be severable.

SYNOPSIS

To establish more transparency in government, and to strengthen citizens' faith in the election and redistricting processes that serve as the foundation of democracy in Delaware, this bill establishes an Independent Redistricting Commission for the State of Delaware. The Commission will be responsible for drawing the boundaries of Delaware's legislative districts every ten years, following each decennial census.

A pool of twenty-four potential Commission members shall be selected by a bipartisan judicial panel from applications filed with the Commissioner of Elections. The pool will consist of eight current or former Delaware attorneys or former Delaware judges and sixteen other citizens of Delaware. The pool must include eight candidates from each of the State's two largest political parties and eight candidates that are not a member of either of the State's two largest parties.

Prior to selection of Commission members, the following individuals shall each have the opportunity to strike one candidate from the pool: the Speaker of the House, the House Minority Leader, the President Pro Tempore of the Senate, and the Senate Minority Leader.

From the pool of remaining candidates, the Secretary of State will draw by lot until the following conditions are satisfied:

1) The Commission will have nine members, three of whom must be current or former attorneys or former Delaware judges, and six of whom must be other Delaware citizens.

2) Three members of the Commission shall be members of the State's largest political party, three shall be members of the State's second largest political party, and the remaining three shall not be a member of either of the State's two largest political parties.

Eligible candidates may not be, and may not have in the five years prior to appointment been, a federal or state lobbyist, an officer of a federal or state political party, an officer of a campaign committee, or an elected federal or state official. Commissioners are also prohibited from running for the General Assembly in the election following the redistricting, and from registering as a federal or state lobbyist for five years following the term as a Commissioner.

A preliminary plan must be prepared by the Commission for public distribution, and four public hearings must be held before a Final Redistricting Plan and Report is approved by the Commission. The Delaware Supreme Court shall have original and exclusive jurisdiction to resolve challenges to the Final Redistricting Plan adopted by the Commission.

Author: Senator Townsend