

JOURNAL OF THE SENATE

Wednesday, June 6, 1945

The Senate convened at 11:00 o'clock A. M., pursuant to adjournment on Tuesday, June 5, 1945.

The President in the Chair.

The roll was called and the following Senators answered to their names:

Mr. President	Bryant	Griner	Perdue
Ausley	Carroll	Johns	Riddle
Barringer	Clarke	Johnson	Sanchez
Baynard	Coleman 13th	King 7th	Shands
Beacham	Coleman 28th	King 27th	Sheldon
Black	Davis	Lewis	Sturgis
Boyle	Fraser 29th	Lindler	Thomas
Brackin	Fraser 31st	Mathews	Wilson
Branch	Gray	Moon	

—35.

A quorum present.

Senators McKenzie and McArthur were excused from attendance upon the session.

The following prayer was offered by the Chaplain:

"Merciful Master, we thank Thee for loving us in spite of our unloveliness. Give us grace to acknowledge our debt and adequately to express our gratitude to Thee. And while we would love all that Thou lovest, grant that we may hate that which Thou dost hate. In the name of our loving Saviour we pray. Amen."

The reading of the Journal was dispensed with.

The Journal of Tuesday, June 5, 1945, was corrected and as corrected was approved.

The President announced that the same standing Committees of the Senate would serve for the Extraordinary Session that served during the Regular Session of the 1945 Session.

Senator King (7th Dist.) moved that the rules be waived and the Senate reconvene for Afternoon Sessions each day during this Extraordinary Session.

The question was put on the adoption of the motion.

Upon which a roll call was demanded.

Upon the adoption of the motion made by Senator King (7th Dist.) the roll was called and the vote was:

Yeas—15.

Mr. President	Boyle	Johnson	Moon
Barringer	Bryant	King 7th	Sheldon
Baynard	Carroll	King 27th	Sturgis
Beacham	Coleman 13th	Mathews	

Nays—19.

Ausley	Davis	Johns	Sanchez
Black	Fraser 29th	Lewis	Shands
Brackin	Fraser 31st	Lindler	Thomas
Branch	Gray	Perdue	Wilson
Clarke	Griner	Riddle	

So the motion failed of adoption.

Senator Mathews arose to a point of personal privilege and addressed the Senate as follows:

Mr. President and members of the Senate:

I arise to a point of privilege and the point is the proceedings of this body on yesterday affecting the right of the Senate collectively, its members, dignity and the integrity of its proceedings; and second the rights, reputation and conduct of the Senators individually in their representative capacity only.

I have particular reference to the proceedings here in this body on yesterday, when a point of order was called after we had only been in session fifteen minutes.

When we adjourned last Saturday, we could only adjourn

for 72 hours under the Constitution. We met at 12:45 and we were first confronted with a statement from Senator from the Fourth, a man I admire and respect and which has grown into love and affection, with a statement that his group had the votes and would not recede and that no bill for re-apportionment could pass at this session of the Senate. We then had a correct ruling from the Chair that no Constitutional Amendment could even be considered until three-fourths of each House had, by proper resolution, declared an emergency to exist with reference to subject matter of the proposed Constitutional Amendment.

While the Senator from the Thirty-fifth was speaking upon the general question before the Senate, one o'clock arrived and the Senator from the Third called a point of order, which he had the technical, legal right to do, but he refused to yield for a motion that we re-convene at 3 o'clock and there was nothing for the President to do except sustain the point of order.

I wish it thoroughly understood that what I say is simply a frank expression of the faith that is within me. I do not attempt to tell any other Senator how he shall vote or how he shall square his conscience with his oath to support, protect and defend the Constitution. That is a matter of individual interpretation. I have my conception of Deity and you have yours. I have my interpretation of sections of the Holy Bible and you have yours. No man can be the keeper of another man's conscience—I am not the keeper of yours and you are not the keeper of mine. I am simply giving a frank expression of my own beliefs and my own interpretations in this matter.

I realize that in the heat of debates we make many mistakes and do and say things which we afterwards regret. However, I say to you Mr. President and Senators according to my own personal and individual viewpoint, it is a reflection upon the Senate collectively and the integrity of its proceedings for us to meet here under the circumstances for only fifteen minutes when there is such an important matter for us to attempt to settle. It is a reflection upon the reputation and conduct of the Senators individually when we cannot devote more than fifteen minutes to such an important question. It is not fair to the citizens and tax payers of this State. It costs approximately \$2000.00 dollars for a Legislative day during this extra-ordinary session. If this kind of proceedings goes on and we are limited only to a few minutes each day to consider the important question now before us, the members of this Senate will rightfully be criticized by the citizens of this State and be held in contempt and ridicule.

It may be all right for groups and blocs in this body to hold their individual meetings and discuss this problem but we should devote some considerable time during each Legislative day to consider the problem that is before us in the hope that from frank and free expressions before the whole membership we will arrive at the truth and do the right thing by the people of the whole State.

I have not intended making any extended remarks with reference to the vital matter that is before us but as I have watched developments, I feel I would be derelict in the performance of my duty if I remained silent.

I doubt if what I shall have to say will make any impression or change a vote.

All through the regular session of the Legislature we have labored together here as Floridians for the general welfare of our State. We have heard no mention of North Florida, West Florida or South Florida. The deadly poison of sectionalism only appeared when the subject of re-apportioning the representation of the Senate was mentioned. We went through the regular session and failed to perform our Constitutional duty to apportion the representation in the Senate providing for 38 Senatorial Districts. I have heard some criticism of the Governor for calling this extra-ordinary session. The same Section of the Constitution, that is Section 3, Article 7, which

made it our duty to re-apportion the Senate based upon 38 Senatorial Districts, made it the solemn duty of the Governor to call the Legislature together in this extra-ordinary session to consider the sole question of re-apportionment. The Governor took the same oath to support, protect and defend the Constitution of the State that each of us took and he would have been derelict in the performance of his duty if he had failed to carry out the plain and unmistakable mandate of the Constitution. The Governor has performed his duty and the question now is, "Are we going to perform our duty." So far as I am concerned I am ready and willing to perform my duty under the Constitution as I see it and re-apportion the Senate based upon 38 Senatorial Districts.

It may be that under Section 3 Article 17 of the Constitution this extra-ordinary session could adopt a Constitution Amendment with reference to apportionment, notwithstanding the fact that Section 3 of Article 7 plainly says that this extra-ordinary session shall consider no other business than re-apportionment as therein set forth. Re-apportionment called for by Section 3 Article 7 is re-apportionment by the Legislature and not by Constitutional Amendments. The re-apportionment called for by this Section is for 38 Senatorial Districts and not the creation of new districts.

To say the least and, for the sake of argument, admitting that it is possible for this extra-ordinary session of the Legislature to pass to the people a Constitutional Amendment, it is quite clear to every one that no such Constitutional Amendment can ever be considered until three-fourths of all members elected to each house shall determine that an emergency exists with reference to the subject matter of the proposed Amendment.

So far as my interpretation of the Constitution is concerned and so far as my duty to support, protect and uphold the Constitution is concerned a Constitutional Amendment, increasing the number of Senators and submitting the matter to the people when they have heretofore turned down two such amendments, does not comply with the Constitutional mandate that we shall re-apportion the State based upon 38 Senatorial Districts.

When we consider that there is one county in this State with a little over 9,000 people—men, women, children, whites and negroes—that has a State Senator and another county of this State having over 39,000 people must be combined with another county having a population of over 79,000, we can readily see the injustice which exists today. Any provision for re-apportionment which ignores that Constitutional mandate which says: "Such Districts to be as nearly equal in population as practicable" is not, according to my interpretation of the Constitution and my oath to support it, a compliance with my Constitutional duty.

When the Legislature proposed and the people adopted Section 3 of Article 7 of the Constitution the solemn obligation was placed upon and assumed by every Senator to re-apportion the representation in the Senate every ten years based upon 38 Senatorial Districts as nearly equal in population as practicable. The obligation was placed upon the Governor to call the extra-ordinary session to consider this one question and that alone, in the event the regular session failed to perform its duty. That, the Governor has done and it is now up to me to perform my Constitutional duty and as God is my helper it is my purpose and intention to attempt to do so.

In performing our Constitutional duties, so far as I am concerned, I am taking into consideration that provision of the Constitution which requires that districts be as nearly equal in population as practicable. I am taking into consideration the tremendous increase in population in certain parts of the State; the tremendous increase in wealth; the tremendous increase in tax contributions in the same sections to run the State Government and to help many of the smaller counties run their governments. In performing my duty, I know no West Florida, North Florida or South Florida. I only attempt to know and interpret the Constitution and apply it to all of Florida. Florida has been good to me. I love its rivers, streams and lakes; I love its forests and farms; I love its beauty and climate; its minerals and groves. In dealing with Florida problems I do not believe in greed and selfishness. I do not believe in pledging our faith one to another based upon personal consideration and ignoring the Constitution and welfare of the State as a whole. I believe we live under a government of laws and not of men and when we bind ourselves together upon such a principle as "Well we got it, let us hold it" or that "Might is Right" we are prone to ask ourselves the question,

"Oh Reason, Whither Hast Thou Flown?". I wish we could be reasonable; I wish all of us could forget greed and selfishness; I wish all of us could repudiate the German principle that "Might is Right."

I have given you a free and frank expression of the faith that is within me. I hope I have not stepped upon the toes of any Senator.

This will probably be my last expression with reference to this matter. It may be my "SWAN SONG" to the Senate of the State of Florida. I have only one ambition in life and that is to be of service. My children are reared and educated. I need nothing particularly of this world's goods. I would like to devote the balance of my life to rendering a worthwhile public service to my fellow-men. I would like to render service to my county and my State in the hope that when I have passed on my community and my adopted State may be a little better for the fact that I have lived.

Senator Coleman (13th Dist.) moved that the foregoing remarks made by Senator Mathews be spread upon the Journal.

Which was agreed to and it was so ordered.

Senator Fraser (31st Dist.) arose to a point of personal privilege and addressed the Senate as follows:

In my opinion, we are deadlocked on account of different interpretations of the meaning of the word "re-apportion", and its application to the 38 Senatorial Districts of Florida.

I am opposed to abolishing or doing away with any of the 38 Senatorial Districts of this State.

In my opinion, the State Constitution does not provide for erasing from the map of Florida any Senatorial District at any time by its provisions for re-apportionment.

To corroborate this view, I wish to quote first from the Governor's Proclamation calling a Special Session of the Legislature, from Webster's New International Dictionary, and from the Constitution.

From the Proclamation of the Governor I quote as follows:

"WHEREAS, the Florida Legislature convened in regular session on April 3, 1945, has adjourned sine die without having re-apportioned the representation in the Legislature, as required by Section 3 of Article VII of the Constitution; AND,

"WHEREAS, said Section 3 of Article VII requires that, upon failure of the Legislature in regular session to re-apportion the representation therein, the Governor shall call the Legislature together in extra-ordinary session to consider the question of re-apportionment:

"NOW, THEREFORE, I, MILLARD F. CALDWELL, AS GOVERNOR OF THE STATE OF FLORIDA, in obedience to the requirements of said Section 3 of Article VII of the Constitution, do hereby call the duly elected and qualified Senators and Members of the House of Representatives of the Legislature of the State of Florida together in extra-ordinary session to be reconvened at twelve o'clock noon, on June 2d, A. D. 1945, to consider the question of re-apportionment of the representation in the Legislature, as mandatorily required by said Section 3 of Article VII of the Constitution."

You will note that in this Proclamation the Governor uses in the first paragraph the word, "reapportioned", and in the second paragraph he uses, "reapportion" and "re-apportionment". *Re-apportion is the key word of his Proclamation.*

Webster defines *apportion* as follows: "To divide and assign in just proportion; to divide and distribute proportionally; to make an apportionment of; portion out, to allot, as, to apportion time among various employments. Synonyms: Allocate, distribute."

To reapportion would be to apportion again. Nowhere in this definition is there any reference to abolishing or doing away entirely with any portion or division already in existence.

When this definition is applied to re-apportionment in the 38 Senatorial Districts of the State of Florida, therefore, it means, in my opinion, that no district now in existence can be done away with. And that is all.

I am opposed, therefore, to any definition of the word, re-apportionment, that would justify this Legislature in abolishing any one or more of the 38 Senatorial Districts of Florida and thereby sweeping from this honorable body or from the House of Representatives one or more of our fellow members.

Quoting from the Constitution of Florida, Article VII.

SECTION 3. Apportionment of representatives in senate and house of representatives.—The Legislature that shall meet in regular session A. D. 1925, and (following italics supplied) those that shall meet every ten years thereafter, shall apportion the Representation in the Senate, and shall provide for thirty-eight (38) Senatorial Districts, such Districts to be as nearly equal in population as practicable, but no county shall be divided in making such apportionment, and each district shall have one Senator; and at the same time, the Legislature shall also apportion the Representation in the House of Representatives, and shall allow three (3) Representatives to each of the five most populous counties, and two (2) Representatives to each of the next eighteen more populous counties, and one Representative of each of the remaining counties of the State at the time of such apportionment. Should the Legislature fail to apportion the Representation in the Senate and in the House of Representatives, at any regular session of the Legislature at any of the times herein designated, it shall be the duty of the Legislature or Legislatures succeeding such regular session of the Legislature, either in special or regular session, to apportion the Representation in the Senate and in the House of Representatives as herein provided. The preceding regular Federal or regular State census, which ever shall have been taken nearest any apportionment of Representatives in the Senate and in the House of Representatives, shall control in making any such apportionment. In the event the Legislature shall fail to reapportion the representation in the Legislature as required by this amendment, the Governor shall (within thirty days after the adjournment of the regular session), call the Legislature together in extraordinary session to consider the question of reapportionment and such extraordinary session of the Legislature is hereby mandatorily required to reapportion the representation as required by this amendment before its adjournment (and such extraordinary session so called for reapportionment shall not be limited to expire at the end of twenty days or at all, until reapportionment is affected, and shall consider no business other than such reapportionment).

Senator Sanchez moved that the remarks of Senator Fraser (31st Dist.) be spread upon the Journal.

Which was agreed to and it was so ordered.

Senator Ausley arose to a point of personal privilege and addressed the Senate as follows:

Mr. President and fellow Senators:

To say that this is a North Florida-South Florida fight appears to me to be a superficial analysis of the real issue. The principle involved is a much deeper one than that. For it to be said that the Senators from the Northern part of the State are unfair also appears to me to disregard all of the facts of the situation.

In my short time in the Legislature I certainly could not with candor say that the Senators from the Southern part of the State have been unfair to the Northern part of the State on any issue. In fact the very reverse seems to be true. You have been eminently fair, generous and unselfish. By the same token I challenge anyone to point to the record of the Senators from the Northern part of the State and to show one instance where they have not been equally fair in dealing with the problems of Southern Florida. The bugaboo of sectionalism is in my opinion just a myth. True, the voting power in the Senate lies in the Northern part of the State, while the voting power in the House lies in the Southern part of the State, but in the use of that power neither section can rightfully accuse the other of abusing it to the detriment of the other. In fact the overwhelming majority of the Legislature appears to be united on the proposition of advancing the welfare of the whole State.

The real principle at issue appears to me to revolve around the very foundation upon which the bicameral system of representation is based. We can profit by reviewing the proceedings of the Constitutional Convention at which the Constitution of the United States was drafted. I quote from Volume 23 of the Ghent Edition of The History of Nations:

"The rock upon which the convention came near splitting was the question of representation. The group of delegates representing the larger States won its first victory when it was decided that the Congress should consist of two houses instead of one. This party then insisted that the States should be represented in both houses in proportion to population; while the smaller States contended with the same insistence for equal representation in both. 'There is no more reason,' said a delegate from one of the smaller States, 'why a large State should have more votes in the legislature than that a large man should

have more votes than a small one.' Without equality of representation, the smaller States would be tyrannized over by the larger ones; it was their only weapon of defense. On the other hand, Madison, Wilson, King and others pointed out with convincing logic the injustice of allowing one State with a population sixteen times as large as that of its neighbor no more representatives in the national legislature. For a long time both parties held out, but finally the convention came to the scheme proposed by Sherman and Ellsworth, by which the representation was to be popular in the lower branch and by States in the upper. Known as the Connecticut Compromise, this famous arrangement saved the convention from dissolution and made the Constitution a possibility and a success. Thus it was agreed that each State should have two senators in the upper branch and one representative in the lower house for every 30,000 of its population. As an illustration of the practical operation of the rule of apportionment today it may not be out of place to note that while the States of New York and Nevada, with populations of 7,000,000 and 42,000 respectively, have equal representation in the Senate, New York's representation in the lower house is thirty-seven times as great as that of Nevada."

In the Epic of America by James Truslow Adams he makes this comment on the Connecticut compromise:

"One destined to perpetuate and emphasize the question of States rights."

In short the principle of bicameral representation seems to be that the House shall be apportioned on a population basis and the members elected for a short term, while the Senate shall be apportioned on a geographical basis and the members elected for a longer term.

That the theory and spirit which pervaded the Constitutional Convention in Philadelphia has also guided the thinking in our State on this subject is easily ascertainable by a review of the history of Florida.

Meeting as we are in the Centennial year of Florida's statehood, it is appropriate that we review for a moment some of the history of this State.

At the time of Statehood, most of the population of the State was in middle Florida and nearly all of it between Pensacola and St. Augustine. The big counties were Leon, Gadsden, Jackson, Jefferson and Madison. The little counties of southern Florida, such as Dade and Hillsborough, formed an alliance with the northeastern counties and the counties of far western Florida to curb the voting power of the middle Florida counties. This alliance continued for many years and resulted in provisions, never materially changed in form and effect, which now limit the representation of the former little counties grown big. (Florida Highways Centennial Ed. June, 1945) Every apportionment made in the Senate from 1945 until the shift in population in recent years was made so as to protect the little counties of Southern and far Western Florida. That strong voting strength in the Senate lies in Western Florida is due to the efforts of the then small, but now large counties, to curb the voting strength of middle Florida.

Never in the history of this State has the representation of the Senate been based on population. The representation has always been on a geographical basis and I submit that by providing a check through the years against any one section gaining control in both houses the interests of the State as a whole have been thereby advanced.

As to the issue before us: It is true that the 1924 Amendment to the State Constitution (Section 3 of Article 7) requires that the Legislature "shall apportion the representation in the Senate, and shall provide for 38 Senatorial Districts, such Districts to be as nearly equal in population as practicable" but the Legislature is the judge as to what is practicable. Certainly geographical problems must be taken into account—historical and traditional ties should be considered and proper balances should be maintained.

Under the 38 limitation it is my belief that the apportionment in the Senate is now as practicable as possible and in this I believe a large majority of the Senate concurs. If there are areas that need representation the only answer is by way of a Constitutional Amendment increasing the limitation.

It is hoped that we can unite on a fair Constitutional Amendment and then with our eyes to the future look forward to a unified Florida with all sections continuing to work toward the main objective, that is, the welfare and progress of the whole State.

Senator Riddle moved that the foregoing remarks made by Senator Ausley be spread upon the Journal.

Which was agreed to and it was so ordered.

SENATE BILLS ON SECOND READING

S. B. No. 1-X—A bill to be entitled An Act to apportion the representation of the State of Florida in the House of Representatives of the State of Florida; imposing certain duties upon the Governor of the State of Florida and the Commissioner of Agriculture of the State of Florida in connection therewith.

Was taken up in its order.

Senator Beacham moved that the rules be waived and Senate Bill No. 1-X be read the second time by title only.

Which was agreed to by a two-thirds vote.

And Senate Bill No. 1-X was read the second time by title only.

Senator Beacham moved that the rules be further waived and Senate Bill No. 1-X be read the third time in full and put upon its passage.

Which was agreed to by a two-thirds vote.

And Senate Bill No. 1-X was read the third time in full.

Upon the passage of Senate Bill No. 1-X the roll was called and the vote was:

Yeas—14.

Mr. President	Bryant	King 7th	Sheldon
Barringer	Carroll	King 27th	Sturgis
Baynard	Coleman 13th	Mathews	
Beacham	Johnson	Moon	

Nays—21.

Ausley	Coleman 28th	Johns	Shands
Black	Davis	Lewis	Thomas
Boyle	Fraser 29th	Lindler	Wilson
Brackin	Fraser 31st	Perdue	
Branch	Gray	Riddle	
Clarke	Griner	Sanchez	

So Senate Bill No. 1-X failed to pass.

S. B. No. 2-X—A bill to be entitled An Act to apportion the representation of the State of Florida in the Senate of the State of Florida.

Was taken up in its order.

Senator Beacham moved that the rules be waived and Senate Bill No. 2-X be read the second time by title only.

Which was agreed to by a two-thirds vote.

And Senate Bill No. 2-X was read the second time by title only.

Senator Carroll offered the following amendment to Senate Bill No. 2-X:

In Section 2, (typewritten bill) insert the following: Thirty-Third District—Okeechobee and Osceola Counties; Thirty-Seventh District—Seminole and Brevard Counties; Twelfth District—Indian River, St. Lucie and Martin Counties.

Senator Carroll moved the adoption of the amendment.

Upon which a roll call was demanded.

Upon the adoption of the amendment offered by Senator Carroll to Senate Bill No. 2-X, the roll was called and the vote was:

Yeas—14.

Mr. President	Boyle	Johnson	Sheldon
Barringer	Bryant	King 7th	Sturgis
Baynard	Carroll	Mathews	
Beacham	Coleman 13th	Moon	

Nays—20.

Ausley	Davis	Lewis	Thomas
Black	Fraser 29th	Lindler	Wilson
Brackin	Fraser 31st	Perdue	
Branch	Gray	Riddle	
Clarke	Griner	Sanchez	
Coleman 28th	Johns	Shands	

Which was not agreed to, so the amendment failed of adoption.

Senator Beacham moved that the rules be further waived and Senate Bill No. 2-X be read the third time in full and put upon its passage.

Which was agreed to by a two-thirds vote.

And Senate Bill No. 2-X was read the third time in full.

Senator Beacham moved that the further consideration of Senate Bill No. 2-X be informally passed.

Upon which a roll call was demanded.

Upon the adoption of the motion made by Senator Beacham the roll was called and the vote was.

Yeas—13.

Mr. President	Boyle	Johnson	Sturgis
Barringer	Bryant	King 7th	
Baynard	Carroll	Mathews	
Beacham	Coleman 13th	Moon	

Nays—21.

Ausley	Davis	Lewis	Sheldon
Black	Fraser 29th	Lindler	Thomas
Brackin	Fraser 31st	Perdue	Wilson
Branch	Gray	Riddle	
Clarke	Griner	Sanchez	
Coleman 28th	Johns	Shands	

Which was not agreed to so the motion failed of adoption.

The question recurred on the passage of Senate Bill No. 2-X. Upon the passage of Senate Bill No. 2-X the roll was called and the vote was:

Yeas—8.

Mr. President	Baynard	Coleman 13th	King 7th
Barringer	Beacham	Johnson	Mathews

Nays—26.

Ausley	Clarke	Johns	Shands
Black	Coleman 28th	Lewis	Sheldon
Boyle	Davis	Lindler	Sturgis
Brackin	Fraser 29th	Moon	Thomas
Branch	Fraser 31st	Perdue	Wilson
Bryant	Gray	Riddle	
Carroll	Griner	Sanchez	

So Senate Bill No. 2-X failed to pass.

EXPLANATION OF VOTE

The following Explanation of Vote on the passage of Senate Bill No. 2-X was filed with the Secretary:

I vote "NO". It seems the only method that is practical to re-apportion the Senate is by Constitutional Amendment.

RAYMOND SHELDON
34th Senatorial District.

Senator Gray moved that a committee be appointed to escort Honorable J. Frank Adams, former member of the Senate from the 25th Senatorial District, to a seat on the rostrum.

Which was agreed to.

And the President appointed Senator Gray as the Committee.

Senator Mathews moved that the rules be waived and when the Senate adjourns it recess until 3:00 o'clock P. M. this day.

Which was not agreed to.

Senator Sheldon moved that the rules be waived and the hour of adjournment be extended fifteen (15) minutes.

Which was agreed to by a two-thirds vote and it was so ordered.

S. B. No. 3-X—A bill to be entitled An Act to apportion the representation of the State of Florida in the Senate of the State of Florida.

Was taken up in its order.

Senator Baynard moved that the rules be waived and Senate Bill No. 3-X be read the second time by title only.

Which was agreed to by a two-thirds vote.

And Senate Bill No. 3-X was read the second time by title only and placed on the Calendar of Bills on Third Reading.