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## Chapter 2

# The Legislative Branch

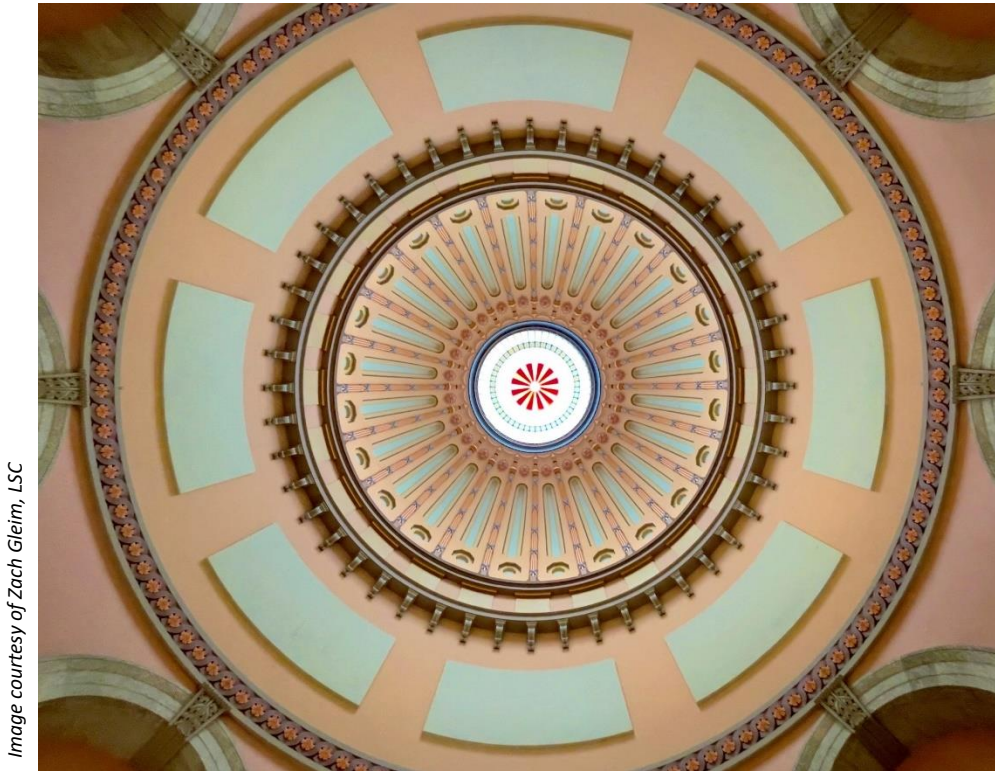


Image courtesy of Zach Gleim, LSC

Rotunda Dome and Skylight

### Legislative Power

The legislative power of the state of Ohio is vested in the General Assembly and in the people, who have reserved to themselves the right to enact laws (initiative) and the right to approve and disapprove laws enacted by the General Assembly (referendum). The legislative power, whether exercised by the General Assembly or by the people, is subject only to the limitations in the Ohio and United States Constitutions and in federal law. Thus, the General Assembly or the people may enact any law that is not prohibited by either constitution or by federal statutes. See [Appendix B](#) for pertinent provisions of the Ohio Constitution.

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The General Assembly has three fundamental powers:

- Political Power – to provide for the establishment, organization, and operation of government;
  - Police Power – to promote the public peace, health, safety, and welfare; and
  - Taxing Power – to raise revenue to pay for government facilities and operations.
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The legislative power comprises three fundamental powers. The **political power** is the power to enact laws for the establishment, organization, and operation of government in Ohio. Examples include laws providing for the government of counties, the incorporation and government of municipalities, the organization of certain courts, the creation and empowering of administrative agencies to carry out the work of government, the election and appointment of officers and employees, and the appropriation of money to pay the costs of government facilities and operations. A special political power is vested in the Senate; when appointment statutes so provide, appointments by the Governor are subject to its advice and consent.

The **police power** is the essence of what government does. It is the power to enact all manner of laws that promote the public peace, health, safety, and welfare. Examples include laws defining and providing for the prevention, detection, prosecution, and punishment of crimes; laws that protect public health; laws providing for the welfare of the poor; laws governing public schools and libraries; and laws providing for the regulation of public utilities.

The **taxing power** is the authority to levy and collect taxes that will raise revenue in an amount sufficient to defray the expenses of state government facilities and operations and to pay principal and interest on the state debt. The General Assembly has levied different types of taxes, such as the income tax, sales tax, commercial activity tax, and cigarette tax.

The General Assembly also levies fees. Fees differ from taxes in that taxes support general government operations while fees reimburse government for performing specific services. An example is the fee paid by licensees for their licenses; the fee supports the operations of the licensing agency.

## **Organizational Powers of the General Assembly**

The General Assembly has broad authority to organize itself and conduct its business, limited only by the Ohio and United States Constitutions and federal law. Each house has all powers necessary to provide for its safety and for the undisturbed transaction of its business. Each house is the judge of the election, returns, and qualifications of its members. Each house may choose its officers, determine its rules of procedure, punish its members for disorderly conduct, and, by a  $\frac{2}{3}$  vote, expel a member. Each house, through committee hearings or otherwise, can obtain (1) information affecting legislation that is contemplated or under consideration or (2) information with respect to any alleged breach of its legislative powers or any alleged misconduct of its members. If necessary to obtain information in these respects, each house can compel the attendance of witnesses and the production of written or other physical evidence.

## **Exercise of Legislative Power by the General Assembly**

Once the process of organizing for business is complete, the General Assembly exercises legislative power principally by enacting bills to establish state law and by adopting joint resolutions that propose constitutional amendments.

## Bills

A “bill” is a formal, written legal instrument for the enactment of a new statute or for the amendment or repeal of an existing statute. (A “statute” is a formal, written statement of law enacted by a legislature.) Although a bill generally must be confined to a single subject, multiple topics may be combined in a bill if they relate to a single unifying subject. A bill must be considered by each house on three different days unless  $\frac{2}{3}$  of the members elected to the house in which the bill is pending vote to suspend the three-consideration requirement. The Ohio Constitution provides that a bill cannot be passed until it has been “reproduced and distributed” to the members of the house in which it is pending. In recent years, the practice has been to reproduce and distribute a bill by electronic means instead of on paper. For a bill to be enacted, a majority of the members elected to each house generally must vote for its passage, but some bills, because of their subject matter, require extraordinary majorities. A common example of the latter is a bill that declares an emergency, which requires  $\frac{2}{3}$  of the members elected to each house to vote to pass the bill as an emergency measure.

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A bill is a formal, written legal instrument introduced by a member of the General Assembly to enact, amend, or repeal a state law.

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The Speaker of the House and President of the Senate are required to sign each bill that has been passed to show that the procedural requirements for passage have been met. The act, as the bill is called after passage, is then presented to the Governor, who has ten days after presentation, Sundays excepted, to review the act. If the Governor approves the act, the Governor signs it, and it becomes a law. However, if the Governor vetoes the act, the Governor must return it, together with a written statement of objections, to the house in which the act originated. If  $\frac{3}{5}$  of the members elected to each house then vote to override the veto, the act becomes law notwithstanding the Governor’s objections. If, within the ten-day period for gubernatorial review, the Governor neither signs nor returns the act, it becomes law just as if the Governor had signed it. When an act becomes law, it is filed with the Secretary of State.

The Governor’s veto power generally applies to whole acts. In the case of acts that appropriate money, however, the Governor may veto any item or items. An “item” of an appropriation act is any distinct and severable provision of the act. A provision of an appropriation act is “distinct and severable” if, after it is separated from the act, the remainder of the act can be given effect as intended by the General Assembly. The Governor’s power to veto items in appropriation acts is not limited to specific appropriations of money but also applies to other, nonappropriation provisions that happen to be included in the act. Vetoes items are void unless re-passed in the same manner as acts.

## How Constitutional Amendments Are Proposed

If  $\frac{3}{5}$  of the members elected to each house vote to adopt a **joint resolution** proposing an amendment to the Ohio Constitution, the amendment is submitted to the voters at an election for their approval or rejection.

The General Assembly does not have exclusive authority to propose constitutional amendments. A **constitutional convention** of delegates elected by the people may be convened to consider and propose constitutional amendments (or even, conceivably, a new constitution) for adoption or rejection by the people. If  $\frac{2}{3}$  of the members elected to each house vote to adopt a joint resolution proposing a constitutional convention, the question of holding a convention is submitted to the voters at an election for their approval or rejection. If the voters approve, the General Assembly is required at its next session to provide for calling the convention. The Constitution itself requires that the question of calling a constitutional convention be placed on the ballot once every 20 years. The last constitutional convention was held in 1912.

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The General Assembly may adopt a joint resolution proposing either to hold a constitutional convention or to amend the Ohio Constitution.

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## Amendments to the United States Constitution

Proposals for amendments to the United States Constitution can be initiated by Congress or by the states. By a  $\frac{2}{3}$  vote in both of its houses, Congress may propose amendments to the United States Constitution. Federal constitutional amendments must be ratified by  $\frac{3}{4}$  of the several states in order to take effect. The ratification may come from the state legislatures or by state conventions, as Congress directs. Ratification of federal constitutional amendments by the General Assembly requires a simple majority of the members elected to each house.

### Legislative Power Exercised by Executive and Judicial Branches

To a limited extent, the Governor possesses legislative authority in the form of the veto power over enacted bills (see [Chapter 5](#)); the power to call special legislative sessions and limit their business; and the power to adjourn the General Assembly if the two houses cannot agree on the time of adjournment. (Under the latter power, the Governor cannot adjourn the General Assembly beyond the time constitutionally fixed for its regular meetings.)

The Ohio Supreme Court possesses limited legislative authority, formerly vested in the General Assembly, to adopt rules governing practice and procedure in the courts. (See [Chapter 12](#).)

Upon application of  $\frac{2}{3}$  of the states, Congress must call a federal constitutional convention to propose amendments to the United States Constitution. To join in such an application, the General Assembly adopts a joint resolution to that effect. Any amendment proposed by a federal constitutional convention must be ratified by states in the same manner as amendments that are proposed by Congress.

### Legislative Power Exercised by the People

The people exercise legislative power through the initiative, which is their power to enact laws independently of the General Assembly, and through the referendum, which is their power to approve or disapprove laws passed by the General Assembly.

## Initiative

### Constitutional Amendments

In addition to their power to call a constitutional convention, the people can amend the Ohio Constitution through the initiative. If an initiative petition proposing a constitutional amendment is filed with the Secretary of State, the proposed amendment is submitted to the voters at an election for their approval or disapproval. (A number of voters equal to 10% of the total number of votes cast for Governor in the most recent gubernatorial election must sign such an initiative petition.) An initiated constitutional amendment approved by the voters takes effect 30 days after the day of the election at which it is approved.

### Statutes

A statute may be proposed by an initiative petition signed by a number of voters equal to 3% of the total number of votes cast for Governor in the most recent gubernatorial election. If such a petition is filed with the Secretary of State, the Secretary of State transmits the proposed statute to the General Assembly. If the General Assembly defeats the proposed statute, passes it in amended form, or does not act on it within four months after the time it was received, a second petition may be filed with the Secretary of State to have the proposed statute submitted to the voters at an election for their approval or disapproval. (A number of voters equal to 3% of the total number of votes cast for Governor in the most recent gubernatorial election, in addition to those who signed the first petition, must sign the second petition.) The proposed statute is submitted to the voters in the form specified in the second petition – either as originally proposed or as it may have been amended by either house of the General Assembly. An initiated statute approved by the voters is not subject to the Governor’s veto and takes effect 30 days after the election at which it was approved.

### Referendum

Laws generally go into effect on the 91<sup>st</sup> day after they are filed with the Secretary of State. This 90-day period allows time for the preparation, circulation, and filing of a referendum petition on the law, any section of the law, or any item in the law if the law is one appropriating money. If a valid referendum petition is filed with the Secretary of State, the law, section, or item is submitted to the voters at an election for their approval or disapproval. (A number of voters equal to 6% of the total number of votes cast for Governor in the most recent gubernatorial election must sign a referendum petition.) A law, section, or item thus submitted to the electorate does not go into effect until the voters have approved it. Certain laws – those levying taxes, those appropriating money for current expenses, and those declaring an emergency – are not subject to the referendum and go into immediate effect when they are approved by the Governor.

#### Initiative Petition Votes

If, under the initiative provisions of the Constitution, the General Assembly passes a proposed statute in amended form, and the original proposed statute is approved by the voters, the original proposed statute becomes law in lieu of the amended version passed by the General Assembly.

If, however, the General Assembly passes the proposed statute in amended form, and the original proposed statute is disapproved by the voters, the amended version passed by the General Assembly becomes law.

For more information about the initiative and referendum and about constitutional amendments, see the Legislative Service Commission (LSC) *Members Brief*, “[Statewide Ballot Issues](#),” available on the LSC website: [lsc.ohio.gov](http://lsc.ohio.gov).

## Limitations on Legislative Power

In exercising legislative power, the General Assembly and the people are limited, as has already been noted, by only the Ohio and United States Constitutions and by federal law. (Limitations placed specifically upon the General Assembly are also limitations upon the people’s power to adopt laws by initiative.) The following paragraphs summarize important constitutional limitations.

### Bill of Rights Not to Be Infringed

The General Assembly cannot enact laws that infringe the civil and political rights guaranteed to the people by the Bills of Rights in the Ohio and United States Constitutions. These rights include, for example, freedom of speech, freedom of religion, freedom of the press, the right to be secure against unreasonable searches and seizures, the right to due process of law, and the right to equal protection of the laws.

**The Ohio Bill of Rights**

Although the Ohio Bill of Rights is similar to the Bill of Rights contained in the United States Constitution, Ohio’s Bill of Rights includes provisions that have no equivalent in the federal Bill of Rights, as well as provisions inspired by the Declaration of Independence and the Ordinance of 1787. An example of these additional provisions is the duty given to the General Assembly to encourage education.

### Laws of a General Nature and Uniform Operation Preferred

A “law of a general nature” is a law affecting a subject that can or does exist everywhere in the state. A law operates “uniformly” if it affects equally every person or thing that comes within the scope of the law. The Ohio Constitution requires that laws of a general nature operate uniformly throughout the state. An example is a law prescribing automobile equipment standards. Because automobiles exist everywhere in the state, the General Assembly must enact the law as a law of uniform operation throughout the state.

The Constitution does not prohibit special or local laws. However, a special or local law is appropriate only if its subject matter is unique to a particular area or circumstance. An example is a law authorizing the sale of a particular parcel of state-owned real estate. Because a parcel of real estate is, by nature, unique, the law cannot be made general or of uniform operation.

Nor is the General Assembly prohibited from classifying persons and things. Classification is an inherent legislative power, although the General Assembly must have a more compelling reason to make some classifications (e.g., those based on race) than others (e.g., business regulations that impose special obligations on certain trades or professions).

### Appointments and Special Conferrals of Corporate Powers Prohibited

The General Assembly is prohibited from appointing public officers. For example, while a law can provide generally for the appointment of a director of a public agency, it cannot appoint a specific individual as director. The General Assembly also is prohibited from enacting any special law that confers corporate powers. All laws conferring corporate powers must be in the form of

general laws. For example, while the General Assembly can enact laws authorizing the formation of corporations, it cannot enact a law incorporating a specific corporation.

## Home Rule Limitation

Under the Home Rule Amendment to the Ohio Constitution, municipalities have authority to exercise powers of local self-government, to adopt local police regulations, and to own and operate public utilities. Powers of local self-government relate to the internal organization and operation of municipal government. Police regulations relate to the peace, health, safety, and welfare of the municipality.

Because municipal home rule powers originate in the Constitution, a court may determine that a law passed by the General Assembly that interferes with those powers is invalid as applied to municipalities. For such a law to stand, the state would need to show that it is authorized by other sections of the Constitution or is otherwise permitted under standards set by the Ohio Supreme Court.

As a rule, the General Assembly cannot interfere with a municipality's exercise of its self-government authority, although it may enact procedural laws for municipalities that have not adopted charters. With regard to municipal police powers, municipalities cannot adopt police regulations that are in conflict with general laws of the state. A general law, for purposes of home rule analysis, is different from a law of a general nature for purposes of the uniformity provision described above. For home rule purposes, a general law must (1) be part of a statewide and comprehensive legislative enactment, (2) apply to all parts of the state alike and operate uniformly throughout the state, (3) set forth police, sanitary, or similar regulations, rather than purport only to grant or limit legislative power of a municipal corporation to set forth such regulations, and (4) prescribe a rule of conduct upon citizens generally.

If a state law does not satisfy the four-part test, a municipality may lawfully act in conflict with it, and the state's application of the law to municipalities may be held to be unconstitutional.

Other provisions of the Ohio Constitution allow the General Assembly to infringe on the home rule authority of municipalities. For example, the General Assembly may enact laws that restrict the municipal power to levy taxes and incur debt. Similarly, the Constitution authorizes the General Assembly to pass laws that fix and regulate the hours of labor and that provide for the comfort, health, safety, and general welfare of all employees.

For a more detailed discussion of home rule, see the *LSC Members Brief*, "[Municipal Home Rule](#)," available on the LSC website: [lsc.ohio.gov](http://lsc.ohio.gov).

### Municipal Corporations

Ohio municipal corporations are of two types: cities and villages. A city has 5,000 or more people; a village has fewer than 5,000 people. The Ohio Municipal, Township and School Board Roster identifies all of the municipalities in Ohio and indicates whether a particular municipality has adopted a charter. It is available in electronic format on the Secretary of State website: [ohioroster.ohiosos.gov](http://ohioroster.ohiosos.gov).

## Lending of Governmental Credit Limited

With some exceptions, the Constitution prohibits the General Assembly from enacting any law that has the effect of extending the state’s credit to any individual or corporation and from enacting any law whereby the state becomes a joint owner of any company or association. The Constitution also prohibits the General Assembly from enacting any law that authorizes a county, city, or township to take similar actions. The General Assembly may not enact any law whereby the state assumes the debts of a county, city, township, or corporation unless the debt was contracted to repel invasion, suppress insurrection, or defend Ohio in war.

There are numerous, specific exceptions to these limitations. For example, the General Assembly may enact laws that authorize using the state’s credit to make grants and guarantee loans to encourage the use of Ohio coal and to enact laws that authorize using state and local credit to finance industrial development and housing. The General Assembly also may aid private, nonprofit organizations, such as veterans’ organizations, that carry out public functions.

### Mills and Millage

Property taxes cannot exceed 1% of the tax valuation of the property taxed, except that property taxes that exceed this limit may be levied if they are specifically approved by the voters of the taxing district. For this reason, references often are made to voted and unvoted (or “outside” and “inside”) millage. (A “mill” is  $\frac{1}{10}$  of a cent; a tax rate of ten mills per dollar of taxable value is equivalent to 1%.) Unvoted or inside millage refers to taxes that are levied inside the 1% limitation and therefore do not require approval by any authority other than the taxing authority of a district. Voted or outside millage refers to taxes that are levied outside or above the 1% limit and therefore must be approved by the voters of the taxing district.

Laws authorizing bonded indebtedness for which the state is generally liable for repayment must provide for the levying and collection of taxes sufficient to pay interest and retire the debt over a specified period of time. This requirement does not apply to bonded indebtedness, such as revenue bonds, that the state does not have a “general obligation” to pay. (A “revenue bond” is a bond that will be repaid solely out of money earned by the project the bond was sold to finance.)

### Taxing Power Limitations

A law that levies a tax must state the purpose for which the tax is being levied. Revenue arising from the tax can be applied to only the stated purpose. Under a specific provision of the Ohio Constitution, taxes and fees derived from the registration, operation, or use of motor vehicles on public highways,

and from fuels used in propelling these vehicles, can be expended only for highways and bridges, traffic law enforcement, and care of indigent victims injured in motor vehicle accidents.

At least 50% of any income tax and any estate or inheritance tax collected by the state must be returned to the county, school district, city, village, or township in which the tax originated. (At present there is no estate tax or inheritance tax in Ohio.)

Poll taxes and taxes in the form of personal service are prohibited.



The General Assembly currently delegates its taxing power with respect to property to local governments. In general, land and improvements must be taxed by uniform rule according to their value. However, the General Assembly may enact laws that (1) reduce the value of homesteads occupied by certain elderly and disabled persons, (2) classify residential and agricultural land and improvements separately from other land and improvements for purposes of taxation, and (3) exempt from taxation lands and improvements that serve a public purpose.

### **Judicial Power Limited**

The General Assembly cannot exercise judicial power. The only exceptions to this prohibition are impeachment and an alternative procedure for the removal of judges.

All state officers are subject to impeachment for misconduct while in office. The House of Representatives has the sole power to initiate an impeachment. “Impeachment” refers to the process by which the House brings charges of misconduct against a state officer. The charges are expressed in a special legislative instrument called “articles of impeachment.” A majority of the members elected to the House must vote to adopt each article of impeachment. The House of Representatives transmits the articles of impeachment to the Senate, which proceeds to try the charges to determine whether or not misconduct has in fact occurred as the articles allege. A  $\frac{2}{3}$  affirmative vote in the Senate is required for conviction upon any article of impeachment.

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The General Assembly may remove state officers from office by impeachment. Impeachment and an alternative procedure for the removal of judges are the only judicial powers currently held by the General Assembly. There has not been an impeachment in Ohio since the early 1800s.

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Upon impeachment and conviction, the General Assembly may not punish the individual further than by removal from office and disqualification from holding state government offices in the future.

The House and Senate, by a  $\frac{2}{3}$  vote of the members elected to each house, also may adopt a concurrent resolution removing a judge from office – but only after a complaint detailing the charges against the judge has been printed in the House and Senate *Journals*, and the judge has been given notice of the complaint and an opportunity to be heard. This procedure for the removal of judges is the alternative to impeachment.

### **Court Rules of Practice and Procedure**

Under the Modern Courts Amendment to the Ohio Constitution, the Ohio Supreme Court is required to adopt rules governing practice and procedure in all courts of the state. The General Assembly cannot enact any law that conflicts with the rules. The General Assembly has a veto power over the rules, however. The Supreme Court must file proposed rules with each house not later than January 15, and can amend the proposed rules until May 1. The proposed rules take effect on July 1 unless before that date the General Assembly adopts a concurrent resolution of disapproval.

## **Other Legislative Limitations and Prohibitions**

There are a number of other limitations placed upon the General Assembly's legislative power. The General Assembly, for the most part, may not enact retroactive laws. Laws that affect matters that have already occurred may be enacted only if they are remedial in nature. A law that has a substantive effect, such as one that declares certain conduct to be a crime, cannot apply to conduct that occurred before the law was enacted. However, a law that merely changes the way in which criminal charges are brought is only remedial and can affect charging with respect to criminal conduct that occurred before the law was enacted.

The General Assembly is limited in its power to pay unauthorized claims. Unless authorized by a  $\frac{2}{3}$  vote of the members elected to each house, the General Assembly cannot enact a law that provides for paying any claim that was not authorized by law at the time it was incurred.

The General Assembly generally cannot delegate its legislative power. Except in the case of laws affecting public schools, the General Assembly cannot enact any law that takes effect upon the approval of any authority other than the General Assembly. However, the General Assembly is not prohibited from delegating power to administrative agencies so long as the delegating legislation includes standards to guide the agency in executing the delegated power.

The General Assembly is required to enact laws fixing the terms and compensation of officers, but no change in either of these matters can affect the salary of an officer during a term unless the office is abolished.

## **Federal Jurisdiction**

The states have delegated certain of their powers to the federal government. These "delegated powers," which are embodied in the United States Constitution, are exercised under statutes enacted by Congress. Ohio, like the other 49 states, retains all the powers not delegated to the federal government. These "reserved powers" are embodied in the Ohio Constitution and the common law and are exercised under statutes enacted by the General Assembly and judgments made by the courts. Statutes and the common law are discussed in greater detail in [Appendix D](#).

When Congress acts within the scope of the power delegated to it by the United States Constitution, these federal laws preempt state laws on the same subject to the extent the two laws conflict. For example, the United States Constitution delegates to Congress the power to regulate interstate commerce. A federal law enacted within the scope of this power may preempt Ohio laws affecting interstate commerce.

In areas of law in which Congress cannot preempt state laws, Congress often uses tools such as conditional spending to encourage the states to comply – federal funds are provided if the federal law is accepted and complied with or withheld if it is not. For example, certain federal highway funds are available only to states that set the minimum age for drinking alcohol at 21 years.

The United States Constitution also places certain direct limitations upon the states. For example, the states cannot tax imports or exports of goods crossing their borders without congressional consent. Another example is that the states cannot, without congressional consent, enter into compacts or agreements with other states or foreign countries.

## Membership in the General Assembly

The General Assembly is a two-house (bicameral) legislature consisting of the Senate and House of Representatives. The Senate has 33 members called Senators; the House has 99 members called Representatives. One Senator is elected from each Senate district, and one Representative is elected from each House district.

### Qualifications for Membership

To hold office as a Senator or Representative, a person must meet certain qualifications. A person must:

- Be a qualified voter (that is, be a citizen of the United States who is 18 years of age or older, a resident of Ohio for at least 30 days, a resident of the county and precinct in which he or she votes, and registered to vote for at least 30 days);
- Be elected to the office;
- Be a resident of the Senate or House district from which the person was elected for at least one year before the election unless absent from the district on the public business of the United States or of Ohio; and
- Present a certificate of election (when sworn into office).

A Senator or Representative must take an oath or affirmation to support the United States and Ohio Constitutions and to faithfully discharge the duties of the office.

In addition, a Senator or Representative who holds money in the public trust must account for those funds before taking a seat in the General Assembly.

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Among the requirements for a person seeking the office of Senator or Representative is that the person be a qualified voter and be a resident of the district from which the person was elected for at least one year.

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### Holding More Than One Office Prohibited

Senators and Representatives are prohibited from holding certain other offices and positions during their terms. Some of these prohibitions are imposed by the Ohio Constitution while others are imposed by statute. A detailed discussion of these prohibitions is included in [Chapter 3](#).

### Legislative Elections and Terms of Office

Elections to the Senate and House of Representatives are held in even-numbered years. Terms of office begin on January 1 of the odd-numbered year following the election. Senators are elected to terms of four years with approximately  $\frac{1}{2}$  of the Senators being elected every other year. Senators from even-numbered districts are up for election at the same time. Senators from odd-numbered districts are up for election two years later. Representatives are elected to terms of two years. Unlike the Senate, the entire membership of the House is subject to election every even-numbered year.

## Term Limits

Under the Ohio Constitution, a person cannot hold the office of Senator for longer than two successive four-year terms. A person cannot hold the office of Representative for longer than four successive two-year terms.

Terms are considered to be successive unless they are separated by four or more years. Consequently, a Senator or Representative who becomes ineligible for reelection under term limits becomes eligible for election to the same office again after a four-year absence from the office.

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Under term limits, members elected to the General Assembly may serve eight consecutive years. Representatives are limited to four successive two-year terms. Senators are limited to two successive four-year terms.

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Occasionally, members resign before the expiration of their terms. A person appointed or elected to fill a vacancy is not charged with the remaining portion of the term as long as four or more years have passed since that person last served in the same house. Because the eight-year clock does not start running in such cases until the next regularly scheduled election for a full term for that seat, a person who fills a vacancy may serve longer than eight years. However, the member who resigned is considered to have served the full term for purposes of determining that member's eligibility to run again.

## Contested Elections

The Ohio Constitution makes each house the judge of the election, returns of the election, and qualifications of its members. Although this power is vested exclusively in the Senate and House, under the election contest laws, the courts perform an initial fact-finding function when a member's election is contested. The court does not resolve the contest, however. The court transmits the evidence to the Senate or House, and the Senate or House resolves the contest. The only limitation on the Senate and House in resolving an election contest with respect to one of its members is that neither house can declare a person to be eligible if the person is ineligible under the Ohio Constitution. Election contests involving seats in the General Assembly, once common, now rarely occur. The Revised Code authorizes a defeated candidate to apply for a recount and requires a recount if the margin of victory is not more than 0.5%. Election contests are explained in more detail in [Appendix C](#).

## Resignations

The procedure by which a Senator or Representative may resign differs according to whether the General Assembly is in session at the time of resignation.

If the General Assembly is in session, a Senator who wishes to resign does so by presenting a letter of resignation to the President. A Representative who wishes to resign does so by presenting a letter of resignation to the Speaker. The President or Speaker verifies the letter's authenticity and, upon doing so, sends a letter of acknowledgment to the resigning Senator or Representative.

If, however, the General Assembly has adjourned without fixing a day for reconvening (sine die), thereby ending its session for the biennium, a Senator or Representative who wishes to resign does so by presenting a letter of resignation to the Governor. The Governor verifies the letter's authenticity and, upon doing so, sends a letter of acknowledgment to the resigning Senator or Representative.

An acknowledged resignation takes effect at the time specified in the letter of resignation.

If a resignation occurs while the General Assembly is in session, the Senate or House Clerk prints the letters of resignation and acknowledgment in the *Journal*.

## **Vacancies**

When a vacancy occurs in the Senate or House of Representatives, a successor is elected by means of a resolution adopted by the Senators or Representatives who are affiliated with the same political party as the member who vacated the seat. The resolution is certified to the Secretary of State, who issues a certificate of election to the member-elect.

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Vacancies in the Senate and House are filled by vote of the members affiliated with the same political party as the former member whose seat is vacant.

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In the House, the person elected to fill the vacancy holds office for the remainder of the unexpired term. In the Senate, the person elected to fill the vacancy holds office for the remainder of the unexpired term only if the vacancy occurs after the first 20 months of the former Senator's term. If the vacancy occurs during the first 20 months of the former Senator's term, the person elected to fill the vacancy holds office only temporarily. At the next general election in an even-numbered year, the Senate district's voters elect a Senator to hold office for the last two years of the unexpired term. The Senator elected takes office on January 1 following the election.

## **Redistricting**

### **General Assembly Districts**

#### **Procedure for Drawing Districts**

Under the Ohio Constitution, the seven-member [Ohio Redistricting Commission](#) is responsible for dividing Ohio into Senate and House districts. Information about the Commission and its duties is available on its website: [redistricting.ohio.gov](http://redistricting.ohio.gov).

The Commission is composed of the Governor, the Auditor of State, the Secretary of State, a person chosen by the Speaker of the House, a person chosen by the Minority Leader of the House, a person chosen by the President of the Senate, and a person chosen by the Minority Leader of the Senate. No appointed member of the Commission may be a current member of Congress. The Commission meets in each year ending in "1" on a date designated by the Governor. The Commission prepares and adopts a redistricting plan based upon the federal decennial census taken in the preceding year. The Commission is required to adopt the

redistricting plan by September 15 and generally must do so by a specified bipartisan vote. Except in certain circumstances, the plan cannot be changed until the next decennial redistricting.

If a federal court or the Ohio Supreme Court invalidates the redistricting plan, the Commission is required to meet and prepare a new plan. A new plan must allow persons 30 days to change residence in order to be eligible for election under its provisions. The new plan generally cannot be changed until the next decennial redistricting.

### **District Standards**

In preparing the redistricting plan for the state House of Representatives and Senate, the Ohio Redistricting Commission first divides Ohio’s population by 99. The resulting quotient is the “ratio of representation” in the House for the next ten years. The Commission then divides Ohio’s population by 33. The resulting quotient is the ratio of representation in the Senate for the next ten years. The Commission then draws lines dividing the state into 33 Senate and 99 House districts.

In drawing district lines, the Commission is subject to the “one person, one vote” principle. Although the goal in drawing district lines under this principle is exact population equality among House and Senate districts, achieving absolute equality is practically impossible and some deviation from the ratios of representation is therefore unavoidable. Consequently, the population of each Senate and House district must be only substantially equal to the applicable ratio of representation, and a Senate or House district cannot contain less than 95% nor more than 105% of the applicable ratio of representation.

In drawing districts, the Commission must follow procedures to keep counties, municipal corporations, and townships together. And, the Commission must attempt to create a district plan that (1) is not drawn primarily to favor or disfavor a political party, (2) corresponds closely to the statewide partisan preferences of Ohio voters, and (3) includes compact districts.

### **District Populations**

Given Ohio’s 2020 census population of 11,799,448 people, the ideal population of a state House district is 119,186 while the ideal population of a Senate district is 357,559. The ideal populations are known technically as ratios of representation.

### **The “One Person, One Vote” Principle**

In 1964, the United States Supreme Court ruled that under the Equal Protection Clause of the 14<sup>th</sup> Amendment, the government must ensure that the vote of a person in one district is as nearly equal as practicable to the vote of a person in every other district.

Prior to this decision, Ohio’s state Senate and House districts were based roughly on population, but district boundaries followed county lines, and beginning in 1903, every county was required to have at least one representative. Similarly, congressional districts were not required to have equal populations. Under that system, a member from one district might have represented significantly more or fewer constituents than a member from another district, especially in the Ohio House. The votes of persons in some districts thus counted for more or less than did the votes of persons in other districts.

## **House of Representatives Districts**

Ohio House districts must be composed of contiguous territory that is bounded by a single, nonintersecting, continuous line. A county that has a population greater than 105% of the House ratio of representation is entitled to as many House districts wholly within its boundaries as it has whole ratios. (Any fraction of such a county's population in excess of the whole ratio is to be made part of only one adjoining House district.) A county that has a population between 95% and 105% of the House ratio of representation must be designated a House district. The remaining territory of the state must be divided into House districts by combining counties, municipal corporations, and townships. The Ohio Redistricting Commission must follow rules designed to minimize the number of political subdivisions split under the redistricting plan.

## **Senate Districts**

Ohio Senate districts must be composed of three contiguous House districts. A county that has a population equal to one or more Senate ratios of representation is entitled to as many Senate districts wholly within its boundaries as it has whole ratios. (Any fraction of such a county's population in excess of the whole ratio is to be made part of only one adjoining Senate district.) Counties having less than one whole Senate ratio but at least one whole House ratio are to be part of only one Senate district.

If a redistricting plan changes the boundaries of an existing Senate district and if a Senator's term will not expire within two years after the adoption of the plan, the Senator represents, for the remainder of that term, the new Senate district that contains the largest portion of the population of the old Senate district from which the Senator was elected. If more than one incumbent Senator would represent such a new Senate district by following this rule, the plan must designate which Senator is to represent the new district and which district each of the other Senators will represent for the remainder of their terms.

## **Congressional Districts**

### **Procedure for Drawing Districts**

Similarly, Ohio's congressional districts must be redrawn in each year ending in "1" based upon the federal decennial census. Based on the 2020 census and the resulting reapportionment of U.S. House of Representatives seats by Congress, Ohio has 15 seats in the U.S. House (one fewer than it had under the 2010 census) with an ideal district population of 786,629.

The Ohio Constitution requires the General Assembly to adopt a congressional district plan by a specified bipartisan vote and in the form of a bill by September 30. If the General Assembly does not do so, the Ohio Redistricting Commission must adopt a plan by a specified bipartisan vote by October 31. And, if the Commission does not adopt a plan by that date, the General Assembly must adopt a plan by November 30. Except in certain circumstances, the plan cannot be changed until the next decennial redistricting.

If a federal court or the Ohio Supreme Court invalidates the redistricting plan, the General Assembly has 30 days to pass a replacement plan that remedies the legal defects but includes no other changes. If the General Assembly does not do so by that deadline, the Commission has another 30 days to adopt a replacement plan in the same manner.

## **District Standards**

In preparing the redistricting plan for the U.S. House of Representatives, the authority drawing the districts must divide Ohio’s population by the number of districts apportioned to the state. The resulting quotient is the congressional ratio of representation for the next ten years.

The authority drawing the districts is subject to the “one person, one vote” principle. In general, the district populations must be as equal as practicable. Congressional districts must be composed of contiguous territory that is bounded by a single, nonintersecting, continuous line. The authority also generally must follow procedures to keep districts compact and to keep counties, municipal corporations, and townships together instead of splitting them between districts.

If the General Assembly passes a congressional district plan by a simple majority vote instead of by the specified bipartisan vote, additional district standards apply, including requirements that the plan not unduly favor or disfavor a political party or its incumbents and that the plan not unduly split governmental units.

## **Current Status of Redistricting**

The congressional and General Assembly district plans adopted in 2021 are the subject of ongoing litigation in state and federal court. The [maps](#) used for the 2022 elections are available in an interactive format at the Publications link on the Secretary of State website: [ohiosos.gov](https://ohiosos.gov). However, it is not yet clear what plans will be in place for 2024 and beyond. For more background information on redistricting, see the LSC *Members Brief*, “[Redistricting in Ohio](#),” available on the LSC website: [lsc.ohio.gov](https://lsc.ohio.gov).