## COMMITTEE MEETING EXPANDED AGENDA

### REAPPORTIONMENT

**Senator Gaetz, Chair**  
**Senator Margolis, Vice Chair**

<table>
<thead>
<tr>
<th>TAB</th>
<th>BILL NO. and INTRODUCER</th>
<th>BILL DESCRIPTION and SENATE COMMITTEE ACTIONS</th>
<th>COMMITTEE ACTION</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Timeline for redistricting in 2011-2012.</td>
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<tr>
<td>2</td>
<td>Introduction to redistricting law.</td>
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<tr>
<td>3</td>
<td>Introduction to redistricting technology.</td>
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</table>
Timeline for redistricting in 2011-2012

The Florida Senate
Committee on Reapportionment
December 9, 2010
Cornerstone of representative democracy...

- Elections are the cornerstone of a representative democracy.

- Redistricting ensures that citizens have:
  - Equal representation in the U.S. House of Representatives, state senate, and state house;
  - Equal opportunity to elect representatives they choose.
Census Day: April 1, 2010

- **U.S. Constitution, Art. I, Sec. 2,** establishes that apportionment of the House of Representatives based on a national census. First census in 1790.
Reapportionment...

- “Apportionment” or “reapportionment” refers to the allocation of seats among units, such as the allocation of congressional seats among the states or legislative seats among counties.

- **Method Equal Proportions.**
Florida delegation in U.S. House of Representatives
New York delegation in U.S. House of Representatives
Redistricting…

- The U.S. Constitution requires states to periodically redraw electoral districts to account for population shifts.
- “Redistricting” is the process of adjusting electoral district boundaries, usually in response to census results.
- District boundaries determine which voters can take part in electing a representative.
Florida’s growth not uniform

- Different areas experience different rates of population growth.

- Areas that grow *faster* than the state average entitled to more representation.

- Conversely, areas that grow *slower* than the state average lose representation.

- Even where a district’s population grows at same rate as state average, district boundaries may change.
Florida Congressional Districts 2002-2012
Florida Senatorial Districts 2002-2012
Florida House Districts 2002-2012
Population per district in Florida…

* Assumptions: 2010 population of 18.9 million; 27 congressional districts
Timeline: 2010 Census

- April 1, 2010 – U.S. Census
- December 31, 2010 – Apportionment of U.S. House of Representatives
Spring 2011
Build databases & software

• April 1, 2011 – Redistricting data (see, http://www.census.gov/rdo/)

• June 2011 – SF1 data (sex, age, group quarters)

• June 2011 – District Builder online for Senators and public
Summer & fall 2011
Interim Meetings

• Precedents:
  • Public hearings during summer and fall of 2011 (see, http://www.flsenate.gov/senateredistricting/archives.cfm)
  • Interim Committee meetings starting in September 2011.
January 10, 2012
Regular session convenes

- The regular session in 2012 convenes 8 weeks earlier than normal (January 10, 2012; see, Ch. 2010-91, Laws of Florida).

* Precedents: January 14, 1992, and January 22, 2002
Spring 2012

Legal reviews

- Florida Supreme Court
  - Within 15 days, Attorney General petitions for declaratory judgment.
  - Within 30 days thereafter, Supreme Court enters its judgment.

- Section 5 preclearance.
  - Department of Justice issues determination with 60 days.
Within 30 days, governor reconvenes legislature in 30-day special apportionment session.

During the 30-day special apportionment session, the legislature shall adopt a joint resolution apportioning the state into senate and house districts.

Within 15 days, Attorney General petitions the Supreme Court to determine the validity of plan(s).

Within 5 days, governor reconvenes legislature in 15-day extraordinary apportionment session.

Within 15 days, Attorney General petitions the Supreme Court to determine the validity of plan(s).

Within 60 days of petition, Supreme Court makes apportionment.

At the regular session in the second year following the decennial census, the legislature shall adopt a joint resolution apportioning the state into senate and house districts.

Plan(s) valid

Joint resolution adopted

Within 15 days, Attorney General petitions the Supreme Court to determine the validity of plan(s).

Plan(s) NOT valid

Joint resolution NOT adopted

Within 30 days, Supreme Court enters its judgment

Within 30 days, Supreme Court enters its judgment

Plan(s) valid

Joint resolution takes effect.

Plan(s) NOT valid

Joint resolution NOT adopted

Within 15 days…

Within 5 days…

Attorney General petitions Supreme Court to apportion legislative districts.

Within 60 days of petition, Supreme Court makes apportionment.
June 18-22, 2012
Qualifying

• Plans must be enacted, approved, and precleared prior to qualifying dates for federal or state office (June 18-22, 2012; see, FLA. STAT. § 99.061(1) and (9)).
Federal & state qualifying
White on green = Mail overseas ballots; White on blue = Election day.
Redistricting

- In 2011, the United States Census Bureau will release population data from the 2010 Census.
- Changes in population and residency patterns will require the Legislature to redraw districts.
  - Florida is likely to gain one or two congressional districts.
- Districts that gained population will shrink, while districts that lost population will grow in size.
Constitutional Authority

- The Legislature draws congressional districts pursuant to Article I, Section 4 of the U.S. Constitution:
  - “The . . . Manner of holding Elections for . . . Representatives, shall be prescribed in each State by the Legislature thereof . . . .”
- The Legislature draws state legislative districts pursuant to Article III, Section 16 of the Florida Constitution:
  - “The Legislature . . . shall apportion the state . . . into not less than thirty nor more than forty consecutively numbered senatorial districts . . . and into not less than eighty nor more than one hundred twenty consecutively numbered representative districts . . . .”
Procedure

- Congressional redistricting plans:
  - Gubernatorial veto
  - No automatic judicial review

- State legislative redistricting plans:
  - Passed by joint resolution
  - No gubernatorial veto
  - Automatic review by the Florida Supreme Court
Concepts and Definitions

- Reapportionment: the allocation of congressional seats among the several states.
- Redistricting: the creation of new district boundaries.
- Single-Member District: a district that elects one member.
- Multi-Member District: a district that elects more than one member.
Concepts and Definitions

- Traditional Redistricting Principles
  - Contiguity
  - Compactness
  - Respect for Local Boundaries
  - Respect for Communities of Interest
  - Preservation of the Cores of Existing Districts
Concepts and Definitions

- Ideal Population: the average district population (determined by dividing the statewide population by the number of districts)
- Overall Range: the variance between the most populous and least populous districts (determined by dividing the difference between their populations by the ideal population)
- Voting-Age Population (VAP): the population that has attained eighteen years of age
Majority-Minority District: a district in which a minority group comprises a majority of the population.

Access District (a.k.a. Influence District): a district in which a minority group, though not a majority, plays a substantial role in the electoral process.

Coalition District: a district in which a minority group, though not a majority, is able to elect its candidate of choice with the concurring votes of another minority group.

Crossover District: a district in which a minority group is not a majority, but is usually able to elect its preferred candidate with concurring votes of white voters.
United States Constitution

- One Person, One Vote
- Racial Gerrymandering
- Partisan Gerrymandering
One Person, One Vote

- To ensure an equally weighted vote, districts must consist of populations as nearly equal as practicable.

- *Congressional districts* must achieve precise mathematical equality, with two exceptions:
  1. Exact equality is impossible despite a good-faith effort.
     - With new technology, this exception is nearly obsolete.
     - In Florida:
       - 3 congressional districts have populations of 639,296.
       - 22 congressional districts have populations of 639,295.
One Person, One Vote

2. Small variances are necessary to achieve some legitimate, consistently applied state objective
   • State objectives recognized as legitimate:
     • Compactness
     • Respect for Municipal Boundaries
     • Preservation of the Cores of Existing Districts
   • Courts will consider:
     • The Size of the Deviation
     • The Importance of the State Objective
     • The Consistency With Which the Objective Is Pursued
     • The Availability of Alternatives
One Person, One Vote

- In *Abrams v. Johnson*, 521 U.S. 74 (1994), an overall range of 0.35 percent was upheld chiefly in deference to the state’s unique interest in respect for county boundaries.

- In *West Virginia Civil Liberties Union v. Rockefeller*, 336 F. Supp. 2d 395 (S.D. W. Va. 1972), an overall range of 0.78 percent was upheld in light of the state’s requirement that districts be compact.

- But in *Karcher v. Daggett*, 462 U.S. 725 (1983), an overall range of 0.69 percent (3,674 people) was not justified by a legitimate state objective.
One Person, One Vote

- *State legislative districts* need not achieve precise mathematical equality, but only substantial equality
  - Reasonable variances that result from a rational state policy (such as contiguity, compactness, or respect for the boundaries of political subdivisions) may be upheld
  - An overall range of less than 10 percent is constitutional absent proof of arbitrariness or discrimination
    - In *Larios v. Cox*, 300 F. Supp. 2d 1320 (N.D. Ga. 2004), an overall range of 9.98 percent was invalid because deviations were designed to benefit one party and some incumbents
One Person, One Vote

- An overall range of more than 10 percent was:
  - Upheld in *Mahan v. Howell*, 410 U.S. 315 (1973), where an overall range of 16.4 percent was the smallest possible consistent with respect for local boundaries.
  - Invalid in *Connor v. Finch*, 431 U.S. 407 (1977), where overall ranges of 16.5 and 19.3 percent were greater than necessary to ensure adherence to local boundaries.

<table>
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<tr>
<th></th>
<th>2002 House Districts</th>
<th>2002 Senate Districts</th>
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<tbody>
<tr>
<td>Ideal Population</td>
<td>133,186</td>
<td>399,559</td>
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<td>Most Populous District</td>
<td>135,043</td>
<td>399,606</td>
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<tr>
<td>Least Populous District</td>
<td>131,310</td>
<td>399,488</td>
</tr>
<tr>
<td>Overall Range</td>
<td>2.79 percent</td>
<td>0.03 percent</td>
</tr>
</tbody>
</table>
Racial Gerrymandering

- Equal Protection ensures that, absent justification, government will treat similarly situated people equally.
  - The courts are especially intolerant of differential treatment based on race.
- If race is the “predominant motive” and traditional, race-neutral principles are subordinated to race, the district will be subject to strict scrutiny.
  - Motive can be proven by:
    - Direct evidence of legislative purpose, or
    - Circumstantial evidence (district shape and demographics).
Racial Gerrymandering

- A district motivated predominantly by race must be narrowly tailored to achieve a compelling interest.
  - Two interests have been recognized as possibly compelling:
    1. Eradication of the effects of racial discrimination.
       - The discrimination must be identified with specificity.
       - There must be a strong basis in evidence that remedial action is necessary.
    2. Compliance with the Voting Rights Act of 1965 (the “VRA”).
       - The Supreme Court has assumed—but has never decided—that compliance with the VRA is a compelling interest.
       - If it is, the district must be reasonably necessary under a constitutional reading and application of the VRA.
Partisan Gerrymandering

- In 1986, the U.S. Supreme Court ruled that maps drawn to secure a partisan advantage are subject to challenge under the Equal Protection Clause.
- The Court, however, has never announced a standard by which such claims can be resolved.
- In 2004, four Justices found no “judicially discoverable or manageable standards” for partisan gerrymandering claims, and opined that courts should not hear them.
Federal Statutes

- Section 5 of the VRA. 42 U.S.C. § 1973c.
- No Multi-Member Congressional Districts. 2 U.S.C. § 2c.
The Voting Rights Act

- The VRA was enacted in 1965 to combat discriminatory practices in voting and elections and to enhance minority registration and participation.

- **Section 2**
  - Permanent
  - Applies nationwide

- **Section 5**
  - Temporary
  - Applies to “covered jurisdictions”
Section 2 of the VRA

• Section 2 was designed to protect minority voters from practices that improperly weaken, or “dilute,” minority voting strength.

  • **Cracking**: the division of a compact minority population into various districts so that it forms a majority in none

  • **Packing**: the over-concentration of minority voters into a small number of districts, limiting minority voting strength

<table>
<thead>
<tr>
<th>Example</th>
<th>Minority VAP</th>
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</thead>
<tbody>
<tr>
<td>District 1</td>
<td>20%</td>
</tr>
<tr>
<td>District 2</td>
<td>20%</td>
</tr>
<tr>
<td>District 3</td>
<td>20%</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Example</th>
<th>Minority VAP</th>
</tr>
</thead>
<tbody>
<tr>
<td>District 1</td>
<td>90%</td>
</tr>
<tr>
<td>District 2</td>
<td>30%</td>
</tr>
</tbody>
</table>
Section 2 of the VRA

- Section 2 protects any group of minority voters:
  1. That meets all “Gingles” preconditions:
     A. It is geographically compact.
     B. It is politically cohesive.
     C. It is sufficiently numerous to form the majority of a district.
     D. Its candidates are usually defeated by a bloc-voting majority.
  2. And whose members, in the totality of circumstances, have less opportunity to participate in the political process and elect representatives of their choice.
Section 2 of the VRA

- Section 2 requires the creation of single-member districts in which the protected minority group has an “effective voting majority.”

- Notable cases:
  - *Bartlett v. Strickland*, 129 S. Ct. 1231 (2009): concluded that Section 2 does not protect minority groups that are too small to comprise a numerical majority in a single-member district.
Section 5 of the VRA

- Section 5 prohibits all changes in voting procedures that:
  1. Worsen the position of racial minorities; or
  2. Were enacted with a discriminatory purpose.

- **Covered Jurisdictions:** Section 5 applies only to particular jurisdictions designated by the U.S. Department of Justice.
  - In Florida, Section 5 applies to Collier, Hardee, Hendry, Hillsborough, and Monroe Counties.

- **Preclearance:** Before any change in voting procedures may be enforced in a covered jurisdiction, it must be approved by a federal District Court or the Department of Justice.
Section 5 of the VRA

How is retrogression measured?

In *Georgia v. Ashcroft*, 539 U.S. 461 (2003), the Court permitted states to balance various considerations:

- The strength and number of safe minority districts.
- The strength and number of minority influence districts.
- The protection of minority incumbents.
- The support or opposition of minority leaders.

In 2006, Congress amended Section 5 to overrule *Ashcroft*.

- Now, the focus of Section 5 is performing districts—districts in which minorities have the ability to elect their preferred candidates.
- Other considerations can no longer compensate for a reduction in the number of performing districts within a covered jurisdiction.
Section 5 of the VRA

  - Federal interference
  - Unequal treatment of states
  - Outdated selection of covered jurisdictions
- Two challenges to the constitutionality of Section 5 are pending in federal District Court.
Florida Constitution

- State Legislative Redistricting:
  - Article III, Section 16
  - Article III, Section 21 (Amendment 5)

- Congressional Redistricting:
  - Article III, Section 20 (Amendment 6)
Article III, Section 16

- State legislative districts must be contiguous.
  - The territory of a district may not be separated by the territory of another district—but it may be separated by a body of water.
  - Senate District 27, which is separated by Lake Okeechobee, was upheld in 2002:
Article III, Section 16

- Florida House: 80 and 120 districts.
- Florida Senate: 30 and 40 districts.
- State legislative districts:
  - Must be consecutively numbered.
  - May overlap or even consist of identical territory.
    - Florida has not created multi-member districts since 1972.
Amendments 5 and 6

- Voters adopted Amendments 5 and 6.
- Amendments 5 and 6 create two tiers of standards.
  - When in conflict, first-tier standards supplant second-tier standards.
  - Within each tier, standards are assigned no order of priority.
Amendments 5 and 6

- **First-Tier Standards:**
  - **Incumbents**
    - No district shall be drawn with the intent to favor an incumbent.
    - No district shall be drawn with the intent to disfavor an incumbent.
    - No apportionment plan shall be drawn with the intent to favor an incumbent.
    - No apportionment plan shall be drawn with the intent to disfavor an incumbent.
  - **Political Parties**
    - No district shall be drawn with the intent to favor a political party.
    - No district shall be drawn with the intent to disfavor a political party.
    - No apportionment plan shall be drawn with the intent to favor a political party.
    - No apportionment plan shall be drawn with the intent to disfavor a political party.
Amendments 5 and 6

Racial Minorities

- Districts shall not be drawn with the intent of denying the equal opportunity of racial minorities to participate in the political process.
- Districts shall not be drawn with the intent of abridging the equal opportunity of racial minorities to participate in the political process.
- Districts shall not be drawn with the result of denying the equal opportunity of racial minorities to participate in the political process.
- Districts shall not be drawn with the result of abridging the equal opportunity of racial minorities to participate in the political process.
- Districts shall not be drawn to diminish the ability of racial minorities to elect representatives of their choice.
Amendments 5 and 6

• Language Minorities
  • Districts shall not be drawn with the intent of denying the equal opportunity of language minorities to participate in the political process.
  • Districts shall not be drawn with the intent of abridging the equal opportunity of language minorities to participate in the political process.
  • Districts shall not be drawn with the result of denying the equal opportunity of language minorities to participate in the political process.
  • Districts shall not be drawn with the result of abridging the equal opportunity of language minorities to participate in the political process.
  • Districts shall not be drawn to diminish the ability of language minorities to elect representatives of their choice.

• Contiguous Territory
Amendments 5 and 6

- Second-Tier Standards
  - Districts shall:
    - Be as nearly equal in population as practicable.
    - Be compact.
    - Where feasible, utilize existing political and geographical boundaries.
Public Records Act

“The following public records are exempt from inspection and copying: . . . A draft, and a request for a draft, of a reapportionment plan or redistricting plan and an amendment thereto. Any supporting documents associated with such plan or amendment until a bill implementing the plan, or the amendment, is filed.” § 11.0431(2)(e), Fla. Stat. (2010).
Technology deliverables

• Applications.
  • Building districts.
  • Processing plans.
  • Viewing/comparing plans.

• Data.
  • Show information about areas…
    [e.g., value ramps, data labels, identify tool]
  • “Real time” information about districts as they are built.
  • Detailed information about proposed plans.
    [e.g., 252 distinct population categories versus 5 in FREDs.]
Technology will be used to...

- Model districts.
- Evaluate districts.
- Challenge districts.
- Defend districts.
1980s: Adding machines and hand-drawn maps
1990s: A New Paradigm

- Map and statistical data integrated into a single GIS interface.
- Cutting edge technology.

- Cutting edge technology.
2000: Better, cheaper, faster

- Decentralized deployment.
- Focus on speed and cost.
- Lower cost of entry, broad participation.
- Software distributed to schools and libraries.
Electronic mapping now is commonplace

- Web applications like Google Maps and Bing.
- GPS devices.
- Elevated public expectations.
Data sets are huge and dynamic

- P.L. 94-171.
- SF1.
- American Communities Survey.
- Registered voters by address.
- Election results by precinct.
2010: Google Map-like Web app

- Lowest cost of entry.
- Public access to rich data and ability to model districts with standard Internet browsers.
- www.fl senate.gov.
Requirements…

• Broad public participation, minimal training, focused functionality, and intuitive interface.

• Easy to deploy, scale, and patch.

• Easy to update data.

• Works with multiple clients (PCs and Macs).

• “Simplest thing that can possibly work.”
Keep it simple…

- Perfection is achieved, not when there is nothing more to add, but when there is nothing left to take away.

Antoine de Saint Exupéry
Evaluate alternatives…

- Purchase COTS (commercial off-the-shelf).
- Reuse FREDs 2000 (VB/MapObjects).
- Recode FREDs 2000 in ArcObjects.
- Develop open source desktop application.
- Develop ArcIMS/database web application.
- Develop ArcGIS Server web application.
- Develop open source web application.
Web app advantages

• Best for public accessibility.

• Best for transparency.

• Best for delivering vast amounts of demographic data.

• Best for data updates and patches.

• Best for supporting multiple clients.
Web app challenges

• Security.

• Scalability and performance.

• User training and support.
Open source advantages

• Free.
• Unlimited deployments.
• No license manager.
• Simple technology.
• Good developer community support.
• Third-party support available.
Open source challenges

- Support not included with software.
- Limited documentation, samples, and examples.
- Much smaller developer base.
- No customer support.
Evolution of District Builder

- **District Browser**
Evolution of District Builder

• District Explorer version 1
Simple interface...
Simple reports...

**Print Reports:**

Select the type of report you want to create and click on the Print button.

- District Details Report (eight districts per page).
- District Details Report (one district per page).
- District Summary Report.
- District By County Summary Report.
- District by County Population Shares.
- Compare Plans Report (shares of population).
- Compare Plans Report (shares of voter registration).
- Compare Plans Report (shares of votes cast).
Simple maps...

District Builder Map Form

Use this form to specify a map for printing.

- The area and layers come from your current "Build Plan" map image.
- The image is resized to fit your page size, page orientation, and "Fit Current Map Image" selections.
- The map image is delivered as a PDF document.
- Use PDF reader tools on your computer to open, navigate, print, or save the map.

Map Size:
- Letter (8.5 x 11 inches; ~200 KB)
- Tabloid (11 x 17 inches; ~250 KB)
- Arch D (24 x 36 inches; ~500 KB)
- Custom 30 x 36 inches (~550 KB)
- Custom 36 x 36 inches (~600 KB)
- Arch E (36 x 48 inches; ~700 KB)
- Arch E1 (30 x 42 inches; ~500 KB)
- Custom 36 x 60 inches (~800 KB)
- Custom 42 x 60 inches (~1000 KB)

Map Orientation:
- Portrait
- Landscape

Fit Current Map Image to Page:
- Preserve area (expand map area to fill page; scale and details may change)
- Preserve scale (extend map area to fill page keeping same scale and details)

Map Title:
My Custom Map (Up to 30 characters)

Map Subtitle:
From The FL Senate District Builder (Up to 40 characters)

Optional Map Elements:
- Map legend (in upper right of map)
**Exports: Assignment files**

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... One record for each unit of geography (compressed)

... One record for each Census block
Section 2. Division of state into congressional districts.—The state is divided into 26 congressional districts, the same to be serially numbered, to be designated by such numbers. . . .

(2) District 2 is composed of:

Processing plans…

• When a Senator submits a redistricting plan for public review, an automatic process will generate bill language, maps, statistics, DOJ export, and District Builder export.

• Documents will be published on www.flsenate.gov.

• Plans will be accessible in District Builder and District Explorer.
Public access…

- User accounts required for District Builder. Anyone can register for a secure account.
- Sign-on *not* required for District Explorer; Version 2 (late fall 2011) will deliver:
  - Granular demographic data;
  - Interactive access to proposed plans, and
  - Easy access to PDF maps and reports for all submitted plans.
New features and data...

• Version 2 of District Builder and District Explorer will deliver additional features and data.

• As new datasets become available, they will be delivered to Senators and the public through District Builder, District Explorer, and www.flsenate.gov.
Deployment schedule...

- District Builder BETA will launch during the week of February 7, 2011.
- District Builder version 1 will launch in June 2011.
- District Builder version 2 will launch in late fall 2011.
- District Explorer version 2 will launch in late fall 2011.
Technology changes, but the task remains the same