

5271

2011-2012 Regular Sessions

I N A S S E M B L Y

February 15, 2011

Introduced by M. of A. GALEF, CLARK, SCHIMMINGER, PAULIN, LATIMER,
DINOWITZ, CASTRO, SPANO, SCHROEDER, CALHOUN, GIGLIO, FINCH -- Multi-
Sponsored by -- M. of A. BARCLAY, BURLING, BUTLER, CONTE, CORWIN,
CROUCH, DUPREY, JORDAN, KOLB, J. MILLER, MOLINARO, OAKS, RAIA,
REILICH, SAYWARD, TEDISCO, THIELE, TOBACCO -- read once and referred
to the Committee on Governmental Operations

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 Senate 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

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

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1 provide in its discretion for an enumeration by state authorities of the
2 inhabitants of the state, to be used for such purposes, in place of a
3 federal census, when the return of a decennial federal census is delayed
4 so that it is not available at the beginning of the regular session of
5 the legislature in the second year after the year nineteen hundred thir-
6 ty or after any tenth year therefrom, or if an apportionment of members
7 of assembly and readjustment or alteration of senate districts is not
8 made at or before such a session. At the regular session in the year
9 nineteen hundred thirty-two, and at the first regular session after the
10 year nineteen hundred forty and after each tenth year therefrom the
11 senate districts shall be readjusted or altered, but if, in any decade,
12 counting from and including that which begins with the year nineteen
13 hundred thirty-one, such a readjustment or alteration is not made at the
14 time above prescribed, it shall be made at a subsequent session occur-
15 ring not later than the sixth year of such decade, meaning not later
16 than nineteen hundred thirty-six, nineteen hundred forty-six, nineteen
17 hundred fifty-six, and so on; provided, however, that if such districts
18 shall have been readjusted or altered by law in either of the years
19 nineteen hundred thirty or nineteen hundred thirty-one, they shall
20 remain unaltered until the first regular session after the year nineteen
21 hundred forty. Such districts shall be so readjusted or altered that
22 each senate district shall contain as nearly as may be an equal number
23 of inhabitants, excluding aliens, and IN NO CASE SHALL A DISTRICT HAVE A
24 POPULATION WHICH VARIES FROM THE AVERAGE POPULATION OF ALL DISTRICTS,
25 UNLESS A POPULATION VARIANCE IS NECESSARY TO COMPLY WITH ONE OF THE
26 OTHER STANDARDS SET FORTH IN THIS SECTION, AND IN NO CASE SHALL A SINGLE
27 DISTRICT HAVE A POPULATION WHICH VARIES MORE THAN FIVE PERCENT FROM THE
28 AVERAGE POPULATION OF ALL DISTRICTS. CONGRESSIONAL DISTRICTS SHALL HAVE
29 POPULATIONS AS NEARLY EQUAL AS IS PRACTICABLE BASED ON THE POPULATION
30 REPORTED IN THE FEDERAL CENSUS TAKEN IN EACH YEAR ENDING IN ZERO. NO
31 DISTRICT FOR ELECTION OF MEMBERS TO THE UNITED STATES HOUSE OF REPRESENTATIVES
32 SHALL HAVE A POPULATION WHICH VARIES BY MORE THAN ONE PERCENT
33 FROM THE AVERAGE POPULATION OF ALL CONGRESSIONAL DISTRICTS IN THE STATE.
34 SUCH DISTRICTS SHALL be in as compact form as practicable, and shall
35 remain unaltered until the first year of the next decade as above
36 defined[, and]. THE DISTRICTS OF A HOUSE SHALL BE AS COMPACT AS POSSI-
37 BLE, CONSISTENT WITH THE STANDARDS LISTED ABOVE. IN NO CASE SHALL THE
38 AGGREGATE LENGTH OF THE BOUNDARIES OF ALL THE DISTRICTS OF A HOUSE
39 EXCEED BY MORE THAN FIVE PERCENT THE SHORTEST POSSIBLE AGGREGATE LENGTH
40 OF ALL THE DISTRICTS UNDER ANY OTHER PLAN FOR THE SAME HOUSE THAT IS
41 CONSISTENT WITH THE OTHER STANDARDS CONTAINED IN THIS CONSTITUTION. IN
42 THE CASE OF A LOCAL POLITICAL SUBDIVISION THAT HAS A POPULATION SUFFI-
43 CIENT TO ESTABLISH TWO OR MORE DISTRICTS FOR ANY ONE HOUSE, THE AGGRE-
44 GATE LENGTH OF THE BOUNDARIES OF ALL DISTRICTS FOR THAT HOUSE ENTIRELY
45 WITHIN THE POLITICAL SUBDIVISION SHALL NOT EXCEED BY MORE THAN FIVE
46 PERCENT THE SHORTEST POSSIBLE AGGREGATE LENGTH OF THE DISTRICTS WITHIN
47 THE POLITICAL SUBDIVISION UNDER ANY OTHER PLAN THAT IS CONSISTENT WITH
48 THE OTHER STANDARDS CONTAINED IN THIS CONSTITUTION.
49 SUCH DISTRICTS shall at all times consist of contiguous territory, and
50 no county shall be divided in the formation of a senate district except
51 to make two or more senate districts wholly in such county. No town,
52 except a town having more than a full ratio of apportionment, and no
53 block in a city inclosed by streets or public ways, shall be divided in
54 the formation of senate districts; nor shall any district contain a
55 greater excess in population over an adjoining district in the same
56 county, than the population of a town or block therein adjoining such

1 district. Counties, towns or blocks which, from their location, may be
2 included in either of two districts, shall be so placed as to make said
3 districts most nearly equal in number of inhabitants, excluding aliens.

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

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

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

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

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

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

47 The quotient obtained by dividing the whole number of inhabitants of
48 the state, excluding aliens, by the number of members of assembly, shall
49 be the ratio for apportionment, which shall be made as follows: One
50 member of assembly shall be apportioned to every county, including
51 Fulton and Hamilton as one county, containing less than the ratio and
52 one-half over. Two members shall be apportioned to every other county.
53 The remaining members of assembly shall be apportioned to the counties
54 having more than two ratios according to the number of inhabitants,
55 excluding aliens. Members apportioned on remainders shall be apportioned
56 to the counties having the highest remainders in the order thereof

1 respectively. No county shall have more members of assembly than a coun-
2 ty having a greater number of inhabitants, excluding aliens.

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

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

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

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

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

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

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

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

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