



COMMONWEALTH of VIRGINIA

Office of the Governor

Robert F. McDonnell
Governor

GOVERNOR'S VETO

APRIL 15, 2011

TO THE HOUSE OF DELEGATES:

HOUSE BILL NO. 5001

House Bill 5001 includes decennial redistricting plans for the House of Delegates and Senate of Virginia, as required by Article II, Section 6 of the Constitution of Virginia. Upon reviewing the plans and relevant state and federal law, I have several legal and other concerns with this legislation. Specifically, there are significant issues with the Senate reapportionment plan ("Senate plan") that prevent me from signing the bill in its current form. While I applaud the House for its bipartisan approach, I encourage the House to pursue opportunities that will strengthen its plan.

First, it is apparent that districts proposed in the Senate plan are not compact, as required in the Constitution of Virginia, and do not properly preserve locality lines and communities of interest. These issues were noted in the Independent Bipartisan Advisory Commission on Redistricting ("Bipartisan Commission") report as the most significant concerns of the citizens of Virginia. The Constitution of Virginia requires that electoral districts be composed of "compact territory." This requirement is also contained in the resolution adopted by the Senate Privileges and Elections Committee on March 25, 2011. Using the most commonly recognized tools of compactness scoring, the Reock and Polsby-Popper methods, the plan adopted by the Senate has less compact districts than the existing House or Senate districts or other plans that have been proposed. The Senate Committee resolution also requires that communities of interest be respected, including local jurisdiction lines. While the House plan keeps the number of split localities relatively static, the Senate plan significantly increases the number of times localities are split as compared to either other proposed plans or the current redistricting law (from 190 to 198 in the House plan (4% change), contrasted with an increase of 108 to 135 in the Senate plan (25% change)). A plain visual examination of the districts in the Senate plan also places into serious doubt that the compactness and communities of interest requirements have been met. As Justice Stevens said in the 1983 U.S. Supreme Court case of *Karcher v. Daggett*, "Drastic departures from compactness are a signal that something may be amiss."

Second, I am concerned that the Senate plan may violate the one person-one vote ideal embodied in the United States and Virginia Constitutions. The Fourteenth Amendment of the United States Constitution provides for equal protection of the laws. This has been interpreted to require that state legislative districts have as close to equal representation as practicable, taking into consideration other important and legitimate redistricting factors. Additionally, Article II, Section 6 of the Constitution of Virginia requires that districts be drawn in a manner to “give, as nearly as is practicable, representation in proportion to the population of the district.” The House plan has a deviation of only ± 1 percent. However, in reviewing the districts proposed in the Senate plan, they appear to deviate from the one person-one vote standard without any apparent legitimate justification. While the deviation from the ideal district is smaller than in past decennial redistricting cycles, deviations must be justified with achieving some recognized principle of redistricting such as preserving local jurisdictional lines, creating compact districts, or maintaining communities of interest. Additionally, as the Bipartisan Commission noted, “the tradition in the Commonwealth has been to require a stricter population standard than allowed by the federal courts.” After close review of the Senate plan, I cannot identify any apparent justification for the deviations proposed. In fact, the Senate plan systematically underpopulates districts in slow-growth regions of the state (urban and rural) while overpopulating districts in high-growth areas of the Commonwealth (suburban).

Lastly, I am concerned that the Senate plan is the kind of partisan gerrymandering that Virginians have asked that we leave in the past. The House of Delegates passed its plan on an overwhelming 86-8 vote, with twenty-eight affirmative votes from members of the minority party. Similarly, in 2001, both the House and Senate plans passed with bipartisan support. In stark contrast, the Senate plan failed to garner any votes in the Senate from the minority party. Certainly, the Senate can create a plan that will be supported by a bipartisan majority of Senators, especially with the Senate’s overwhelming support for a bipartisan redistricting process as expressed in previous legislation.

In conclusion, after a careful review of the Senate plan, I have serious concerns that such a plan may violate state and federal law and could potentially subject Virginia to costly and unnecessary litigation. Time is of the essence to ensure that we maintain control over a process that drastically impacts Virginians for years to come. I encourage you to reevaluate this legislation in light of these expressed concerns and begin work immediately to develop a plan that is clearly lawful and can ensure bipartisan support. It is imperative that your work commence and be completed promptly to permit the appropriate preclearance process to occur so that the election can proceed as currently scheduled.

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Accordingly, pursuant to Article V, Section 6, of the Constitution of Virginia, I veto this bill.

Sincerely,

A handwritten signature in black ink, appearing to read "Robert McDonnell". The signature is written in a cursive, flowing style with some loops and flourishes.

Robert F. McDonnell