

Senate Bill No. 409

(By Senators Hall and Barnes)

[Introduced February 3, 2011; referred to the Committee on the
Judiciary; and then to the Committee on Finance.]

A BILL to amend the Code of West Virginia, 1931, as amended, by
adding thereto a new article, designated §1-2A-1, §1-2A-2, §1-
2A-3, §1-2A-4, §1-2A-5, §1-2A-6, §1-2A-7, §1-2A-8 and §1-2A-9,
all relating to establishing the Model State Redistricting
Reform Act.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended
by adding thereto a new article, designated §1-2A-1, §1-2A-2, §1-
2A-3, §1-2A-4, §1-2A-5, §1-2A-6, §1-2A-7, §1-2A-8 and §1-2A-9, all
to read as follows:

ARTICLE 2A. MODEL STATE REDISTRICTING REFORM ACT.

§1-2A-1. Definitions.

For purposes of this article:

(1) "Proportional voting system" means any voting system that
ensures the election of any candidate in a multi-member district

1 who receives a share of votes cast that is at least one vote
2 greater than one-third of the total number of votes cast in the
3 district.

4 (2) "Commission" means the Independent Legislative
5 Redistricting Commission created pursuant to this chapter.

6 (3) "Ideal district population" is determined by dividing the
7 number of districts to be established into the population of the
8 state reported in the latest federal decennial census.

9 (4) "Multi-member district" means any legislative district
10 that elects more than one legislator.

11 (5) "Partisan public office" means: (A) An elective or
12 appointive office in the executive or legislative branch or in an
13 independent establishment of the federal government; (B) an
14 elective office in the executive or legislative branch of the
15 government of this state, or an office of the government of this
16 state which is filled by appointment of executive or legislative
17 authority; (C) an office of a county, municipality, or other
18 political subdivision of this state which is filled by an election
19 process involving the nomination and election of candidates on a
20 partisan basis.

21 (6) "Plan" means a plan for legislative reapportionment drawn
22 up pursuant to the requirements of this chapter.

23 (7) "Political party office" means an elective office in the
24 national or state organization of a party.

25 **§1-2A-2. Redistricting commission.**

1 (a) Not later than July 1, 2011, and thereafter, February 15
2 of each year ending in one, a redistricting commission shall be
3 established as provided in this section. The commission's only
4 functions shall be those described in section three.

5 (b) The commission shall be the only means of redrawing
6 congressional, state assembly and State Senate district lines.

7 (c) The commission shall only be convened in a year not ending
8 in one subject to a court order.

9 (d) The commission shall be convened pursuant only to either
10 section four or five of this article.

11 **§1-2A-3. Duties of commission.**

12 (a) The commission shall develop a plan for the apportionment
13 of congressional representatives and state house and senatorial
14 districts based on the most recent decennial census. The
15 commission shall forward the plan to the Speaker of the House of
16 Delegates and the President of the Senate, and shall include
17 legislation necessary to effectuate the plan.

18 (b) The commission shall decide whether to draw single member
19 districts, multi-member districts with proportional voting systems,
20 or some combination thereof.

21 (c) If the commission cannot decide on whether to draw single
22 member districts, multi-member districts with proportional voting
23 systems, or some combination thereof, it is empowered to empanel
24 and Citizens' Assembly to study the issue and make a recommendation
25 to the commission.

1 **§1-2A-4. Legislative redistricting office - census data.**

2 As soon as possible after April 1, 2011, and thereafter,
3 January 1 of each year ending in one, the legislative redistricting
4 office shall obtain from the United States bureau of the census the
5 population data needed for legislative districting which the census
6 bureau is required to provide this state under United States Pub.
7 L. 94-171, and shall use that data to assign a population figure
8 based upon certified federal census data to each geographic or
9 political unit.

10 **§1-2A-5. Nonpartisan redistricting commission.**

11 (a) The commission shall be composed of nine members and shall
12 reflect the diversity of the state.

13 (b) Prior to April 1, 2011, and thereafter, December 31 in a
14 year ending in zero, the Supreme Court of Appeals shall establish
15 a pool of thirty-six potential commission members. A person is
16 eligible to be a member of the commission if the person:

17 (1) Is a retired state judge or a federal judge who has served
18 in a federal court in this state and has retired or taken senior
19 status;

20 (2) Has never held a partisan public office; and

21 (3) Has not changed the person's political party affiliation
22 indicated in the person's voter registration records during the
23 five years immediately preceding appointment.

24 (c) One third of the pool shall be registered members of the
25 largest political party in the state, one third of the pool shall

1 be registered members of the second largest political party in the
2 state, and one third of the pool shall not be registered members of
3 either of the two largest political parties in the state.

4 (d) A random drawing shall be held in the following manner to
5 determine which members of the pool shall serve on the commission.

6 (1) Three members will be chosen by lot from those members of
7 the pool who are registered members of the largest political party
8 in the state.

9 (2) Three members will be chosen by lot from those members of
10 the pool who are registered members of the second largest political
11 party in the state.

12 (3) Three members will be chosen by lot from those members of
13 the pool who are not registered members of either of the two
14 largest political parties in the state.

15 (e) A person appointed to the commission under this
16 subsection, before commencing service on the commission, shall
17 pledge in writing that during the person's service as a member of
18 the commission and for at least five years after the date the
19 person's service as a member of the commission is concluded the
20 person will not seek, accept or hold:

21 (1) A public office;

22 (2) The position of an officer of a political party; or

23 (3) The position of a compensated lobbyist.

24 (f) The terms of office of members of the commission expire
25 upon the last filing of a redistricting plan under this section or

1 upon discharge of the members by the Supreme Court of Appeals under
2 subsection (g) of this section.

3 (g) The Supreme Court of Appeals shall identify qualified
4 persons willing to serve as members of the commission. From the
5 list of qualified persons, the court shall appoint at random four
6 persons to serve as members of the commission. If the court
7 appoints a panel in which more than two members are registered to
8 vote as members of one of the two largest political parties in this
9 state, then the court shall excuse one member of the panel by lot
10 and randomly appoint and excuse new members until a panel is
11 appointed consisting of two members belonging to each of the two
12 largest political parties in this state.

13 (h) The four members of the commission appointed by the
14 Supreme Court of Appeals under subsection (g) of this section shall
15 identify qualified persons willing to serve as the fifth member of
16 the commission. From the list of qualified persons, the four
17 members shall appoint the fifth member by an affirmative vote of
18 three-fourths of the members.

19 **§1-2A-6. Redistricting standards.**

20 (a) Districts shall be drawn in compliance with the United
21 States Constitution, the West Virginia Constitution and the federal
22 Voting Rights Act (42 U.S.C. §1973 et seq).

23 (b) The commission may create plans containing multi-member
24 districts with a proportional voting system, single member
25 districts, or a combination thereof. Each such district shall have

1 a population per representative as nearly equal as practicable.

2 (c) To the greatest extent possible, the commission shall
3 maximize both representativeness and, where practicable,
4 competitiveness, though neither goal shall be superior to the
5 other.

6 (1) A representative plan is one where racial groups and other
7 communities of interest are able to elect representatives in
8 proportion to their percentage of the voting age population.

9 (2) If it is impracticable to draw competitive districts in
10 the state, the commission shall not use party registration
11 information.

12 (d) The commission shall hold at least three public hearings
13 throughout the state for receiving and considering proposed
14 redistricting plans and public comment from any member of the
15 Legislative or the public.

16 (e) In no circumstance shall the commission know or take into
17 account the address of any individual, including an officeholder.

18 (f) Information concerning party registration and historical
19 election returns shall only be used once a plan has been drawn, and
20 shall only be used to test the plan for compliance with the stated
21 goals of this article.

22 (g) Each district shall be as contiguous as compact as
23 practicable. With respect to compactness, to the extent
24 practicable a contiguous area of population shall not be bypassed
25 to incorporate an area of population more distant. Respect for

1 contiguous and compact districts shall be secondary to the goals of
2 representativeness and competitiveness.

3 (h) District boundaries shall conform to the existing
4 geographic boundaries of a county, city, or city and county, and
5 shall preserve identifiable communities of interest to the greatest
6 extent possible. A redistricting plan shall provide for the most
7 whole counties and the fewest county fragments possible, and the
8 most whole cities and fewest city fragments possible. For the
9 purposes of this section, communities of interest are defined by
10 similarities in social, cultural, ethnic, and economic interest,
11 school districts, and other formal relationships between
12 municipalities.

13 **§1-2A-7. Submission of plan to legislature.**

14 (a) The commission shall forward the plan to the Legislature
15 before August 15, 2011, and thereafter, April 1 of each year ending
16 in one. The House of Delegates and the Senate shall vote on the
17 plan expeditiously, but not less than seven days after the plan is
18 received and made available to the members of both houses. The plan
19 shall be voted on using a procedure allowing no amendments, other
20 than those of a purely corrective nature.

21 (b) If the plan fails to be approved by a constitutional
22 majority in either the House of Delegates or the Senate, the clerk
23 of the House of Representatives or the Senate, as the case may be,
24 shall at once transmit to the commission reasons why the plan was
25 not approved. The commission shall then prepare a second plan in

1 accordance with section six of this article and taking into account
2 the reasons cited by the House of Representatives or Senate for its
3 failure to approve the plan insofar as it is possible to do so
4 within the requirements of section six. The second plan shall be
5 delivered to the Speaker of the House of Delegates and the
6 President of the Senate not later than September 15, 2011, or
7 thereafter May 1 of the year ending in one, or twenty-one days
8 after the date of the vote by which the House of Delegates or the
9 Senate fails to approve the plan submitted under subsection (a),
10 whichever date is later. It is the intent of this chapter that, if
11 a second plan is necessary, it shall be brought to a vote not less
12 than seven days after the plan is made available to the members of
13 the general court, in the same manner as prescribed for the plan
14 under subsection one.

15 **§1-2A-8. Judicial review.**

16 Any elector may bring an action directly to the West Virginia
17 Supreme Court of Appeals alleging that a law establishing or
18 changing boundaries of any Senate, House, or congressional district
19 does not comply with the requirements of this article. An action
20 filed with the Supreme Court of Appeals pursuant to this section
21 must be filed within thirty days of the enactment of the challenged
22 law. The Supreme Court of Appeals shall render a decision within
23 sixty days after the filing of a petition and the court's failure
24 to do so shall constitute a denial of the petition. If the Supreme
25 Court of Appeals finds a redistricting plan to be in violation of

1 this article, it shall order that a new plan be adopted pursuant to
2 this article.

3 **§1-2A-9. Severability.**

4 If any section, part, clause, or phrase of this article is for
5 any reason held to be invalid or unconstitutional, the remainder
6 shall not be affected, but shall remain in full force and effect.

NOTE: The purpose of this bill is to establish the Model
State Redistricting Reform Act.

This article is new; therefore, strike-throughs and
underscoring have been omitted.