



Ohio Legislative Service Commission

Resolution Analysis

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Am. Sub. S.J.R. 5* 128th General Assembly (As Reported by H. Elections and Ethics)

Sens. Husted, Patton, Niehaus, Wagoner, Goodman, Widener, Schuring, Stewart, Schaffer, Seitz, Grendell, Faber, Jones

RESOLUTION SUMMARY

- Submits to the voters at the May 3, 2011, special election a proposal to revise the provisions of the Ohio Constitution regarding the redistricting of the state by changing the persons responsible for redistricting, revising the process and criteria for redistricting, and requiring Congressional districts to be adopted under that process.
- Specifies that the proposed constitutional changes take effect immediately, if adopted by a majority of electors voting on the proposal.
- Replaces the Apportionment Board with the Ohio Redistricting Commission, consisting of the Governor, the Auditor of State, the Secretary of State, the Speaker of the House, the Minority Leader of the House, the President of the Senate, and the Minority Leader of the Senate.
- Provides for the operation of the Ohio Redistricting Commission, including a timeline for the establishment of districts, requirements for the number of votes needed for certain actions, public comment on redistricting 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.

* 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.

- Requires any plan adopted by the Ohio Redistricting Commission to comply with all state and federal constitutional provisions and all applicable federal statutory provisions, including those specifically dealing with the protection of minority voting rights.
- Changes the number of political subdivisions that may be divided in establishing House of Representatives 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 the Ohio Redistricting 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 but permits districts to be made of a whole county in such a circumstance.
- 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 Redistricting 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 redistricting 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 Chusing [sic] 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 redistricting

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 Redistricting Commission. The resolution requires the Ohio Redistricting Commission to redistrict the state for both Congress and the General Assembly. (Proposed Article XI, Section 1(A), Ohio Constitution.)

Membership on the Ohio Redistricting Commission

The Ohio Redistricting Commission consists of the Governor, the Auditor of State, the Secretary of State, the Speaker of the House, the Minority Leader of the House, the President of the Senate, and the Minority Leader of the Senate.

The resolution specifies that all meetings of the Commission must be open to the public. The Governor must give the Commission members 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 June 1 but before June 16 of the year ending in the numeral "1." At that first meeting, those four members must convene, select co-chairpersons, at least one of whom must be a member of a political party other than the largest one represented on the Commission, and adopt procedural rules for the Commission's operation. (Proposed Article XI, Section 1(B), Ohio Constitution.)

Operation of the Ohio Redistricting Commission

Not later than July 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 Constitution of the United States.



Immediately after the adoption of a redistricting plan, the Commission is required to prepare a report that explains the basis on which the Commission made its decisions to achieve the districting criteria specified in the Ohio Constitution.

After the Commission adopts each plan, the Commission is required to file that plan with the Secretary of State. Upon filing with the Secretary of State, the plan must become effective. The resolution requires the Secretary of State to cause the redistricting 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(C) and (I), Ohio Constitution).

Adoption of redistricting plans

Unless otherwise specified, a simple majority of Commission members is required for any action by the Ohio Redistricting Commission. However, the affirmative vote of five of the seven Commission members, including at least two members of the Commission who are members of a political party other than the largest one represented on the Commission is required to adopt any plan. (Proposed Article XI, Section 1(D), Ohio Constitution.)

Under the resolution, the Commission must make the necessary provisions to allow for public comment at public hearings and in writing and to allow for any resident of Ohio to submit a Congressional plan or a General Assembly plan for consideration. The Commission is required to develop and implement a plan to make available to the public all relevant data and information necessary for the submission of a potential Congressional plan and a potential General Assembly plan by any resident of Ohio. (Proposed Article XI, Section 1(E), Ohio Constitution.)

Procedures following the adoption of the required redistricting plans

The resolution makes the Attorney General responsible for defending a plan adopted by the members of the Commission in any legal action 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(F) and (G), Ohio Constitution.)

After the Commission adopts a Congressional plan and a General Assembly plan and completes any necessary administrative functions, the co-chairpersons of the Commission must jointly dissolve it. Upon the dissolution of the Commission, the co-chairpersons are required to arrange for all records of the Commission to be delivered to the Ohio Historical Society for preservation. (Proposed Article XI, Section 1(H), 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.¹ 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 ten years next succeeding the redistricting. (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 if the population of a county is between 90% and 110% of the ratio of representation, and that county is designated as a single district (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.)

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

Constitutional requirements, including minority voting rights

The resolution requires any plan adopted by the Ohio Redistricting Commission to comply with all applicable Ohio and federal constitutional provisions and all applicable federal statutory provisions, including, but not limited to, those dealing

¹ The "ratio of representation" is the target number of persons per district.

specifically with the protection of minority voting rights (proposed Article XI, Section 6(A), Ohio Constitution).

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(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 House of Representatives district. 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. In the selection of a unit for division, preference must be given, in order, to a contiguous township, a contiguous municipality, and a village. (Proposed Article XI, Section 6(C) and (D), Ohio Constitution.)

Competitiveness

The resolution establishes a new criterion for establishing district boundaries: competitiveness. When the formation of competitive districts does not conflict with the other principles established by the resolution, the Ohio Redistricting 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 most competitive general elections by percentage for nonjudicial statewide state or federal office, including the elections of a President and Vice President of the United States, in which the candidates receiving the highest and second highest number of votes were the nominees of political parties, 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 combined received at least 95% of the total votes cast.

- Using the three most competitive 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 that district.
- A "competitive district" is a district for which 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 new districts, district boundaries established by the preceding redistricting must be adopted to the extent reasonably consistent with the constitutional redistricting 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 redistricting plans. (Proposed Article XI, Section 6, Ohio Constitution.)

The resolution also eliminates an existing provision that requires the persons responsible for redistricting to make reasonable efforts to create a House of Representatives district consisting of a whole county if the population of the county is not less than 90% nor more than 110% of the ratio of representation in the House of Representatives. The resolution eliminates the requirement that a reasonable effort be made to establish a district of a whole county, but still permits a district to be made of the whole county in such a circumstance. (Existing Article XI, Section 9, Ohio Constitution--*repealed by the resolution*, and proposed Article XI, Sections 3(B) and 8(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 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 redistricting, unless the redistricting 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 redistricting 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 a redistricting plan is invalid. Under existing law, a new redistricting 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 court to convene the Ohio Redistricting Commission to adopt a new plan of redistricting 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 redistricting plan adopted, if the Ohio Supreme Court, or an applicable federal court, ruled the plan invalid and that order is not appealed. In no circumstance is a court permitted to order the implementation or enforcement of any plan that has not been approved by the Commission. (Proposed Article XI, Sections 5 and 12, Ohio Constitution.)

If a court convenes the Commission, the court is permitted to adjust the established timelines as necessary for the timely adoption of a new redistricting plan. (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 May 3, 2011. If adopted by a majority of electors voting on the proposal, it will take effect immediately. (Effective date and repeal.) The first scheduled meeting of the Ohio Redistricting Commission would be in June of 2011, and the Commission would be responsible for establishing both General Assembly and Congressional districts that year.

Terminology change

Article XI of the Ohio Constitution currently refers to the apportionment of the state into General Assembly districts. The use of the term "apportionment" is inaccurate, because the number of districts does not change. Instead, the persons responsible for "apportionment" determine the lines of the districts, not the number of districts to be assigned. Similarly, in establishing Congressional districts under resolution, the Ohio Redistricting Commission will only be establishing district lines and not determining the number of districts to be assigned. Throughout the constitutional text, the resolution replaces the term "apportionment" with "redistricting" to more accurately reflect the actual duties of the Commission.

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 redistricting	<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 Redistricting 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 redistricting	<i>Unchanged</i>
Art. XI, Section 2	Determination of ratio of representation	<i>Unchanged</i>



New citation	Topic	Prior citation
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 Redistricting 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

DATE

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