



Ohio Legislative Service Commission

Resolution Analysis

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H.J.R. 15*

128th General Assembly
(As Reported by H. Elections and Ethics)

Reps. Letson and Garrison

RESOLUTION SUMMARY

- Submits to the voters at the May 4, 2010, special election a proposal to revise the process by which the Apportionment Board adopts General Assembly districts.
- Specifies that the proposed constitutional changes take effect January 1, 2011, if adopted by a majority of the electors voting on the proposal.
- Requires the Secretary of State to make available to the Apportionment Board and the public census data, political subdivision boundary information, and the statewide partisan index, which the Secretary of State is required to calculate, and which must be used in the development of apportionment plans.
- Requires the General Assembly to make appropriations to adequately fund the activities of the Apportionment Board and the Secretary of State's activities in support of the Board.
- Requires the Apportionment Board to administer a public competition to determine the House of Representatives district map and the Senate district map that comply, to the greatest extent, with the required apportionment criteria.
- Generally requires General Assembly districts maps to contain the number of House of Representatives districts and Senate districts that favor each political party represented in the state partisan index (the two parties receiving the highest number of votes in the closest three statewide races during the previous ten years) in the ratio reflected in that index.

* This analysis was prepared before the report of the House Elections and Ethics Committee appeared in the House Journal. Note that the list of co-sponsors and the legislative history may be incomplete.

- Specifies additional criteria that districts are required to meet, and a process for the Apportionment Board to identify which maps will be preferred over others, in evaluating proposed districts.
- Establishes the Apportionment Special Tribunal, composed of retired Ohio judges, to hear all cases and certified questions regarding apportionment, and specifies that the Ohio Supreme Court has no jurisdiction over apportionment.
- Prohibits the Apportionment Special Tribunal from ordering the establishment or implementation of any apportionment plan or district map that has not been approved by the Apportionment Board.
- Requires the General Assembly to make appropriations to adequately fund the activities of the Apportionment Special Tribunal and to make other laws to facilitate the operation of the Tribunal.

CONTENT AND OPERATION

Apportionment Board

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 Constitution currently requires the Board to meet on a date designated by the Governor between August 1 and October 1 in each year ending in the numeral 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 resolution retains the current membership of the Apportionment Board and specifies that the Board must decide all matters coming before it by a majority vote of its members present at any meeting. Under the resolution, members of the Board may be represented by their designees at any meeting of the Board. The resolution changes the time at which the Apportionment Board must meet. The Governor, who presides at the meetings, must convene the Board not later than the third Tuesday in January in each year ending in the numeral one. The Governor must give one week's advance public notice of the date, time, and place of each meeting. The resolution permits the Board to adopt procedural rules for its operation.

The Board must establish the apportionment of the state by October 1 of the year in which it convenes. Once the apportionment plan is established, the resolution requires the Governor to cause it to be published as provided by law. Upon the publication of the apportionment, the Board must adjourn until the next year ending in the numeral "1" or until convened by order of the Apportionment Special Tribunal (see "**Apportionment Special Tribunal**," below). (Ohio Constitution Article XI, Section 1.)

District population requirements

The Ohio Constitution currently requires the population of both House of Representatives districts and Senate districts to be not less than 95% and not more than 105% of the applicable ratio of representation. However, an exception is made if a county is between 90% and 110% of the ratio of representation in the House of Representatives. In that case, a single district may be made of that county. The resolution eliminates this exception and instead requires the population of all districts to be between 95% and 105% of the applicable ratio of representation. (Ohio Constitution Article XI, Section 2(B) and (C).)

The resolution relocates, but otherwise does not change, a provision that entitles each House of Representatives district to one representative and each Senate district to one Senator in each General Assembly. (Ohio Constitution Article XI, Section 2(D).)

District standards

Specific redistricting criteria

The Ohio Constitution currently contains numerous requirements that districts are required to meet. For example, districts currently must be drawn in a manner that delineates an area containing whole counties. If whole counties cannot be maintained, current constitutional language specifies the order in which political subdivisions may be divided, and the number of districts between which political subdivisions may be divided. Current constitutional provisions also require districts to be compact and require new district plans to use existing district boundaries when possible.

The resolution eliminates nearly all of the specific district criteria currently appearing in Article XI. Under the resolution, apportionment plans are required to meet only the following three criteria (Ohio Constitution Article XI, Section 3):

- Each House of Representatives district must be composed of contiguous territory, and the boundary of each district must be a single nonintersecting continuous line.

- Each Senate district must be composed of three contiguous House of Representatives districts.
- Any island must be part of the district that is geographically closest to the island.

Additionally, any map adopted by the Apportionment Board is required to comply with all applicable federal constitutional provisions and all applicable federal statutory provisions, including, but not limited to, those dealing specifically with the protection of minority voting rights (Ohio Constitution Article XI, Section 5(N)).

Partisan distribution of districts

In addition to the specific criteria previously mentioned, the resolution generally requires district plans to establish districts that favor political parties in the same ratio in which those parties have received votes in close elections conducted over the previous ten years (Ohio Constitution Article XI, Section 5(D)).

Secretary of State's duties

The resolution imposes several duties on the Secretary of State related to the partisan distribution of districts. By April 1 of each year ending in "1," the Secretary of State must do all of the following:

- Gather and make available to the public, in a form that facilitates data analysis and the drawing of legislative districts, thorough and accurate census data and information detailing the boundaries of political subdivisions and election precincts.
- Establish and make public the statewide partisan index, which must be calculated as follows: (1) Using the results of all nonjudicial Ohio statewide state or federal elections in the ten years immediately preceding the year of an apportionment, the Secretary of State must determine the three elections that had the smallest percentage margin between the highest and second highest nominees of a political party. If in any of the three elections the percentages of the two highest nominees of political parties do not equal 100%, the remaining percentage for that election must be attributed to the parties of the two highest nominees in the ratio of the percentages received by those nominees. (2) The Secretary of State then must add together the percentage of the vote received by the candidates with the same political party affiliation for each of those three elections and divide each of those totals by three to establish the statewide partisan index for those political parties.

- Establish and make public the precinct partisan index of each election precinct. To establish the precinct partisan index for each precinct in the state, the Secretary of State must add together the percentage of the vote received in that precinct by the political party nominees used in determining the statewide partisan index. If in any of the three elections the percentages of those nominees do not equal 100%, the remaining percentage for those nominees in those elections must be attributed to the parties of those nominees in the ratio of the percentages received by those nominees. The Secretary of State must then divide the percentage totals by three to establish the precinct partisan index for each political party in each precinct in the state.

The resolution also requires the Secretary of State to provide to the Apportionment Board, and make public, any additional data or election information the Apportionment Board requests in the form requested.

The General Assembly is required to make appropriations to adequately fund the activities of the Apportionment Board and the Secretary of State's activities in support of the Board, including, but not limited to, the provision of funds for equipment and staff. (Ohio Constitution Article XI, Section 4.)

Public apportionment competition

The resolution requires the Apportionment Board to administer a public competition to determine the House of Representatives district map and the Senate district map that comply, to the greatest extent, with the criteria set forth below (see "**Evaluation of proposed maps**," below). Those maps must be adopted by the Apportionment Board as the General Assembly maps until the next apportionment and must be effective for the next subsequent General Assembly.

Any resident of Ohio is permitted, under the resolution, to submit one proposed House of Representatives district map and one proposed Senate district map in the manner prescribed by the Apportionment Board. Plans must be kept confidential by the Board and its staff until the deadline for plan submission, at which time all properly submitted plans must be made public. The public competition for the establishment of Senate districts must not commence until the Board has established the House of Representatives districts.

Proposed maps, to the greatest extent possible, are required to contain the number of House of Representatives districts and Senate districts that favor each political party represented in the state partisan index in the ratio reflected by that index. The resolution prohibits a House of Representatives district map from being adopted if

the map fails to include the number of districts favoring each political party in the ratio reflected by the state partisan index. Similarly, the resolution prohibits a Senate district map from being adopted if the map fails to include the number of districts favoring each political party in the ratio reflected by the state partisan index unless doing so is impossible, in which case the only Senate map that may be adopted by the Apportionment Board is one that includes the number of districts favoring each political party in a ratio as close to that reflected by the state partisan index as is possible. (Ohio Constitution Article XI, Section 5(A), (B), (C), (D)(1), and (M).)

Evaluation of proposed maps

For the purpose of evaluating proposed maps, the district partisan index must be calculated for each proposed district in each map submitted in the competition that establishes maps favoring each political party in the ratio established by the statewide partisan index.¹ The district partisan index must be calculated by first adding together, for each of the elections represented in the calculation of the statewide partisan index, the number of votes cast in each precinct in a proposed district for the nominees of each of the political parties in those elections. The district-wide vote totals for the nominee of each party in each of the three elections must be used to determine the district partisan ratio for each of those three elections by determining, from all votes cast for either such party in each election, the percentage of votes cast for the nominee of each party in each election. The average of those three percentages for each party establish the district partisan index for each party in each proposed district.

In evaluating proposed maps, the Apportionment Board is required to determine the extent to which the district partisan index of each proposed House of Representatives district and each proposed Senate district varies from the statewide partisan index. In particular, for each map, the Board must determine the number of districts in which the district partisan index varies from the state partisan index by:

- (1) Less than 1%;
- (2) An amount equal to or greater than 1% and less than 3%;
- (3) An amount equal to or greater than 3% and less than 5%;
- (4) An amount equal to or greater than 5% and less than 10%; and
- (5) An amount equal to or greater than 10%.

¹ In calculating any of the required percentages or indices, the resolution requires all calculations to be made to within one one-thousandth of one percent (Ohio Constitution Article XI, Section 5(O)).

Any map, with respect to the categories (2) through (5) established above, that has an equal number of proposed districts in which the district partisan index favors each political party which is represented in the state partisan index in each of those categories will be deemed a better map than one which has an unequal number of proposed districts in which the district partisan index favors each political party in each of those categories.

If two or more maps are presented that equally meet the previous criteria, any map with a greater number of proposed districts in which the district partisan indices are between 49% and 51% will be preferred over other such maps.

If no map is presented that has an equal number of proposed districts favoring each political party, or if two or more maps have the same number of district partisan indices between 49% and 51%, the map with closest to an equal number of proposed districts in which the district partisan index favors each political party in each of the categories (2) through (5) will be deemed a better map than one which has a greater variance from an equal number of proposed districts in which the district partisan index favors each political party in those categories.

If two or more maps are presented that equally meet the previous criteria, any map with a greater number of proposed districts in which the district partisan indices are between 49% and 50% will be deemed a better map than other such maps.

If two or more maps are presented that equally meet the previous criteria, the map that preserves the greatest percentage of undivided municipalities will be deemed a better map than one that preserves fewer undivided municipalities.

If two or more maps are presented that equally meet the previous criteria, the map with the lowest compactness index will be deemed a better map than others with a higher compactness index. The compactness index will be calculated by averaging the compactness of all proposed districts in the map. The compactness of each proposed district will be determined by dividing the area of the proposed district by its perimeter.

If two or more maps are presented that equally meet the previous criteria, the Apportionment Board must randomly select the map to be adopted from among those maps that equally meet that criteria. (Ohio Constitution Article XI, Section 5(D)(2), (E), (F), (G), (H), (I), (J), (K), and (L).)

District numbering

The resolution requires the Apportionment Board to determine the appropriate district numbers for House of Representatives districts and Senate districts, seeking, in its sole and exclusive discretion, to assign numbers that will minimize voter confusion.

The resolution retains an existing constitutional provision that specifies what district a Senator whose term of office is not expiring is required to represent after the apportionment. (Ohio Constitution Article XI, Section 6.)

Apportionment Special Tribunal

The Ohio Constitution currently grants exclusive, original jurisdiction over apportionment cases to the Supreme Court of Ohio. The resolution eliminates this provision and instead grants exclusive, original jurisdiction over apportionment cases and questions of law to a newly established Apportionment Special Tribunal. A decision of the Apportionment Special Tribunal is final and is not appealable.

The Apportionment Special Tribunal is composed of the following:

- Two retired Ohio judges appointed by the Governor;
- Two retired Ohio judges appointed by the first of the following legislative leaders that is a member of a political party represented in the state partisan index that is not the political party of which the Governor is a member: the President of the Ohio Senate; the Speaker of the Ohio House of Representatives; the Minority Leader of the Ohio Senate; or the Minority Leader of the Ohio House of Representatives.
- One retired Ohio judge, who presides over the Tribunal, who must be appointed by the previous four judges.

The retired Ohio judges must have voluntarily retired from judicial service more than one year before their appointment to the Apportionment Special Tribunal. A new Apportionment Special Tribunal must be appointed in each year ending in "1." Members of the Tribunal are eligible for reappointment.

The Apportionment Special Tribunal is required to operate using the rules of the Ohio Supreme Court, except as clearly inapplicable, and must have all of the constitutional and statutory authority that the Ohio Supreme Court would have if it had jurisdiction to review apportionment cases and certified questions. However, at no time is the Tribunal or any other court permitted to order the establishment or implementation of any apportionment plan or the establishment or implementation of any House of Representatives or Senate district boundary map that has not been approved by the Apportionment Board.

The resolution requires the General Assembly to make appropriations to adequately fund the activities of the Apportionment Special Tribunal, including, but not limited to, the provision of funds for equipment and staff. The General Assembly also

must make other laws to facilitate the operations of the Tribunal. (Ohio Constitution Article XI, Section 7.)

Relocation of legislators

The resolution relocates, but does not substantively change, a current constitutional provision that requires an apportionment plan to allow 30 days for persons to change residence in order to be eligible for election under the plan (Ohio Constitution Article XI, Section 8).

HISTORY

ACTION	DATE
Introduced	02-01-10
Reported, H. Elections & Ethics	---

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