

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Reapportionment

BILL: SB 2-C

INTRODUCER: Senator Rodrigues

SUBJECT: Establishing the Congressional Districts of the State

DATE: April 18, 2022

REVISED: _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. Rojas	Ferrin	RE	Pre-meeting

I. Summary:

Senate Bill 2-C apportions the state into 28 single-member Congressional districts as required by the United States (U.S.) Constitution, Federal Voting Rights Act, Florida Constitution, and applicable court decisions.

II. Present Situation:

The 2020 Census revealed an unequal distribution of population growth across Florida's Congressional districts. Therefore, districts must be adjusted to comply with the "one person, one vote" principle such that each district must be substantially equal in total population.¹

According to the 2020 Census, 21,538,187 people resided in Florida as of April 1, 2020. That represents a population growth of 2,736,877 people from 2010 to 2020, approximately a 15 percent increase. Due to the population growth within the last decade, Florida is apportioned an additional congressional seat, increasing its representation to 28.²

Table 1 below shows the changes in population for each of Florida's current congressional and state legislative districts and their respective ideal populations.

¹ See *Reynolds v. Sims*, 377 U.S. 533, 568 (1964).

² United States Census Bureau, *2020 Census Apportionment Results* (April, 26, 2021), <https://www.census.gov/data/tables/2020/dec/2020-apportionment-data.html>.

Table 1. Florida Congressional and State Legislative Districts Summary 2010 – 2020

Florida Fast Facts	2010	2020	Difference
Statewide Population	18,801,310	21,538,187	+2,736,877
Number of Congressional Seats	27	28	+1 seat
Congressional District Ideal Population	696,345	769,221	+72,876
Florida House of Representatives District Ideal Population <i>(based on 120 seats)</i>	156,678	179,485	+22,807
Florida Senate District Ideal Population <i>(based on 40 seats)</i>	470,033	538,455	+68,422

According to the 2020 Census, the congressional district with the largest population has 955,602 people (186,381 more than the ideal), and the congressional district with the smallest population has 727,465 people (41,756 less than ideal).

Background

The terms “redistricting” and “reapportionment” are often used interchangeably to describe the process of redrawing Congressional and state legislative district boundaries after each decennial census. Redrawing districts is necessary to accommodate population growth and shifts, ensuring that each district contains equal or nearly equal populations in compliance with applicable state and federal law.

The U.S. Constitution requires the apportionment of the U.S. House of Representatives after each decennial census to distribute each of the U.S. House of Representatives’ 435 seats between the 50 states and to equalize population between districts within each state.³

The 2020 Census

Established by the U.S. Constitution, the census has been conducted every 10 years by the United States Census Bureau since 1790 to determine the number of people living in the United States. Article I, s. 2 of the U.S. Constitution states that “The actual enumeration shall be made within three years after the first meeting of the Congress of the United States, and within every subsequent term of ten years, in such manner as they shall by law direct.”⁴

Florida is one of 21 states that explicitly requires the use of census data for redistricting.⁵ Article X, s. 8 of the Florida Constitution designates each decennial census of the state taken by the

³ Art. I, s. 2, U.S. Const.

⁴ Art. I, s. 2, U.S. Const.

⁵ National Conference of State Legislatures Redistricting Law 2020, Appendix B: Redistricting and Use of Census Data.

United States as the official census of the state.⁶ Florida Statutes also designate the most recent federally conducted decennial census as the official census for redistricting.⁷

Public Law (P.L.) 94-171 requires the Census Bureau to provide states the opportunity to identify the small area geography for which data is needed to conduct legislative and congressional redistricting. The law also requires the U.S. Census Bureau to furnish these tabulations of population to each state, at the county, tract, block group, and block levels, within one year of Census Day.⁸

Title 13, U.S. Code requires that the state-level apportionment population counts be delivered to the President of the United States within 9 months of the census date. In the 2020, 2010, and most 20th century censuses, the census date has been April 1, meaning that the statutory deadline for delivering the counts to the President is December 31 of the census year.⁹

The delivery of 2020 Census results was delayed due to several factors affecting the Census Bureau's collection and processing, including the COVID-19 pandemic, natural disasters that included hurricanes and wildfires, civil unrest, and legal challenges.¹⁰

The state population counts for apportionment were delivered to the President on April 26, 2021 (originally due December 31, 2020). The U.S. Census Bureau provided redistricting data as legacy format summary files, which is tabular data, for all states on August 12, 2021 (originally due April 1, 2021). The full redistricting data toolkit was delivered to all 50 states and the public on September 16, 2021 (originally due April 1, 2021).

Redistricting Criteria and Concepts

Florida follows various criteria and standards as it relates to drawing congressional districts, including the United States (U.S.) Constitution, Federal Voting Rights Act, Florida Constitution, and applicable court decisions.

The United States Constitution

The United States (U.S.) Constitution requires the reapportionment of the U.S. House of Representatives after each decennial census to distribute each of the U.S. House of Representatives' 435 seats between the states and to equalize population among districts within each state.¹¹

Article I, s. 4 of the U.S. Constitution grants each state legislature the exclusive authority to apportion seats designated to that state by providing the legislative bodies with the authority to

⁶ Art. X, s. 8, Fla. Const.

⁷ Section 11.031, F.S. (2021).

⁸ United States Census Bureau, *Decennial Census P.L. 94-171 Redistricting Data* (Aug. 12, 2021), <https://www.census.gov/programs-surveys/decennial-census/about/rdo/summary-files.html>.

⁹ United States Census Bureau, *About Congressional Reapportionment* (Nov. 22, 2021), <https://www.census.gov/topics/public-sector/congressional-apportionment/about.html>.

¹⁰ Styles, Kathleen, *2020 Census: Overview* (2021), https://www.ncsl.org/Portals/1/Documents/Redistricting/NCSSL_Census_Update_KathleenStyles.pdf.

¹¹ Art. I, s. 2, U.S. Const.

determine the times, place, and manner of holding elections for senators and representatives. Consistent therewith, Florida adopts its Congressional apportionment plans by legislation subject to gubernatorial approval.

In addition to state-specific requirements to redistrict, states are obligated to redistrict based on provisions within the United States Constitution. In *Wesberry v. Sanders*, the United States Supreme Court held that districts must be as nearly equal in population as practicable.¹² Derived from the Fourteenth Amendment, this principle is commonly referred to as “one person, one vote.”¹³ For Congressional districts, “as practicable” has been interpreted to mean exactly equal based on census data available at the time of redistricting.¹⁴

The requirement that each district be equal in population applies differently to Congressional districts than to state legislative districts. The populations of Congressional districts must achieve absolute mathematical equality (+/- one person from the ideal population), with no de minimis exception.¹⁵ Limited population variances are permitted if they are “unavoidable despite a good faith effort” or if a valid “justification is shown.”¹⁶ In practice, Congressional districting has strictly adhered to the requirement of exact mathematical equality and in *Kirkpatrick v. Preisler*, the Court rejected several justifications for violating this principle.

The Fourteenth Amendment has also been interpreted to prohibit racial predominance.¹⁷ The U.S. Supreme Court has stated: “The equal protection clause prohibits a state, without sufficient justification, from separating its citizens into different voting districts on the basis of race.” A redistricting plan “that expressly distinguishes among citizens because of their race [must] be narrowly tailored to further a compelling government interest.” Such strict scrutiny review applies not only to redistricting plans that expressly distinguish citizens because of race, but also those plans “that, although race neutral, are, on their face, unexplainable on grounds other than race.”¹⁸

The Federal Voting Rights Act

The Federal Voting Rights Act (VRA) prohibits any state or political subdivision from enacting a map that results in the denial or abridgment of any U.S. citizen’s right to vote on account of race, color, or status as a member of a language minority group and purposeful discrimination.¹⁹ The VRA also protects against retrogression—or backsliding—in the ability of racial and language minorities to elect representatives of their choice.²⁰

Section 2 of the VRA requires the creation of a district that performs for racial and language minorities where a minority population is geographically compact and sufficiently numerous to be a majority in a single-member district, the minority population is politically cohesive, the

¹² *Wesberry v. Sanders*, 376 U.S. 1 (1964).

¹³ *See Reynolds v. Sims*, 377 U.S. 533, 568 (1964).

¹⁴ *See Wesberry v. Sanders*, 376 U.S. 1 (1964).

¹⁵ *See Kirkpatrick v. Preisler*, 394 U.S. 526, 531 (1969).

¹⁶ *Id.*

¹⁷ *See Shaw v. Reno*, 509 U.S. 630 (1993).

¹⁸ *Id.*

¹⁹ 52 U.S.C.A. s. 10301.

²⁰ 52 U.S.C.A. s. 10303.

majority votes sufficiently as a bloc to enable it usually to defeat the minority-preferred candidate, and under all of the circumstances, the minority population has less opportunity than others to participate in the political process and elect representatives of its choice.²¹

Section 5 of the VRA prohibits purposeful discrimination and protects against retrogression—or backsliding—in the ability of racial and language minorities to elect representatives of their choice.²² Section 5 contains a coverage formula that was applied to “covered jurisdictions” to determine if there was a history of discrimination against racial or language minorities.²³ Such jurisdictions had to be “precleared” before any of the changes could take effect, meaning that any substantial changes made to voting laws, including redistricting plans, in these “covered jurisdictions” could not be implemented without first obtaining federal permission.²⁴ In Florida, Collier, Hardee, Hendry, Hillsborough, and Monroe counties were subject to Department of Justice preclearance in regards to redistricting until the coverage formula was invalidated in 2013 in *Shelby County v. Holder*.²⁵ However, as *Apportionment I* states, “Florida’s new constitutional provision, codified the non-retrogression principle of Section 5 (VRA) and has now extended it statewide. In other words, Florida now has a statewide non-retrogression requirement independent of Section 5.”²⁶

The Florida Constitution

In 2010, voters amended the Florida Constitution to create additional standards for establishing Congressional district boundaries.²⁷ The standards are set forth in two tiers.

Tier–One Standards

Article III, s. 20(a) of the Florida Constitution prohibits line-drawing that intentionally favors or disfavors a political party or an incumbent. It also affords protection to racial and language minorities. Districts may 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. Finally, it requires that districts must be contiguous. The order in which the tier-one standards are set out in the Constitution does not establish any priority among those standards within the tier.²⁸

The tier-one standards provide that “[n]o apportionment plan or district shall be drawn with the intent to favor or disfavor a political party or an incumbent.”²⁹ The Florida Supreme Court has held that Florida’s constitutional provision “prohibits intent, not effect” because “any redrawing of lines, regardless of intent, will inevitably have an effect on the political composition of a

²¹ *Thornburg v. Gingles*, 478 U.S. 30, 106 S. Ct. 2752, 92 L. Ed. 2d 25 (1986).

²² 52 U.S.C.A. s. 10303.

²³ *Id.*

²⁴ *Id.*

²⁵ *Shelby Cty., Ala. v. Holder*, 570 U.S. 529, 133 S. Ct. 2612, 186 L. Ed. 2d 651 (2013).

²⁶ In re Senate Joint Resolution of Legislative Apportionment 1176, 83 So. 3d 597, 624 (Fla. 2012).

²⁷ Art. III, s. 20, Fla. Const.

²⁸ Art. III, s. 20(c), Fla. Const.

²⁹ Art. III, s. 20(a), Fla. Const.

district and likely whether a political party or incumbent is advantaged or disadvantaged.”³⁰ Nonetheless, there is no acceptable level of improper intent.³¹

The tier-one standards also provide protections for racial and language minorities. Districts may “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.”³²

The Court has interpreted the tier-one constitutional provisions that relate to racial or language minorities’ ability to participate in the political process or elect a candidate of their choice to mean that “the Legislature cannot eliminate majority-minority districts or weaken other historically performing minority districts where doing so would actually diminish a minority group’s ability to elect its preferred candidates...in addition to majority-minority districts, coalition or crossover districts that previously provided minority groups with the ability to elect a preferred candidate under the benchmark plan must also be recognized.”³³

The Court went on to say, “that under Florida’s provision, a slight change in percentage of the minority group’s population in a given district does not necessarily have a cognizable effect on a minority group’s ability to elect its preferred candidate of choice. This is because a minority group’s ability to elect a candidate of choice depends upon more than just population figures.”³⁴ In order to draw districts that comply with the tier-one standards, a functional analysis is required to be performed.

A “functional analysis,” as it has been termed, is an inquiry into a racial or language minority group’s ability to elect a candidate of choice that requires “consideration not only of the minority population in the districts, or even the minority voting-age population in those districts, but of political data and how a minority population group has voted in the past.”³⁵ The map drawing application in use for the 2022 Redistricting Cycle includes over 350 data points in the following categories to enable users to perform this type of analysis:³⁶

2012 – 2020 General Election Voter Registration Information;

- Total Registration
- Registration by Party
- Registration by Race or Ethnicity
- Registration by Race or Ethnicity and Party
- Registration by Party and Race or Ethnicity

2012 – 2020 General Election Voter Turnout Information;

- Total Turnout

³⁰ In re Senate Joint Resolution of Legislative Apportionment 1176, 83 So. 3d 597 (Fla. 2012).

³¹ *Id.*

³² Art. III, s. 20(a), Fla. Const.

³³ In re Senate Joint Resolution of Legislative Apportionment 1176, 83 So. 3d 597, 625 (Fla. 2012).

³⁴ *Id.*

³⁵ *Id.*

³⁶ See Florida Senate Committee on Reapportionment, *Functional Analysis* (October, 2021), available at: https://www.flsenate.gov/Committees/Show/RE/MeetingPacket/5264/9438_MeetingPacket_5264_3.pdf.

- Turnout by Party
- Turnout by Race or Ethnicity
- Turnout by Party and Race or Ethnicity
- Turnout by Race or Ethnicity and Party

2012 – 2020 Primary Election Voter Turnout Information;

- Total Turnout
- Turnout by Party
- Turnout by Race or Ethnicity
- Turnout by Party and Race or Ethnicity
- Turnout by Race or Ethnicity and Party

2012 – 2020 Elections Results;

- General Elections results by candidate
- Primary Elections results by candidate

The last tier-one standard requires that all districts “consist of contiguous territory.” The Florida Supreme Court has previously defined contiguous as “being in actual contact: touching along a boundary or at a point.”³⁷ A district is not contiguous if it consists of isolated parts or meets at a corner or right angle.³⁸ The Florida Supreme Court has also held that the presence in a district of a body of water without a connecting bridge, even if it requires land travel outside the district in order to reach other parts of the district, does not violate contiguity.³⁹

Tier–Two Standards

The tier-two standards of the Florida Constitution encompass what are often called “traditional redistricting criteria,” but make it clear these standards are subordinated to the tier-one standards. Article III, s. 20(b) states that unless compliance with these standards conflicts with tier-one standards or with federal law, districts shall be as nearly equal in population as practicable, districts shall be compact, and districts shall, where feasible, utilize existing political and geographical boundaries.⁴⁰ However, the extent to which the non-diminishment standard of Article III Section 21(a) compels map-drawers to create districts that conflict with the tier-two standards in Article III Section (b) has yet to be clearly interpreted by state or federal courts.⁴¹ As with tier-one, the order in which the tier-two standards are set out in the Constitution does not establish any priority among those standards within the tier.⁴²

The first tier-two standard set forth by the Florida Constitution states that districts shall be as nearly equal in population as is practicable. As interpreted by the United States Supreme Court, the Equal Protection Clause of the Fourteenth Amendment mandates that “state legislatures be

³⁷ In re Apportionment Law Appearing as Senate Joint Resolution 1 E, 1982 Special Apportionment Session; Constitutionality Vel Non, 414 So. 2d 1040 (Fla. 1982).

³⁸ In re Senate Joint Resolution 2G, Special Apportionment Session 1992, 597 So. 2d 276 (Fla. 1992), amended sub nom. In re Constitutionality of Senate Joint Resolution 2G, Special Apportionment Session 1992, 601 So. 2d 543 (Fla. 1992).

³⁹ *Id.*

⁴⁰ Art. III, s. 20(b), Fla. Const.

⁴¹ Advisory Opinion to the Governor: Retention of North Florida Congressional District, SC22-139 (2022).

⁴² Art. III, s. 20(c), Fla. Const.

apportioned in such a way that each person's vote carries the same weight—that is, each legislator represents the same number of voters.”⁴³ Congressional districts fall under a stricter standard of variance under the United States Constitution, where Congressional districts must achieve precise mathematical equality of population of +/- one person from the ideal population.⁴⁴

The second tier-two requirement established by Section 20 of the Florida Constitution is compactness. The constitutional amendments adopted in Florida in 2010 state that districts “shall be compact.”⁴⁵

The Florida Supreme Court has held that “compactness is a standard that refers to the shape of the district. The goal is to ensure that districts are logically drawn and that bizarrely shaped districts are avoided. Compactness can be evaluated both visually and by employing standard mathematical measurements.”⁴⁶ However, “limiting the definition of compactness to an assessment of a district’s shape does not eliminate the inherent vagueness of the term; however measured, compactness is a matter of degree. And a district’s compactness can be affected by factors over which the line-drawer has no control, like our state’s unique geographical contours and the distribution of population within the state.”⁴⁷

Florida has historically used three scores to gauge compactness mathematically, all of which fall within a range of 0-1, where a score closer to one indicates a more compact district.⁴⁸ The first score used is the Convex Hull score, which tests for concavities or indentations in district boundaries by calculating the ratio of the area of the district to the area of the minimum convex polygon that can enclose the district’s geometry.⁴⁹ The second score used is the Polsby-Popper score, which tests for jagged or squiggly district boundaries by calculating the ratio of the area of the district to the area of a circle whose circumference is equal to the perimeter of the district. The third score used is the Reock score, which indicates a district’s similarity to a circle by calculating the ratio of the area of the district to the area of the smallest circle that can be drawn around the district.⁵⁰

In the Court’s interpretation of the tier-one and tier-two standards as applied to state legislative districts, they held that “since compactness is set forth in Section 21(b), the criteria of Section 21(a) must predominate to the extent that they conflict with drawing a district that is compact. However, if a district can be drawn more compactly while utilizing political and geographical boundaries and without intentionally favoring a political party or incumbent, compactness must be a yardstick by which to evaluate those other factors.”⁵¹ The same standard applies to

⁴³ In re Senate Joint Resolution of Legislative Apportionment 1176, 83 So.3d 597 (2012).

⁴⁴ See *Kirkpatrick v. Preisler*, 394 U.S. 526, 531 (1969).

⁴⁵ Art. III, s. 20(b), Fla. Const.

⁴⁶ In re Senate Joint Resolution of Legislative Apportionment 1176, 83 So.3d 597 (2012).

⁴⁷ In re Senate Joint Resolution of Legislative Apportionment 100, SC22-131 (2022).

⁴⁸ See Florida Senate Committee on Reapportionment, *Compactness* (October, 2021), available at: https://www.flsenate.gov/Committees/Show/RE/MeetingPacket/5264/9438_MeetingPacket_5264_3.pdf.

⁴⁹ *Id.*

⁵⁰ *Id.*

⁵¹ In re Senate Joint Resolution of Legislative Apportionment 1176, 83 So.3d 597 (2012); See *League of Women Voters of Florida v. Detzner*, 179 So. 3d 258 (Fla. 2015).

Congressional districts, given that Sections 20 and 21 within Article III of the Florida Constitution are identical.⁵²

The final tier-two standard established by the Florida Constitution is that districts shall, “where feasible, utilize existing political and geographical boundaries.”⁵³ The Florida Supreme court has defined geographic boundaries as features that are “easily ascertainable and commonly understood” such as “rivers, railways, interstates, and state roads.”⁵⁴ Moreover, political boundaries primarily consist of county and municipal boundaries.⁵⁵

The boundaries of Florida’s municipalities are not static. Between January 1, 2010 and December 31, 2019, 200 cities annexed or de-annexed parcels, changing their boundaries 3,552 times.⁵⁶ Additionally, while Florida Statutes⁵⁷ permit municipalities to annex contiguous and compact unincorporated territory, many of Florida’s cities are not contiguous, neither visually nor mathematically compact, and contain holes or enclaves.⁵⁸ Of Florida’s 412 cities, 136 are discontinuous, and 170 have holes or enclaves.⁵⁹

Unlike other objective tier-two standards in the Florida Constitution, there is no widely accepted measurement for compliance with the requirement to, where feasible, utilize existing political and geographic boundaries.⁶⁰

Simply counting the cities or counties kept whole, meaning they have either all geographic territory or all population in a single district⁶¹, fails to account for the degree of usage of existing county or municipal boundaries. It also disregards the co-equal constitutional mandate to, where feasible, use political and geographical boundaries.⁶²

Professional staff of the Florida House of Representatives and the Florida Senate worked to develop a set of quantitative metrics that measure the coincidence of a district’s border with easily ascertainable and commonly understood political and geographic features, and make it publicly available to all users in the redistricting application. This Boundary Analysis independently measures the extent to which district boundaries overlap city boundaries, county boundaries, primary and secondary roads (interstates, U.S. highways, and State highways), railroads, and significant water bodies (contiguous area hydrography features greater than 10

⁵² Art. III, s. 20, Fla. Const.; Art. III, § 21, Fla. Const.

⁵³ Art. III, s. 20(b), Fla. Const.

⁵⁴ In re Senate Joint Resolution of Legislative Apportionment 1176, 83 So.3d 597 (2012).

⁵⁵ *Id.*

⁵⁶ Boundary change data obtained from the U.S. Census Bureau: <https://www.census.gov/geographies/reference-files/timeseries/geo/bas/annex.html>. As noted, The U.S. Census Bureau makes no claims to the completeness of the annexation data in the boundary change files. The data in these files were collected through programs in which state, county, and local governments voluntarily participated.

⁵⁷ Section 171.0413(1), F.S. (2021).

⁵⁸ Compactness scores, parts, and holes based on 2020 U.S. Census TIGER geometry for the places layer available at: <https://www.census.gov/geographies/mapping-files/time-series/geo/tiger-line-file.2020.html>.

⁵⁹ See Florida Senate Committee on Reapportionment, *Municipal Boundaries* (October, 2021), available at: https://www.flsenate.gov/Committees/Show/RE/MeetingPacket/5264/9438_MeetingPacket_5264_3.pdf.

⁶⁰ In re Senate Joint Resolution of Legislative Apportionment 1176, 83 So.3d 597 (2012).

⁶¹ In Apportionment VIII, the Court held that unpopulated county splits are “not considered to include part of the county for the purpose of counting splits. See *League of Women Voters of Fla. v. Detzner*, 179 So. 3d 258 (Fla. 2015).

⁶² In re Senate Joint Resolution of Legislative Apportionment 1176, 83 So.3d 597 (2012).

acres) as defined by the U.S. Census Bureau's TIGER/Line files. Districts' coincidence with these existing political and geographic boundaries is independently calculated and presented along with the extent to which district boundaries do not follow any specified features.

In this way, users are presented with a Boundary Analysis that shows the degree of utilization for each type of existing political or geographic boundary as specified by the Florida Constitution and interpreted by the Florida Supreme Court. To facilitate the utilization of existing political and geographic boundaries, each of the feature layers used in the computation of the Boundary Analysis is provided in the map-drawing application.

Judicial Review of State Legislative Districts

The state constitution prescribes a mandated review process for state legislative redistricting plans by the Florida Supreme Court.⁶³ During a constitutionally mandated review, the Florida Supreme Court determines if the newly created State Senate and State House districts are valid. When the Florida Supreme Court enters a judgment that the plan is valid, the plan becomes binding upon all citizens of the state.⁶⁴

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.

Passage of CS/SB 102 (2022)

On February 1, 2022, Governor DeSantis requested an advisory opinion from the Florida Supreme Court inquiring as to whether Article III, Section 20(a) of the Florida constitution "requires the retention of a district in northern Florida that connects the minority population in Jacksonville with distant and distinct minority populations (either in Leon and Gadsden Counties or outside of Orlando) to ensure sufficient voting strength, even if not a majority, to elect a candidate of their choice."⁶⁵ The Florida Supreme Court declined to provide an opinion in response to the Governor's request, noting that "the scope of the Governor's request is broad and contains multiple questions that implicate complex federal and state constitutional matters and precedents interpreting the Voting Rights Act of 1965...Moreover, the Governor's request might necessitate fact-intensive analysis and consideration of other congressional districts, not just District 5. We have no record before us setting forth a functional analysis of statistical evidence, such as the voting age of minority populations and election results."⁶⁶

On March 4, 2022, the House amended and passed CS/SB 102 to include both a primary and secondary map. The primary map in the House product (H000C8019) sought to address concerns expressed by the Governor's office about the Duval-to-Gadsden configuration of CD 5 by creating a more compact North Florida district located in Duval County alone. The House amendment also contained a secondary map (H000C8015), which would have taken immediate effect if a court determined that the primary map's configuration of CD 5 was found to be invalid

⁶³ Art. III, s. 16(c), Fla. Const.

⁶⁴ Art. III, s. 16(d), Fla. Const.

⁶⁵ Advisory Opinion to the Governor: Retention of North Florida Congressional District, SC22-139 (2022).

⁶⁶ *Id.*

under state or federal law. The secondary map maintained a configuration of CD 5 similar to that in the benchmark map. The Senate concurred with the House amendment and passed CS/SB 102 the same day.

On March 29, 2022, the Governor vetoed CS/SB 102 and issued a proclamation calling the Florida Legislature into Special Session C to consider legislation relating to the establishment of congressional districts. The veto message filed with the Secretary of State included a memorandum containing the rationale for the veto: “Congressional District 5 in both the primary and secondary maps enacted by the Legislature violates the Equal Protection Clause of the Fourteenth Amendment to the U.S. Constitution because it assigns voters primarily on the basis of race but is not narrowly tailored to achieve a compelling state interest.”⁶⁷

III. Effect of Proposed Changes:

Consistent with the United States (U.S.) Constitution, Federal Voting Rights Act, Florida Constitution, and applicable court decisions, the bill apportions the state into 28 single-member Congressional districts.

Section 1 of the bill amends s. 8.0001, F.S., to provide definitions regarding Census geography and the electronic versions of districts. Additionally, it designates the United States Decennial Census of 2020 as the official census of the state for the purposes of Congressional redistricting as provided by Art. X of the Florida Constitution.

Section 2 of the bill amends s. 8.0002, F.S., to describe the state's 28 Congressional districts using Census geography.

Section 3 of the bill amends s. 8.0111, F.S., to update the use of the 2010 Decennial Census to the 2020 Decennial Census.

Section 4 of the bill reenacts s. 8.031, F.S., to establish the districts described in 8.0002 as the official congressional districts of the state.

Section 5 of the bill creates s. 8.051, F.S., to designate electronic maps as the authoritative representation of the state's Congressional districts. Additionally, it establishes the Office of Economic and Demographic Research as the official custodian of electronic maps representing the Congressional districts described in s. 8.0002, F.S.

Section 6 of the bill reenacts s. 8.0611, F.S., to provide severability if any provision of this chapter is invalidated.

Section 7 of the bill amends s. 8.07, F.S., to change the applicable starting date for the qualification, nomination, and election of the new districts from 2012 to 2022.

⁶⁷ See Veto Transmittal Letter and Memo “*RE: Constitutionality of CS/SB 102, An Act Relating to Establishing the Congressional Districts of the State.*”

Section 8 of the bill repeals s. 8.08, 8.081, 8.082, 8.083, 8.084, 8.085, 8.086, 8.087, and 8.088, F.S., to remove obsolete language from a remedial apportionment session.

Section 9 of the bill provides an effective date upon the bill becoming law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The 2022 reapportionment will have an undetermined fiscal impact on Florida's election officials, including 67 Supervisor of Elections offices and the Department of State, Division of Elections. Local supervisors will incur the cost of data processing and labor to change each of Florida's approximately 14 million voter records to reflect new districts. As precincts are reconfigured for new districts, postage and printing will be required to provide each eligible voter whose precinct has changed with official notification.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 8.0001, 8.0002, and 8.0111.

This bill creates the following sections of the Florida Statutes: 8.051.

This bill repeals the following sections of the Florida Statutes: 8.08, 8.081, 8.082, 8.083, 8.084, 8.085, 8.086, 8.087, and 8.088.

IX. Additional Information:**A. Committee Substitute – Statement of Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.