

**INITIATIVE FINANCIAL INFORMATION STATEMENT
INDEPENDENT NONPARTISAN COMMISSION TO APPORTION LEGISLATIVE AND
CONGRESSIONAL DISTRICTS WHICH REPLACES APPORTIONMENT BY LEGISLATURE**

SUMMARY OF INITIATIVE FINANCIAL INFORMATION STATEMENT

Article III, Section 16 of the Florida Constitution currently provides for legislative redistricting of the state into legislative and congressional districts in the second year following each decennial census. The proposed amendment would replace this provision of the Florida Constitution and provide for redistricting by a fifteen-member Apportionment and Districting Commission, rather than the legislature. The Senate President, Speaker of the House of Representatives, the minority parties in each house, and Chief Justice of the Supreme Court shall each appoint three persons to comprise the commission membership. The amendment disqualifies certain persons from membership and prohibits commission members from seeking office for four years following service on the commission. The commission would be required to redistrict the state each year following a decennial census.

Based on information provided through public workshops and collected through staff research, the Financial Impact Estimating Conference expects that the proposed amendment will result in state fiscal savings estimated to range from zero to \$6.7 million for each ten-year redistricting cycle. The costs of the commission and associated staff, data, technology, and legal expenses are estimated to be \$6.7 million to \$13.4 million, which probably will be offset by savings to the legislature of \$13.4 million (based on expenditures of the last two redistricting cycles). This estimate is based on the following:

- The Apportionment and Districting Commission will incur the following direct costs:
 - Administrative expenses related to staff, consultant fees, travel, public hearings, data preparation, equipment and software, and
 - Legal expenses related to the development of the plans and the defense thereof.
- The state will be required to pay attorney's fees for successful plaintiffs.
- No significant change is expected in the costs of the Attorney General, the Supreme Court, the Department of State, and the supervisors of elections because the amendment does not substantially alter their current responsibilities.
- Total commission costs will be no more than the average amount expended by the legislature over the last two cycles and no less than one-half of that amount.
- The average cost to the legislature of redistricting over the last two cycles has been \$13.4 million.

FINANCIAL IMPACT STATEMENT

As a result of the adoption of this amendment, the state fiscal savings are estimated to range from zero to \$6.7 million for each ten-year redistricting cycle. The costs of the commission and associated staff, data, technology, and legal expenses are estimated to be \$6.7 million to \$13.4 million, which probably will be offset by savings to the legislature of \$13.4 million (based on expenditures of the last two redistricting cycles).

I. SUBSTANTIVE ANALYSIS

A. Proposed Amendment

Ballot Title:

INDEPENDENT NONPARTISAN COMMISSION TO APPORTION LEGISLATIVE AND CONGRESSIONAL DISTRICTS WHICH REPLACES APPORTIONMENT BY LEGISLATURE

Ballot Summary:

Creates fifteen-member commission replacing legislature to apportion single-member legislative and congressional districts in the year following each decennial census. Establishes non-partisan method of appointment to commission. Disqualifies certain persons for membership to avoid partiality. Limits commission members from seeking office under plan for four years after service on commission. Requires ten votes for commission action. Requires Florida Supreme Court to apportion districts if commission fails to file a valid plan.

1) Statement and Purpose:

The purpose of this amendment is to transfer the authority to apportion and redistrict the state into legislative and congressional districts from the legislature to the Apportionment and Districting Commission.

2) Amendment of Florida Constitution:

The amendment proposes to delete current Article III, Section 16, and insert the following:

Section 16. Apportionment and Districting Commission. --.

(a) APPORTIONMENT AND DISTRICTING COMMISSION. In the year following each decennial census or when required by the United States or by court order, a commission shall divide the state into not less than 30 or more than 40 consecutively numbered single-member senatorial districts of convenient contiguous territory, not less than 80 or more than 120 consecutively numbered single-member representative districts of convenient contiguous territory as provided by this constitution or by general law and shall divide the state to create as many congressional districts as there are representatives in congress apportioned to this state. Districts shall be established in accordance with the constitution of this state and of the United States and shall be as nearly equal in population as practicable.

(1) On or before June 1 in the year following each decennial census, or within 15 days after legislative apportionment or congressional districting is required by law or by court order, 15 commissioners shall be certified by the respective appointing authorities to the custodian of records. The president of the senate and the speaker of the house of representatives each shall select and certify three commissioners. Members of minority parties in the senate

shall elect one from their number who shall select and certify three commissioners. Members of minority parties in the house of representatives shall elect one from their number who shall select and certify three commissioners. On or before June 1 of the same year, the chief justice of the supreme court shall select three members of the commission, each of whom shall be a registered voter who for the previous two years was not registered as an elector of either of the two largest political parties in the senate and the house of representatives. The chief justice shall select commissioners from recommendations made by the chief judge of each district court of appeal. Each chief judge shall recommend three individuals who otherwise meet the requirements of this section and who reside in that district. From the individuals recommended by chief judges of the district courts of appeal, the chief justice shall select and certify three commissioners. No two commissioners selected by the chief justice shall reside in the same appellate district.

(2) a. No commissioner shall have served during the four years prior to his or her certification as an elected state official, member of congress, party officer or employee, paid registered lobbyist, legislative or congressional employee, and no commissioner shall be a relative, as defined by law, or an employee of any of the above.

b. As a condition of appointment, each commissioner shall take an oath affirming that the commissioner will not receive compensation as a paid registered lobbyist, or seek elected office in any legislative or congressional district for a period of four years after concluding service as a commissioner.

(3) The commission shall elect one of its members to serve as chair and shall establish its own rules and procedures. All commission actions shall require 10 affirmative votes. Meetings and records of the commission shall be open to the public and public notice of all meetings shall be given.

(4) Within 180 days after the commission is certified to the custodian of records, the commission shall file with the custodian of records its final report, including all required plans.

(5) After the supreme court determines that the required plans are valid, the commission shall be dissolved.

(b) FAILURE OF COMMISSION TO APPORTION; JUDICIAL APPORTIONMENT. If the commission does not timely file its final report including all required plans with the custodian of records, the commission shall be dissolved, and the attorney general shall, within five days, petition the supreme court of the state to make such apportionment. No later than the sixtieth day after the filing of such petition, the supreme court shall file with the custodian of records an order making such apportionment.

(c) JUDICIAL REVIEW OF APPORTIONMENT. Within 15 days after the final report of the commission is filed with the custodian of records, the attorney general shall petition the supreme court to review and determine the validity

of the apportionment. The supreme court, in accordance with its rules, shall permit adversary interests to present their views and, within 30 days from filing the petition, shall enter its judgment.

(d) EFFECT OF JUDGMENT IN APPORTIONMENT. A judgment of the supreme court determining the apportionment to be valid or ordering judicial apportionment shall be binding upon all citizens of the state. Should the supreme court determine that the apportionment made by the commission is invalid, the commission, within 20 days after the ruling, shall adopt and file with the custodian of records an amended plan that conforms to the judgment of the supreme court. Within five days after the filing of an amended plan, the attorney general shall petition the supreme court of the state to determine the validity of the amended plan, or if the commission has failed to file an amended plan, report that fact to the court.

(e) JUDICIAL APPORTIONMENT. Should the commission fail to file an amended plan or should the supreme court determine the amended plan is invalid, the commission shall be dissolved, and the supreme court shall, not later than 60 days after receiving the petition of the attorney general, file with the custodian of records an order making such apportionment.

The current Article III, Section 16 states:

Section 16. Legislative apportionment. --

(a) SENATORIAL AND REPRESENTATIVE DISTRICTS. The legislature at its regular session in the second year following each decennial census, by joint resolution, shall apportion the state in accordance with the constitution of the state and of the United States into not less than thirty nor more than forty consecutively numbered senatorial districts of either contiguous, overlapping or identical territory, and into not less than eighty nor more than one hundred twenty consecutively numbered representative districts of either contiguous, overlapping or identical territory. Should that session adjourn without adopting such joint resolution, the governor by proclamation shall reconvene the legislature within thirty days in special apportionment session which shall not exceed thirty consecutive days, during which no other business shall be transacted, and it shall be the mandatory duty of the legislature to adopt a joint resolution of apportionment.

(b) FAILURE OF LEGISLATURE TO APPORTION; JUDICIAL REAPPORTIONMENT. In the event a special apportionment session of the legislature finally adjourns without adopting a joint resolution of apportionment, the attorney general shall, within five days, petition the supreme court of the state to make such apportionment. No later than the sixtieth day after the filing of such petition, the supreme court shall file with the custodian of state records an order making such apportionment.

(c) JUDICIAL REVIEW OF APPORTIONMENT. Within fifteen days after the passage of the joint resolution of apportionment, the attorney general shall petition the supreme court of the state for a declaratory judgment determining

the validity of the apportionment. The supreme court, in accordance with its rules, shall permit adversary interests to present their views and, within thirty days from the filing of the petition, shall enter its judgment.

(d) EFFECT OF JUDGMENT IN APPORTIONMENT; EXTRAORDINARY APPORTIONMENT SESSION. A judgment of the supreme court of the state determining the apportionment to be valid shall be binding upon all the citizens of the state. Should the supreme court determine that the apportionment made by the legislature is invalid, the governor by proclamation shall reconvene the legislature within five days thereafter in extraordinary apportionment session which shall not exceed fifteen days, during which the legislature shall adopt a joint resolution of apportionment conforming to the judgment of the supreme court.

(e) EXTRAORDINARY APPORTIONMENT SESSION; REVIEW OF APPORTIONMENT. Within fifteen days after the adjournment of an extraordinary apportionment session, the attorney general shall file a petition in the supreme court of the state setting forth the apportionment resolution adopted by the legislature, or if none has been adopted reporting that fact to the court. Consideration of the validity of a joint resolution of apportionment shall be had as provided for in cases of such joint resolution adopted at a regular or special apportionment session.

(f) JUDICIAL REAPPORTIONMENT. Should an extraordinary apportionment session fail to adopt a resolution of apportionment or should the supreme court determine that the apportionment made is invalid, the court shall, not later than sixty days after receiving the petition of the attorney general, file with the custodian of state records an order making such apportionment.

3) Effective Date and Severability:

Pursuant to Article XI, Section 5, this amendment will be effective on January 2, 2007.

B. Effect of Proposed Amendment

The effect of this amendment is to transfer the authority to apportion and redistrict¹ the state into legislative and congressional districts from the legislature to the Apportionment and Districting Commission.

¹ Question: What is the difference between apportionment and redistricting?

Answer: Apportionment is the process of determining the number of representatives to which each state is entitled in the U.S. House of Representatives based on the decennial census. By law, the apportionment results must be submitted to the President by December 31 of the census year. Redistricting is the process of revising the geographic boundaries of areas from which people elect representatives to the U.S. House of Representatives, a state legislature, a county or city council, a school board, etc. By law, redistricting data must be submitted to the states by April 1 of the year after the census.

Source: U.S. Census Bureau, Population Division, Population & Housing Programs Branch

The terms “apportionment”, “reapportionment”, and “redistricting” are often used interchangeably. For example, Black Law Dictionary states that “reapportionment” is “also termed redistricting.”

Background

The Committee for Fair Elections is the official sponsor of this proposed constitutional amendment. The Committee for Fair Elections is a registered political committee whose pronounced main focus is advocating for the creation of fair districts in Florida.

According to the Committee for Fair Elections' website², it is a conflict of interest to vest the legislature with redistricting responsibilities. The sponsor proposes that the amendment will create "fair voting districts" and "remove politicians from the process."

Apportionment and Redistricting In Florida

Article III, Section 16 of the Florida Constitution currently provides for legislative apportionment and redistricting of the state into legislative and congressional districts in the year following each decennial census.

In its next regular session after the decennial census, the legislature must redistrict the state into not less than thirty nor more that forty consecutively numbered senatorial districts and not less than eighty nor more than one hundred twenty consecutively numbered representative districts. The legislature must follow the state constitution, the federal constitution, and federal laws.

If the regular legislative session adjourns without a redistricting plan, the governor must within thirty days call a special redistricting session which shall not exceed thirty days. If the legislature adjourns and fails to redistrict the state, then the attorney general shall, within five days, petition the supreme court of the state to make the redistricting. No later than sixty days after the filing of the petition, the supreme court shall issue an order making the redistricting.

When the legislature adopts a redistricting plan, within fifteen days the attorney general shall petition the supreme court of the state to review the plan. The supreme court must issue its judgment on the plan within sixty days of the filing of the petition for review. If the supreme court determines the plan is valid, then the plan is binding on all citizens of the state. If the supreme court rules the plan invalid, then the governor shall reconvene the legislature within five days for an extraordinary redistricting session not to exceed fifteen days.

Within fifteen days after the extraordinary redistricting session, the attorney general shall petition the supreme court to review the plan or to inform the court that no plan was adopted. If the legislature fails to adopt a plan or if supreme court finds the plan invalid, the court shall, not later than sixty days after receiving the petition, make the redistricting plan for the state.

The Florida Constitution directs the legislature to "apportion" the state; however, as part of the apportionment process the legislature redistricts the state. Since the redistricting, the "revising of geographic boundaries", is the most costly aspect of the apportionment process, the FIEC will use the term "redistricting" throughout this statement.

² www.committeeforfairelections.com

Historically, the legislature has fulfilled its responsibility for redistricting with support from House and Senate staff as well as outside consultants and attorneys. During the 2002 redistricting, significant time was required by legal, professional and technical staff to perform the many tasks associated with analyzing data, working with the Census Bureau, building data sets and databases, generating reports and maps, writing briefs, developing defense arguments and providing legal advice.

Historical Costs

The total costs to the state for each of the last two redistricting cycles averaged over \$13 million. These costs included technology and staffing costs as well as the costs of legal representation during the redistricting process and in defense of the redistricting plans.

| | Senate Costs | House Costs | EDR ³ Costs | Payments to Plaintiffs | Total Costs to State |
|-------------|---------------|---------------|------------------------|------------------------|----------------------|
| 1988 – 1990 | \$4.4 million | \$8.1 million | \$0.9 million | \$1.6 million | \$15.0 million |
| 1998 – 2000 | \$3.9 million | \$6.9 million | \$0.9 million | | \$11.7 million |
| | | | | Average Cost | \$13.4 million |

During previous redistricting cycles, each house of the legislature drew plans for the Florida Senate, the Florida House of Representatives, and Florida's congressional seats using separate computer equipment, software, staff, and other resources. This resulted in a significant level of duplication, but not a complete duplication of effort. The majority of the work performed by the Senate focused on the Senate and congressional plans, while the majority of the work performed by the House focused on the House and congressional plans.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

Section 100.371, Florida Statutes, requires that the Financial Impact Estimating Conference (FIEC) "...complete an analysis and financial impact statement to be placed on the ballot of the estimated increase or decrease in any revenue or costs to state or local governments resulting from the proposed initiative."

As part of determining the fiscal impact of this proposed amendment, the FIEC principals held three public meetings during September and October 2005.

A. FISCAL ANALYSIS

The fiscal impact summary for this proposed amendment is based on independent research; testimony before the FIEC public workshop; written statements from the proponents and opponents of the initiative; responses to a survey of state agencies and local governments regarding fiscal impacts; and discussions among the FIEC principals and other professional

³ Legislative Office of Economic and Demographic Research

staff. Based on this information, the FIEC expects the proposed amendment will result in state fiscal savings estimated to range from zero to \$6.7 million for each ten-year redistricting cycle. The costs of the commission and associated staff, data, technology, and legal expenses are estimated to be \$6.7 million to \$13.4 million, which probably will be offset by savings to the legislature of \$13.4 million (based on expenditures of the last two redistricting cycles).

This estimate is based on the following:

- **The Apportionment and Districting Commission will incur the direct costs of administrative expenses related to staff, consultant fees, travel, public hearings, data preparation, equipment and software.**

The commission will need staff, consultant fees, travel, data preparation, equipment, and software.

The need for the commissioners to travel in order to hear public comments may be greater and they may need to hold more public hearings than the legislature previously held. Legislators often travel and spend time with their constituency, making travel for the sole purpose of seeking input on redistricting less necessary. During the 2002 reapportionment process, legislators held 21 public hearings across the state to receive public input.

- **The Apportionment and Districting Commission will incur legal expenses related to the development of the plans and the defense thereof.**

During its existence, the commission will have a need for legal advice on the standards for redistricting⁴. An issue for the commission will be how it will defend its plans and its actions in lawsuits brought after the commission has been disbanded. Typically, a plaintiff challenging a redistricting plan will list numerous state defendants⁵ including the chairs of the Senate and House reapportionment

⁴ The Voting Rights Act (VRA), 42 U.S.C.A. s. 1971, et. seq., is a Federal mandate that requires the drawing of special majority-minority districts under certain circumstances: a minority population is large enough to draw a district around and racially polarized voting patterns exist (i.e., racial groups voting for candidates along racial lines). Originally, the 1965 VRA was designed to protect African-Americans, but was extended in 1982 to include “language minorities” such as Hispanics.

In covered jurisdictions under § 5, primarily the South and non-Southern states with substantial minority populations, all levels of government must submit any change in electoral law – including redistricting – to the Justice Department or the District Court of DC for approval or “preclearance.” Any racial group in the United States may challenge an electoral system they feel is biased against them under § 2.

⁵ See e.g.; MIGUEL DE GRANDY, MARIO DIAZ-BALART, ANDY IRELAND, CASIMER SMERICKI, VAN B. POOLE, TERRY KETCHEL, ROBERTO CASAS, RODOLFO GARCIA, JR., LUIS ROJAS, LINCOLN DIAZ-BALART, JAVIER SOUTO, JUSTO LUIS POSO, ALBERTO CARDENAS, REY VELAZQUEZ, LUIS MORSE, ALBERTO GUTMAN, KAREN E. BUTLER, SGT. AUGUSTA CARTER, JEAN VAN METER, ANNA M. PINELLAS, ROBERT WOODY, GINA HAHN, BILL PETERSEN, TERRY KESTER, MARGIE KINCAID, and BROOKS WHITE, Plaintiffs, v. T.K. WETHERELL, in his official capacity as Speaker of the Florida House of Representatives, GWEN MARGOLIS, in her official capacity as President of the Florida Senate, LAWTON CHILES, in his official capacity as Governor of the State of Florida, JACK GORDON, in his official capacity as Chairman of the Senate Reapportionment Committee, PETER R. WALLACE, in his official capacity as Chairman of the House Reapportionment Committee, JIM SMITH, in his official capacity as Secretary of State of Florida, ROBERT BUTTERWORTH, in his official capacity as Attorney General of Florida, Defendants. FLORIDA STATE CONFERENCE OF NAACP BRANCHES, T. H.

committees. While the Attorney General may provide representation for the defendants, individual defendants may wish to have their own representation.

- **The state will be required to pay attorney's fees for successful plaintiffs.**

Title 42 United States Code Section 1983 provides that citizens may bring civil actions to enforce their constitutional rights. In these cases, the court may award successful plaintiff's attorney's fees.⁶

Citizens may challenge redistricting plans under section 1983 if their civil rights are violated. For example in *Johnson v. Mortham*⁷, the plaintiffs were awarded attorney's fees after the successful challenge of a congressional redistricting plan as violating equal protection.

For the 1990 redistricting cycle, the legislature paid \$1.6 million to successful plaintiffs.

- **No significant change is expected in the costs of the Attorney General, the Supreme Court, the Department of State, and the supervisors of elections because the amendment does not substantially alter their current responsibilities.**

In response to an inquiry by the FIEC the Attorney General, the Department of State, and the supervisors of elections gave their opinion that the amendment does not substantially alter their current responsibilities. The FIEC also found no evidence that the amendment would substantially alter the responsibilities of the Supreme Court.

- **Total commission costs will probably be no more than the average amount expended by the legislature over the last two cycles and no less than one-half of that amount.**

The costs to the State of Florida will be largely controlled by:

- 1) Amounts appropriated for the operation of the commission by the legislature.

POOLE, SR., WHITFIELD JENKINS, LEON W. RUSSELL, WILLYE DENNIS, TURNER CLAYTON, RUFUS BROOKS, VICTOR HART, KERNA ILES, ROOSEVELT WALTERS, JOHNNIE MCMILLIAN, PHYLLIS BERRY, MARY A. PEARSON, MABLE BUTLER, IRIS WILSON, JEFF WHIGHAM, AL DAVIS, PEGGY DEMON, CARLTON MOORE, RICHARD POWELL, NEIL ADAMS, LESLIE MCDERMOTT, ROBERT SAUNDERS, SR., IRV MINNEY, ADA MOORE, ANITA DAVIS, and CALVIN BARNES, Plaintiffs, v. LAWTON CHILES, in his official capacity as Governor of Florida, JIM SMITH, in his official capacity as Secretary of State of Florida, ROBERT BUTTERWORTH, in his official capacity as Attorney General of Florida, GWEN MARGOLIS, in her official capacity as President of the Florida Senate, T. K. WETHERELL, in his official capacity as Speaker of the Florida House of Representatives, JACK GORDON, in his official capacity as Chairperson of the House Reapportionment Committee, and PETER R. WALLACE, in his official capacity as Chairman of the House Reapportionment Committee, Defendants, 794 F. Supp. 1076 (N.D.Fla. 1992)

⁶ 42 USC sec. 1988(b)

⁷ 950 F.Supp. 1117 (N.D.Fla.1996)

- 2) Amounts expended by the legislature, including the Office of Economic and Demographic Research (EDR), in support of the commission.⁸
- 3) Costs to defend any lawsuits that may be brought challenging the commission's processes or work product⁹.

The commission will have costs similar to, but not identical to, the direct costs of the legislature for redistricting; therefore, the estimate is primarily based on historical costs to the legislature. Since the legislature had duplication of staff, computer equipment, and other resources between the two chambers, there should be lower direct costs for the commission. As discussed above, there could be some additional costs to the commission for certain functions.

- **The average cost to the legislature of redistricting over the last two cycles has been \$13.4 million.** See Historical Costs above.

B. FISCAL IMPACT ON STATE AND LOCAL GOVERNMENTS:

1. Revenues:

There will be no direct financial impact on the revenues of state or local government.

2. Expenditures:

The direct financial impact on state government expenditures is expected to be a savings estimated to range from zero to \$6.7 million for each ten-year redistricting cycle.

There will be no direct financial impact on the expenditures of local government.

⁸ During the 1997-1998 constitutional revision process, the Florida Senate devoted substantial resources, both technological and professional staff, to support the Constitutional Revision Commission, in addition to the \$2.2 million in direct funding appropriated for the commission.

⁹ Lawsuits have typically been brought as challenges based on traditional districting principles such as compactness, population equity, contiguity, and respect for political subdivisions. See, e.g.; *Shaw v. Reno*, 509 U.S. 630, 644, 125 L. Ed. 2d 511, 113 S. Ct. 2816.