SPONSOR: Rep. Michael Smith & Sen. Buckson

HOUSE OF REPRESENTATIVES
153rd GENERAL ASSEMBLY

HOUSE BILL NO. 184

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

WHEREAS, all Delaware governmental jurisdictions are constitutionally mandated to draw applicable legislative districts immediately following the decennial U.S. Census to guarantee equal representation of all citizens; and

WHEREAS, this process should be a non-partisan system reflecting population shifts and should not be misused to gain partisan, political advantage; and

WHEREAS, the current system of state legislative redistricting in Delaware is predisposed to produce distinctly biased results favoring the majority party in the Delaware House of Representatives and Senate; and

WHEREAS, Delaware should adopt a redistricting protocol that strives to be equitable and seeks to increase public trust in the process; and

NOW, THEREFORE:

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

Section 1. Amend Subchapter I, Chapter 8, Title 29 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

~~§ 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. Within 120 calendar days following the receipt, by the entity designated by the Governor, of the federal decennial census data for redistricting pursuant to Public Law 94-171, the General Assembly shall reapportion and redistrict the State, wherever necessary, for the general election of 2032 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.~~

~~§ 806. Staggered senatorial districts.~~

~~(a) The Senators from the 1st, 5th, 7th, 8th, 9th, 12th, 13th, 14th, 15th, 19th and 20th Senatorial Districts shall be elected for 4-year terms in 2022 and 2026 and for a 2-year term in 2030.~~

~~(b) The Senators from the 2nd, 3rd, 4th, 6th, 10th, 11th, 16th, 17th, 18th and 21st Senatorial Districts shall be elected for a 2-year term in 2022 and for 4-year terms in 2024 and 2028.~~

§ 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 federal decennial census by the President to Congress, the General Assembly shall, not later than October 1 in any year ending in a 1, reapportion and redistrict the state, wherever necessary, for the next general election 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 continue in effect until the next succeeding federal decennial census.

§ 806 Staggered senatorial districts.

(a) The Senators from the 1st, 5th, 7th, 8th, 9th, 12th, 13th, 14th, 15th, 19th and 20th Senatorial Districts shall be elected for 4-year terms in 2032 and 2036 and for a 2-year term in 2040.

(b) The Senators from the 2nd, 3rd, 4th, 6th, 10th, 11th, 16th, 17th, 18th and 21st Senatorial Districts shall be elected for a 2-year term in 2032 and for 4-year terms in 2034 and 2038.

§ 807. Standards and Criteria for a Redistricting Plan.

(a) Each redistricting plan shall provide fair and effective representation for all citizens of the state.

(b) Any redistricting involving the Senate and House of Representatives 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.

§ 808. Redistricting after federal decennial census; the authorization and creation of a protocol for full bipartisan participation.

(a) Findings and Purpose. The General Assembly finds that the establishment of a redistricting protocol to redraw 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, eliminating the practice of partisan gerrymandering.

(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 federal decennial census by the President to Congress, and each decade thereafter, the protocol established pursuant to this subchapter shall be authorized to redistrict the legislative districts of the state Senate and the House of Representatives.

§ 809. Establishment of the redistricting protocol for the Delaware General Assembly.

(a) By January 30 of each year ending in the number 1, the House Majority Caucus and the House Minority Caucus will each establish a redistricting committee of 3 caucus members each.

(b) By January 30 of each year ending in the number 1, the Senate Majority Caucus and the Senate Minority Caucus will each establish a redistricting committee of 3 caucus members each.

(c) Within 7 days of the establishment of the caucus redistricting committees, the names and official contact information of the committees' members shall be shared with all Delaware media outlets covering the General Assembly and on a redistricting web page(s) mandated by this legislation on the General Assembly's legislative website.

(d) The committees shall be staffed by each caucus as its caucus's leadership determines is appropriate to the task. Each caucus redistricting committee shall be entitled to an attorney, as selected by that caucus's leadership, with all caucus redistricting committees enjoying equal access to the resources needed to conduct their work.

(e) The four caucus redistricting committees established under this legislation shall meet as needed to agree to the selection of equipment, software, training, and any other resources as will be needed to accomplish their task, as well as a schedule to meet the deadlines required by this legislation.

§ 810. Assistance and Funding.

(a) Operation of the caucus redistricting committees shall be funded by the General Assembly. The State of Delaware shall provide each caucus redistricting committee with such support staff, consultants, equipment, computer software, materials, and other resources that are needed to complete the redistricting process. If needed and requested by the leadership of any caucus, the State of Delaware shall provide each caucus redistricting committee with sufficient, secure office space to conduct their work.

(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. These resources are to be made available from the time the committees form until the new legislative maps are enacted into law.

(c) The Commissioner of Elections and all 4 caucus redistricting committees 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 caucus redistricting committees and their staffs.

§ 811. Creation of a Redistricting web page(s) on the General Assembly's website.

(a) A web page or web pages shall be created on the General Assembly's official website so the public may access such information as will assist citizens in reviewing, understanding, evaluating, and commenting upon the work of the caucus redistricting committees. The website shall, at a minimum, include:

1. The names and contact information of all the members of the four caucus redistricting committees.

2. The district maps from the previous redistricting of the State Senate and the House of Representatives, including racial demographics and voter registration.

3. District maps created by each caucus redistricting committee at each stage of the process, posted at the same time they are completed and presented to their colleagues in the other caucus redistricting committees.

§ 812. Work and process of the House Caucus Redistricting Committees.

(a) In all aspects of this section, the House Caucus Redistricting Committees shall draft their district maps in accordance with applicable federal redistricting law and § 804 of this section and present this work in a format mutually acceptable and agreed to by both House Redistricting Committees prior to the commencement of this work. All maps produced at each step of this process shall be posted on the General Assembly web page(s) mandated by this legislation at the time the maps are presented to each House caucus redistricting committee.

(b) No later than April 15 in each year ending in a 1, the House Majority Caucus Redistricting Committee shall redraw all 41 Delaware Representative Districts, presenting their work to the House Minority Caucus Redistricting Committee.

(c) The House Minority Caucus Redistricting Committee shall, within 5 business days, review the district maps presented to them by the House Majority Caucus Redistricting Committee and set the boundaries of 5 of the legislative districts, redrawing the remaining 36 districts as it determines, and presenting their work to the House Majority Caucus.

(d) The House Majority Caucus Redistricting Committee shall, within 5 business days, review the district maps presented to them by the House Minority Caucus Redistricting Committee and set the boundaries of 4 of the legislative districts, redrawing the remaining 32 districts as it determines, presenting their work to the House Minority Caucus Redistricting Committee.

(e) The House Minority Caucus Redistricting Committee shall, within 5 business days, review the district maps presented to them by the House Majority Caucus Redistricting Committee and set the boundaries of 4 of the legislative districts, redrawing the remaining 28 districts as it determines, presenting their work to the House Majority Caucus Redistricting Committee.

(f) The House Majority Caucus Redistricting Committee shall, within 5 business days, review the district maps presented to them by the House Minority Caucus Redistricting Committee and set the boundaries of 4 of the legislative

districts, redrawing the remaining 24 districts as it determines, presenting their work to the House Minority Caucus Redistricting Committee.

(g) The House Minority Caucus Redistricting Committee shall, within 5 business days, review the district maps presented to them by the House Majority Caucus Redistricting Committee and set the boundaries of 4 of the legislative districts, redrawing the remaining 20 districts as it determines, presenting their work to the House Majority Caucus.

(h) The House Majority Caucus Redistricting Committee shall, within 5 business days, review the district maps presented to them by the House Minority Caucus Redistricting Committee and set the boundaries of 4 of the legislative districts, redrawing the remaining 16 districts as it determines, presenting their work to the House Minority Caucus Redistricting Committee.

(i) The House Minority Caucus Redistricting Committee shall, within 5 business days, review the district maps presented to them by the House Majority Caucus Redistricting Committee and set the boundaries of 4 of the legislative districts, redrawing the remaining 12 districts as it determines, presenting their work to the House Majority Caucus.

(j) The House Majority Caucus Redistricting Committee shall, within 5 business days, review the district maps presented to them by the House Minority Caucus Redistricting Committee and set the boundaries of 4 of the legislative districts, redrawing the remaining 8 districts as it determines, presenting their work to the House Minority Caucus Redistricting Committee.

(k) The House Minority Caucus Redistricting Committee shall, within 5 business days, review the district maps presented to them by the House Majority Caucus Redistricting Committee and set the boundaries of 4 of the legislative districts, redrawing the remaining 4 districts as it determines.

(l) Following the conclusion of the draft House redistricting plan, the House Majority Caucus Redistricting Committee and the House Minority Caucus Redistricting Committee shall meet to verify that all districts meet state and federal redistricting requirements. If any adjustments are needed to reach compliance, the 2 committees shall negotiate and implement a consensus solution, as determined by a majority vote of the combined committees' membership, making the required adjustments to the preliminary redistricting proposal.

§ 813. Work and process of the Senate Caucus Redistricting Committees.

(a) In all aspects of this section, the Senate Caucus Redistricting Committees shall draft their district maps in accordance with applicable federal redistricting law and § 804 of this section and present this work in a format mutually acceptable and agreed to by both Senate Redistricting Committees prior to the commencement of this work. All maps produced at each step of this process shall be posted on the General Assembly web page(s) mandated by this legislation at the time the maps are presented to each Senate Caucus Redistricting Committee.

(b) No later than April 15 in each year ending in a 1, the Senate Majority Caucus Redistricting Committee shall redraw all 21 Delaware Senatorial Districts, presenting their work to the Senate Minority Caucus Redistricting Committee.

(c) The Senate Minority Caucus Redistricting Committee shall, within 5 business days, review the district maps presented to them by the Senate Majority Caucus Redistricting Committee and set the boundaries of 3 of the legislative districts, redrawing the remaining 18 districts as it determines, and presenting their work to the Senate Majority Caucus.

(d) The Senate Majority Caucus Redistricting Committee shall, within 5 business days, review the district maps presented to them by the Senate Minority Caucus Redistricting Committee and set the boundaries of 2 of the legislative districts, redrawing the remaining 16 districts as it determines, presenting their work to the Senate Minority Caucus Redistricting Committee.

(e) The Senate Minority Caucus Redistricting Committee shall, within 5 business days, review the district maps presented to them by the Senate Majority Caucus Redistricting Committee and set the boundaries of 2 of the legislative districts, redrawing the remaining 14 districts as it determines, presenting their work to the Senate Majority Caucus Redistricting Committee.

(f) The Senate Majority Caucus Redistricting Committee shall, within 5 business days, review the district maps presented to them by the Senate Minority Caucus Redistricting Committee and set the boundaries of 2 of the legislative districts, redrawing the remaining 12 districts as it determines, presenting their work to the Senate Minority Caucus Redistricting Committee.

(g) The Senate Minority Caucus Redistricting Committee shall, within 5 business days, review the district maps presented to them by the Senate Majority Caucus Redistricting Committee and set the boundaries of 2 of the legislative districts, redrawing the remaining 10 districts as it determines, presenting their work to the Senate Majority Caucus.

(h) The Senate Majority Caucus Redistricting Committee shall, within 5 business days, review the district maps presented to them by the Senate Minority Caucus Redistricting Committee and set the boundaries of 2 of the legislative districts, redrawing the remaining 8 districts as it determines, presenting their work to the Senate Minority Caucus Redistricting Committee.

(i) The Senate Minority Caucus Redistricting Committee shall, within 5 business days, review the district maps presented to them by the Senate Majority Caucus Redistricting Committee and set the boundaries of 2 of the legislative districts, redrawing the remaining 6 districts as it determines, presenting their work to the Senate Majority Caucus.

(j) The Senate Majority Caucus Redistricting Committee shall, within 5 business days, review the district maps presented to them by the Senate Minority Caucus Redistricting Committee and set the boundaries of 2 of the legislative

districts, redrawing the remaining 4 districts as it determines, presenting their work to the Senate Minority Caucus Redistricting Committee.

(k) The Senate Minority Caucus Redistricting Committee shall, within 5 business days, review the district maps presented to them by the Senate Majority Caucus Redistricting Committee and set the boundaries of 2 of the legislative districts, and redraw the remaining 2 districts as it determines.

(l) Following the conclusion of the draft Senate redistricting plan, the Senate Majority Caucus Redistricting Committee and the Senate Minority Caucus Redistricting Committee shall meet to verify that all districts meet state and federal redistricting requirements. If any adjustments are needed to reach compliance, the 2 committees shall negotiate and implement a consensus solution, as determined by a majority vote of the combined committees' membership, making the required adjustments to the preliminary redistricting proposal.

§ 814. 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 August 1 of each year ending in the number 1.

(b) The preliminary redistricting plan and report shall comply with the standards and criteria set forth in § 807 of this subchapter.

(c) The preliminary 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) The racial demographic information of the population of each House and Senate district.

(3) The voter registration information for each House and Senate district.

(4) 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 preliminary redistricting plan and report, 1 in each county and 1 in the City of Wilmington, to review the 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. A notice of at least 7 days shall be given for each hearing.

§ 815. Adjustments to the Redistricting Plan Following the Public Hearing Process and Submission to the General Assembly.

(a) Following the conclusion of the public hearings, the House Majority Caucus Redistricting Committee and the House Minority Caucus Redistricting Committee shall meet to determine if any adjustments to the preliminary redistricting

plan and report are needed as a result of information gathered at the public hearings. If changes are required, the 2 committees shall negotiate and implement a consensus solution, as determined by a majority vote of the combined committees' membership, making the required adjustments to the preliminary redistricting plan and report and submitting it to the General Assembly for action.

(b) Following the conclusion of the public hearings, the Senate Majority Caucus Redistricting Committee and the Senate Minority Caucus Redistricting Committee, shall meet to determine if any adjustments to the preliminary redistricting plan and report are needed as a result of information gathered at the public hearings. If changes are required, the 2 committees shall negotiate and implement a consensus solution, as determined by a majority vote of the combined committees' membership, making the required adjustments to the preliminary redistricting plan and report and submitting it to the General Assembly for action.

§ 816. General Assembly Action on Finalized Redistricting Plan.

(a) The General Assembly shall approve and enact the final redistricting plan and report, in its entirety, without amendment, by September 1 of each year ending in the number 1, unless that date is extended by a majority of the members of both chambers of the General Assembly. However, this extension shall not extend beyond September 23.

(b) The Final Redistricting Plan and Report shall comply with the standards and criteria set forth in § 807of 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) The racial demographic information of the population of each House and Senate district.

(3) The voter registration information for each House and Senate district.

(4) 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 any redistricting plan adopted by the General Assembly. 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 General Assembly fails to adopt a redistricting plan by September 30 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 of the State of Delaware and 3 Superior Court judges, 1 from each county, as appointed by the President Judge of the Delaware Superior Court. One of the Superior

Court judges shall be of the same political party as the Chancellor of the State of Delaware, with the remaining 2 Superior Court judges' members of the opposing major political party. The judicial plan of redistricting shall comply with the standards and criteria set forth in § 807 of this subchapter. In preparing the judicial plan of redistricting, the judicial panel may conduct such proceedings as they deem appropriate at their discretion. The judicial redistricting plan shall be made public by November 1 of the same year and shall be final and lawfully binding. The judicial plan shall not be subject to any appellate process.

§ 818. General Assembly Action to Eliminate Mapping Conflicts.

(a) Recognizing that conflicts may occur following the adoption of the new representative and senatorial district maps in regard to the creation of new election districts, the General Assembly shall work with the Commissioner of Elections in identifying and rectifying such conflicts. These adjustments will be made through legislation, minimizing to the greatest extent possible, the boundaries of the newly apportioned legislative districts.

Section 2. This Act shall become effective for any redistricting after December 31, 2030.

SYNOPSIS

The constitutional requirement to create new legislative districts following the U.S. Census was intended to ensure equal representation at all levels of government. However, Delaware's current process of redistricting is deeply flawed. It allows the majority party in each legislative chamber to gerrymander state legislative maps in a self-serving attempt to preserve and expand partisan political power. All other considerations have become secondary in this process. This defect is common to many states and some have tried to address the issue by creating election commissions charged with redrawing legislative lines. The challenge in such a system is ensuring that these commissions can conduct their function in a balanced, objective, and non-partisan fashion. This bill proposes a new method that avoids this significant hurdle by leveraging partisan self-interest to create a protocol that results in an equitable outcome. This fresh approach to reapportionment is described in a paper by 3 Carnegie Mellon University professors entitled: "A Partisan Districting Protocol with Provably Nonpartisan Outcomes." It utilizes a system analogous to a proven, prudent method for instructing 2 children to fairly divide a piece of cake between themselves. The first child cuts the cake, while the second has the option of selecting which piece he or she wishes to consume. In the protocol outlined in this bill, the two competing parties are the partisan caucuses of each General Assembly chamber. The first caucus will initially draw all the legislative districts, observing established legal redistricting standards. The second caucus will have the ability to "freeze" a set number of the districts, locking their boundaries into place. They will then be able to redraw the remaining districts as they wish, delivering the new maps back to the first caucus. This group will then also engage in the freeze and redraw process, with the cycles continuing until all the districts have been defined. With both sides getting equal "bites of the apple," each has a practical ability to affect the outcome and a reason to work together to achieve a mutually acceptable conclusion. The bill also includes safeguards to ensure public notification and participation in the process, as well as a contingency to allow the judicial branch to draw the new legislative maps should the General Assembly be unable to achieve the task. This legislation assumes calling the General Assembly into special session to approve the finalized maps, providing enough time for the process to be conducted in a deliberative manner.