



Ohio Legislative Service Commission

Resolution Analysis

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H.J.R. 5

129th General Assembly
(As Introduced)

Reps. Celeste and Duffey

RESOLUTION SUMMARY

- Submits to the voters at the November 6, 2012, general 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 January 1, 2019, 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.
- 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 process for determining which political subdivisions should be divided when necessary to establish district plans.
- Requires the Ohio Redistricting Commission 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 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.¹

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 the 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 the federal courts.

¹ R.C. 3521.01.

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.²

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, and must broadcast meetings by electronic means of transmission using a medium readily accessible by the general 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 in the year ending in the numeral "1" on the first business day occurring two weeks after the day on which the decennial census data is released regarding the state of Ohio. At that first meeting, the 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.³

Redistricting data preparation

The resolution establishes the Redistricting Information Services Office, which must be a nonpartisan office under the auspices of the General Assembly, to do all of the following:⁴

(1) Gather and make available to the Commission and to the public, in a form that facilitates data analysis and the drawing of legislative and Congressional districts, thorough and accurate census data and information detailing the boundaries of political subdivisions that are required to be considered in establishing a redistricting plan;

² Proposed Article XI, Section 1(A)(1), Ohio Constitution.

³ Proposed Article XI, Section 1(B), Ohio Constitution.

⁴ Proposed Article XI, Section 1(A)(2).

(2) Provide to the Commission any additional data or election information the Commission requests, in the form requested;

(3) Provide all map-production and data services the Commission requires in completing its duties; and

(4) Establish and maintain electronic resources that are accessible to the public and that permit members of the public to prepare legislative and Congressional redistricting plans for consideration by the Commission.

Operation of the Ohio Redistricting Commission

Not later than four weeks after the day on which the Ohio census data is released, 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 20 weeks after the release of that census data, the Commission must adopt the boundaries for each of the following:⁵

- 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 becomes effective.

Adoption of redistricting plans

Unless otherwise specified, a vote of at least five of its 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.⁶ Members may be represented on the

⁵ Proposed Article XI, Section 1(C)(1), Ohio Constitution.

⁶ Proposed Article XI, Section 1(C)(2), Ohio Constitution.

Commission by their designees, but only Commission members may participate in a vote to adopt a redistricting plan. No designees may participate in such a vote.⁷

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 Ohio elector 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 through the Redistricting Information Services Office all relevant data and information necessary for the submission of a potential Congressional plan and a potential General Assembly plan by any Ohio elector.⁸

If the Commission is unable to adopt a legislative plan, Congressional plan, or both, by the end of the 20th week after the day on which the Ohio census data is released, all of the following apply:

(1) For each type of plan that has not been adopted, members of the Commission who are affiliated with the two largest political parties in the state each have one week to develop their last, best offer of a redistricting plan. The plans must be submitted to the Secretary of State, to be placed on the ballot at the general election conducted in that year.

During that same one-week period, members of the Commission who are affiliated with the two largest political parties in the state each must select one of their members, and those two selected members must select a third person, who is not a member of the Commission. The two selected Commission members, and the third person they select, must, by majority vote, choose from among the publicly submitted plans the single plan that is the most competitive, that splits the fewest number of political subdivisions, and that, to the best of their belief, meets all the other redistricting requirements, including, but not limited to, federal statutory provisions dealing specifically with the protection of minority voting rights. That plan also must be submitted to the Secretary of State, to be placed on the ballot at the general election conducted in that year.

Of the three plans submitted to the Secretary of State for placement on that ballot at the general election, the plan receiving the highest number of favorable votes at that election is adopted.

⁷ Proposed Article XI, Section 1(A)(1), Ohio Constitution.

⁸ Proposed Article XI, Section 1(E), Ohio Constitution.

(2) If a primary election was scheduled to occur prior to the first Tuesday after the first Monday in May of the following even-numbered year, that primary election, and any special election scheduled to be held on the day of that primary election, must be conducted on the first Tuesday after the first Monday in May, unless the General Assembly specifies a later date by law.

(3) Every primary election conducted during the ten-year period preceding the next redistricting to nominate candidates for representatives for the applicable districts must be conducted as a nonpartisan primary. The name of each candidate shall be placed on the ballot without reference to party affiliation. The two candidates receiving the highest number of votes in each district at that election are nominated, and the names of those candidates will appear on the ballot at the general election, regardless of their political party affiliation.⁹

Procedures following the adoption of the required redistricting plans

The Secretary of State is required to cause the redistricting plans to be published not later than 22 weeks after the day on which the Ohio census data is released. If following a deadlock on the Commission, the legislative plan, Congressional plan, or both are adopted by a vote of the people, the Secretary of State is required to cause the applicable plan or plans to be published not later than five days after the certification of the vote establishing the plan.¹⁰

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 necessary in order for the Commission and the Redistricting Information Services Office to perform their duties, and to defend any lawsuit arising from the performance of their duties.¹¹

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

⁹ Proposed Article XI, Section 1(D), Ohio Constitution.

¹⁰ Proposed Article XI, Section 1(I), Ohio Constitution.

¹¹ Proposed Article XI, Section 1(F) and (G), Ohio Constitution.

to the Ohio Historical Society, or to a functionally equivalent entity providing state archival services, for preservation.¹²

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.¹³ 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.¹⁴

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 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.¹⁵

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.¹⁶

¹² Proposed Article XI, Section 1(H), Ohio Constitution.

¹³ The "ratio of representation" is the target number of persons per district.

¹⁴ Proposed Article XI, Section 2, Ohio Constitution.

¹⁵ Proposed Article XI, Section 3, Ohio Constitution.

¹⁶ 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 specifically with the protection of minority voting rights.¹⁷

Compactness and contiguity

Existing law requires every House of Representatives district to be compact and composed of contiguous territory. And the boundary of each district must be a single, nonintersecting continuous line. The resolution expands these criteria to apply to all General Assembly and Congressional districts.¹⁸

The resolution also defines "contiguity," with respect to divided political subdivisions. For the purpose of establishing districts, any noncontiguous portion of a political subdivision must be considered to be a separate governmental unit.¹⁹

Preference for whole governmental units

Under existing law, as much as possible, the boundaries of districts must be drawn so as to delineate an area containing one or more whole counties. 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, there is no requirement that counties be kept intact. And, instead of the current preference for retaining intact specified types of governmental units, the resolution gives preference to retaining intact the smallest governmental units, as determined by population, of municipal wards, villages, townships, and municipalities.²⁰

¹⁷ Proposed Article XI, Section 6(A), Ohio Constitution.

¹⁸ Proposed Article XI, Section 6(B), Ohio Constitution.

¹⁹ Proposed Article XI, Section 6(E), Ohio Constitution.

²⁰ Proposed Article XI, Section 6(B) and (C), 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 maximize the number of competitive districts using the following criteria:²¹

- The Commission must determine the average partisan indexes for each proposed district by averaging together the percentage of the vote received by each nonjudicial statewide candidate with the same political party affiliation who received votes within the district during the prior ten years, taking into account only the votes received by candidates affiliated with the two political parties with the largest population in the state over that ten-year period.
- 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.²²

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. Instead, the Commission must make its best efforts to designate a single county as a representative district if it contains a population of between 95% and 105% of the ratio of representation in the House of Representatives.²³

²¹ Proposed Article XI, Section 6(D), Ohio Constitution.

²² Proposed Article XI, Section 6, Ohio Constitution.

²³ Existing Article XI, Section 9, Ohio Constitution – repealed by the resolution, and proposed Article XI, Section 7, Ohio Constitution.

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 not 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.²⁴

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.²⁵

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.²⁶ As under existing law, the new plan must be determined in accordance with the provisions of the Constitution that are then valid.²⁷

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 6, 2012. If adopted by a majority of electors voting on the proposal, it will take effect on January 1, 2019, for the purpose of allowing time to establish and staff the Redistricting Information Services Office and for

²⁴ Proposed Article XI, Sections 5 and 10, Ohio Constitution.

²⁵ Proposed Article XI, Sections 5 and 10, Ohio Constitution.

²⁶ Proposed Article XI, Section 10, Ohio Constitution.

²⁷ Proposed Article XI, Section 10, Ohio Constitution.

the purpose of allowing the newly established Office time to complete its required preparatory tasks for the 2021 redistricting.

During the period from January 1, 2019, through March 15, 2021, if the legislative redistricting plan then in effect is determined to be invalid by an unappealed final order of a court of competent jurisdiction, the persons responsible for apportionment, as specified in the version of Section 1 of Article XI, Ohio Constitution, that was in effect prior to the resolution becoming effective, must convene and ascertain a legislative redistricting plan that will continue in effect until a legislative redistricting plan is adopted in accordance with the resolution, in 2021.

During the period from January 1, 2019, through March 15, 2021, if the Congressional redistricting plan then in effect is determined to be invalid by an unappealed final order of a court of competent jurisdiction, the Ohio General Assembly must convene and ascertain a Congressional redistricting plan that will continue in effect until a Congressional redistricting plan is adopted in accordance with the resolution, in 2021.

Beginning March 15, 2021, if any legislative or Congressional redistricting plan then in effect is determined to be invalid by an unappealed final order of a court of competent jurisdiction, the Ohio Redistricting Commission must convene and ascertain a redistricting plan in accordance with the requirements of the resolution.²⁸ The first scheduled meeting of the Ohio Redistricting Commission would be in 2021, the first year ending in the numeral "1" after the proposal becomes effective.

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.

²⁸ Effective date and repeal.

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.²⁹

HISTORY

ACTION	DATE
Introduced	02-28-12

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²⁹ Existing Article XI, Section 14, Ohio Constitution – repealed by the resolution.

