



# OHIO LEGISLATIVE SERVICE COMMISSION

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## Resolution Analysis

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### **Sub. S.J.R. 5\***

132nd General Assembly

(As Reported by H. Rules and Reference)

**Sens.** Huffman, Uecker, LaRose, Balderson, Beagle, Dolan, Eklund, Gardner, Hackett, Hoagland, Hottinger, Kunze, Lehner, Manning, Obhof, Oelslager, Peterson, Terhar, Wilson

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## **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 pass a congressional district plan in the form of a bill by a specified bipartisan vote, and provides procedural requirements for that action.
- Requires a plan passed by the General Assembly that becomes law to remain in effect until the next year ending in the numeral one.
- Specifies that, if the General Assembly does not pass a congressional district plan by that deadline, or if the Governor vetoes the plan and the General Assembly does not override the veto, the Ohio Redistricting Commission must adopt a plan not later than October 31 of that year by a specified bipartisan vote, and provides procedural requirements for that action.
- Specifies that a plan adopted by the Commission remains effective until the next year ending in the numeral one.
- Prohibits any appointed member of the Commission from being a current member of Congress.

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

- Requires the General Assembly, if the Commission does not adopt a plan by that deadline, to pass a plan not later than November 30 of that year, and provides procedural requirements for that action.
- Specifies that if the General Assembly passes a plan by a specified bipartisan vote, the plan remains effective until the next year ending in the numeral one.
- Specifies that if the General Assembly passes a plan by a simple majority vote, certain additional district requirements apply, and if the plan becomes law, it remains effective until two general elections for the U.S. House of Representatives have occurred under the plan.
- Requires, after a plan expires after two general elections, that the plan be replaced using the same process and census data as applied previously, and specifies that the plan remains effective until the next year ending in the numeral one.
- Requires the General Assembly and the Commission to facilitate and allow for the submission of proposed plans by members of the public, and requires the General Assembly to provide by law the manner in which the public may do so.

### **District standards**

- Requires each congressional district to have a single representative in the U.S. House of Representatives.
- 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 or group of congressional districts, the General Assembly must pass a plan in conformity with the provisions of the Constitution that are then valid.

- Specifies that if the General Assembly does not pass a new plan by the specified deadline, or if the Governor vetoes the plan and the General Assembly does not override the veto, the Ohio Redistricting Commission must adopt a plan by a particular deadline.
- Requires a plan passed or 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.

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## **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 pass a congressional district plan in the form of a bill 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  $\frac{1}{2}$  of the members of each of the two largest political parties represented in that house. Before the General Assembly passes a plan under any provision of the resolution, a joint committee of the General Assembly must hold at least two public hearings concerning a proposed plan.

Because the resolution requires the General Assembly to pass the plan by bill, the plan is subject to the Governor's veto in the same manner as any other bill. The Governor generally has ten days, excluding Sundays, to sign an act and file it with the Secretary of State, file the act with the Secretary without signing it, or veto the act and return it to the General Assembly. Then, the General Assembly may override the veto by a vote of  $\frac{3}{5}$  of the members of each house. If the General Assembly does not override the veto, then the Ohio Redistricting Commission must adopt a plan not later than October 31, as described in step two below.

The plan also is subject to the referendum in the same manner as any other bill. If the General Assembly passes the plan as an emergency measure, with a vote of  $\frac{2}{3}$  of the members of each house, it takes effect immediately and is not subject to the referendum. Otherwise, the bill takes effect 90 days after the Governor files it with the Secretary of State. If the following year is a presidential election year, a plan passed with a 90-day effective date would not take effect before the deadline for candidates to file their papers to appear on the primary ballot. (For example, in 2032, the primary election will be held on March 9. Candidates must file their papers not later than 90 days before the primary, on December 10, 2031. However, if the General Assembly passed a district plan on September 30, 2031, without an emergency clause, it would take effect December 30 at the earliest.) The date of the primary election and the filing deadlines for that election are set in the Revised Code, and the General Assembly could adjust those deadlines by bill in that situation.

If the electors successfully submit a referendum petition during that 90-day period, the law remains on hold until it is placed on the ballot for approval or rejection at the election held in November of the following year. In that situation, new district boundaries would not take effect in time to hold primary and general elections for Congress that year using the new districts. The proposal specifies that the previous



district boundaries continue in operation until the new districts take effect, so presumably, elections would be held using the old district map, which might not include the correct number of districts. Moreover, if the electors vote to reject the bill, the proposal does not specify a timeline for the General Assembly or the Commission to replace the bill.

If the plan passed by the General Assembly under this step becomes law, it remains effective until the next year ending in the numeral one, unless the state is required to redraw judicially invalidated districts.<sup>1</sup>

## **2. Ohio Redistricting Commission**

If the General Assembly does not pass a congressional district plan not later than September 30 of that year, or if the Governor vetoes the General Assembly's plan and the General Assembly does not override the veto, the proposal requires the Ohio Redistricting Commission to adopt a plan not later than October 31 of that year 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. 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. 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.

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 prohibits any appointed member of the Commission from being a current member of Congress. 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.

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<sup>1</sup> Proposed Art. XIX, Sec. 1(A), (G), and (J). See also Ohio Const., Art. II, Secs. 1c, 1d, and 16 and R.C. 3501.01(E)(2) and 3513.05, not in the resolution.



Before adopting a congressional district plan under any provision of the resolution, the resolution requires the Commission to release a proposed plan and hold at least two public hearings concerning the plan.<sup>2</sup>

### **3. General Assembly**

If the Commission does not adopt a congressional district plan not later than October 31 of that year, the General Assembly must pass a plan by November 30 of that year. If the General Assembly passes the plan 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 of the two largest political parties represented in that house, and the plan becomes law, 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 passes the plan by a simple majority vote of the members of each house, and not by that bipartisan vote, all of the following apply:<sup>3</sup>

- The General Assembly must not pass a plan that unduly favors or disfavors a political party or its incumbents.
- The General Assembly must not unduly split governmental units, giving preference to keeping whole, in the order named, counties, then townships and municipal corporations (see "**District standards**," below).
- The General Assembly must attempt to draw districts that are compact, but the General Assembly is not required to draw compact districts, as it otherwise would be.
- The General Assembly must include in the plan an explanation of the plan's compliance with the three requirements listed above.
- If the plan becomes law, it 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.

### **Replacing a district plan that expires after two general elections**

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 pass a plan in the form of a bill using the

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<sup>2</sup> Ohio Const., Art. XI, Sec. 1 and Proposed Art. XIX, Sec. 1(B) and (G).

<sup>3</sup> Proposed Art. XIX, Sec. 1(C).



same procedures as described in step one above. If the General Assembly does not do so, the Commission must adopt a plan as described in step two not later than October 31 of that year. And, if the Commission does not adopt a plan in that manner, the General Assembly must pass a plan as described in step three not later than November 30 of that year. In all cases, the plan must be drawn using the same census data or other data on which the previous redistricting was based, and the new plan remains effective until the next year ending in the numeral one.<sup>4</sup>

### **Plans submitted by the public**

The proposal requires the General Assembly and the Commission to facilitate and allow for the submission of proposed congressional district plans by members of the public. The General Assembly must provide by law the manner in which members of the public may do so.<sup>5</sup>

### **Form of district plan to be filed**

A congressional district plan that is filed with the Governor or the Secretary of State 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.<sup>6</sup>

### **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. If a vacancy occurs in a district that was created under the previous district plan, the election to fill the vacancy for the remainder of the unexpired term must be held using the previous district plan.<sup>7</sup>

### **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.

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<sup>4</sup> Proposed Art. XIX, Sec. 1(D), (E), and (F).

<sup>5</sup> Proposed Art. XIX, Sec. 1(H).

<sup>6</sup> Proposed Art. XIX, Sec. 1(I).

<sup>7</sup> Proposed Art. XIX, Sec. 1(J).



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.<sup>8</sup>

## **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.)<sup>9</sup>

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.<sup>10</sup>

### **Population equality**

The proposal does not specify the extent to which the population of each congressional district must be equal to the congressional ratio of representation. As a result, the General Assembly and the Commission would be required to rely on U.S. Supreme Court precedent to determine how much population variance might be acceptable. Historically, the Court has ruled that congressional districts must be as equal in population as practicable, and that "absolute population equality [must] be the paramount objective of apportionment." That standard does not require precise mathematical equality, but if a state could have avoided population differences between districts by a good faith effort and did not do so, the state must justify the differences.<sup>11</sup>

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<sup>8</sup> See *Wesberry v. Sanders*, 376 U.S. 1 (1964) and *Thornburg v. Gingles*, 478 U.S. 30 (1986).

<sup>9</sup> Proposed Art. XIX, Sec. 2(A).

<sup>10</sup> Ohio Development Services Agency, *Census 2010 Complete SF-1 Content Profile*, available at [development.ohio.gov/files/research/P1119.pdf](http://development.ohio.gov/files/research/P1119.pdf), accessed February 5, 2018.

<sup>11</sup> *Karcher v. Daggett*, 462 U.S. 725, 732 (1983).





In 2012, the Court heard a challenge to West Virginia's congressional district plan. The population difference between its largest and smallest districts was 0.79%, and the plaintiffs argued that because it was mathematically possible to adopt a plan with a smaller population variance, the plan was unconstitutional. However, the Court found that the population variance in the case was acceptable as necessary to achieve legitimate state objectives, such as avoiding contests between incumbents, not splitting county boundaries, and minimizing population shifts between districts.<sup>12</sup>

As a result, it appears that a relatively small population variance may be allowed, depending on the circumstances. But, the Court's 2012 decision was fact-specific, and it is not possible to predict what level of population variance in Ohio's congressional districts a court might find acceptable.

### **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, including federal laws protecting racial minority voting rights. 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 district be a single nonintersecting continuous line prevents, for example, the creation of "donut" districts, with one district being entirely surrounded by another.<sup>13</sup>

### **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

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<sup>12</sup> *Tennant v. Jefferson County Commission*, 567 U.S. 758, 764 (2012).

<sup>13</sup> Proposed Art. XIX, Sec. 2(B)(1), (2), and (3).



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.<sup>14</sup>

### **Restrictions on splitting**

Under the proposal, except as otherwise required by federal law, in a county that contains a population that exceeds the ratio of representation, the authority drawing the districts must take the first of the following actions that applies to that county:

- If a municipal corporation or township located in that county contains a population that exceeds the congressional ratio of representation, the authority must attempt to include a significant portion of that municipal corporation or township in a single district and may include in that district other municipal corporations and townships that are located in that county and whose residents have similar interests as the residents of the municipal corporation or township whose population exceeds the ratio of representation. In determining whether the population of a municipal corporation or township exceeds the congressional ratio of representation for the purpose of this provision, if the territory of that municipal corporation or township completely surrounds the territory of another municipal corporation or township, the territory of the surrounded municipal corporation or township must be considered part of the surrounding municipal corporation or township.
- If one municipal corporation or township in that county contains a population of not less than 100,000 and not more than the ratio of representation, 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 of Ohio's 88 counties, 65 counties must be contained entirely within a district, while 18 counties may be split not more than once, and five counties may be split not more than twice. The authority drawing the districts may determine which counties may be split. (If a county's population were more than three times the congressional ratio of representation, the U.S. Constitution would

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<sup>14</sup> Proposed Art. XIX, Sec. 2(A)(3) and (C).



require the authority drawing the districts to split the county more than twice in order to divide its population among four or more districts, despite this provision.)

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, no two districts may share portions of the territory of more than one county, except for a county whose population exceeds 400,000.

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.<sup>15</sup>

## **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 or group of congressional districts is challenged and is determined to be invalid by an unappealed final order of a court of competent jurisdiction, the General Assembly must pass a plan in conformity with the provisions of the Constitution that are then valid, to be used until the next time for redistricting. The General Assembly must do so not later than the 30th day after the last day on which an appeal of the court order could have been filed or, if the order is not appealable, the 30th day after the day on which the order is issued. (If the General Assembly's plan is subject to the referendum, the same practical issues discussed above would apply.)

If the General Assembly does not pass a new plan, or if the Governor vetoes the General Assembly's plan and the General Assembly does not override the veto, the Ohio Redistricting Commission must adopt a plan in conformity with the provisions of the Constitution that are then valid. The Commission must do so not later than the 30th day after the deadline described above for the General Assembly to pass a new plan.

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<sup>15</sup> Proposed Art. XIX, Sec. 2(B).



A plan passed or 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.<sup>16</sup>

### **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.

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## **HISTORY**

<b>ACTION</b>	<b>DATE</b>
Introduced	01-16-18
Reported, S. Gov't Oversight & Reform	02-05-18
Adopted Senate (31-0)	02-05-18
Reported, H. Rules & Reference	---

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<sup>16</sup> Proposed Art. XIX, Sec. 3.

