

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** PCS for CS/HB 953 Legislative Redistricting and Congressional Reapportionment  
**SPONSOR(S):** Judiciary Committee  
**TIED BILLS:** None **IDEN./SIM. BILLS:** CS/SB 352

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Judiciary Committee		Aziz	Camechis

### SUMMARY ANALYSIS

State legislative and congressional districts are redrawn by the Legislature after each decennial census to accommodate population growth and shifts. The process of drawing new state legislative and congressional district boundaries is referred to as "redistricting" or "reapportionment."

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. 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. Additionally, in years when the Legislature apportions the state, a candidate seeking to qualify by petition may do so by obtaining signatures from any registered voter in the state.

Following the redistricting in 2012, protracted litigation and multiple judicial opinions resulted in confusion for candidates, supervisors of elections, and citizens over qualification periods.

PCS for CS/HB 953 provides certainty for when the qualification period is for congressional office in years in which the congressional maps are being challenged. The PCS defines "year of apportionment" in the Florida Election Code as:

- The second year following each decennial census, as specified in article III, section 16 of the Florida Constitution; and
- Any other even-numbered year in which the validity of legislative or congressional district boundaries is subject to an active challenge, pending in any court, that has not been concluded by the rendering of or entry of a final order or judgment and by the exhaustion or waiver of all available direct appeals.

As a result of the PCS, the qualification period for federal office in a year in which Congressional boundaries are being challenged will be between noon on the 71st day and no later than noon on the 67th day before the primary election. Additionally, a candidate for Congress, state Senate, or state House of Representatives attempting to qualify by petition in a year of apportionment will be allowed to qualify by using signatures from any registered voter in the state.

The bill does not appear to have a fiscal impact on state or local governments.

The bill takes effect upon becoming law.

## 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. State 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.<sup>1</sup> 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.<sup>2</sup>

Article 1, s. 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 general law legislation subject to gubernatorial approval. Florida congressional apportionment plans are not subject to automatic review by the Florida Supreme Court.

Article III, s. 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 state legislative senatorial and representative districts. Unlike congressional reapportionment, state legislative redistricting plans are subject to automatic review by the Florida Supreme Court.<sup>3</sup>

Article III, ss. 20 & 21 of the Florida Constitution establish standards for both state 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.<sup>4</sup> A primary election, held for nominating a party candidate to run in the general election, is conducted 10 weeks before the general election.<sup>5</sup>

The Florida Election Code prescribes the qualifying dates for candidates seeking office.<sup>6</sup> Qualifying periods for federal office differ depending upon whether it is an apportionment or non-apportionment year. In non-apportionment years, candidates seeking federal office must qualify between noon on the 120th day and noon on the 116th day before the primary election.<sup>7</sup>

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<sup>1</sup> U.S. CONST. art. 1, s. 2. However, the U.S. Constitution does not specifically state there will be 435 representatives. It was not until 1911 that Congress enacted a statute settling on 435 representatives for the U.S. House of Representatives. 62 P.L. 5, 37 Stat. 13, 62 Cong. Ch. 5; 2 U.S.C. s. 2 (1911)(superseded by the Apportionment Act of 1941, 2 U.S.C. s. 2b (1941)).

<sup>2</sup> 2 U.S.C. s. 2a.

<sup>3</sup> FLA. CONST. art. III, s. 16(c).

<sup>4</sup> FLA. CONST. art. VI, s. 5(a). & Section 100.031, F.S.

<sup>5</sup> s. 100.061, F.S.

<sup>6</sup> The Florida Election Code is contained in chapter 97-106, F.S.

<sup>7</sup> s. 99.061(1), F.S.

In years during which the Legislature apportions the state, the qualifying period for candidates for federal office 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.<sup>8</sup> This later qualifying period is apparently provided as an accommodation to the possibility that a protracted reapportionment session or multiple sessions might be required to finalize a redistricting plan before candidates must qualify.

The qualifying dates for state senators and state representatives 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.<sup>9</sup> The election laws do not prescribe different qualifying dates in a year in which the Legislature apportions state Senate or House offices.

A person seeking to qualify as a candidate must pay a qualifying fee, unless they are seeking to qualify by petition or as a write-in-candidate.<sup>10</sup> Qualifying by petition requires a person to collect signatures of registered voters who reside in the geographical area of the office sought.<sup>11</sup> In years of apportionment, a candidate for representative to Congress, state Senate, or state House of Representatives seeking to qualify by petition instead of paying a qualifying fee is allowed to collect signatures of any registered voter in Florida, regardless of where the voter is registered.<sup>12</sup> Additionally, in a year in which the state is reapportioned, candidates use a different formula for calculating the minimum number of signatures required to qualify by petition.<sup>13</sup>

### The Process of Redistricting in Florida

During the regular session of the Legislature in the second year following the decennial census, the state constitution requires the Legislature to adopt a joint resolution that apportions the state into no fewer than 30 nor more than 40 state senate districts, and into no fewer than 80 nor more than 120 state representative districts. Because the Legislature is required to adopt a joint resolution instead of a general bill, the measure does not require the Governor's approval and is not subject to veto.<sup>14</sup>

The state constitution prescribes a mandated review process for state legislative redistricting plans by the Florida Supreme Court.<sup>15</sup> During its constitutionally mandated review, the Florida Supreme Court ("Court") determines if the newly created districts are valid. When the Court enters a judgment that a redistricting plan is valid, the plan becomes binding upon all citizens of the state.<sup>16</sup>

In contrast, the process for enacting Congressional districts differs in two ways. First, congressional districts are not established in a joint resolution; rather, they are established in a general bill that is subject to the Governor's approval and veto. Second, congressional maps are not subject to mandatory review by the Court. The federal Apportionment Act of 1941<sup>17</sup> specifies the apportionment method, establishes the House membership at 435 representatives, mandates an apportionment every

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<sup>8</sup> s. 99.061(9), F.S.

<sup>9</sup> s. 99.061(1), F.S. For 2018, the primary will be held on August 28, 2018. The candidate qualifying period is June 18 (the 71st day before the primary election) through June 22 (the 67th day before the primary election). Florida Division of Elections, *Election Dates*, <http://dos.myflorida.com/elections/for-voters/election-dates/> (last visited April 17, 2017).

<sup>10</sup> s. 99.092(1), F.S.

<sup>11</sup> s. 99.095(2)(a), F.S. A person seeking to qualify by petition must obtain the signatures of 1 percent of the total number of registered voters of that geographical area. For example, a person seeking to qualify for House District 66 needs 1,158 signatures from the 115,779 eligible voters residing within House District 66. Florida Division of Election, 2018 Petition Signatures Required for State Representatives, <http://dos.myflorida.com/elections/candidates-committees/qualifying/> (last visited April 21, 2017).

<sup>12</sup> s. 99.09651(3), F.S.

<sup>13</sup> s. 99.09651(1) and (2), F.S. In a year of apportionment, the number of signatures needed to qualify by petition is determined by taking the total population of the state and dividing it by the number of districts for Congress (27), Senate (40) or House of Representatives (120).

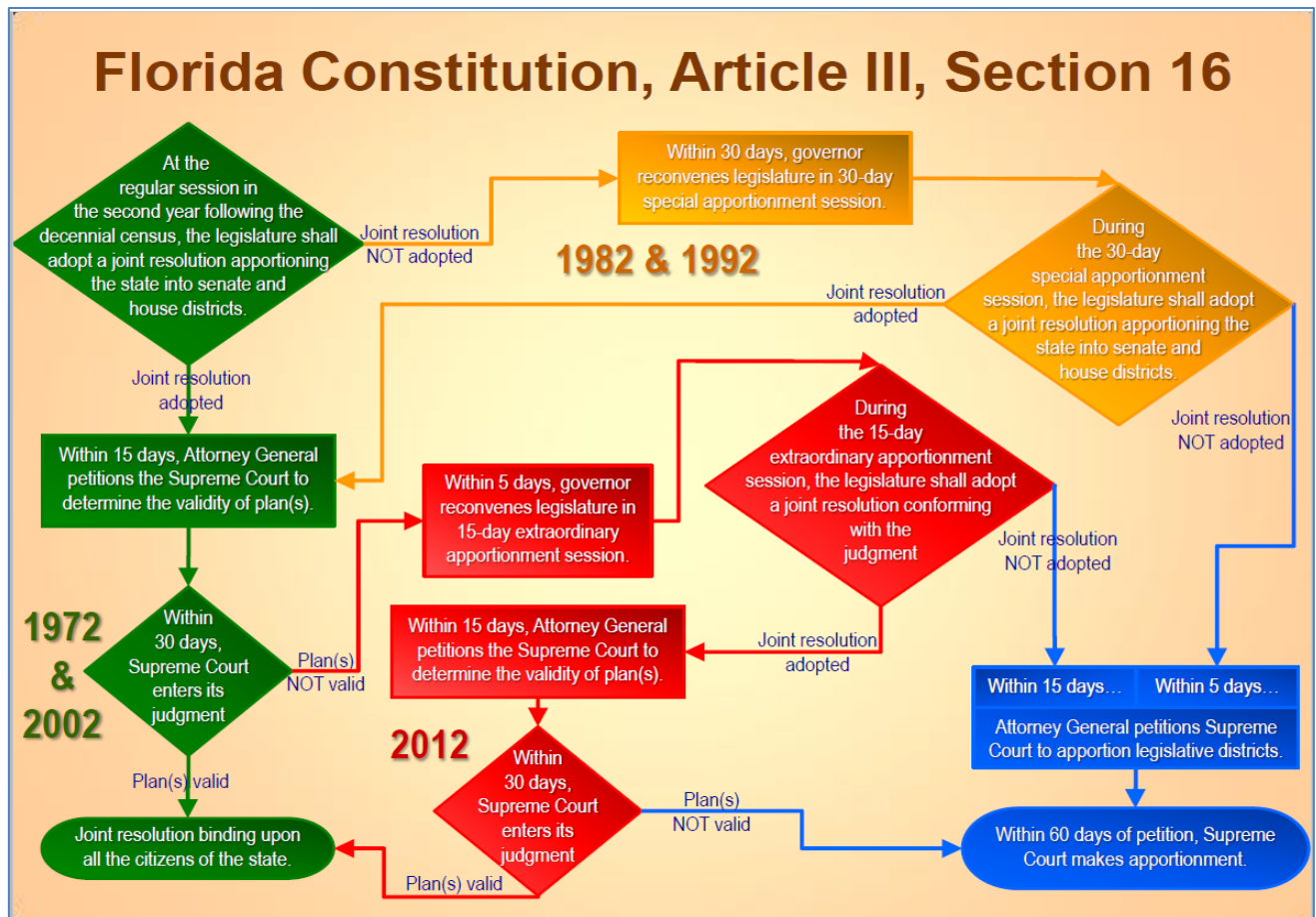
<sup>14</sup> FLA. CONST. art. III, s. 16(a).

<sup>15</sup> *Id.* at (c).

<sup>16</sup> *Id.* at (d).

<sup>17</sup> 55 Stat. 761. (1941) Sec. 22 (a). Codified in 2 U.S.C. s. 2(a).

10 years, and designates the administrative procedures that will be used for apportionment.<sup>18</sup> Florida is entitled to 27 U.S. Representatives in Congress based upon the 2010 Census.<sup>19</sup>



## Judicial Review of State Legislative Districts

### *If the Legislature Adopts a Joint Resolution of Apportionment during Regular Session*

Within 15 days after the Legislature passes a joint resolution to apportion state legislative districts, the Attorney General must petition the Court for a declaratory judgment that determines the validity of the apportionment.<sup>20</sup> The Court must allow adversary interests to present their views challenging the validity of the apportionment,<sup>21</sup> and must enter its judgment within 30 days after the Attorney General submits the petition.

If the Court finds the apportionment valid, the Court's judgment is binding on all citizens of the state.<sup>22</sup>

<sup>18</sup> Congressional Research Service, *The U.S. House of Representatives Apportionment Formula in Theory and Practice*, p. 2 (Aug. 2, 2013), available at <https://www.everycrsreport.com/reports/R41357.html> (last accessed April 7, 2017). See also 2 U.S.C. s. 2a-2c.

<sup>19</sup> Directory of Representatives, United States House of Representatives, available at [http://www.house.gov/representatives/#state\\_fl](http://www.house.gov/representatives/#state_fl). (last accessed April 21, 2017). The single-member districts for the U.S. House of Representatives are described in s. 8.002, F.S. However, the districts described there represent the last legislation passed by the Legislature and do not contain the revisions required by the Florida Supreme Court in *The League of Women Voters of Florida v. Detzner*, Case No. SC14-1905 (2015). With respect to the number of U.S. Senators apportioned to each state, the U.S. Constitution specifies that "the Senate of the United States shall be composed of two Senators from each state, elected by the people thereof, for six years." U.S. CONST. art. 17.

<sup>20</sup> FLA. CONST. art. III, s. 16(c).

<sup>21</sup> *Id.*

<sup>22</sup> *Id.* at (d).

If the Court finds the apportionment invalid, the Governor must reconvene the Legislature, by proclamation, within 5 days, in an extraordinary apportionment session that may not exceed 15 days.<sup>23</sup> The Legislature must then adopt a joint resolution of apportionment that conforms to the Court's judgment.<sup>24</sup>

If the Legislature adopts a joint resolution during the extraordinary apportionment session, the Attorney General must petition the Court and provide the apportionment resolution within 15 days after adjournment of the session. The Court must then consider the validity of the resolution as though adopted at a regular or special apportionment session.<sup>25</sup> Again, the Court must allow adversary interests to present their views and render its judgment within 30 days after the Attorney General submits the petition.<sup>26</sup> If the Legislature did not adopt a joint resolution during the extraordinary apportionment session, the Attorney General must so inform the Court.<sup>27</sup>

If the Legislature did not adopt an apportionment resolution during an extraordinary apportionment session, or if the Court declares an apportionment resolution adopted during an extraordinary apportionment session invalid, the Court must, within 60 days after receiving the Attorney General's petition, file an order with the custodian of state records making an apportionment.<sup>28</sup>

#### *If the Legislature does not Adopt a Joint Resolution of Apportionment during Regular Session*

If the regular session of the Legislature in the second year following the decennial census is adjourned without adoption of a joint resolution apportioning the state into the necessary legislative districts, the Governor must, within 30 days, issue a proclamation reconvening the Legislature in a special apportionment session.<sup>29</sup> That session may not exceed 30 consecutive days and no other business may be transacted.<sup>30</sup> The state constitution specifies that, "[i]t is the Legislature's mandatory duty to adopt a joint resolution of apportionment during that session."<sup>31</sup>

If the Legislature adjourns the special apportionment session without adopting a joint resolution of apportionment, the Attorney General must, within 5 days, petition the Court to make the apportionment.<sup>32</sup> Within 60 days after the Attorney General files the petition, the Court must file an order with the state custodian of records making the apportionment.<sup>33</sup>

### **The Fair Districts Amendments to the State Constitution**

The State Constitution was amended in November 2010 to incorporate standards for establishing congressional<sup>34</sup> and legislative districts.<sup>35</sup> These amendments are commonly known as the Fair District Amendments.<sup>36</sup> 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;

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<sup>23</sup> *Id.*

<sup>24</sup> *Id.*

<sup>25</sup> *Id.* at (e).

<sup>26</sup> *Id.*

<sup>27</sup> *Id.* at (f).

<sup>28</sup> *Id.*

<sup>29</sup> *Id.* at (a).

<sup>30</sup> *Id.*

<sup>31</sup> *Id.*

<sup>32</sup> *Id.* at (b).

<sup>33</sup> *Id.*

<sup>34</sup> FLA. CONST. art. III, s. 20.

<sup>35</sup> FLA. CONST. art. III, s. 21.

<sup>36</sup> *League of Women Voters of Fla. v. Fla. House of Representatives*, 132 So. 3d 135, 139 (Fla. 2013).

- 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

- Must be as nearly equal in population as is practicable;
- Must be compact; and
- Must, 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.<sup>37</sup> Shortly thereafter, two legal challenges to the plan were filed in the Circuit Court for the Second Judicial Circuit in Leon County. The challenges were eventually combined into one case.<sup>38</sup> On July 10, 2014, after a 12-day trial, the Circuit Court entered a final judgment that rejected challenges to eight districts<sup>39</sup> but invalidated Districts 5 and 10. On August 11, 2014, the Legislature passed SB 2A<sup>40</sup> to remedy the two invalidated districts. Those districts were upheld by the Circuit Court on August 22, 2014. In addition, the Circuit Court ordered that the 2014 elections proceed under the map originally passed in 2012 to accommodate the election timeline. On August 29, 2014, the plaintiffs appealed that decision, and the Florida Supreme Court ("Court") heard oral arguments on March 3, 2015.

On July 9, 2015, the 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.<sup>41</sup> In its invalidation of those districts, the Court relinquished jurisdiction to the Circuit Court for 100 days to enter an order recommending approval or disapproval of the remedial plan.<sup>42</sup>

Following a Special Session in August 2015 during which 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. On October 9, 2015, the Circuit Court recommended the adoption of a map presented by the plaintiffs to the Florida Supreme Court. On December 2, 2015, the Florida Supreme Court, in a 5-2 opinion, approved the map that was recommended by the Circuit Court.<sup>43</sup> In his dissenting opinion, Justice Polston highlighted the fact that the plaintiff's maps, unlike the legislative drawn maps, were not held to the requirements of the Fair Districting Amendments.<sup>44</sup>

### *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 Court issued a 191-page majority opinion, unanimously finding the State House map valid.<sup>45</sup> However, by a 5-to-2 vote, the Court found the state

<sup>37</sup> Ch. 2012-2, Laws of Fla.

<sup>38</sup> *Rene Romo, et al, v. Ken Detzner and Pam Bondi*, Case No. 2012-CA-412; *The League of Women Voters of Florida, et al, v. Ken Detzner*, Case No. 2012-CA-490.

<sup>39</sup> The eight congressional districts the trial court found valid were districts 13, 14, 15, 21, 22, 25, 26 and 27.

<sup>40</sup> Ch. 2014-255, Laws of Fla.

<sup>41</sup> *League of Women Voters of Fla. v. Detzner*, 172 So. 3d 363, 378 (Fla. 2015)

<sup>42</sup> *Id.* at 417.

<sup>43</sup> *League of Women Voters of Fla. v. Detzner*, 179 So. 3d 258 (Fla. 2015).

<sup>44</sup> *Id.* at 305-08. "The map the trial court recommended and the majority adopts was drawn by a Democratic consulting firm. . . [and] is an unconstitutional violation of the Fair Districts Amendment and the separation of powers." *Id.* at 305.

<sup>45</sup> *In re Senate Joint Resolution of Legislative Apportionment 1176*, 83 So. 3d 597, 644-654 (Fla. 2012).

Senate map invalid.<sup>46</sup> 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 Court found the new state Senate map valid.<sup>47</sup>

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 ("Plaintiffs").<sup>48</sup>

On July 28, 2015, shortly before the case 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. The House did not object to the entry of the consent judgment and agreed to be bound by its terms because the plaintiffs and the Senate had entered into a stipulation that required the Senate plan to be redrawn.

Following a Special Session that concluded on November 5, 2015, during which the Legislature failed to adopt a remedial plan, the Circuit Court ordered that all parties involved submit, by November 18, proposed plans for judicial adoption. After a subsequent trial, where each party presented its proposal, the Circuit Court ordered adoption of a map presented by the plaintiffs. In accordance with the Circuit Court's final judgment, the Senate districts were renumbered on January 8, 2016, and adopted by the court.

Due to the protracted litigation, there was confusion over whether redrawn maps would trigger a different qualification period and petition requirements for candidates seeking office in 2016.<sup>49</sup>

### **Effect of Proposed Changes**

The bill provides certainty with respect to the qualification periods for federal office in years in which the congressional maps are being challenged. The bill defines "year of apportionment" in the Florida Election Code as:

- The second year following each decennial census, as specified in article III, section 16 of the Florida Constitution; and
- Any other even-numbered year in which the validity of legislative or congressional district boundaries is subject to an active challenge, pending in any court, that has not been concluded by the rendering of or entry of a final order or judgment and by the exhaustion or waiver of all available direct appeals.

As a result of the bill, during election years in which congressional boundaries are being challenged, the later qualification period of 71 to 67 days prior to the primary election will apply to candidates for federal office.

Additionally, when district boundaries are uncertain due to ongoing litigation during a year of apportionment, candidates seeking to qualify by petition for Congress, the state Senate, or the state House of Representatives will be allowed to collect signatures from any registered voter in Florida to qualify pursuant to s. 99.09651, F.S.

### **B. SECTION DIRECTORY:**

Section 1. Amends s. 97.021, F.S., relating to definitions.

Section 2. Amends s. 99.061, F.S., relating to method of qualifying for nomination or election to federal, state, county, or district offices.

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<sup>46</sup> *Id.* at 654-83.

<sup>47</sup> *In re Senate Joint Resolution of Legislative Apportionment 2-B*, 89 So. 3d 872 (Fla. 2012).

<sup>48</sup> *The League of Women Voters of Florida v. Kenneth Detzner*, Case No. 2012-CA-2842.

<sup>49</sup> Memorandum from Ken Detzner, Florida Secretary of State, "Directive 2015-01-Congressional Candidate Qualifying; Year of Apportionment"

[http://dos.myflorida.com/media/695355/sos\\_directive\\_2015-01.pdf](http://dos.myflorida.com/media/695355/sos_directive_2015-01.pdf) .

Section 3. 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: None

### **B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues: None.
2. Expenditures: None

### **C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR: None.**

### **D. FISCAL COMMENTS: None.**

## **III. COMMENTS**

### **A. CONSTITUTIONAL ISSUES:**

1. Applicability of Municipality/County Mandates Provision: The local mandates provision in Art. VII, s. 18 of the Florida Constitution exempts bills amending election laws from the mandates requirements.
2. Other: None

### **B. RULE-MAKING AUTHORITY: None.**

### **C. DRAFTING ISSUES OR OTHER COMMENTS: None.**

## **IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

N/A