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Resolution Analysis
Legislative Service Commission

H.J.R. 13

126th General Assembly
(As Introduced)

Rep. DeWine

RESOLUTION SUMMARY

- Submits to the voters at the November 7, 2006, general election a proposal to revise the provisions of the Ohio Constitution regarding the apportionment of the state by changing the persons responsible for apportionment, revising the process and criteria for apportionment, and requiring Congressional districts to be adopted under that process.
- Specifies that the proposed constitutional changes take effect January 1, 2007, if adopted by a majority of electors voting on the proposal.
- Replaces the Apportionment Board with the Ohio Apportionment Commission, consisting of seven members, four of which must be appointed by the leaders in the General Assembly, and three of which must be appointed unanimously by the first four.
- Prohibits persons who have, within ten years, held or been a candidate for a state or federal office for which candidates may be nominated by political parties from being appointed to the Ohio Apportionment Commission.
- Prohibits members of the Ohio Apportionment Commission from being a candidate for the Ohio General Assembly at the first general election after the adoption of a new Congressional or General Assembly plan.
- Provides for the operation of the Ohio Apportionment Commission, including a timeline for the establishment of districts, requirements for the number of votes needed for certain actions, public input on apportionment plans, representation by the Attorney General, and appropriations by the General Assembly.

- Establishes standards for the creation of Congressional districts that generally parallel the requirements for establishing General Assembly districts, but require Congressional districts to be as close to the applicable ratio of representation as practicable.
- Requires any plan adopted by the Ohio Apportionment Commission to comply with all state and federal constitutional provisions, including those specifically dealing with the protection of minority voting rights.
- Changes the number of political subdivisions that may be divided in establishing General Assembly districts by permitting two political subdivisions to be divided per district instead of allowing one political subdivision to be divided between districts; limits the number of political subdivisions that may be divided per Congressional district to the smallest number necessary to achieve the required ratio of representation in Congress.
- Requires, to the extent that their formation does not conflict with other criteria, the Ohio Apportionment Commission to make its best efforts to maximize the number of competitive districts and establishes a process for determining whether districts are competitive.
- Eliminates existing district criteria that generally require, in the establishment of House of Representatives districts, (1) previous district boundaries to be maintained and (2) single districts to be formed in counties with a population of between 90% and 110% of the ratio of representation.
- Expands the prohibition against establishing General Assembly districts more than once a decade, unless ordered by a court, to apply to Congressional districts.
- Requires the Ohio Apportionment Commission to be convened to establish new districts if the existing district plan is determined to be invalid by an unappealed final order of a court of competent jurisdiction.
- Renumbers various apportionment provisions of the Ohio Constitution.

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CONTENT AND OPERATION

Background

Currently, Section 1 of Article XI of the Ohio Constitution provides for the establishment of an Apportionment Board that is responsible for the apportionment of the state for members of the General Assembly. The Board consists of the Governor, Auditor of State, Secretary of State, one person chosen by the Speaker of the House and the leader of the Senate of the political party of which the Speaker is a member, and one person chosen by the legislative leaders in the two houses of the major political party of which the Speaker is not a member. The Board must meet on a date designated by the Governor between August 1 and October 1 in each year ending in one. The Board's apportionment of the House and Senate districts must be published no later than October 5 of the year in which it is made.

The United States Constitution vests state legislatures with the authority to provide for the establishment of Congressional districts. Section 4 of Article I states that "[t]he Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof; but

the Congress may at any time by Law make or alter such Regulations, except as to Places of Choosing Senators." Accordingly, the General Assembly has established the current Congressional districts in Ohio by statute; the plan is contained in section 3521.01 of the Revised Code.

The Fourteenth Amendment to the United States Constitution provides, with respect to Congressional districts, that "Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed." The count is to be based on a census, which must be taken every ten years. A census is provided for in Section 2 of Article I of the United States Constitution, which states that "[t]he actual Enumeration shall be made within three Years after the first Meeting of Congress of the United States, and within every subsequent term of ten Years, in such Manner as they shall by Law direct." It should be noted, however, that the manner of drawing Congressional and state legislative districts, especially with respect to requirements of population, has become an area governed substantially by standards developed through cases decided by federal courts.

Persons responsible for apportionment

Overview

As previously mentioned, the Ohio Constitution currently requires the five-member Apportionment Board to meet between specified dates to establish General Assembly districts. The resolution abolishes the Apportionment Board and replaces it with the seven-member Ohio Apportionment Commission. The resolution requires the Ohio Apportionment Commission to apportion the state for both Congress and the General Assembly. (Proposed Article XI, Section 1(A), Ohio Constitution.)

Membership on the Ohio Apportionment Commission

Beginning with the year 2011, after February 1 but before March 1 of each year ending in the numeral "1," four members must be appointed to the Ohio Apportionment Commission in the following manner (proposed Article XI, Section 1(A), Ohio Constitution):

- (1) One member must be appointed by the Speaker of the Ohio House of Representatives;
- (2) One member must be appointed by the Minority Leader of the Ohio House of Representatives;
- (3) One member must be appointed by the President of the Ohio Senate;



(4) One member must be appointed by the Minority Leader of the Ohio Senate.

The resolution specifies that all meetings of the Commission must be open to the public. The Governor must give the four Commission members appointed by the leaders in the General Assembly, and the public, at least two weeks advance notice of date, time, and place of the first meeting of the Commission. The first meeting must be held after March 1 but before March 15 of the year ending in the numeral "1." At that first meeting, those four members must convene and select cochairpersons. The members must proceed with a process of appointing, by unanimous vote, the remaining three members of the Commission. If additional meetings are required for the process of selecting the three remaining Commission members, the Commission cochairpersons must call the meetings with at least two days prior notice. In selecting the three additional appointments to the Commission, the four members appointed by the leaders in the General Assembly are required to give due consideration to the diversity of the state. (Proposed Article XI, Section 1(B), Ohio Constitution.)

Vacancies on the Commission must be filled in the same manner as the original appointment not later than 30 days after the vacancy occurs (proposed Article XI, Section 1(I), Ohio Constitution). The resolution requires all appointments to the Commission to be made anew for each successive decennial apportionment of the state. Prior service on the Commission does not exclude a person from being appointed to and serving on the Commission (proposed Article XI, Section 1(J), Ohio Constitution).

During a Commission member's tenure on the Ohio Apportionment Commission, and during the ten year preceding appointment to the Commission, no Commission member is permitted to do either of the following (proposed Article XI, Section 1(C)(1), Ohio Constitution):

(1) Hold or have held a state or federal elective public office for which candidates may be nominated by political parties;

(2) Be or have been a candidate for a state or federal office for which candidates may be nominated by political parties.

Additionally, at the first general election after the adoption of a new Congressional plan or new General Assembly plan, no Commission member may



be a candidate for the Ohio General Assembly (proposed Article XI, Section 1(C)(2), Ohio Constitution).¹

Operation of the Ohio Apportionment Commission

Not later than May 1 of a year ending in the numeral "1," the Commission is required to convene, public notice being given, to establish a schedule that it determines appropriate to carry out its duties. Not later than October 1 of that year, the Commission must adopt the boundaries for each of the following (proposed Article XI, Section 1(D), Ohio Constitution):

- 99 House of Representatives districts;
- 33 Senate districts;
- The prescribed number of Congressional districts apportioned to Ohio pursuant to Section 2 of Article I of the United States Constitution.

As under the current constitutional apportionment process, the resolution requires the Governor to cause the apportionment plans to be published no later than October 5 of the year in which they are made, in the manner provided by law (proposed Article XI, Section 1(L), Ohio Constitution).

Unless otherwise specified, a simple majority of Commission members is required for any action by the Ohio Apportionment Commission. However, the affirmative vote of five of the seven Commission members, including at least one member of each political party appointed to the Commission by the General Assembly leaders and at least one of the three members not appointed to the Commission by the General Assembly leaders is required to either (1) adopt any plan or (2) change the definition of a "competitive district." (See "**District criteria**," below.) (Proposed Article XI, Section 1(E), Ohio Constitution.)

Under the resolution, the Commission must make the necessary provisions to allow for public input and to allow for any resident of Ohio to submit a Congressional plan or a General Assembly plan for consideration (proposed Article XI, Section 1(F), Ohio Constitution).

¹ *The United States Supreme Court, in U.S. Term Limits, Inc. v. Thornton (1995), 514 U.S. 779, held that states may not add qualifications for federal office to those specified in the United States Constitution. Pursuant to this decision, former Commission members may not be similarly prohibited from being a candidate for federal office at the first general election after a plan is adopted.*

The resolution makes the Attorney General responsible for defending a plan adopted by the members of the Commission in any legal case or lawsuit arising from the process established in the resolution. The General Assembly is responsible for making the appropriations it determines necessary in order for the Commission to perform its duties and to defend any lawsuit arising from the performance of its duties. (Proposed Article XI, Section 1(G) and (H), Ohio Constitution.)

After the Commission adopts a Congressional plan and a General Assembly plan and completes any necessary administrative functions, the cochairpersons of the Commission must jointly dissolve it (proposed Article XI, Section 1(K), Ohio Constitution).

Standards for representation

Section 2 of Article XI of the Ohio Constitution specifies the processes for determining the ratio of representation for House of Representatives districts and Senate districts.² Generally, the ratio of representation is determined by dividing the state's population, as determined by the federal decennial census, by the required number of districts. The resolution retains these processes and adds a similar process for determining the congressional ratio of representation. Under the resolution, the whole population of the state, as determined by the federal decennial census, must be divided by the number of Congressional districts apportioned to Ohio pursuant to Section 2 of Article I of the United States Constitution. The resulting quotient must be the ratio of representation in the Congress for the 10 years next succeeding the apportionment. (Proposed Article XI, Section 2, Ohio Constitution.)

After the ratio of representation is determined for each type of district, the resolution specifies the population requirements for each district type, based on the ratio of representation. As under the current constitutional provisions, the resolution generally requires the populations of House of Representatives districts and Senate districts to be substantially equal to the applicable ratio of representation, and in no event to contain a population of less than 95% nor more than 105% of the ratio of representation. The population percentages for House of Representatives districts may vary by more than the specified percentages in those instances where reasonable effort is made to avoid dividing a county in accordance with other districting criteria (see "*District criteria*," below). The resolution also establishes population requirements for Congressional districts. The population of each Congressional district must be as equal to the ratio of representation in the Congress as practicable. (Proposed Article XI, Section 3, Ohio Constitution.)

² *The "ratio of representation" is the target number of persons per district.*

Once the districts are established, each type of district is entitled to have a single person represent the district. Each Congressional district is entitled to a single representative in the United States House of Representatives in each Congress. The bill retains a parallel standard regarding House of Representatives and Senate districts. (Proposed Article XI, Section 4, Ohio Constitution.)

District criteria

Compactness and contiguity

Existing law requires every House of Representatives district to be compact and composed of contiguous territory. The boundary of each district must be a single nonintersecting continuous line. As much as possible, the boundaries of districts must be drawn as to delineate an area containing one or more whole counties. The resolution expands these criteria to apply to all General Assembly and Congressional districts. (Proposed Article XI, Section 6(A), Ohio Constitution.)

Constitutional requirements, including minority voting rights

The resolution requires any plan adopted by the Ohio Apportionment Commission to comply with all applicable Ohio and federal constitutional provisions, including, but not limited to, those dealing specifically with the protection of minority voting rights (proposed Article XI, Section 6(B), Ohio Constitution).

Preference for whole governmental units

Under existing law, if a district cannot be formed from a whole county or counties, the district must be formed by combining the areas of governmental units, giving preference, in order, to counties, townships, municipalities, and municipal wards. If those governmental units cannot be kept intact, existing law permits only one such unit to be divided between districts, giving preference for division, in order, to a township, a city ward, a city, and a village. Under the resolution, if those governmental units cannot be kept intact, generally only two such units may be divided per district, giving preference for division, in order, to a township, a contiguous municipality, and a village. In the case of congressional districts, more than two units may be divided per district, but not more than necessary to achieve the required ratio of representation in Congress. (Proposed Article XI, Section 6(C) and (D), Ohio Constitution.)

Competitiveness

The resolution establishes a new criterion for establishing district boundaries: competitiveness. Where their formation does not conflict with the

other principles established by the resolution, the Ohio Apportionment Commission is required to make its best efforts to maximize the number of competitive districts using the following criteria (proposed Article XI, Section 6(E), Ohio Constitution):

- The Commission must determine the three closest general elections by percentage for nonjudicial statewide or federal statewide office, including the elections of a President and Vice President of the United States, held in the three previous even-numbered years immediately preceding the year in which the Commission meets to adopt new plans, provided that the two partisan candidates received at least 95% of the total votes cast.
- Using the three closest elections selected under the previous paragraph, the Commission must determine the average partisan indexes for each proposed district by (1) taking the percentage of the vote received in the district for each of the two partisan candidates who received the highest vote totals (counting only the votes cast for those two partisan candidates), then (2) averaging together the three voting percentages for the candidates with the same partisan affiliation by dividing the sum of the percentages by the number "3" to yield the average partisan indexes for those districts.
- Unless the Ohio Apportionment Commission adopts a different definition, a "competitive district" is a district where the average partisan indexes are not more than 5% apart.

Elimination of existing district criteria

The resolution eliminates two criteria that are used to establish House of Representatives districts under existing law. Existing law specifies that, in making a new apportionment, district boundaries established by the preceding apportionment must be adopted to the extent reasonably consistent with the constitutional apportionment requirements. The resolution eliminates this requirement. As a result, prior district boundaries are not required, under the resolution, to be used as the basis for new apportionment plans. (Proposed Article XI, Section 6, Ohio Constitution.)

The resolution also eliminates an existing provision that authorizes whole-county House of Representatives districts to be created outside of the general 95% to 105% population variance. Existing law specifies that, where the population of a county is not less than 90% nor more than 110% of the ratio of representation in the House of Representatives, reasonable effort must be made to create a House of Representatives district consisting of the whole county. The resolution eliminates

this language, although it still permits a House of Representatives district to vary by more than the normal 5% above or below the ratio of representation where reasonable effort is made to avoid dividing a county. (Existing Article XI, Section 9, Ohio Constitution--*repealed by the resolution*, and Proposed Article XI, Section 3(B), Ohio Constitution.)

Establishment of new districts

The resolution generally retains the process by which House of Representatives and Senate districts are established using the required criteria (see "**District criteria**," above). Congressional districts, under the resolution, must be established so that they are as equal to the required ratio of representation as practicable, using the required criteria (see "**District criteria**," above). Congressional districts must be created in the following order to the extent that the order is consistent with the ratio of representation and required district criteria (proposed Article XI, Section 10, Ohio Constitution):

(1) The number of whole ratios of representation for a county must be determined by dividing the population of the county by the whole ratio of representation in the Congress;

(2) Proceeding in succession from the largest to the smallest, each county containing more than one whole ratio of representation must be divided into the appropriate number of Congressional districts. Any fraction of the county population in excess of a whole ratio of representation must be contained in one Congressional district by combining it with adjoining territory outside the county.

(3) The remaining territory of the state must be combined into Congressional districts.

Districts established pursuant to court order

The Constitution currently provides that district boundaries established pursuant to its requirements must not be changed until the ensuing federal decennial census and the ensuing apportionment, unless the apportionment plan is determined to be invalid by the Ohio Supreme Court or the United States Supreme Court. The resolution retains the requirement that General Assembly district boundaries generally be established no more than once per decade, unless the existing apportionment plan is determined to be invalid. The resolution expands this provision to apply to both General Assembly and Congressional districts. (Proposed Article XI, Sections 5 and 12, Ohio Constitution.)

The resolution changes the courts with jurisdiction to determine that an apportionment plan is invalid. Under existing law, a new apportionment plan may

be drawn at a time other than a year ending in the numeral "1" only if the Ohio Supreme Court or the United States Supreme Court determines that the existing plan is invalid. The resolution requires the Ohio Apportionment Commission to be convened and to determine a new plan of apportionment if the existing plan is determined to be invalid by an unappealed final order of a court of competent jurisdiction. The Supreme Court of Ohio, or an applicable federal court, has exclusive, original jurisdiction over cases arising under the resolution. Thus, the Commission would be reconvened, and a new apportionment plan determined, if the Ohio Supreme Court, or an applicable federal court, ruled the plan invalid and that order is not appealed. (Proposed Article XI, Sections 5 and 12, Ohio Constitution.)

If the Ohio Apportionment Commission is convened pursuant to a court order to adopt a new plan, the leaders in the General Assembly at the time must each make a new appointment to the Commission in the manner specified for original appointments. Those four members must select the remaining three members in the manner specified for those additional appointments. (Proposed Article XI, Section 5, Ohio Constitution.) As under existing law, the new plan must be determined in accordance with the provisions of the Constitution that are then valid (proposed Article XI, Section 12, Ohio Constitution).

Election schedule and effective date

The resolution submits the proposed constitutional changes to the voters of Ohio at the general election to be held on November 7, 2006. If adopted by a majority of electors voting on the proposal, it will take effect on January 1, 2007. (Effective date and repeal.) The first scheduled meeting of the Ohio Apportionment Commission would be in 2011, the first year ending in the numeral "1" after the proposal becomes effective.

Elimination of obsolete language

Section 14 of Article XI of the Ohio Constitution specifies the General Assembly districts that were in effect in Ohio until January 1, 1973. Since the time at which this language applied has passed, the resolution eliminates the language (existing Article XI, Section 14, Ohio Constitution--*repealed by the resolution*).

Relocation of provisions

In addition to the changes previously discussed, the resolution relocates numerous constitutional provisions. The following tables detail the structure of Article XI of the Ohio Constitution, as proposed by the resolution, and identify any provisions that are relocated by the resolution.

Article XI – As organized under the current Ohio Constitution

Prior citation	Topic	New citation
Art. XI, Section 1	Persons responsible for apportionment	<i>Unchanged</i>
Art. XI, Section 2	Determination of ratio of representation	<i>Unchanged</i>
<i>No provision</i>	Population of Congressional districts	Art. XI, Section 3(A)
Art. XI, Section 3	Population of House of Representatives districts	Art. XI, Section 3(B)
Art. XI, Section 4	Population of Senate districts	Art. XI, Section 3(C)
Art. XI, Section 5	Number of representatives per district	Art. XI, Section 4
Art. XI, Section 6	Districts created every 10 years	Art. XI, Section 5
<i>No provision</i>	Convening Ohio Apportionment Commission by court order	Art. XI, Section 5
Art. XI, Section 7	District criteria	Art. XI, Section 6
Art. XI, Section 8	Number of House districts in each county	Art. XI, Section 7
Art. XI, Section 9	Single county House districts contain 90-110% of ratio	<i>Repealed</i>
Art. XI, Section 10	Standards for House of Representatives districts	Art. XI, Section 8
Art. XI, Section 11	Standards for Senate districts	Art. XI, Section 9
<i>No provision</i>	Standards for Congressional districts	Art. XI, Section 10
Art. XI, Section 12	Assignment of Senate districts to current Senators	Art. XI, Section 11
Art. XI, Section 13	Judicial jurisdiction; district creation after invalidity	Art. XI, Section 12
Art. XI, Section 14	District boundaries until 1973	<i>Repealed</i>
Art. XI, Section 15	Severability	Art. XI, Section 13

Article XI – As organized under the resolution

New citation	Topic	Prior citation
Art. XI, Section 1	Persons responsible for apportionment	<i>Unchanged</i>
Art. XI, Section 2	Determination of ratio of representation	<i>Unchanged</i>
Art. XI, Section 3(A)	Population of Congressional districts	<i>No provision</i>
Art. XI, Section 3(B)	Population of House of Representatives districts	Art. XI, Section 3
Art. XI, Section 3(C)	Population of Senate districts	Art. XI, Section 4
Art. XI, Section 4	Number of representatives per district	Art. XI, Section 5
Art. XI, Section 5	Districts created every 10 years	Art. XI, Section 6
Art. XI, Section 5	Convening Ohio Apportionment Commission by court order	<i>No provision</i>
Art. XI, Section 6	District criteria	Art. XI, Section 7
Art. XI, Section 7	Number of House districts in each county	Art. XI, Section 8
<i>No provision</i>	Single county House districts contain 90-110% of ratio	Art. XI, Section 9
Art. XI, Section 8	Standards for House of Representatives districts	Art. XI, Section 10
Art. XI, Section 9	Standards for Senate districts	Art. XI, Section 11
Art. XI, Section 10	Standards for Congressional districts	<i>No provision</i>
Art. XI, Section 11	Assignment of Senate districts to current Senators	Art. XI, Section 12
Art. XI, Section 12	Judicial jurisdiction; district creation after invalidity	Art. XI, Section 13
<i>No provision</i>	District boundaries until 1973	Art. XI, Section 14
Art. XI, Section 13	Severability	Art. XI, Section 15

HISTORY

ACTION

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Introduced

05-09-06

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