



# OHIO CONSTITUTIONAL MODERNIZATION COMMISSION

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## REPORT AND RECOMMENDATION

### OHIO CONSTITUTION ARTICLE II, SECTIONS 6, 7, 8, 9, 13, AND 14

#### CONDUCTING BUSINESS OF THE GENERAL ASSEMBLY

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The Ohio Constitutional Modernization Commission adopts this report and recommendation regarding Article II, Sections 6, 7, 8, 9, 13, and 14 of the Ohio Constitution concerning the organization of the General Assembly and the basic standards for conducting the business of the body. It is adopted pursuant to Rule 10.3 of the Ohio Constitutional Modernization Commission's Rules of Procedure and Conduct.

#### **Recommendation**

*The Commission recommends that Article II, Sections 6, 7, 8, 9, 13, and 14 of the Ohio Constitution be retained in their current form.*

#### **Background**

Article II generally concerns the Legislative Branch, providing the organizational structure and membership requirements of the General Assembly and the method for it conducting its business.

Article II, Section 6 outlines the powers of each house of the General Assembly, providing:

Each House shall be judge of the election, returns, and qualifications of its own members. A majority of all the members elected to each House shall be a quorum to do business; but, a less number may adjourn from day to day, and compel the attendance of absent members, in such manner, and under such penalties, as shall be prescribed by law.

Each House may punish its members for disorderly conduct and, with the concurrence of two-thirds of the members elected thereto, expel a member, but not the second time for the same cause. Each House has all powers necessary to provide for its safety and the undisturbed transaction of its business, and to obtain, through committees or otherwise, information affecting legislative action under

consideration or in contemplation, or with reference to any alleged breach of its privileges or misconduct of its members, and to that end to enforce the attendance and testimony of witnesses, and the production of books and papers.

Section 7 provides for the organization of each house of the General Assembly, providing:

The mode of organizing each House of the general assembly shall be prescribed by law.

Each House, except as otherwise provided in this Constitution, shall choose its own officers. The presiding officer in the Senate shall be designated as president of the Senate and in the House of Representatives as speaker of the House of Representatives.

Each House shall determine its own rules of proceeding.

Section 8 governs the calendar of the General Assembly, providing:

Each general assembly shall convene in first regular session on the first Monday of January in the odd-numbered year, or on the succeeding day if the first Monday of January is a legal holiday, and in second regular session on the same date of the following year. Either the governor, or the presiding officers of the general assembly chosen by the members thereof, acting jointly, may convene the general assembly in special session by a proclamation which may limit the purpose of the session. If the presiding officer of the Senate is not chosen by the members thereof, the President pro tempore of the Senate may act with the speaker of the House of Representatives in the calling of a special session.

Section 9 requires the two chambers to keep and publish a journal of proceedings, and to record the votes:

Each House shall keep a correct journal of its proceedings, which shall be published. At the desire of any two members, the yeas and nays shall be entered upon the journal; and, on the passage of every bill, in either house, the vote shall be taken by yeas and nays, and entered upon the journal.

Section 13 relates to the public nature of the legislative process, requiring open proceedings:

The proceedings of both houses shall be public, except in cases which, in the opinion of two-thirds of those present, require secrecy.

Section 14 controls the ability of either house to adjourn, providing:

Neither House shall, without the consent of the other, adjourn for more than five days, Sundays excluded; nor to any other place than that, in which the two Houses are in session.

## **Amendments, Proposed Amendments, and Other Review**

An early agenda item for the Ohio Constitutional Revision Commission (1970s Commission) was to address the administration, organization, and procedures of the General Assembly. Consequently, the 1970s Commission issued a comprehensive report recommending the amendment of Article II, Sections 4, 6, 7, 9, 11, 14, 16, and 31; the repeal of Article II, Sections 5, 17, 18, 19, and 25; and the repeal and enactment of new sections for Article II, Sections 8 and 15.<sup>1</sup>

In relation to Section 6, the 1970s Commission recommended that the original section from the 1851 constitution (which had its genesis in the 1802 constitution), be amended to include portions of former Section 8 dealing with the ability of each chamber of the General Assembly to discipline and control its members. Thus, the 1970s Commission advocated adding the second paragraph of Section 6, which allows each house to punish members for disorderly conduct, to expel members, and to enforce rules and procedures promoting the orderly transaction of its business.<sup>2</sup>

Addressing Section 7, which derived from a provision in the 1802 constitution that was partially retained in the 1851 constitution, the 1970s Commission recommended the addition of a portion of former Section 8 that had described the procedure for selecting legislative officers, including the president of the senate and the speaker of the house of representatives. The 1970s Commission also supported a statement confirming that each house may determine its own procedural rules. The 1970s Commission's recommended changes were intended to correct an omission from the 1851 constitution that resulted in there being no reference to how the senate was to select its officers.<sup>3</sup>

With regard to Section 8, the 1970s Commission recommended repeal and replacement, explaining that its recommendations to split the section between Sections 6 and 7 resulted in there being no remaining portion of the section to retain.<sup>4</sup> To take its place, the 1970s Commission proposed a new section detailing what constitutes a "session" of the General Assembly, specifically describing a "regular session" and a "special session." Explaining its rationale, the 1970s Commission observed that, despite the provision in former Article II, Section 25 fixing the first Monday of January as the commencement of "all regular sessions," to occur biennially, the long practice of the General Assembly was to designate a "second regular session" on the same date of the following year. This resulted in the concept of the biennial General Assembly meeting in a first regular session, to be followed a year later by the second regular session. The 1970s Commission sought to clarify this practice by recommending that the constitution expressly recognize the practice of holding annual sessions, noting that it regarded the proposal as "an important element in strengthening the power of the legislative branch and insuring its ability to deal with problems as they arise."<sup>5</sup> The 1970s Commission also recommended the addition of a reference to the ability of the General Assembly to hold "special sessions," as convened by the governor or the presiding officers of the General Assembly.<sup>6</sup>

The 1970s Commission sought to maintain the journal-keeping requirement in Section 9, acknowledging that similar legislative recordkeeping requirements are standard in most, if not all, state constitutions, as well as in the United States Constitution. However, the 1970s Commission recommended that a portion of the section, which mandated that no law could be

passed without the concurrence of a majority of the members of each chamber, be moved to a proposed new Section 15.<sup>7</sup>

Section 13, requiring the General Assembly to hold open meetings, was not addressed by the 1970s Commission, and, in fact, has not been amended since its adoption in 1851. The current provision is based on a provision in the 1802 constitution literally expressing an “open door” policy, stating, in part, that the “doors of each house, and of committees of the whole, shall be kept open, except in such cases as, in the opinion of the house, require secrecy.”<sup>8</sup>

Reviewing Section 14, which restricted the separate houses of the General Assembly from adjourning for more than two days without the consent of the other house, the 1970s Commission recommended expanding the original two-day requirement to five days. The purpose of the change was to accommodate the legislature’s established practice of beginning a session week on a Tuesday, a practice that, in order to comply with the constitutional requirement, required the General Assembly to hold perfunctory, or “skeleton,” sessions on Mondays. As observed by the 1970s Commission, “a requirement that is being observed through the device of a technicality deserves reconsideration.”

The recommendations of the 1970s Commission with regard to Sections 6 through 9, and 14, were presented to voters on the May 8, 1973 ballot as part of a ballot issue package related to General Assembly operational reforms.<sup>9</sup> The measure passed by a margin of 54.30 percent to 45.70 percent.<sup>10</sup>

### **Litigation Involving the Provision**

Two Supreme Court of Ohio cases addressing these sections have been decided since the 1970s Commission completed its work.

*State ex rel. Hodges v. Taft*, 64 Ohio St.3d 1, 591 N.E.2d 1186 (1992), was a mandamus action based on a statutory initiative proponent’s claim that the secretary of state had forwarded the initiative petition to the General Assembly at a time that was not contemplated by Article II, Section 1b of the Ohio Constitution. Specifically, the case revolved around whether Article II, Section 8’s stipulation that the General Assembly convene in first regular session in an odd-numbered year required the secretary of state to wait to forward the initiative petition until the next General Assembly convened, which was over a year after the proponents filed their initiative petition. Interpreting the statutory initiative petition requirements of Article II, Section 1b in conjunction with the definition of “first” and “second” regular session of the General Assembly in Article II, Section 8, the Supreme Court held that once the proponents presented the initiative petition to the secretary of state on December 11, 1991, the secretary of state was required by law to transmit the petition to the General Assembly at its next regular session, which was in January 1992, rather than when the next General Assembly convened in January 1993. As interpreted by the Court, Section 8 “restores a clear distinction between the *term* of a General Assembly, which coincides with the biennial election cycle, and the *sessions* of the General Assembly, which are annual and two in number during each biennial term.” *Id.*, 64 Ohio St.3d at 21, 591 N.E.2d at 1193. Thus, the first regular session was said to convene when each house is called to order by its respective presiding officer on the relevant day in January in

the odd-numbered year, and the second regular session then convenes automatically on the same day of the following year. *Id.*

In *State ex rel. Grendell v. Davidson*, 86 Ohio St.3d 629, 1999-Ohio-130, 716 N.E.2d 704, the Supreme Court considered joint legislative rules adopted pursuant to Article II, Section 7, which gives each house of the General Assembly the ability to independently choose its officers and its rules of procedure. In *Grendell*, the senate and house of representatives passed competing versions of a bill, which was then referred to conference committee to work out the differences. In doing so, the conference committee deleted a key provision, allegedly because it would have benefited the district of a state representative who had voted against the bill. The state representative then sought a writ of mandamus to compel the conference committee to include the provision. In rejecting the writ, the Court found the complaint to be nonjusticiable because Section 7 allows each chamber of the General Assembly to determine its own rules of proceeding. *Id.*, 86 Ohio St.3d at 633, 716 N.E.2d at 709. While the case holding hinged on the separation of powers principle, noting that “mandamus will not issue to a legislative body or its officers to require the performance of duties that are purely legislative in character and over which such legislative bodies have exclusive control,” *Grendell* nevertheless confirms Section 7 as expressing the self-governing power of the General Assembly. *Id.*

## **Presentations and Resources Considered**

### *Hollon Presentation*

In his presentation to the Legislative Branch and Executive Branch Committee on July 14, 2016, Steven C. Hollon, executive director, 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. Mr. Hollon said the subject matter of these provision supports creating one report and recommendation to report the committee’s work on the topics.

## **Discussion and Consideration**

In considering Article II, Sections 6 through 9, 13, and 14, the Legislative Branch and Executive Branch Committee recognized the General Assembly’s ability to determine how often it meets, noting that there is nothing in the constitution controlling the legislative calendar. The committee saw no need to alter that arrangement, based on its conclusion that the legislature is its own best authority for determining how often and how long it should meet.

## **Action by the Legislative Branch and Executive Branch Committee**

After formal consideration by the Legislative Branch and Executive Branch Committee, the committee voted on December 15, 2016 to issue a report and recommendation recommending that Article II, Sections 6, 7, 8, 9, 13, and 14 be retained in their present form.

## **Presentation to the Commission**

On March 9, 2017, Shari L. O’Neill, interim executive director and counsel to the Commission, on behalf of the Legislative Branch and Executive Branch Committee, presented a report and recommendation for Article II, Sections 6, 7, 8, 9, 13, and 14. Ms. O’Neill said the report describes that Section 6 outlines the powers of each house of the General Assembly, requiring each house to be the judge of the election, returns, and qualifications of its own members, setting the number of members for a quorum, allowing each house to prescribe punishment for disorderly conduct, and to obtain information necessary for legislative action, including the power to call witnesses and obtain the production of books and papers. She said the report describes that Section 7 provides for the organization of each house of the General Assembly, allowing the mode of organizing to be prescribed by law, and requiring each house to choose its own officers, with there being designated a president of the Senate and a Speaker of the House of Representatives. Ms. O’Neill indicated the report outlines that Section 8 governs the calendar of the General Assembly, and allows the governor, or the presiding officers of the general assembly chosen by the members thereof, acting jointly, to convene the general assembly in special session by a proclamation which may limit the purpose of the session.

Ms. O’Neill said the report states that Section 9 requires the two chambers to keep and publish a journal of proceedings, and to record the votes. The report also indicates that Section 13 relates to the public nature of the legislative process, requiring open proceedings except where, in the opinion of 2/3s of those present, secrecy is required. Finally, Ms. O’Neill stated, the report outlines that Section 14 controls the ability of either house to adjourn, providing that neither may adjourn for more than five days without the consent of the other. Ms. O’Neill indicated that the report and recommendation describes the work of the 1970s Constitutional Revision Commission on these sections, indicating where amendments were recommended and adopted. She said the report also outlines litigation involving the provisions before describing the discussion and consideration by the committee. She said the report indicates the committee’s conclusion that Article II, Sections 6, 7, 8, 9, 13, and 14 should be retained in their current form.

## **Action by the Commission**

At the Commission meeting held April 13, 2017, Legislative Branch and Executive Branch Committee Chair Fred Mills moved to adopt the report and recommendation for Article II, Sections 6, 7, 8, 9, 13, and 14, a motion that was seconded by Senator Bill Coley. Upon a roll call vote, the motion passed unanimously, by a vote of 25 in favor, with none opposed, and five absent.

## **Conclusion**

The Ohio Constitutional Modernization Commission recommends that Article II, Sections 6, 7, 8, 9, 13, and 14 be retained in their present form.

## Date Adopted

After formal consideration by the Ohio Constitutional Modernization Commission on March 9, 2017 and April 13, 2017, the Commission voted to adopt the report and recommendation on April 13, 2017.

/s/ Charleta B. Tavares  
Senator Charleta B. Tavares, Co-chair

/s/ Jonathan Dever  
Representative Jonathan Dever, Co-chair

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## Endnotes

<sup>1</sup> Ohio Constitutional Revision Commission (1970-77), *Recommendations for Amendments to the Ohio Constitution, Part I, Administration, Organization, and Procedures of the General Assembly* (Dec. 31, 1971). Available at <http://www.lsc.ohio.gov/ocrc/recommendations%20pt1%20general%20assembly.pdf> (last visited Oct. 5, 2016). *See also* Ohio Constitutional Revision Commission, *Recommendations for Amendments to the Ohio Constitution, Final Report* (June 30, 1977). Available at: <http://www.lsc.ohio.gov/ocrc/final%20report%20index%20to%20proceedings%20and%20research.pdf> (last visited Oct. 12, 2016).

<sup>2</sup> *Id.* at 25.

<sup>3</sup> *Id.* at 26-29.

<sup>4</sup> *Id.* at 30.

<sup>5</sup> *Id.* at 31-32.

<sup>6</sup> *Id.* at 32-33.

<sup>7</sup> *Id.* at 33-34.

<sup>8</sup> *See, e.g.,* Steven H. Steinglass and Gino J. Scarselli, *The Ohio State Constitution* 149 (2nd prtg. 2011).

<sup>9</sup> The ballot language asked whether Article II, Sections 4, 6, 7, 9, 11, 14, and 16 should be amended, whether Sections 8 and 15 should be enacted, and whether Sections 8, 15, 17, 18, 19, and 25 should be repealed, with the goal of providing qualifications for members of the General Assembly, allowing each house to choose its own officers and rules of proceeding, requiring annual legislative sessions and allowing special sessions, and providing for procedures for passing and enacting legislation.

*See* [https://ballotpedia.org/Ohio\\_Procedures\\_of\\_the\\_General\\_Assembly,\\_Amendment\\_6\\_\(May\\_1973\)](https://ballotpedia.org/Ohio_Procedures_of_the_General_Assembly,_Amendment_6_(May_1973)) (last visited Oct. 6, 2016), citing the *Toledo Blade*, May 7, 1973, available at <https://news.google.com/newspapers?id=8QhPAAAIBAJ&sjid=RAIEAAAIBAJ&pg=7444.4723240&hl=en> (last visited Oct. 6, 2016).

<sup>10</sup> <http://www.sos.state.oh.us/sos/upload/elections/historical/issuehist.pdf> (last visited Oct. 6, 2016).