



OHIO LEGISLATIVE SERVICE COMMISSION

Resolution Analysis

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S.J.R. 5

132nd General Assembly
(As Introduced)

Sen. Huffman

RESOLUTION SUMMARY

- Proposes an amendment to the Ohio Constitution to establish standards and procedures for congressional redistricting.

Procedure for adopting a district plan

- Requires the General Assembly, not later than September 30 of a year ending in the numeral one, to adopt a congressional district plan in the form of a joint resolution by a specified bipartisan vote, and provides procedural requirements for that action.
- Requires a plan adopted by the General Assembly to remain in effect until the next year ending in the numeral one.
- Specifies that, if the General Assembly does not adopt a congressional district plan by that deadline, the Ohio Redistricting Commission must adopt a plan not later than October 31 of that year, and provides procedural requirements for that action.
- Specifies that if the Commission adopts a plan by a specified bipartisan vote, the plan remains effective until the next year ending in the numeral one.
- Specifies that if the Commission adopts a plan by a simple majority vote, the General Assembly may approve the plan without amendment by adopting a joint resolution by a specified bipartisan vote, and provides that if the General Assembly does so, the plan remains in effect until the next year ending in the numeral one.
- Provides that if the General Assembly does not approve a plan that the Commission adopted by a simple majority vote, the plan remains effective until two general elections for the U.S. House of Representatives have occurred under the plan.

- Requires the General Assembly, after a plan expires after two general elections, to adopt a plan using a similar procedure as described above not later than September 30 of the year after the year in which the plan expires.
- Specifies that if the General Assembly does not adopt a plan by that deadline, the Commission must adopt a plan by a simple majority vote not later than October 31 of that year.
- Provides that a plan adopted after a plan expires after two general elections remains in effect until the next year ending in the numeral one.

District standards

- Requires each congressional district to have a single representative in the U.S. House of Representatives.
- Requires the population of each congressional district to be equal to the congressional ratio of representation, except that a district's population may be greater or lesser than that ratio by one person if the total population of the state is not divisible by the number of districts apportioned to the state.
- Requires a congressional district plan to comply with all applicable provisions of the Ohio Constitution, the U.S. Constitution, and federal law.
- Specifies that every district must be compact and composed of contiguous territory, and the boundary of each district must be a single nonintersecting continuous line.
- Provides several district drawing rules that limit the extent to which counties, municipal corporations, and townships may be split between districts.

Legal challenges

- States that the Ohio Supreme Court has exclusive, original jurisdiction in all cases arising under the article of the Constitution that the proposal enacts.
- Requires that, if a court invalidates any section of the Ohio Constitution relating to congressional redistricting, any congressional district plan, or any congressional district, the General Assembly must adopt a plan in conformity with the provisions of the Constitution that are then valid.
- Specifies that if the General Assembly does not adopt a new plan, the Ohio Redistricting Commission must do so.

- Requires a plan adopted under those circumstances to remedy any legal defects in the previous plan identified by the court but to include no changes to the previous plan other than those made in order to remedy those defects.

Date of election and effective date

- Specifies that the proposal is to appear on the ballot on May 8, 2018.
- Provides that, if adopted by a majority of electors voting on it, the proposal takes effect January 1, 2021.

CONTENT AND OPERATION

The joint resolution proposes an amendment to the Ohio Constitution to establish standards and procedures for congressional redistricting. Currently, the General Assembly adopts congressional districts by bill, and no specific procedure applies.

Procedure for adopting a district plan

Three-step process

1. General Assembly

The proposal gives the General Assembly primary responsibility for congressional redistricting. Under the resolution, not later than September 30 of a year ending in the numeral one, the General Assembly must adopt a congressional district plan in the form of a joint resolution by the affirmative vote of $\frac{3}{5}$ of the members of each house of the General Assembly, including the affirmative vote of at least $\frac{1}{3}$ of the members of each house who are not members of the largest political party represented in that house.

Before the General Assembly adopts a plan, a joint committee of the General Assembly must hold at least two public hearings concerning congressional redistricting. A plan adopted by the General Assembly under this step takes effect upon filing with the Secretary of State and remains effective until the next year ending in the numeral one, unless the state is required to redraw judicially invalidated districts.¹

2. Ohio Redistricting Commission

If the General Assembly does not adopt a congressional district plan not later than September 30 of that year, the proposal requires the Ohio Redistricting

¹ Proposed Art. XIX, Sec. 1(A).

Commission to adopt a plan not later than October 31 of that year. Under the current Constitution, beginning in 2021, the Commission is responsible for drawing General Assembly districts. (The provisions of the Constitution that create the Ohio Redistricting Commission and specify the process for adopting General Assembly districts take effect January 1, 2021. For the sake of brevity, this analysis refers to those provisions as part of the current Constitution.)

The proposal retains the current organizational requirements for the Commission, except for two provisions. First, it specifies that if an appointed member of the Commission is a current member of Congress, that member's seat must be considered vacant for the purpose of adopting a congressional district plan, and the authority who appointed the member to the Commission must appoint a replacement member to deliberate and vote upon a congressional district plan. Additionally, the resolution requires the Commission to be automatically dissolved four weeks after the adoption of a final congressional district plan or a final General Assembly district plan, whichever is later.

Before adopting a congressional district plan, the resolution requires the Commission to release a proposed plan and hold at least two public hearings concerning the plan.

If the Commission adopts a plan by the affirmative vote of four Commission members, including at least two Commission members who represent each of the two largest political parties represented in the General Assembly, the plan takes effect upon filing with the Secretary of State and remains effective until the next year ending in the numeral one, unless the state is required to redraw judicially invalidated districts. A Commission member is considered to represent a political party if the member was appointed to the Commission by a member of that party or if, in the case of the Governor, the Auditor, or the Secretary of State, the person is a member of that party.

If the Commission adopts a plan by a simple majority vote, and not by the bipartisan vote described above, the plan takes effect upon filing with the Secretary of State and remains effective for the period determined under step three, below. The Commission also immediately must file copies of the plan with the clerks of the Senate and the House of Representatives.²

3. General Assembly

If the Commission adopts a congressional district plan by a simple majority vote, then not later than November 30 of that year, the General Assembly may approve that

² Ohio Const., Art. XI, Sec. 1 and Proposed Art. XIX, Sec. 1(B).



plan without amendment by adopting a joint resolution by the affirmative vote of a majority of the members of each house of the General Assembly, including the affirmative vote of at least $\frac{1}{5}$ of the members of each house who are not members of the largest political party represented in that house. The General Assembly must file the joint resolution with the Secretary of State, and the plan remains effective until the next year ending in the numeral one, unless the state is required to redraw judicially invalidated districts.

If the General Assembly does not approve the Commission's plan, the plan remains effective until two general elections for the U.S. House of Representatives have occurred under the plan, unless the state is required to redraw judicially invalidated districts.³

Replacing a district plan that expires after two general elections

1. General Assembly

Not later than September 30 of the year after the year in which a congressional district plan expires after two general elections, as described in step three above, the proposal requires the General Assembly to adopt a plan in the form of a joint resolution by the affirmative vote of $\frac{3}{5}$ of the members of each house of the General Assembly, including the affirmative vote of at least $\frac{1}{3}$ of the members of each house who are not members of the largest political party represented in that house.

Before the General Assembly adopts the plan, a joint committee of the General Assembly must hold at least two public hearings concerning congressional redistricting. The plan must be drawn using the federal decennial census data or other data on which the previous redistricting was based.

A plan adopted under this procedure takes effect upon filing with the Secretary of State and remains effective until the next year ending in the numeral one, unless the state is required to redraw judicially invalidated districts.⁴

2. Ohio Redistricting Commission

If the General Assembly does not adopt a congressional district plan not later than September 30 of the year after the year in which a plan expires after two general elections, then the Ohio Redistricting Commission must be reconstituted and reconvene and adopt a plan by a simple majority vote not later than October 31 of that year.

³ Proposed Art. XIX, Sec. 1(B).

⁴ Proposed Art. XIX, Sec. 1(B).



If an appointed member of the Commission is a current member of Congress, that member's seat must be considered vacant for the purpose of adopting a congressional district plan, and the authority who appointed the member to the Commission must appoint a replacement member to deliberate and vote upon a congressional district plan. After proposing, but before adopting, a plan, the Commission must hold at least two public hearings concerning the proposed plan.

A plan adopted under this procedure takes effect upon filing with the Secretary of State and remains effective until the next year ending in the numeral one, unless the state is required to redraw judicially invalidated districts.⁵

Form of district plan to be filed

A congressional district plan that is filed with the Secretary of State or the General Assembly must include both a legal description of the boundaries of the districts and all electronic data necessary to create a district map for the purpose of holding elections.⁶

Expiration of previous district plan

The resolution specifies that when a congressional district plan ceases to be effective, the district boundaries described in the plan continue in operation for the purpose of holding elections until a new district plan is adopted.⁷

District standards

The proposal lists several standards that the authority drawing congressional districts must follow, including standards for the population and shape of districts and the extent to which counties, municipal corporations, and townships may be split between districts.

Currently, Ohio has no written standards for congressional redistricting, although congressional districts must have sufficiently equal populations to comply with the "one person, one vote" principle of the Fourteenth Amendment of the U.S. Constitution, and districts must not be drawn in a way that discriminates against minority groups in violation of the federal Voting Rights Act of 1965.⁸

⁵ Proposed Art. XIX, Sec. 1(B).

⁶ Proposed Art. XIX, Sec. 1(C)(1).

⁷ Proposed Art. XIX, Sec. 1(C)(2).

⁸ See *Baker v. Carr*, 369 U.S. 186 (1962) and *Thornburg v. Gingles*, 478 U.S. 30 (1986).



Population requirements

Census data and ratio of representation

The proposal requires the authority drawing congressional districts to give each district a single representative in the U.S. House of Representatives. The authority must take the entire population of the state, as determined by the most recent federal decennial census, and divide it by the number of congressional districts apportioned to the state by Congress. The resulting number is the congressional ratio of representation, which represents the ideal population of a congressional district. (If the federal census is unavailable, the authority must use another basis, as directed by the General Assembly.)⁹

For example, according to the 2010 federal census, Ohio's population was 11,536,504, and Ohio was given 16 representatives to the U.S. House. The resulting congressional ratio of representation was 721,031.5 persons per district.¹⁰

Population equality

Under the proposal, the population of each congressional district must be equal to the congressional ratio of representation, except that a district's population may be greater or lesser than that ratio by one person if the total population of the state is not divisible by the number of districts apportioned to the state. For instance, using the 2010 data cited above, because the ratio of representation was not a whole number, eight districts would need to have 721,032 persons, and eight districts would need to have 721,031 persons.¹¹

General district drawing requirements

The resolution requires a congressional district plan to comply with all applicable provisions of the Ohio Constitution, the U.S. Constitution, and federal law. Additionally, every district must be compact and composed of contiguous territory, and the boundary of each district must be a single nonintersecting continuous line. To be contiguous, a district must be a single, unbroken shape, with no "islands" of territory that do not touch the rest of the district. The requirement that the boundary of each

⁹ Proposed Art. XIX, Sec. 2(A).

¹⁰ Ohio Development Services Agency, *Census 2010 Complete SF-1 Content Profile*, available at development.ohio.gov/files/research/P1119.pdf, accessed January 16, 2018.

¹¹ Proposed Art. XIX, Sec. 2(B)(2).



district be a single nonintersecting continuous line prevents, for example, the creation of "donut" districts, with one district being entirely surrounded by another.¹²

Splitting political subdivisions

Definitions

The proposal limits the extent to which counties, municipal corporations, and townships may be split between districts. Under the resolution, a county, municipal corporation, or township is considered to be split if any contiguous portion of its territory is not contained entirely within one district. The inclusion of "contiguous" in that provision means that if a political subdivision has an "island" of territory that does not touch the rest of its territory, the political subdivision is not considered split if the island is not included in the same district as the rest of the political subdivision.

Further, if a municipal corporation or township has territory in more than one county, the contiguous portion of that municipal corporation or township that lies in each county is considered a separate municipal corporation or township for purposes of drawing districts.

The resolution specifies that although the boundaries of counties, municipal corporations, and townships may be changed, the districts must be created using the census data used for redistricting.¹³

Restrictions on splitting

Under the proposal, except as otherwise required by federal law, each municipal corporation or township that contains a population that exceeds the ratio of representation must be divided into as many districts as it has whole ratios of representation. For the purpose of this provision, if the territory of a municipal corporation or township completely surrounds the territory of another municipal corporation or township, the authority drawing the districts must give preference to maintaining the territory of the surrounding municipal corporation or township in a single district rather than including the surrounded municipal corporation or township in that district, to the extent practicable while taking into account the requirements of the proposal.

Additionally, except as otherwise required by federal law, in a county that contains a population that exceeds the ratio of representation, if the county contains a municipal corporation or township with a population of not less than 100,000 and not

¹² Proposed Art. XIX, Sec. 2(B)(1) and (3).

¹³ Proposed Art. XIX, Sec. 2(A)(3) and (C).



more than the ratio of representation, and a district was not created in that county under the previous paragraph, that municipal corporation or township must not be split. If the county contains two or more municipal corporations or townships that qualify under this provision, only the most populous of those municipal corporations or townships must not be split.

The resolution also provides that each county, other than the ten most populous counties in Ohio, may be split not more than once. Of the ten most populous counties, two counties, as chosen by the authority drawing the districts, may be split not more than three times, and the remaining eight counties may be split not more than twice.

If a district includes only part of the territory of a particular county, the part of that district that lies in that particular county must be contiguous within the boundaries of the county. And, except for a county whose population exceeds 400,000, no two districts may share portions of the territory of more than one county.

Finally, the proposal requires the authority drawing the districts to attempt to include at least one whole county in each district. That provision does not apply to a district that is contained entirely within one county or that cannot be drawn in that manner while complying with federal law.¹⁴

Legal challenges

The proposal states that the Ohio Supreme Court has exclusive, original jurisdiction in all cases arising under the article of the Constitution that the proposal enacts.

If any section of the Ohio Constitution relating to congressional redistricting, any congressional district plan, or any congressional district is determined to be invalid by an unappealed final order of a court of competent jurisdiction, the General Assembly must adopt a plan in conformity with the provisions of the Constitution that are then valid, to be used until the next time for redistricting. If the General Assembly does not adopt a new plan, the Ohio Redistricting Commission must do so.

A plan adopted under those circumstances must remedy any legal defects in the previous plan identified by the court but must include no changes to the previous plan other than those made in order to remedy those defects.¹⁵

¹⁴ Proposed Art. XIX, Sec. 2(B).

¹⁵ Proposed Art. XIX, Sec. 3.



Date of election and effective date

The resolution specifies that the proposal is to appear on the ballot on May 8, 2018. If adopted by a majority of electors voting on it, the proposal takes effect January 1, 2021, which is the effective date of the previously approved General Assembly redistricting provisions.

HISTORY

ACTION	DATE
Introduced	01-16-18

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