



## OHIO CONSTITUTIONAL MODERNIZATION COMMISSION

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### MINUTES OF THE LEGISLATIVE BRANCH AND EXECUTIVE BRANCH COMMITTEE

FOR THE MEETING HELD  
THURSDAY, JULY 14, 2016

#### **Call to Order:**

Vice-chair Paula Brooks called the meeting of the Legislative Branch and Executive Branch Committee to order at 1:32 p.m.

#### **Members Present:**

A quorum was present with Vice-chair Brooks, and committee members Asher, Coley, Curtin, McColley, Taft, Talley, and Tavares in attendance.

#### **Approval of Minutes:**

The minutes of the May 12, 2016 meeting of the committee were approved.

#### **Presentation:**

*“Grouping of Article II Sections”*

*Steven C. Hollon*

*Executive Director*

Vice-chair Brooks recognized Steven C. Hollon, executive director of the Constitutional Modernization Commission, who provided an overview of Article II, particularly grouping related sections for possible consideration and/or combination into reports and recommendations.

Mr. Hollon described ten different groupings, or categories, of sections, as follows:

#### Category I – Section 1 (Legislative Power)

Mr. Hollon said this category deals with vesting the legislative authority of government in the General Assembly and reserving to the people certain powers, such as the initiative and referendum. Of these sections, Mr. Hollon said only Section 1 is assigned for review by the

Legislative and Executive Branch Committee, with the sections on the initiative and referendum being assigned to the Constitutional Revision and Updating Committee.

Mr. Hollon said Section 1 would benefit from a revision that would make it more readable, providing a suggested change that would describe the legislative powers in a cleaner fashion. However, he acknowledged that improving clarity may not be a sufficient reason to alter the section.

#### Category II – Section 2 (Election of Legislators)

Mr. Hollon indicated the committee already had reviewed this section and there is no need for further action.

#### Category III – Sections 3, 4, 5, 11, and 31 (Qualifications, Vacancy, and Compensation of Members of General Assembly)

Mr. Hollon noted that Sections 3, 4, 5, 11, and 31 deal with residency requirements and restrictions on those who serve in the General Assembly, the method for filling a vacancy of a member of the General Assembly, and the compensation of the members and officers of that body. Mr. Hollon said the committee may wish to consider whether some of the provisions should remain in Article II or whether they should be moved to another article dealing with officeholders in general, such as Category VIII (Officeholders), described below.

#### Category IV – Sections 6, 7, 8, 9, 13, and 14 (Conducting Business of General Assembly)

Mr. Hollon said the sections in this category deal with the organization and power of the General Assembly, providing basic standards for conducting the business of the body. He observed that, of the six sections in this category, four were adopted in 1851 and then amended in 1973, one was adopted in 1851 and has never been amended, and one was adopted in 1973, at the time the first four sections noted above were amended. He noted the sections in this category could be considered in the same report and recommendation.

#### Category V – Sections 10 and 12 (Rights and Privileges of Members of General Assembly)

Mr. Hollon indicated Sections 10 and 12 address the rights and privileges of the members of the General Assembly, and that these sections reasonably could be considered by the committee at the same time and reviewed in the same report and recommendation.

#### Category VI – Sections 15, 16, 26, and 28 (Enacting Laws)

According to Mr. Hollon, the four sections in this category deal with the process for enacting bills by the General Assembly, the requirement for the governor's signature, how laws are to be applied, and restrictions on their enactment. He suggested these sections be dealt with at the same time and in one report and recommendation. However, he said, since these sections refer to actions by both the General Assembly and the governor, and the effect of laws generally, a question the committee may wish to address is whether this grouping of provisions should be removed from Article II and placed in its own separate article that deals with enacting laws. Mr. Hollon provided possible language for a new separate article addressing enacting laws.

#### Category VII – Sections 33, 34, 34a, 35, 37 (Employee and Worker Protections)

Mr. Hollon indicated the sections in this category deal with protecting the interests of employees and workers. He noted there are also two other provisions that have been proposed by a private citizen that broadly fall into this category and that have been assigned to the committee for its review. He said one question for the committee is whether there are enough sections on this topic that would warrant removing this group of provisions from Article II and placing them in a new and separate article dealing exclusively with this topic, in order to provide for greater clarity, transparency, and ease of comprehension by the reader.

#### Category VIII – Sections 4, 5, 20, 23, 24, 27, 38 (Officeholders)

Mr. Hollon described a group of sections that deal with topics concerning officers and officeholders, including their term, compensation, impeachment and removal, and filling of vacancies.

Mr. Hollon added that another topic that might be considered in this category is the creation of a salary commission for officeholders. Such a provision could be added to the other sections related to general requirements for all officeholders in state and local government. Mr. Hollon said an additional question is whether the committee would want to add a provision preventing elected officials from holding two elected offices at the same time. He said there is a current provision preventing General Assembly members from doing so.

#### Category IX – Sections 21, 22, 30, 32, 39 (Miscellaneous Topics)

Mr. Hollon described sections that deal with miscellaneous powers the constitution grants to the General Assembly, but which do not deal with a common topic. He said these sections perhaps more logically belong in other articles in the constitution and could be transferred to other committees for review, or they could be grouped with the sections noted in Category VI above (Enacting Legislation), either in a new and separate article or contained within Article II.

#### Category X – Section 36 and Other Provisions (Natural Resources)

Finally, Mr. Hollon described sections, including Section 36, relating to natural resources. He said other provisions located in different articles of the constitution addressing the topics of (i) private property and eminent domain; (ii) the protection of private property rights in ground water, lakes, and water courses; and (iii) Ohio Livestock Care Standards Board. He said, collectively, these four topics deal with the larger issue of the preservation of natural resources and rights in private property versus the interest of the state in conserving natural resources and regulating methods for their use and extraction.

Mr. Hollon said the question is whether it makes sense to place all of these items in one article in the constitution for the convenience of the reader, or whether it would be too difficult a task to have the voters approve moving these provisions around, thus making more sense to leave well enough alone and just let the two committees complete their work on these topics as assigned.

Having concluded his presentation, Mr. Hollon asked what the committee would like to see, wondering if staff should begin to draft reports and recommendations on any of these groupings.

Considering Mr. Hollon's proposed redraft of Article II, Section 1, clarifying the legislative power of the state, committee member Herb Asher noted that throughout the constitution there are paragraphs that combine concepts. He wondered if a rewrite would create other problems or have unknown implications, even if the intent is simply to clarify the intent.

Mr. Hollon said the suggested revision provides clarity that is missing from the dated language of the 1851 constitution. He said a goal of the Commission is to make the constitution clearer, more readable, and more transparent. Mr. Hollon acknowledged a revision could create greater difficulties related to statutory law. But, he said, any recommended change would have to be reviewed and approved by the General Assembly, which could, at that time determine if a change would relate to statutory law.

Representative Mike Curtin wondered if the prohibition on holding office in Section 5 refers to any elective office, or only to the state officeholders. He also asked whether statutory law specifies that an embezzlement conviction is the only restriction on holding public office, or whether conviction of other crimes also creates a restriction. He asked whether there should be an array of offenses named in the constitution that prevent holding public office.

Mr. Hollon answered there could well be other disabilities described in statutory law, but that his initial purpose was to sort the constitutional provisions, and so he did not look into statutory law. Senior Policy Advisor, Steven H. Steinglass said the Section 5 reference to disqualification for embezzlement was recommended for repeal by the 1970s Constitutional Revision Commission, but was defeated at the polls. He said the argument at the time was that one category of crime should not be singled out, but that other crimes should also be disqualifying.

Mr. Asher asked for information about those disqualifying crimes, and Mr. Hollon agreed that the research would be provided.

Vice-chair Brooks asked if the restriction is applicable to other offices or just to legislators. Mr. Hollon noted the provision says no person in any office in the state. He added this point is why he suggested the committee might want to consider creating a separate article in the constitution addressing the role of officeholders. Vice-chair Brooks followed up, commenting that there are also appointed officials, so the language should be clear.

Senator Charleta Tavares said she agrees the sections could be grouped in order to enhance the constitution's readability. She wondered if there are other constitutions whose readability has been enhanced by the grouping of related sections.

Mr. Hollon said he is not aware of another state that has a separate article on officeholders. He said the last set of constitutions adopted was in the 1960s, and there was not much activity in this regard. He noted there are two purposes behind his memo: first, that the committee might want to consider grouping the sections in the constitution itself, and second, that the sections might be fine in their current placement, but could be grouped for the purposes of writing a report and recommendation. He said staff could research what other states have done regarding grouping or relocating related sections of their constitutions.

Sen. Tavares said she is not just interested in clarifying the section referencing officeholders, but is also considering grouping sections so that the constitution is more readable for the average person.

Mr. Hollon said there is more back and forth in Ohio's constitution, and that the sections are fragmented. He said this has to do with the fact that Ohio's is the sixth oldest constitution, dating from 1851. Mr. Steinglass added that the constitutions of Hawaii and Alaska were adopted in an era in which the National Municipal League Model constitution had influence. He said those states' constitutions are cleaner, neater, and better organized constitutions because, being newer, they have not been amended as frequently. He said Ohio's constitution is old, and has not been rewritten to be clearer. He noted some state constitutions are even more problematic, for example, Massachusetts puts all amendments at the end.

Mr. Asher asked whether, as other states have gone through constitutional revision, the concern about clarity and readability has been a factor.

Mr. Steinglass said this has happened minimally, with a couple of states having addressed it, but as a side issue. He said most constitutional review commissions have been focused on substantive proposals.

Mr. Hollon said he took it as a goal of the commission to clarify, modernize, and clean up. So, he said, that is why he went through this exercise.

Vice-chair Brooks noted the committee has some thinking to do about this question. Mr. Hollon indicated staff is ready to assist based on how the committee wants to approach the exercise.

Committee member Bob Taft said he concurs with the suggestion that some sections be transferred to the Education, Public Institutions, and Local Government Committee, or to the Judicial Branch and Administration of Justice Committee. He said the committee should proceed to accomplish that goal.

Mr. Hollon noted the concept of moving or grouping sections without changing them may not resonate with voters, who may not care when the proposed change is not substantive.

Rep. Curtin said it is worthy to continue the process of trying to revise the constitution for clarity, but questions how long it will take to get it done. He expressed that such an effort might depend on how simple the ballot language would be, and cautioned that detailed ballot language could prevent the public from approving the change. He asked for legal advice about how simple or complicated the ballot language would be.

Mr. Steinglass said the ballot language does not have to include the text of the proposed amendment. He suggested that ballot language saying the sections would be reorganized without making a substantive change would be adequate and would withstand a court challenge. He said the more difficult issue is that the secretary of state would have to buy many pages of newsprint to publish the change because newspaper publication of the complete proposed constitutional section is required.

Vice-chair Brooks asked whether the transfer of some sections is a topic to explore with the other two committees. Mr. Hollon clarified that the sections in question were Sections 30, 32, and 39, and that the Coordinating Committee, as well as the Education, Public Institutions, and Local Government Committee and the Judicial Branch and Administration of Justice Committees consider the question when they meet in September.

Mr. Taft then moved that the committee recommend to the Coordinating Committee that Section 30 be transferred to the Education, Public Institutions, and Local Government Committee, and that Sections 32 and 39 be transferred to the Judicial Branch and Administration of Justice Committee. The motion was seconded by Sen. Tavares.

Mr. Steinglass noted that Section 32 is an important substantive section because, in addition to not allowing the General Assembly to grant divorces, it also describes the separation of powers doctrine. He suggested the committee may want to leave that limitation in that section in place, and to keep consideration of the topic for this committee.

Mr. Hollon said he agreed with Mr. Steinglass on the question. He added, however, that Article IV, Section 1 provides a separation of powers provision because it says the judicial power of the state is vested in the Supreme Court, although it does not say that power is exclusively granted to the Supreme Court.

Mr. Taft said, reading Section 32, he agrees with Mr. Steinglass that Section 32 should stay within the legislative article.

Mr. Hollon asked whether the committee would want to amend the section to state that the General Assembly shall grant no divorce.

Vice-chair Brooks asked whether, now that the intent was to keep Section 32 for this committee's consideration, an amended motion was needed.

Mr. Steinglass pointed out that Section 30 represents a historical relic in relation to the formation of new counties. Mr. Taft said that topic should be considered by the Education, Public Institutions, and Local Government Committee.

Mr. Taft then made a new motion to send Section 30 (relating to the creation of new counties) to the Education, Public Institutions, and Local Government Committee, and to send Section 39 (relating to the regulation of expert testimony in criminal trials) to the Judicial Branch and Administration of Justice Committee. Sen. Tavares seconded the motion. A voice vote was taken, and the motion passed unanimously.

Mr. Taft said he applauds the goal of trying to simplify the constitution, and said the committee should try to achieve that goal, if possible, although he is not sure if the committee will have time to do it. He said it is helpful to identify which sections raise a policy issue with respect to having to be changed.

Mr. Taft noted one issue the committee may want to give substantive consideration to from a policy standpoint, which is the single subject rule. He said there has been much litigation related to that rule, and he is not sure whether the committee can improve on it, but that is an issue the

committee would want to consider. He wondered if there are other sections where experts have raised questions about the appropriateness of the current language.

Sen. Tavares noted one area of concern, Section 34a, relating to the minimum wage. She said the section dates from 2006, raising a question about whether the identified wage amount is a maximum or whether it is a minimum, and whether communities can exceed the minimum.

Mr. Hollon said he is not suggesting a change, but rather organized a grouping of sections that seemed to be related to labor. He said the committee may not want to recommend that these provisions should be moved around, or that an entire new article should be created, but what the committee could do is to state that, as the General Assembly acts in the next 15 years, it might want to consider this topic, form committees, and propose something to the public.

Vice-chair Brooks said the committee's consideration would be benefited by research about possible ballot language so that the committee could know how best to present a recommendation to the General Assembly and/or to the public. Mr. Hollon indicated the committee would next meet in October, by which time staff could provide some research on this question.

Committee member Petee Talley asked about Category VII, describing labor-related sections. She noted Mr. Hollon's reference to proposed sections that have not been circulated or presented yet to this committee, wondering if those proposals would be presented to the committee.

Mr. Hollon said his goal was to provide a method for organizing the committee's work. He suggested the committee inform him of its next steps and staff would provide research, a rough draft of a report and recommendation, or whatever is needed. Regarding the two labor-related proposals, Mr. Hollon said there was some question about who was to assign citizen proposals to the specific committee, and the Coordinating Committee concluded that the executive director should make that decision. He said he concluded the two proposals should go to this committee, but has not brought them to the committee's attention yet because the group was working on other issues.

Vice-chair Brooks clarified that if the committee were to choose a category to focus on next, there would be an opportunity to bring in speakers and prepare to address that topic.

Sen. Tavares proposed that the committee first deal with sections related to legislative power, including Sections 1, 3, 4, 5, 11, and 31. She said the committee may want to take into consideration whether the committee's review would deal with all officeholders. Mr. Hollon suggested Category IV might also be taken up right away as those sections may not be up for change and could be reported easily.

Vice-chair Brooks asked whether the order should be Category I, Category III, and then Category IV. Mr. Hollon said Categories I and IV are likely to be done first.

Senator Bill Coley said he sees a conflict between the General Assembly, municipal power, and what laws have general application across the state. He said he believes that question falls under Category I.

Mr. Hollon indicated that Sen. Coley may be referring to Section 26, which he grouped in Category VI. He said the question is whether that section should be in a report and recommendation with 15, 16 and 28, or whether 26 should be in a report and recommendation with Category IV sections. Vice-chair Brooks asked what Mr. Hollon's thought process was in placing Section 26 in Category VI instead of Category IV. Mr. Hollon said Category VI deals with the issue of enacting laws and their effect, not necessarily the power of the General Assembly. Sen. Coley said he would prefer it go to Category IV. Mr. Hollon said staff can put something together in relation to the topic and let the committee decide later.

**Adjournment:**

There being no further business to come before the committee, the meeting was adjourned at 2:46 p.m.

**Approval:**

The minutes of the July 14, 2016 meeting of the Legislative Branch and Executive Branch Committee were approved at the October 13, 2016 meeting of the committee.

*/s/ Frederick E. Mills*

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Frederick E. Mills, Chair

*/s/ Paula Brooks*

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Paula Brooks, Vice-chair