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*Resolution Analysis*  
*Legislative Service Commission*

**H.J.R. 13\***  
123rd General Assembly  
(As Introduced)

**Reps. Amstutz, Sykes**

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**RESOLUTION SUMMARY**

- Proposes amendments to the Ohio Constitution to provide new procedures for drawing Congressional and General Assembly district boundaries.
- Requires the Secretary of State to invite any person to submit a plan for Congressional, Ohio Senate, or Ohio House districts and to select, on the basis of specified criteria, one plan for each of these legislative bodies.
- Abolishes the Apportionment Board.

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**CONTENT AND OPERATION**

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\* *This analysis was prepared before the journal entry reflecting the introduction of the resolution appeared in the House Journal.*

### **Current law**

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 Choosing 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.

### **Overview of the resolution**

The resolution substantially amends Article XI of the Ohio Constitution to provide new procedures for drawing General Assembly district boundaries and to set forth for the first time provisions in the Ohio Constitution that provide the method for establishing Congressional districts in Ohio. Essentially, under the

resolution, any person may submit to the Secretary of State a plan for creating districts for Congress, the Ohio Senate, or both. The Secretary of State, following standards contained in the resolution, must select the best plan for each body. The Secretary of State then must solicit plans for the creation of Ohio House districts and select the plan that best meets the standards contained in the resolution. The resolution abolishes the Apportionment Board (Section 1 of Article XI).

### **Congressional and Ohio Senate districts**

#### **Submission of plans**

The resolution requires the Secretary of State by public notice to invite any person to submit a plan for dividing the state into Congressional districts, Ohio Senate districts, or both. The *invitation* must be extended on the first day of May in each year ending in one. Any person intending to submit a plan must file a *notice of intent* with the Secretary of State by May 15, along with a fee to be fixed by law but not to exceed \$100 for each plan. (Section 6(B) of Article XI.) Each plan must cover the entire state and be submitted in the manner prescribed by the Secretary of State. All plans must be filed with the Secretary of State by July 1 in each year ending in one, and after that date must be available for public examination. (Section 7 of Article XI.) The Secretary of State must require that each plan include a *summary sheet* listing or containing all of the following (Section 6(A)(3), (4), (5), (6), and (7) and Section 7 of Article XI):

- The population of each district in the plan.
- The *compactness ratio* of each district in the plan. To determine the compactness ratio, a person submitting a plan must (1) compute the area of each district in the plan, (2) compute the perimeter of each district in the plan, and (3) divide the area of each district by the square of its perimeter. The compactness of any district that includes the Ottawa County township of Portage or Danbury, any of the Lake Erie islands, or the Meigs County township of Sutton, Lebanon, or Letart must be computed as if these areas were not contained in the district.
- The identity of each county divided by the plan.
- The number of *county fragments* resulting from the plan. "County fragment" means one of the portions of a county resulting when a county is divided between two or more districts. In each case, the number of fragments is required to equal the number of different districts with territory within the county.
- The identity of each municipal corporation divided by the plan.



- The number of *municipal fragments* resulting from the plan. "Municipal fragment" means one of the portions of a municipal corporation resulting when a municipal corporation is divided between two or more districts. In each case, the number of fragments is required to equal the number of different districts with territory within the municipal corporation.
- The identity of each contiguous township divided by the plan. A "contiguous township" means a township with all of its territory in one piece.
- The number of *contiguous township fragments* resulting from the plan. "Contiguous township fragment" means one of the portions of a contiguous township resulting when a contiguous township is divided between two or more districts. In each case, the number of fragments is required to equal the number of different districts with territory within the contiguous township.
- A statement, signed by the person submitting the plan, attesting that the criteria that the plans are required to conform to under the resolution (see "*Criteria for selection of plans*," below) have been met.

***Information supplied by the Secretary of State***

On June 1 of each year ending in one, the Secretary of State must publish, and distribute to any person who filed a notice of intent to submit a plan, documents indicating the population, length of "perimeter segments," and area of each county, township, municipal corporation, census tract, and block numbering area in the state whose population does not exceed a threshold equal to 1% of the *ratio of representation* for Congress or 5% of the ratio of representation for the Ohio House of Representatives, whichever is smaller (Section 6(C) of Article XI).<sup>1</sup> The resolution continues existing provisions set forth in Section 2 of Article XI for

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<sup>1</sup> "*Perimeter segment*" means a portion of the perimeter of this state, of a county, township, municipal corporation, census tract, or block numbering area, or of a unit of a township, municipal corporation, census tract, or block numbering area, that is shared with the perimeter of another state, of another county, township, municipal corporation, census tract, or block numbering area, or of a unit of a township, municipal corporation, census tract, or block numbering area (Section 6(A)(1) of Article XI). "*Census tract*" and "*block numbering area*" mean the geographical units designated by these terms in the most recent federal census and include any comparable geographical units called by other names in a federal census after the resolution's effective date (Section 6(A)(2) of Article XI).



determining the ratio of representation *for the Ohio House*: dividing the whole population of the state by the number "99." The resolution provides that the ratio of representation *for Congress* is the state's population divided by the number of United States Representatives apportioned to the state pursuant to the most recent federal census, and the ratio of representation *for the Ohio Senate* is the state's population divided by the number "33." (Section 2 of Article XI.)

If a township, census tract, or block numbering area has a population that exceeds the threshold population described in the preceding paragraph, or contains parts of more than one municipal corporation, the Secretary of State must divide it into the fewest possible units of contiguous territory containing populations not exceeding the threshold population or not containing parts of more than one municipal corporation, and must publish the population, perimeter segment lengths, and area for each such unit in the documents described above. When it is possible to perform these divisions in more than one way, the Secretary of State must make the division resulting in the most compact units. (Section 6(D) of Article XI.)

Information published by the Secretary of State, including census data and measurements made using established cartographic techniques, must be presumed to be accurate (Section 6(E) of Article XI).

### **Criteria for selection of plans**

**Existing law.** Currently, the Ohio Constitution requires that, to the extent consistent with the requirement that Ohio House districts be substantially equal in population, these districts must contain one or more whole counties. If this is not feasible, they must consist of whole governmental units combined, with preference given in descending order to "counties, townships, municipalities, and city wards." If this is not feasible, only one such unit may be divided between two districts. (Sections 3 and 7 of Article XI.)

The Ohio Constitution also currently requires that a county having at least one House of Representatives ratio of representation (1/99 of the population of the state) have as many House districts as the number of whole ratios of representation it contains, with any remainder to be divided into only one other adjoining House district. Similar requirements, using the Senate ratio of representation (1/33 of the state's population), apply to the allocation of Senate districts to counties. (Sections 8 and 11 of Article XI.)

Finally, the Ohio Constitution also requires that "reasonable effort" be made to create a House district consisting of the whole of any county containing between 90% and 110% of the ratio of representation (Section 9 of Article XI).



**Changes proposed by the resolution.** The resolution replaces these current criteria with a requirement that the Secretary of State examine the summary sheet of each plan that is submitted and determine whether the plan described in the summary sheet is a *qualifying plan* because it apparently conforms to the following criteria (Section 8 of Article XI):

(1) The plan must conform to the appropriate *district population requirements*. The resolution requires that the population of each Congressional district be as nearly equal as practicable to the Congressional ratio of representation, and that no Congressional district contain a population of less than 99% or more than 101% of that ratio. No Ohio Senate district may contain a population of less than 96% or more than 104% of the ratio of representation for the Senate. No Ohio House district may contain a population of less than 95% or more than 105% of the ratio of representation for the Ohio House. (Section 3 of Article XI.)

(2) Each township, municipal corporation, census tract, or block numbering area, or unit of a township, municipal corporation, census tract, or block numbering area, about which the Secretary of State publishes information must retain its integrity and cannot be divided between two or more districts.

(3) Each district generally must be composed of contiguous territory and be bounded by a single, nonintersecting, continuous line. A provision repealed by the resolution states that every Ohio House district "shall be compact and composed of contiguous territory, and the boundary of each district shall be a single nonintersecting continuous line" (Section 7(A) of Article XI).

(4) Generally, no Congressional or Ohio Senate district created by the plan may have a compactness ratio of less than 30/1000, except that, in districts wholly or partially included in counties having at least one Congressional ratio of representation, the minimum compactness ratio must be 24/1000.

The resolution authorizes the General Assembly, by law, to specify minimum and maximum percentages of *minority populations* for specified numbers of Congressional, Senate, and House of Representatives districts. If the General Assembly specifies those percentages, a districting plan need not conform to the criteria described in (3) and (4) above. (Section 8(E) of Article XI.)

### **Selection of Congressional and Ohio Senate plans**

By not later than August 15 of each year ending in one, the Secretary of State must choose, from among the qualifying plans, the winning Congressional district plan and the winning Ohio Senate district plan. The Secretary of State must first determine, for each qualifying plan, the total number of county



fragments, municipal fragments, and contiguous township fragments it contains, and designate the plan that has the *fewest county fragments as the apparent winning plan*. The Secretary of State then must make a detailed examination of the supporting documents of the apparent winning plan to determine whether the information provided on its summary sheet is true and correct. If it is, that plan must be declared the winning plan and will be in effect for the next ten years. The Secretary of State must publish for public distribution the map and list of units composing the districts in the Ohio Senate and Congressional plans so chosen. (Section 9(A) and (B) of Article XI.)

If, on the other hand, the Secretary of State's examination of the supporting documents of the apparent winning plan fails to verify the information provided on its summary sheet, that plan must be disqualified. The Secretary of State then must determine the apparent winning plan from the remaining qualifying plans and follow the same verification procedure described above. If the data provided on the summary sheet of the second apparent winning plan cannot be verified, the verification procedure must be repeated until the qualifying plan that best meets the resolution's criteria is found. (Section 9(C) of Article XI.)

If two or more qualifying plans each contain the fewest county fragments, the Secretary of State must choose as the winning plan the qualifying plan that has the *fewest municipal fragments*, not counting those derived from municipal corporations included in more than one county. If two or more qualifying plans each contain the fewest municipal fragments, the Secretary of State must choose as the winning plan the qualifying plan that has the *fewest contiguous township fragments*. If two or more qualifying plans each contain the fewest contiguous township fragments, the Secretary of State must choose as the winning plan the qualifying plan *whose least compact district has the highest compactness ratio*. (Section 9(D) of Article XI.)

If the least compact districts of two or more qualifying plans have the same compactness ratio *when rounded to two significant figures*, the Secretary of State must compare the compactness of the next least compact districts of those qualifying plans and must choose as the winning plan the qualifying plan whose district has the highest compactness ratio, when rounded to two significant figures. If no qualifying plan can be chosen after comparing the next least compact districts, the Secretary of State must compare the third least compact districts, and so on, until one qualifying plan emerges as the winning plan. In this regard, when rounding the compactness ratio of a district to two significant figures, the second significant figure must be rounded to the next higher numeral (1) if the third significant figure is "5" and all subsequent figures are "0" and (2) if the second significant figure is an odd number. The second significant figure must remain the same, however, (1) if the third significant figure is "5" and all subsequent figures



are "0" and (2) if the second significant figure is an even number. (Section 9(E)(1) of Article XI.)

If a comparison of the compactness ratios of *each* least compact district in two or more qualifying plans fails to produce a winning plan when those ratios are rounded to two significant figures, the resolution apparently requires the Secretary of State to *round the compactness ratio to three significant figures.*<sup>2</sup> Then, because two or more qualifying plans have the same compactness ratio for each of their least compact districts when rounded to two significant figures, the Secretary of State must compare the compactness of the least compact districts of each of the qualifying plans when the compactness ratio is rounded to three significant figures. If no qualifying plan can be chosen after comparing those least compact districts, the Secretary of State must compare the next least compact districts, and so on, until one qualifying plan emerges as the winning plan. (Section 9(E)(2) of Article XI.)

The Secretary of State must not disqualify any plan because the plan or summary sheet contains minor technical errors that have no substantive effect (Section 9(F) of Article XI).

### **Ohio House districts**

By not later than August 15 of each year ending in one, the Secretary of State must issue a *public notice inviting* any person to submit a plan for dividing any number of Senate districts established by the chosen winning plan (see above) into House of Representatives districts. The Secretary of State must distribute to any person who intends to submit such a plan documents containing the same information as is distributed to persons filing a notice of intent to submit a

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<sup>2</sup> *Section 9(E)(2) of Article XI does not explicitly state that its procedure for comparing compactness ratios rounded to three significant figures only applies if the procedure set forth in Section 9(E)(1) for comparing compactness ratios rounded to two significant figures fails to produce a winning plan. Without clarifying language, the two sections could be interpreted as providing alternate, rather than successive, procedures for determining a winning plan. (e.g., Under Section 9(E)(1), if the least compact districts of two or more qualifying plans have the same compactness ratio when rounded to two significant figures, the Secretary of State must compare the next least compact districts. Under Section 9(E)(2), if the least compact districts of two or more qualifying plans have the same compactness ratio when rounded to two significant figures, the Secretary of State must compare the least compact districts when the compactness ratio is rounded to three significant figures.) Clarifying language may be helpful to specify whether these procedures are intended to be alternatives or whether Section 9(E)(2) only applies where Section 9(E)(1) fails to produce a winning plan.*

Congressional plan or Ohio Senate plan plus certain information about the Congressional plan and Ohio Senate plan the Secretary of State selected. Each plan to establish House districts must be submitted in the manner prescribed by the Secretary of State. The plan must include for each Senate district being divided a *summary sheet* (which must contain the same information as summary sheets for Congressional and Ohio Senate district plans) and must be accompanied by a filing fee in an amount to be fixed by law, not to exceed \$10 per Senate district being divided; however, the total fee must not exceed \$100. All plans must be filed by September 15 of the same year. (Section 10(A) of Article XI.)

The Secretary of State must choose, by November 1 of each year ending in one, a winning plan for dividing each Senate district from among the qualifying House of Representatives district plans submitted, using the same procedure specified for the selection of Congressional and Ohio Senate plans, except that the minimum permissible compactness ratio in all cases must be 24/1000 unless the following provision applies (Section 10(B) of Article XI).

If no plan submitted for the division of a particular Senate district into House of Representatives districts contains House districts with a compactness ratio of at least 24/1000, the minimum permissible compactness ratio must be reduced by 1/1000. The Secretary of State then must again invite any person to submit a plan for dividing that Senate district into House districts, using the procedures described above, but with the reduced minimum permissible compactness ratio. Procedures for selecting a winning House of Representatives plan then proceed as described above. If the second invitation for submissions and selection procedure does not produce a qualifying plan, the minimum permissible compactness ratio again must be reduced by 1/1000, the invitation for submissions and selection procedure must be repeated at that reduced level, and so on, until a winning plan emerges. (Section 10(B) of Article XI.)

#### **Adjustments by the General Assembly**

The resolution authorizes the General Assembly to adjust, by law, (1) the dates prescribed in the procedure for selecting district plans, to reflect the availability of census data, the time the Secretary of State requires to process plans, the filing dates for primary elections, and other relevant factors, and (2) the fees for filing plans, to account for inflation. (Section 10(D) of Article XI.)

#### **Changes in Senate district boundaries**

Currently, under the Ohio Constitution, at the time of a change in Senate district boundaries due to reapportionment, a Senator *whose term will not expire within two years of the time the plan is made* is required to represent, for the remainder of the Senator's term, the Senate district containing the largest portion of



the population of the district from which the Senator was elected (Section 12 of Article XI). Under the resolution, such a Senator holds office for the remainder of the Senator's term if the Senator is a resident of a newly created district not electing a Senator within two years of the time the plan is adopted (new Section 11 of Article XI, which is an amended version of current Section 12).

The Ohio Constitution also currently provides that, if more than one Senator whose term will not so expire would represent the same district, a majority of those responsible for the apportionment must designate which Senator is to represent the district and which district the other Senator or Senators are to represent for the balance of their term or terms (Section 12 of Article XI). Under the resolution, in such a situation, the district must be represented by the Senator whose former constituents make up the largest fraction of the population of the newly created district. The resolution requires that, "in all other cases," elections be held to ensure that the terms of Senators conform to the requirements of the Ohio Constitution regarding the starting dates of terms of Senators representing odd-numbered and even-numbered districts. (New Section 11 of Article XI.) (See "*District numbering*," below.)

### *District numbering*

Current Article XI of the Ohio Constitution prescribes a formula for the numbering of *Ohio House districts* under which the *lowest numbers* go to the districts consisting of a single county with a population substantially equal to the ratio of representation for House districts and *subsequent numbers* go to other counties or parts or groups of counties that are progressively more distant from this ideal population (Section 10 of Article XI). Each *Senate district* that is represented by a holdover Senator, after a redrawing of district boundaries, receives the number of the district to which that Senator was elected. Apparently, the remaining districts are numbered however the Apportionment Board chooses. (Section 12 of Article XI.) The numbering of Congressional districts is left to the General Assembly, which has fixed the numbers by statute (sec. 3521.01).

Under the resolution, *Senate districts* must be composed of three contiguous House of Representatives districts and be ranked in order of area and numbered accordingly, with the largest being numbered "one" and the smallest "33." The resolution also specifies that the terms of Senators representing odd-numbered districts start on January 1, 2013, and the terms of Senators representing even-numbered districts start January 1, 2015. (Section 3 of Article XI.) The resolution requires the General Assembly, by law, to prescribe a *procedure for numbering Congressional districts and Ohio House of Representatives districts* that precludes the exercise of discretion in the assigning of numbers; the districts

of the chosen winning Congressional plan and the chosen winning Ohio House of Representatives plan must be numbered accordingly (Section 10(C) of Article XI).

**Jurisdiction of Supreme Court; challenges**

Current provisions of the Ohio Constitution grant the Ohio Supreme Court exclusive, original jurisdiction in all cases arising under Article XI (Section 13 of Article XI). The resolution retains this provision but specifies that the jurisdiction applies only to those cases involving the districting of either house of the General Assembly. The resolution requires that petitions challenging a districting plan adopted by the Secretary of State be filed with the Supreme Court no later than 30 days after the public announcement of the decision to adopt the plan. (New Section 12 of Article XI, which is an amended version of current Section 13.)

The resolution removes from current Section 13 of Article XI provisions dealing with steps to be taken upon a judicial determination that a plan of apportionment is unconstitutional (new Section 12 of Article XI).

**District boundaries until January 1, 2013**

Under the resolution, the boundaries of Congressional districts, Ohio Senate districts, and Ohio House districts from which members of Congress and the General Assembly were elected to the 112th Congress and the 129th General Assembly remain in effect until January 1, 2013. The resolution requires that the representatives and members of Congress elected in the general election in 2010 hold office for the terms for which they were then elected. (New Section 13 of Article XI.)

**Submission of resolution to voters; effective date**

The resolution states that it must be submitted to the electors at the general election to be held on November 7, 2000, and if adopted takes effect January 1, 2010.

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**HISTORY**

ACTION	DATE	JOURNAL ENTRY
Introduced	---	---

HJR00-I.123/jc

