

2892

2009-2010 Regular Sessions

I N   S E N A T E

March 5, 2009

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Introduced by Sen. BONACIC -- read twice and ordered printed, and when  
printed to be committed to the Committee on Judiciary

CONCURRENT RESOLUTION OF THE SENATE AND ASSEMBLY

proposing an amendment to article 3 of the constitution, in relation to  
creating a non-partisan apportionment commission

1     Section 1. Resolved (if the Assembly concur), That sections 4 and 5 of  
2 article 3 of the constitution be amended, and a new section 5-b be added  
3 to read as follows:  
4     S 4. Except as herein otherwise provided, the federal census taken in  
5 the year nineteen hundred thirty and each federal census taken decenni-  
6 ally thereafter shall be controlling as to the number of inhabitants in  
7 the state or any part thereof for the purposes of the apportionment of  
8 members of assembly and readjustment or alteration of senate and assem-  
9 bly districts next occurring, in so far as such census and the tabu-  
10 lation thereof purport to give the information necessary therefor. [The  
11 legislature] AN APPORTIONMENT COMMISSION, by law, shall provide for the  
12 making and tabulation by state authorities of an enumeration of the  
13 inhabitants of the entire state to be used for such purposes, instead of  
14 a federal census, if the taking of a federal census in any tenth year  
15 from the year nineteen hundred thirty be omitted or if the federal  
16 census fails to show the number of aliens or Indians not taxed. If a  
17 federal census, though giving the requisite information as to the state  
18 at large, fails to give the information as to any civil or territorial  
19 divisions which is required to be known for such purposes, the [legisla-  
20 ture] COMMISSION, by law, shall provide for such an enumeration of the  
21 inhabitants of such parts of the state only as may be necessary, which  
22 shall supersede in part the federal census and be used in connection  
23 therewith for such purposes. The [legislature] COMMISSION, by law, may  
24 provide in its discretion for an enumeration by state authorities of the  
25 inhabitants of the state, to be used for such purposes, in place of a  
26 federal census, when the return of a decennial federal census is delayed  
27 so that it is not available at the beginning of the regular session of

EXPLANATION--Matter in *ITALICS* (underscored) is new; matter in brackets  
[ ] is old law to be omitted.

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1 the legislature in the second year after the year nineteen hundred thir-  
2 ty or after any tenth year therefrom, or if an apportionment of members  
3 of assembly and readjustment or alteration of senate districts is not  
4 made at or before such a session. At the regular session in the year  
5 nineteen hundred thirty-two, and at the first regular session after the  
6 year nineteen hundred forty and after each tenth year therefrom the  
7 senate districts shall be readjusted or altered, but if, in any decade,  
8 counting from and including that which begins with the year nineteen  
9 hundred thirty-one, such a readjustment or alteration is not made at the  
10 time above prescribed, it shall be made at a subsequent session occur-  
11 ring not later than the sixth year of such decade, meaning not later  
12 than nineteen hundred thirty-six, nineteen hundred forty-six, nineteen  
13 hundred fifty-six, and so on; provided, however, that if such districts  
14 shall have been readjusted or altered by law in either of the years  
15 nineteen hundred thirty or nineteen hundred thirty-one, they shall  
16 remain unaltered until the first regular session after the year nineteen  
17 hundred forty. Such districts shall be so readjusted or altered that  
18 each senate district shall contain as nearly as may be an equal number  
19 of inhabitants, excluding aliens, and IN NO CASE SHALL A DISTRICT HAVE A  
20 POPULATION WHICH VARIES FROM THE AVERAGE POPULATION OF ALL DISTRICTS,  
21 UNLESS A POPULATION VARIANCE IS NECESSARY TO COMPLY WITH ONE OF THE  
22 OTHER STANDARDS SET FORTH IN THIS SECTION, AND IN NO CASE SHALL A SINGLE  
23 DISTRICT HAVE A POPULATION WHICH VARIES MORE THAN FIVE PERCENT FROM THE  
24 AVERAGE POPULATION OF ALL DISTRICTS. CONGRESSIONAL DISTRICTS SHALL HAVE  
25 POPULATIONS AS NEARLY EQUAL AS IS PRACTICABLE BASED ON THE POPULATION  
26 REPORTED IN THE FEDERAL CENSUS TAKEN IN EACH YEAR ENDING IN ZERO. NO  
27 DISTRICT FOR ELECTION OF MEMBERS TO THE UNITED STATES HOUSE OF REPRESen-  
28 TATIVES SHALL HAVE A POPULATION WHICH VARIES BY MORE THAN ONE PERCENT  
29 FROM THE AVERAGE POPULATION OF ALL CONGRESSIONAL DISTRICTS IN THE STATE.

30 SUCH DISTRICTS SHALL be in as compact form as practicable, and shall  
31 remain unaltered until the first year of the next decade as above  
32 defined[, and]. THE DISTRICTS OF A HOUSE SHALL BE AS COMPACT AS POSSI-  
33 BLE, CONSISTENT WITH THE STANDARDS LISTED ABOVE. IN NO CASE SHALL THE  
34 AGGREGATE LENGTH OF THE BOUNDARIES OF ALL THE DISTRICTS OF A HOUSE  
35 EXCEED BY MORE THAN FIVE PERCENT THE SHORTEST POSSIBLE AGGREGATE LENGTH  
36 OF ALL THE DISTRICTS UNDER ANY OTHER PLAN FOR THE SAME HOUSE THAT IS  
37 CONSISTENT WITH THE OTHER STANDARDS CONTAINED IN THIS CONSTITUTION. IN  
38 THE CASE OF A LOCAL POLITICAL SUBDIVISION THAT HAS A POPULATION SUFFI-  
39 CIENT TO ESTABLISH TWO OR MORE DISTRICTS FOR ANY ONE HOUSE, THE AGGRE-  
40 GATE LENGTH OF THE BOUNDARIES OF ALL DISTRICTS FOR THAT HOUSE ENTIRELY  
41 WITHIN THE POLITICAL SUBDIVISION SHALL NOT EXCEED BY MORE THAN FIVE  
42 PERCENT THE SHORTEST POSSIBLE AGGREGATE LENGTH OF THE DISTRICTS WITHIN  
43 THE POLITICAL SUBDIVISION UNDER ANY OTHER PLAN THAT IS CONSISTENT WITH  
44 THE OTHER STANDARDS CONTAINED IN THIS CONSTITUTION.

45 SUCH DISTRICTS shall at all times consist of contiguous territory, and  
46 no county shall be divided in the formation of a senate district except  
47 to make two or more senate districts wholly in such county. No town,  
48 except a town having more than a full ratio of apportionment, and no  
49 block in a city inclosed by streets or public ways, shall be divided in  
50 the formation of senate districts; nor shall any district contain a  
51 greater excess in population over an adjoining district in the same  
52 county, than the population of a town or block therein adjoining such  
53 district. Counties, towns or blocks which, from their location, may be  
54 included in either of two districts, shall be so placed as to make said  
55 districts most nearly equal in number of inhabitants, excluding aliens.

1 No county shall have four or more senators unless it shall have a full  
2 ratio for each senator. No county shall have more than one-third of all  
3 the senators; and no two counties or the territory thereof as now organ-  
4 ized, which are adjoining counties, or which are separated only by  
5 public waters, shall have more than one-half of all the senators.

6 The ratio for apportioning senators shall always be obtained by divid-  
7 ing the number of inhabitants, excluding aliens, by fifty, and the  
8 senate shall always be composed of fifty members, except that if any  
9 county having three or more senators at the time of any apportionment  
10 shall be entitled on such ratio to an additional senator or senators,  
11 such additional senator or senators shall be given to such county in  
12 addition to the fifty senators, and the whole number of senators shall  
13 be increased to that extent.

14 SUCH DISTRICTS SHALL NOT BE DRAWN FOR THE PURPOSE OF FAVORING ANY  
15 POLITICAL PARTY, INCUMBENT LEGISLATOR OR OTHER PERSON OR GROUP. IN  
16 PREPARING A PLAN, THE COMMISSION SHALL NOT CONSIDER OR TAKE INTO ACCOUNT  
17 THE ADDRESS OF INDIVIDUAL PERSONS, INCLUDING INCUMBENT LEGISLATORS. THE  
18 COMMISSION SHALL NOT USE THE POLITICAL AFFILIATIONS OF REGISTERED  
19 VOTERS, PREVIOUS ELECTION RESULTS, ADDRESSES OF INCUMBENT LEGISLATORS,  
20 ADDRESSES OF INDIVIDUAL PERSONS AND DEMOGRAPHIC INFORMATION OTHER THAN  
21 POPULATION HEAD COUNTS FOR THE PURPOSE OF FAVORING ANY POLITICAL PARTY,  
22 INCUMBENT LEGISLATOR OR OTHER PERSON OR GROUP.

23 SUCH DISTRICTS SHALL NOT BE DRAWN FOR THE PURPOSE OF DILUTING THE  
24 VOTING STRENGTH OF ANY LANGUAGE OR RACIAL MINORITY GROUP.

25 The senate districts, including the present ones, as existing imme-  
26 diately before the enactment of a law readjusting or altering the senate  
27 districts, shall continue to be the senate districts of the state until  
28 the expirations of the terms of the senators then in office, except for  
29 the purpose of an election of senators for full terms beginning at such  
30 expirations, and for the formation of assembly districts.

31 S 5. The members of the assembly shall be chosen by single districts  
32 and shall be apportioned by the [legislature] APPORTIONMENT COMMISSION  
33 at each regular session at which the senate districts are readjusted or  
34 altered, and by the same law, among the several counties of the state,  
35 as nearly as may be according to the number of their respective inhabit-  
36 ants, excluding aliens. Every county heretofore established and sepa-  
37 rately organized, except the county of Hamilton, shall always be enti-  
38 tled to one member of assembly, and no county shall hereafter be erected  
39 unless its population shall entitle it to a member. The county of Hamil-  
40 ton shall elect with the county of Fulton, until the population of the  
41 county of Hamilton shall, according to the ratio, entitle it to a  
42 member. But the legislature may abolish the said county of Hamilton and  
43 annex the territory thereof to some other county or counties.

44 The quotient obtained by dividing the whole number of inhabitants of  
45 the state, excluding aliens, by the number of members of assembly, shall  
46 be the ratio for apportionment, which shall be made as follows: One  
47 member of assembly shall be apportioned to every county, including  
48 Fulton and Hamilton as one county, containing less than the ratio and  
49 one-half over. Two members shall be apportioned to every other county.  
50 The remaining members of assembly shall be apportioned to the counties  
51 having more than two ratios according to the number of inhabitants,  
52 excluding aliens. Members apportioned on remainders shall be apportioned  
53 to the counties having the highest remainders in the order thereof  
54 respectively. No county shall have more members of assembly than a coun-  
55 ty having a greater number of inhabitants, excluding aliens.

1 The assembly districts, including the present ones, as existing imme-  
2 diately before the enactment of a law making an apportionment of members  
3 of assembly among the counties, shall continue to be the assembly  
4 districts of the state until the expiration of the terms of members then  
5 in office, except for the purpose of an election of members of assembly  
6 for full terms beginning at such expirations.

7 In any county entitled to more than one member, the board of supervi-  
8 sors, and in any city embracing an entire county and having no board of  
9 supervisors, the common council, or if there be none, the body exercis-  
10 ing the powers of a common council, shall assemble at such times as the  
11 [legislature] APPORTIONMENT COMMISSION making an apportionment shall  
12 prescribe[, and].

13 THE APPORTIONMENT COMMISSION SHALL divide such counties into assembly  
14 districts as nearly equal in number of inhabitants, excluding aliens, as  
15 may be, of convenient and contiguous territory in as compact form as  
16 practicable, AS REQUIRED UNDER THE PROVISIONS FOR SENATE APPORTIONMENT,  
17 each of which shall be wholly within a senate district formed under the  
18 same apportionment, equal to the number of members of assembly to which  
19 such county shall be entitled, and shall cause to be filed in the office  
20 of the secretary of state and of the clerk of such county, a description  
21 of such districts, specifying the number of each district and of the  
22 inhabitants thereof, excluding aliens, according to the census or  
23 enumeration used as the population basis for the formation of such  
24 districts; and such apportionment and districts shall remain unaltered  
25 until after the next reapportionment of members of assembly, except that  
26 the board of supervisors of any county containing a town having more  
27 than a ratio of apportionment and one-half over may alter the assembly  
28 districts in a senate district containing such town at any time on or  
29 before March first, nineteen hundred forty-six. In counties having more  
30 than one senate district, the same number of assembly districts shall be  
31 put in each senate district, unless the assembly districts cannot be  
32 evenly divided among the senate districts of any county, in which case  
33 one more assembly district shall be put in the senate district in such  
34 county having the largest, or one less assembly district shall be put in  
35 the senate district in such county having the smallest number of inhab-  
36 itants, excluding aliens, as the case may require. No town, except a  
37 town having more than a ratio of apportionment and one-half over, and no  
38 block in a city inclosed by streets or public ways, shall be divided in  
39 the formation of assembly districts, nor shall any districts contain a  
40 greater excess in population over an adjoining district in the same  
41 senate district, than the population of a town or block therein adjoin-  
42 ing such assembly district. Towns or blocks which, from their location  
43 may be included in either of two districts, shall be so placed as to  
44 make said districts most nearly equal in number of inhabitants, exclud-  
45 ing aliens. Nothing in this section shall prevent the division, at any  
46 time, of counties and towns and the erection of new towns by the legis-  
47 lature.

48 [An apportionment by the legislature, or other body, shall be subject  
49 to review by the supreme court, at the suit of any citizen, under such  
50 reasonable regulations as the legislature may prescribe; and any court  
51 before which a cause may be pending involving an apportionment, shall  
52 give precedence thereto over all other causes and proceedings, and if  
53 said court be not in session it shall convene promptly for the disposi-  
54 tion of the same.]

55 THE STATE SUPREME COURT SHALL HAVE ORIGINAL JURISDICTION OVER ANY  
56 APPORTIONMENT MATTER. THE COURT SHALL HAVE JURISDICTION TO COMPEL THE

1 COMMISSION OR ANY PERSON TO PERFORM DUTIES REQUIRED OF THE COMMISSION OR  
2 THAT PERSON BY THIS SECTION OR ANY LAW ENACTED PURSUANT TO THIS SECTION  
3 UPON PETITION OF ANY REGISTERED VOTER. ANY REGISTERED VOTER MAY FILE A  
4 PETITION WITH THE COURT CHALLENGING A PLAN OF THE COMMISSION WITHIN  
5 FORTY-FIVE DAYS OF THE ADOPTION OF A PLAN. THE COURT MAY CONSOLIDATE ANY  
6 OR ALL PETITIONS AND SHALL GIVE ALL PETITIONS REGARDING APPORTIONMENT  
7 PRECEDENCE OVER ALL OTHER MATTERS. THE COURT SHALL RENDER ITS DECISION  
8 WITHIN SIXTY DAYS AFTER A PETITION IS FILED. IF THE COURT FINDS THAT THE  
9 PLAN IS NOT CONSISTENT WITH THE REQUIREMENTS OF ANY FEDERAL OR STATE  
10 CONSTITUTIONAL OR STATUTORY PROVISION, THE COURT SHALL DECLARE THE PLAN  
11 INVALID IN WHOLE OR IN PART AND SHALL ORDER THE COMMISSION TO PREPARE A  
12 NEW PLAN WITHIN SIXTY DAYS.

13 A REAPPORTIONMENT PLAN SHALL BE IN FORCE UNTIL THE EFFECTIVE DATE OF A  
14 PLAN BASED UPON THE FOLLOWING FEDERAL CENSUS TAKEN IN A YEAR ENDING IN  
15 ZERO UNLESS MODIFIED PURSUANT TO COURT ORDER. A REAPPORTIONMENT PLAN  
16 SHALL NOT BE SUBJECT TO AMENDMENT, APPROVAL OR REPEAL BY INITIATIVE,  
17 REFERENDUM OR ACT OF THE LEGISLATURE.

18 THE LEGISLATURE MAY DEFINE BY LAW ANY OF THE STANDARDS ENUMERATED IN  
19 THIS SECTION AND MAY ESTABLISH BY LAW ADDITIONAL STANDARDS, NOT IN  
20 CONFLICT WITH THE CONSTITUTION OF THE UNITED STATES OR THIS CONSTITU-  
21 TION, DESIGNED TO GUARANTEE FAIR AND EFFECTIVE REPRESENTATION FOR ALL  
22 CITIZENS. NO LAW ENACTED UNDER THIS SECTION SHALL MODIFY A PLAN IN  
23 EFFECT AT THE TIME OF THE EFFECTIVE DATE OF THAT LAW.

24 S 5-B. IN EACH YEAR ENDING IN ZERO AND AT ANY OTHER TIME OF COURT  
25 ORDERED APPORTIONMENT, AN APPORTIONMENT COMMISSION SHALL BE ESTABLISHED  
26 TO PREPARE A REAPPORTIONMENT PLAN FOR STATE LEGISLATIVE AND CONGRESSION-  
27 AL DISTRICTS. THE COMMISSION SHALL CONSIST OF FIVE MEMBERS, NONE OF WHOM  
28 MAY BE PAST OR CURRENT PUBLIC OFFICIALS, NOR PAST OR CURRENT OFFICE  
29 HOLDERS IN ANY POLITICAL PARTY. THE TEMPORARY PRESIDENT OF THE SENATE,  
30 THE SPEAKER OF THE ASSEMBLY, THE MINORITY LEADER OF THE SENATE AND THE  
31 MINORITY LEADER OF THE ASSEMBLY SHALL EACH SELECT ONE MEMBER. THE FOUR  
32 MEMBERS SO SELECTED SHALL SELECT, BY A VOTE OF AT LEAST THREE MEMBERS, A  
33 FIFTH MEMBER WHO SHALL SERVE AS CHAIR. THE LEGISLATURE SHALL ESTABLISH  
34 BY LAW QUALIFICATIONS OF COMMISSIONERS AND PROCEDURES FOR THEIR  
35 SELECTION AND THE FILING OF VACANCIES. THE LEGISLATURE SHALL ESTABLISH  
36 BY LAW THE DUTIES AND POWERS OF THE COMMISSION AND SHALL APPROPRIATE  
37 FUNDS TO ENABLE THE COMMISSION TO CARRY OUT ITS DUTIES.

38 S 2. Resolved (if the Assembly concur), That the foregoing amendments  
39 be referred to the first regular legislative session convening after the  
40 next succeeding general election of members of the assembly, and, in  
41 conformity with section 1 of article 19 of the constitution, be  
42 published for 3 months previous to the time of such election.