

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 953 Legislative Redistricting and Congressional Reapportionment
SPONSOR(S): Ahern
TIED BILLS: IDEN./SIM. **BILLS:** CS/SB 352

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Public Integrity & Ethics Committee	14 Y, 3 N, As CS	Poreda	Rubottom
2) Judiciary Committee			
3) Rules & Policy Committee			

SUMMARY ANALYSIS

CS/HB 953 provides clarity regarding which legislative and congressional maps must be used when redistricting challenges are unresolved and upcoming elections are imminent.

The bill prohibits legislative district challenges after the Florida Supreme Court validates the legislative plan under Art. III, s. 16 of the Florida Constitution, and also prohibits congressional district challenges 60 days after the legislature enacts or alters districts. It suspends litigation challenging a redistricting map between the qualifying dates and the general election of any particular election cycle. (If qualifying is more than 105 days before the Primary Election, the suspension begins on the 105th day.) The bill also addresses any need to reopen the qualifying dates in circumstances where qualifying occurs prior to the issuance of an enforceable order implementing a remedial map, which could be the case in Congressional qualifying which is more than 105 days prior to the Primary under current law). Any remedial map ordered after the qualifying date, takes affect during the following election cycle.

The bill also requires that any drafter of a remedial redistricting plan is subject to examination as to prohibit intent on the same grounds as a state legislator as stated in Art III, sec. 20 and 21 of the Florida Constitution.

The bill prohibits future challenges to legislative district maps after the Florida Supreme Court validates a plan under its constitutionally mandated review of legislative redistricting plans.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

The terms “redistricting” and “reapportionment” are often used interchangeably to describe the process of drawing new congressional and state legislative district boundaries. Legislative and congressional districts are redrawn after each decennial census to accommodate population growth and shifts. Redistricting also ensures that each district contains nearly equal populations.

The United States (U.S.) Constitution requires the reapportionment of the U.S. House of Representatives every ten years to distribute each of the U.S. House of Representatives’ 435 seats between the states and to equalize population between districts within each state.

Article I, Section 4 of the U.S. Constitution provides that “[t]he Time, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof; but the Congress may at any time by Law make or alter such Regulations, except as to the Places of choosing Senators.” The U.S. Constitution thus delegates to state legislatures authority, subject to congressional regulation, to create congressional districts and otherwise regulate congressional elections.

At the federal level, through congressional reapportionment, the 435 seats in the U.S. House of Representatives are redistributed after the decennial census among the 50 states based upon their relative population changes as determined by the decennial census. Each state then determines how to draw its congressional districts. In addition to case law and federal legislation, the state constitution and the U.S. Constitution provide direction on legislative redistricting and congressional reapportionment.

Article III, Section 16 of the Florida Constitution requires the Legislature, by joint resolution at its regular session in the second year after the Census is conducted, to apportion the state into senatorial districts and representative districts.

The Florida Constitution is silent with respect to process for congressional redistricting. Article 1 Section 4 of the U.S. Constitution grants to each state legislature the exclusive authority to apportion seats designated to that state by providing the legislative bodies with the authority to determine the times, place and manner of holding elections for senators and representatives. Consistent therewith, Florida has adopted its congressional apportionment plans by legislation subject to gubernatorial approval. Florida congressional apportionment plans are not subject to automatic review by the Florida Supreme Court.

Article III, Section 20 & 21 of the Florida Constitution establishes standards for both legislative and congressional redistricting. These standards are set forth in two tiers. The first tier, subparagraph (a), contains provisions regarding political favoritism, racial and language minorities, and contiguity. The second tier, subparagraph (b), contains provisions regarding equal population, compactness and use of political and geographical boundaries.

Election Dates and Qualifying Periods for Nomination and Election to Office

A general election is conducted in November of each even-numbered year.¹ A primary election, held for nominating a party candidate to run in the general election, is conducted 10 weeks before the general election.²

¹ FLA. CONST. art. VI, s. 5(a). & Section 100.031, F.S.

² Section 100.061, F.S.

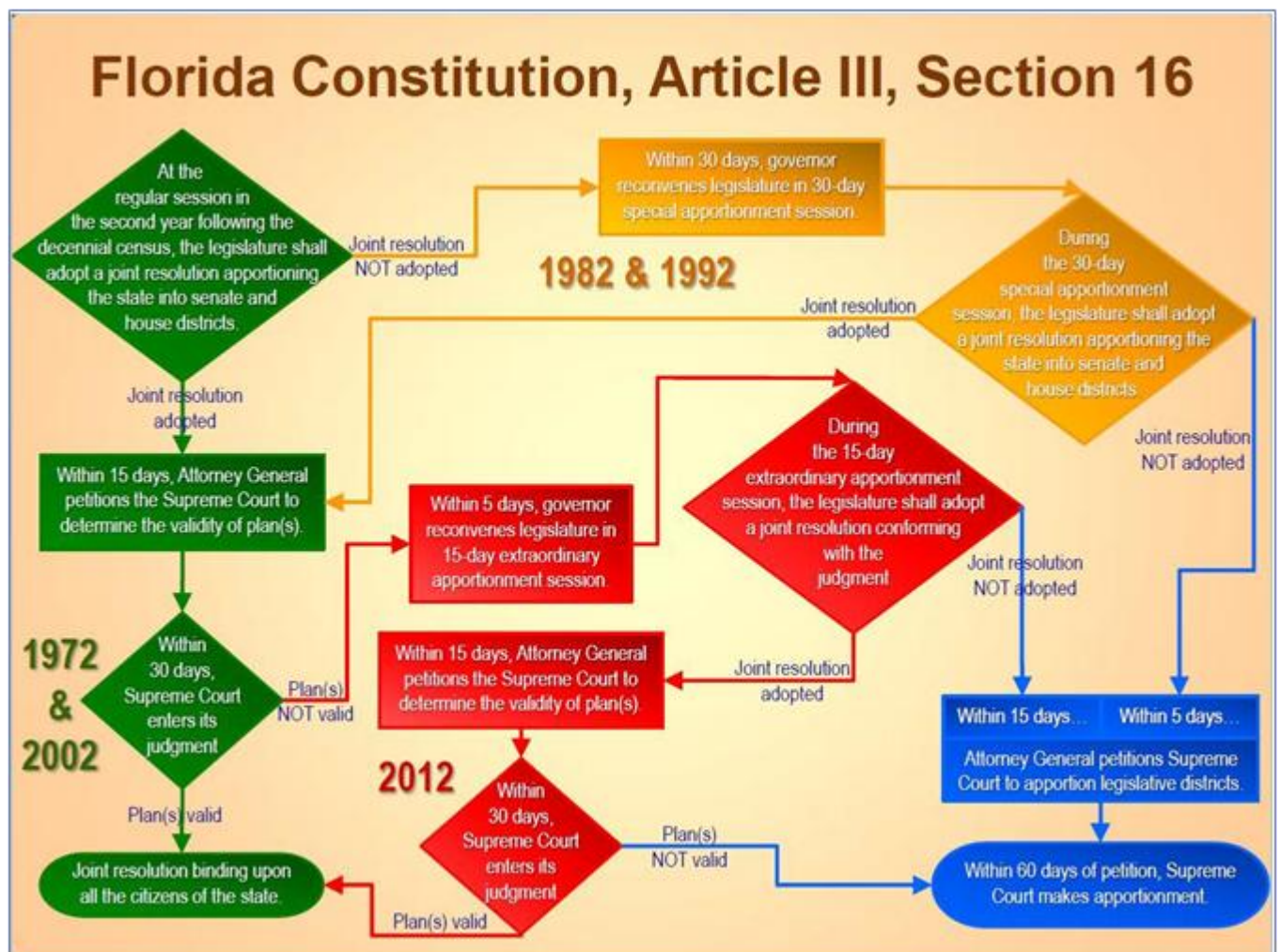
The Florida Election Code prescribes the qualifying dates for candidates seeking office. Qualifying periods for federal office differ depending upon whether it is an apportionment or non-apportionment year. In non-apportionment years, candidates seeking a congressional office must qualify between noon on the 120th day and noon on the 116th day before the primary election.³

In years when the Legislature apportions the state, the qualifying period occurs 7 weeks later in the calendar year, between noon on the 71st day and no later than noon of the 67th day before the primary election.⁴ This later qualifying period is apparently done as an accommodation to the possibility that a protracted reapportionment session or multiple sessions might be required to sort out a final redistricting plan before it is time to qualify.

The qualifying dates for state senator and state representative begin at noon on the 71st day before the primary election and end no later than noon of the 67th day before the primary election. The election laws do not prescribe any different qualifying dates in a year in which the Legislature apportions state Senate or State House offices.⁵

The Process of Redistricting in Florida

Overview of the process established by the Florida Constitution, Art. 3, S. 16



³ The Florida Election Code is contained in chapters 97-106, F.S. and Section 99.061(1), F.S.

⁴ Section 99.061(9), F.S.

⁵ Section 99.061(1), F.S.

During the regular session of the Legislature in the second year following the decennial census, the Legislature is required to adopt a joint resolution that apportions the state into Senate and House districts. The Legislature is directed to apportion the state into no fewer than 30, nor more than 40 senate districts, and into no fewer than 80, nor more than 120 representative districts. Because the Legislature adopts a joint resolution, rather than passing a general bill, the measure does not require the Governor's approval, nor is it subject to a veto.⁶

The state constitution prescribes a mandated review process for state legislative redistricting plans by the Florida Supreme Court⁷. During this process the Florida Supreme Court determines if the newly created districts are valid or when they are invalid. When the Florida Supreme Court enters a judgment that the plan is valid, the plan becomes binding upon all citizens of the state.⁸

In contrast, the process for enacting Congressional districts differs in two ways. The districts are not established in a joint resolution, but in a general bill that is subject to a Governor's veto. Additionally, the maps do not require mandatory review by the Florida Supreme Court. The Apportionment Act of 1941 specifies the apportionment method, establishes the House membership at 435 representatives, mandates an apportionment every 10 years, and designates the administrative procedures that will be used for apportionment. Florida is entitled to 27 U.S. Representatives in Congress based upon the 2010 Census.

Judicial Review of Legislative Districts

Within 15 days after the Legislature passes a joint resolution of apportionment, the Attorney General must petition the Florida Supreme Court for a declaratory judgment that determines the validity of the apportionment. Florida Supreme Court is required to permit adversary interests to present their views challenging the validity of the apportionment. Florida Supreme Court then must enter its judgment within 30 days after the filing of the Attorney General's petition. If it is determined that the apportionment made by the Legislature is not valid, the Governor is required to reconvene the Legislature, by proclamation, within 5 days, in an extraordinary apportionment session that may not exceed 15 days. The Legislature is required to then adopt a joint resolution of apportionment that conforms to the Florida Supreme Court's judgment.

Within 15 days after the Legislature adjourns the extraordinary apportionment session, the Attorney General is required to petition the Florida Supreme Court and provide the apportionment resolution where they will then consider the validity of the resolution as though it were adopted at a regular or special apportionment session. The Florida Supreme Court will permit adversary interests to present their views and, within 30 days of the Attorney General's petition, render a judgment. If no resolution was adopted, the Attorney General must so inform the Florida Supreme Court.⁹

If the Legislature does not adopt an apportionment resolution during the extraordinary apportionment session, or the Florida Supreme Court declares it invalid, they must, within 60 days after receiving the Attorney General's petition, file an order with the custodian of state records making an apportionment.

If the Legislature adjourns without adopting a joint resolution apportioning the state into the necessary legislative districts, the Governor shall, within 30 days, issue a proclamation reconvening the Legislature in a special apportionment session. That session may not exceed 30 consecutive days. It is the Legislature's mandatory duty to adopt a joint resolution of apportionment during that session and no other business may be transacted.¹⁰ If the Legislature adjourns without adopting the joint resolution of apportionment, the Attorney General must, within 5 days, petition the Florida Supreme Court to make

⁶ FLA. CONST. art. III, s. 16(a).

⁷ FLA. CONST. art. III, s. 16(c)

⁸ FLA. CONST. art. III, s. 16(d).

⁹ FLA. CONST. art. III, s. 16(e,f).

¹⁰ FLA. CONST. art. III, s. 16(a).

the apportionment. Florida Supreme Court then has 60 days after the Attorney General's petition is filed to file its order with the custodian of state records making the apportionment.¹¹

The Fair Districts Amendments to the State Constitution

The State Constitution was amended in November 2010 to incorporate standards for establishing congressional¹² and legislative districts¹³. These amendments are commonly known as the Fair District Amendments. They are set forth in two tiers. In general terms, the new standards require that an apportionment plan or individual district:

Tier 1

- Not be drawn with the intent to favor or disfavor a political party or incumbent;
- not be drawn with the intent or result of denying or abridging the equal opportunity of racial or language minorities to participate in the political process or to diminish their ability to elect representatives of their choice; and
- Consist of contiguous territory

Tier 2

- Shall be as nearly equal in population as is practicable;
- Shall be compact;
- Shall, where feasible, utilize existing political and geographical boundaries.

2012 Redistricting and subsequent litigation

Congressional Map

On February 9, 2012, the Florida Legislature passed SB 1174, redistricting the population of Florida into 27 congressional districts, as required by state and federal law. Shortly thereafter, two legal challenges to the plan were filed in the Circuit Court for Florida's Second Judicial Circuit in Leon County. Those challenges were eventually combined into one case, *Romo v. Detzner*. On July 10, 2014, after a 12-day trial, the Circuit Court entered a final judgment rejecting challenges to eight districts (Districts 13, 14, 15, 21, 22, 25, 26 and 27) but finding Districts 5 and 10 invalid. On August 11, 2014, the Legislature passed SB 2A to remedy the invalidated districts, and those districts were upheld by the Circuit Court on August 22, 2014. In addition, Judge Terry Lewis ordered that the 2014 elections proceed under the map originally passed in 2012 under the circumstances of the election timeline. On August 29, 2014, the plaintiffs appealed that decision, and the Florida Supreme Court heard oral arguments on the case on March 3, 2015.

In an interlocutory appeal in the 2012 redistricting litigation, the Florida Supreme Court ruled that legislative immunity from judicial process inquiring into legislative action,¹⁴ "is not absolute in this case, where the violations alleged are of an explicit state constitutional provision prohibiting partisan political gerrymandering and improper discriminatory intent in redistricting."¹⁵

On July 9, 2015, the Florida Supreme Court found Districts 5, 13, 14, 21, 22, 25, 26 and 27 invalid and provided the Legislature with specific guidance as to how to remedy these deficiencies. In its invalidation of those districts, the Florida Supreme Court relinquished jurisdiction to the Circuit Court for 100 days to enter an order recommending approval or disapproval of the remedial plan.

¹¹ FLA. CONST. art. III, s. 16(b).

¹² FLA. CONST. art. III, s. 20

¹³ FLA. CONST. art. III, s. 21

¹⁴ *E.g., Tenney v. Brandhove*, 341 U.S. 367, 71 S. Ct. 783, 95 L. Ed. 1019 (U.S. 1951).

¹⁵ *The League of Women Voters of Fla. v. Fla. House of Representatives*, 132 So. 3d 135, 154 (Fla. 2013). The Legislature strongly disagreed with the Court's disallowance of legislative immunity.

Following a Special Session in August 2015 where the legislature failed to adopt a remedial plan, The Circuit Court held hearings the week of September 28, 2015 to accept remedial plans from all parties involved in the case and on October 9, 2015, Judge Terry Lewis recommended the adoption of a map presented by the plaintiffs to the Florida Supreme Court. On December 2, 2015, the Florida Supreme Court approved the map that was recommended by Judge Terry Lewis who on December 22, 2015, issued his final judgment in the case.

State Senate Map

On February 9, 2012, the Florida Legislature passed SJR 1176, reapportioning the 120 state House districts and 40 state Senate districts. On March 9, the Florida Supreme Court issued a 191-page majority opinion, unanimously finding the State House map valid. By a 5-to-2 vote, the Florida Supreme Court found the state Senate map invalid. The Legislature then met in an Extraordinary Session and on March 27, passed SJR 2B, reapportioning the 40 state Senate districts. On April 27, by a 5-to-2 vote, the Florida Supreme Court found the new state Senate map valid.

Shortly thereafter, the State Senate map was challenged in the Circuit Court of the Second Judicial Circuit in Leon County by the League of Women Voters of Florida and other groups as The League of Women Voters of Florida vs. Kenneth W. Detzner.

On July 28, 2015, shortly before the case of The League of Women Voters of Florida vs. Kenneth W. Detzner was to go to trial, the Senate entered into a stipulation and consent judgment with the Plaintiffs and agreed the enacted state Senate map would be revised prior to the 2016 primary and general elections. Because the Plaintiffs and the Senate had entered into a stipulation that required the Senate Plan to be redrawn, the House did not object to the entry of the consent judgment and agreed to be bound by its terms.

Following a Special Session that concluded on November 5, 2015 the legislature failed to adopt a remedial plan, the Circuit Court ordered that all parties involved submit proposed plans for judicial adoption by November 18, 2015. After a subsequent trial where each party presented their proposal Judge George Reynolds ordered the adoption of a map presented by the Plaintiffs on December 30, 2015, and later adopted the random renumbered map on January 8, 2016, as he ordered be done in his final judgment.

Effect of Proposed Changes

The bill prohibits legislative district challenges after the Florida Supreme Court validates the legislative plan under Art. III, s. 16 of the Florida Constitution, and also prohibits congressional district challenges 60 days after legislature enacts or alters districts.

The bill also establishes a deadline for resolving both legislative and congressional challenges. Pending challenges would be suspended on the later of qualifying date for that election cycle or 105 days before primary. 105 days allows a 30 day appeal period followed by time to qualify between 71st and 67th day before a primary election which is the current qualifying period for state office.

The bill states that if a binding order is issued in a congressional district challenge after federal candidate qualifying but before the 71st day before the primary election, the Governor must reopen qualifying for the 71st through 67th day before the Primary.

The bill establishes that any judgment ordering a remedial map after the qualifying date of a election cycle takes affect during the subsequent election cycle (or the 105th day if that date applies).

The bill also requires that any drafter of a plan is subject to examination as to prohibited intent on the same grounds a state legislator under Art III, sec. 20 and 21 of the Florida Constitution¹⁶.

The bill prohibits new state legislative apportionment claims after Florida Supreme Court issues a judgment validating the plan in line with the Florida Constitution, s. 16(d), Art. III: "A judgment...determining the apportionment to be valid shall be binding upon all citizens of the state." Any additional challenges to state legislative districts filed in other courts are to be consolidated with Florida Supreme Court mandated review, s. 16(c), Art. III: "shall permit adversary interests to present their views".

B. SECTION DIRECTORY:

Section 1. creates s. 97.029, F.S., relating to Challenges to State Legislative or congressional Districts.

Section 2. provides that the effective date is upon becoming law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

It is unknown if and under what circumstances a redistricting challenge will be brought so its impact on the Florida Legislature, Division of Elections and other state agencies cannot be determined. Judicial proceedings that disrupt elections already underway necessarily impose some costs on the election process

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

It is unknown if and under what circumstances a redistricting challenge will be brought so its impact on the county supervisor of elections, county courts and other local governments cannot be determined. Judicial proceedings that disrupt elections already underway necessarily impose some costs on the election process

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

None.

2. Other:

This bill could in theory limit the how and when a court can order a remedial redistricting plan or other constitutional challenge but nothing in the bill hinders a court from deciding a case within the time constraints allowed. However, the circumstance by which a challenge is brought and argued is unclear and will depend on the specifics of each case. Current law prohibits challenges to ballot language 30 days after filing with the Secretary of State and also requires expeditious resolution of such challenges.¹⁷ Current law also requires the continuance of any judicial proceeding involving a legislator as party, witness or attorney if proceedings conflict with a legislative session or committee meetings.¹⁸

The requirement that elections be regulated by general law necessitates the regulation of challenges to and judicial or executive interference with election processes once under way. Requiring orderly litigation at non-disruptive times is a reasonable regulation to ensure that elections are administered pursuant to law rather than decree. The constitutional right to vote is inviolable. The bill does not limit the scope of a court's judgment in any reapportionment challenge, but only restrains disruptive timing of such orders. Legislative powers including appropriations, statutes of limitations, legal privileges and immunities, and the establishment of state holidays can have impacts on the timing and application of judicial actions without unconstitutionally infringing on the power of a court to decide a case in an appropriate time with available resources.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

There were two strike-all amendments adopted in the Public Integrity and Ethics Committee meeting on March 29, 2017. The result of those two adopted strike all amendments were:

- Legislative district challenges prohibited after Supreme Court validates legislative plan under s. 16, Art. III.
- Congressional district challenges prohibited 60 days after legislature enacts or alters districts.
- Pending challenges must be stayed on the later of candidate qualifying date or 105 days before primary in any election cycle.
- Any order or judgment entered after the date for stay governs beginning the subsequent election cycle.
- If a binding order or judgment is entered after federal candidate qualifying, Governor must reopen qualifying for any congressional districts impacted for the 71st through 67th day before the Primary.
- Any drafter of a plan is subject to examination as to prohibited intent on the same grounds a state legislator.
- State legislative apportionment claims barred after the Florida Supreme Court Judgment validating plan and any other challenges to state legislative districts filed in other courts are to be consolidated with Supreme Court review.

¹⁷ S. 101.161(3)(c), F.S.

¹⁸ S. 11.111, F.S.

- Legislative intent to bind all to the procedures in s. 16, Art. III.