

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCB SAC 23-02 Local Redistricting

SPONSOR(S): State Affairs Committee

TIED BILLS: **IDEN./SIM. BILLS:** SB 1080

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: State Affairs Committee	20 Y, 0 N	Poreda	Williamson

SUMMARY ANALYSIS

The United States Constitution delegates to each state, subject to congressional regulation, the authority to create districts within each state for the different levels of government. The Florida Constitution sets forth standards for congressional and state legislative redistricting.

The Florida Constitution grants the authority for home rule by counties and municipalities in Florida, including the authority for establishing the district boundaries for various governing bodies within each jurisdiction.

Pursuant to the Florida Constitution, each of the 67 counties in Florida constitutes a school district, which is divided into at least five, and as many as seven, district school board member residence areas.

Current law provides that county commission districts and school board member residence areas may only be modified in odd-numbered years and that boundary adjustments for county commission districts should ensure populations are as nearly equal in population as possible and that school board member residence areas should ensure populations are as nearly equal in population as practicable.

The bill prohibits county commission districts, municipal districts, and school board member residence areas from being drawn with the intent to favor or disfavor a candidate for the governing body or an incumbent member of the governing body based on the candidate's or incumbent's residential address. The bill also requires county commission board districts to be nearly equal in population as practicable.

The bill requires municipalities, from time to time, to fix the boundaries of their districts in order to keep them as nearly equal in proportion to their respective populations as practicable, and provides that they may only do so in odd-numbered years. Lastly, the bill also voids any local ordinance adopted by a county, municipality, or school district, on or after July 1, 2023, that conflicts with the provisions in the bill.

The bill may have an indeterminate, though likely insignificant, fiscal impact on local government expenditures. See Fiscal Comments.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Redistricting

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

United States Constitution

The U.S. Supreme Court has recognized that Art. I, ss. 2 and 4 of the U.S. Constitution delegates to state legislatures the exclusive authority to create congressional districts.¹ The Court has held that the Fourteenth Amendment requires seats in state legislatures be reapportioned on a population basis and that decennial reapportionment is a rational approach to readjust legislative representation to take into consideration population shifts and growth.²

In addition to state specific requirements to redistrict, states are obligated to redistrict based on the principle commonly referred to as “one-person, one-vote.”³ The requirement that each district be equal in population applies differently to congressional districts than to state legislative and other districts. The populations of congressional districts must achieve absolute mathematical equality, with no *de minimis* exception.⁴ For state legislative and other districts, the courts have permitted a greater population deviation amongst districts but they must be “substantially equal.”⁵

All political subdivisions are subject to federal requirements, which include equal population,⁶ compliance with the Voting Rights Act,⁷ and other applicable laws and judicial precedent.

Florida Constitution

The Florida Constitution establishes standards for congressional and state legislative redistricting.⁸ These standards are set forth in two tiers. The first tier prohibits the “intent to favor or disfavor a political party or an incumbent,” provides protections for racial and language minorities, and provides for contiguity.⁹ The second tier addresses equal population, compactness, and use of political and geographical boundaries.¹⁰

County Commissions

¹ *Grove v. Emison*, 507 U.S. 25, 34 (1993); *League of United Latin Am. Citizens v. Perry*, 548 U.S. 399, 416 (2006).

² *Reynolds v. Sims*, 377 U.S. 584 (1964).

³ *Baker v. Carr*, 369 U.S. 186 (1962).

⁴ *Kirkpatrick v. Preisler*, 394 U.S. 526, 531 (1969).

⁵ *Reynolds v. Sims*, 377 U.S. 533, 568 (1964).

⁶ Equal population is specifically mandated by the Florida Constitution and is based on the constitutional concept of “One Person, One Vote,” derived by the U.S. Supreme Court from the Equal Protection Clause of the U.S. Constitution. County commissioners in arranging their districts do not have to create districts with identical population so long as the population of each district is equal to that of the others as near as it is practicable to attain that end. *See Prince v. State ex rel. Williams*, 157 Fla. 103, 25 So. 2d 5 (1946); According to U.S. Supreme Court precedent, a redistricting plan presumptively meets the “One Person One Vote,” mandate so long as the “maximum deviation” does not exceed 10 percent. *See Chapman v. Meier*, 420 U.S. 1 (1975). Nevertheless, any significant deviation (even within the 10 percent overall deviation margin) must be “based on legitimate considerations incident to the effectuations of a rational state policy . . .” *See Reynolds v. Sims*, 377 U.S. 533, 579 (1964).

⁷ 52. U.S.C. 10301.

⁸ Article III, ss. 20 and 21, FLA. CONST.

⁹ Article III, ss. 20(a) and 21(a), FLA. CONST.

¹⁰ Article III, ss. 20(b) and 21(b), FLA. CONST.

The Florida Constitution establishes the authority for home rule by counties and municipalities in Florida. The Legislature is required to divide the state into counties.¹¹ Non-charter county governments may exercise those powers of self-government that are provided by general or special law.¹² Counties operating under a county charter have all powers of self-government not inconsistent with general law or special law approved by the vote of the electors.¹³

Each county, except as otherwise provided by county charter, is governed by a board of county commissioners composed of five or seven members serving staggered four-year terms,¹⁴ representing districts that are contiguous and as nearly equal in population as practicable, which are redrawn after each decennial census.¹⁵ One commissioner must reside in each district as provided by law. County commissioners are responsible for any boundary adjustments to ensure district populations are nearly equal as possible, but these changes may only be made during odd-numbered years.¹⁶

The default method created by general law provides that each county has a five-member commission, with a commissioner representing each district elected at-large by all voters of the county.¹⁷ Subject to approval in a referendum of the county's voters, the commission may alternatively be structured as:

- A five-member board, with each member elected only by the qualified electors who reside in the same county commission district as the commissioner; or
- A seven-member board, with five members elected only by the qualified electors who reside in the same county commission district as the commissioner and two members elected at-large.¹⁸

Most counties use the default five-member board, elected at-large method, while 20 counties elect commissioners from single-member districts and seven counties use the seven-member board system.¹⁹

Municipalities

The Florida Constitution provides that municipalities may be established or abolished and their charters amended pursuant to general or special law.²⁰ Under the Florida Constitution and Municipal Home Rule Powers Act,²¹ municipalities are constitutionally granted all government, corporate, and proprietary powers necessary to enable them to conduct municipal government, perform municipal functions, render municipal services and exercise any power for municipal purpose except as provided by law.²² Additionally, municipalities are constitutionally authorized to exercise any power for municipal purpose except when expressly prohibited by general or special law.²³

The Florida Constitution does not specify the form of organization for municipal government. The powers of municipal government may be given to a Mayor, elected as the top official, or vested in a city council or other such governing body chosen by the electors to make policy and decisions that impact the specific municipality.²⁴ The only constitutional requirement as to the municipal form of government is that each municipal legislative body must be elected.²⁵

¹¹ Article VIII, s. 1(a), FLA. CONST.

¹² Article VIII, s. 1(f), Fla. CONST.

¹³ Article VIII, s. 1(g), Fla. CONST.

¹⁴ Article VIII, s. 1(e), FLA. CONST.

¹⁵ *Id.*

¹⁶ Section 124.01(3), F.S.

¹⁷ Section 124.011(1), F.S.

¹⁸ Section 124.011(1)(a)-(b), F.S.

¹⁹ Fla. Association of Counties, County Districting, <https://www.fl-counties.com/county-districting> (last visited April 16, 2023). On November 8, 2022, the voters of Alachua County approved an amendment to s. 2.2(A) the county charter and now require county commissioners to be elected only by the qualified electors within their respective districts. *See* ch. 2022-257, Laws of Fla.

²⁰ Article VIII, s. 2, FLA. CONST.

²¹ Chapter 166, F.S.

²² 12A Fla. Jur. 2d Counties, Etc. s. 95.

²³ Article VIII, s. 2(b), FLA. CONST.

²⁴ 12A Fla. Jur. 2d Counties, Etc. s. 105.

²⁵ Article VIII, s. 2(b), FLA. CONST.

There is no state constitutional or specific state statute provision that addresses requirements for municipal redistricting, but some local municipal charters may have applicable provisions that must also be followed.

School Board Districts

Pursuant to the Florida Constitution, each of the 67 counties in Florida constitutes a school district.²⁶ School boards operate, control, and supervise all free public schools within the school district and determine the rate of school district taxes within constitutional limits.²⁷ The powers and duties of the district school board are further set forth in law.²⁸

School districts are divided into at least five, and as many as seven, district school board member residence areas.²⁹ Districts with more than five school board members can be divided into five district school board member residence areas, with the remaining two district school board members serving “at large,” or the school district can be divided into seven district school board member residence areas, one for each member.³⁰ A candidate for a district school board must be a resident of the district board member residence area from which the candidate seeks election at the time he or she qualifies.³¹

Members of the district school board can be elected by either school district-wide election or a single member district election.³² In a school district-wide election, all qualified electors in the school district must be entitled to vote for one candidate from each district school board member residence area.³³ In school districts with single-member representation, candidates for the school board are elected only by qualified electors who reside in the same school board residence area as the candidate.³⁴

Current law requires each school district be divided into school board member residence areas as nearly equal in population as practicable.³⁵ District school boards may make any change that they deem necessary in the boundaries of any district school board member residence area provided that such changes are made in odd-numbered years and do not affect the residence qualifications of any incumbent member during the term for which he or she is elected.³⁶

²⁶ Article IX, S. 4(a), FLA. CONST.; s. 1001.30, F.S. However, two or more contiguous counties, upon vote of the electors of each county pursuant to law, may be combined into one school district.

²⁷ Article IX, s. 4(b), FLA. CONST.

²⁸ Sections 1001.41 and 1001.42, F.S.

²⁹ Article IX, s. 4(a), FLA. CONST.; *see also* s. 1001.36(1), F.S.

³⁰ Section 1001.36(1)(a), F.S.

³¹ Section 1001.361, F.S.

³² In 43 school districts, school members are elected by a district-wide vote of electors. In 21 school districts, school board members are elected by a vote of the electors within their residence area (single member district election). In four school districts, some school board members are elected by a vote of the electors within their residence area and other are elected by a district wide vote. “2018-2019 Florida School Board Fast Facts,” Florida School Boards Association (2019), <https://fsba.org/wp-content/uploads/2019/08/2018-2019-School-Board-Fast-Facts.pdf> (last visited April 7, 2023).

³³ Section 1001.361, F.S.

³⁴ Section 1001.362(2), F.S.

³⁵ Section 1001.36(1), F.S.

³⁶ Section 1001.36(2), F.S.

Effect of the Bill

The bill prohibits county commission districts, municipal districts, and school board residence areas from being drawn with the intent to favor or disfavor a candidate for the governing body or an incumbent member of the governing body based on the candidate's or incumbent's residential address. The bill requires county commission districts to be nearly equal in population as practicable, instead of possible.

The bill requires municipalities, from time to time, to fix the boundaries of their districts in order to keep them as nearly equal in proportion to their respective populations as practicable, and provides that they may only do so in odd-numbered years.

The bill voids any local ordinance adopted by a county, municipality, or school district, on or after July 1, 2023, that conflicts with the provisions of the bill.

B. SECTION DIRECTORY:

Section 1 amends s.124.01, F.S., relating to the division of counties into districts; county commissioners.

Section 2 creates s.166.0321, F.S., relating to the division of municipalities into districts.

Section 3 amends s. 1001.36, F.S., relating to district school board member residence areas.

Section 4 provides an effective date of July 1, 2023.

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:

The bill prohibits counties, municipalities, and school districts from taking into account certain factors during redistricting. The costs associated with training and implementation regarding this provision will have an indeterminate, but likely insignificant, fiscal impact.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. The bill does not appear to require counties or municipalities to spend funds or take action requiring the expenditure of funds; reduce the authority that counties and municipalities have to raise revenues in the aggregate; or reduce the percentage of state tax shared with counties and municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

None.