



OHIO CONSTITUTIONAL MODERNIZATION COMMISSION
LEGISLATIVE BRANCH AND EXECUTIVE BRANCH COMMITTEE

THURSDAY, JUNE 11, 2015
2:30 P.M.
SOUTH MEETING ROOMS B & C, 31ST FLOOR
RIFFE CENTER FOR GOVERNMENT AND THE ARTS

AGENDA

- I. Call to Order
- II. Roll Call
- III. Approval of Minutes
 - Meeting of May 14, 2015
- VI. Reports and Recommendations
 - None scheduled
- V. Presentations
 - HJR2 – Congressional Redistricting
 - Ann Henkener
League of Women Voters of Ohio

 - Richard Gunther
Professor Emeritus
Ohio State University
- VI. Committee Discussion
 - HJR2 – Congressional Redistricting – Continuing discussion regarding a congressional redistricting plan as outlined in HJR2.

- Sub. SJR1 – Public Office Compensation Commission – Continuing discussion regarding a public office compensation commission as outlined in Sub. SJR1.

VII. Next Steps

- Committee discussion regarding the next steps it wishes to take in preparing for upcoming meetings.

VIII. Old Business

IX. New Business

X. Public Comment

XI. Adjourn



OHIO CONSTITUTIONAL MODERNIZATION COMMISSION

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

**FOR THE MEETING HELD
THURSDAY, MAY 14, 2015**

Call to Order:

Chair Fred Mills called the meeting of the Legislative Branch and Executive Branch Committee to order at 11:10 a.m.

Members Present:

A quorum was present with committee members Mills, Brooks, Curtin, Manning, Taft, Talley and Trafford in attendance.

Approval of Minutes:

The minutes of the April 9, 2015 meeting of the committee were approved.

Presentations:

“Article II Issues”

*Steven H. Steinglass
Senior Policy Advisor*

Senior Policy Advisor Steven H. Steinglass provided an overview and history of sections in Article II that the committee might wish to review, with the exception of Sections 1 and 1a – 1g which were assigned to the Constitutional Revision and Updating Committee; Section 2 (Election and Term of State Legislators) for which the committee recently approved a report and recommendation to extend existing term limits for state legislators from eight years to twelve years; and Section 20 (Term of Office and Compensation of Members) which would create a public office compensation commission.

Sections of Article II that may be of particular interest include Section 5 (Embezzlers Holding Public Office) and Section 15(D) (One-Subject Requirement). Regarding Section 5, the

committee may want to review the continued presence in the constitution of a provision specifically barring only those convicted of embezzlement from holding “any office in this state” as Article V, Section 4 gives the General Assembly the power to exclude from the privilege of voting, or of being eligible to office, any person convicted of a felony.” Thus, with the exception of the special provision for “embezzlers,” the right to serve in the General Assembly (and in other public offices) tracks the right to vote. The committee may also want to examine the relationship of the embezzlement provisions with other provisions dealing with eligibility for service in public office.

Article II, Section 15(D) provides that “[n]o bill shall contain more than one subject, which shall be clearly expressed in its title.” This provision has been the subject of much litigation during the last 35 years, including an important case now pending before the Ohio Supreme Court. *See State ex rel. Ohio Civil Service Employees Association v. State*, No. 2014-0319 (accepting discretionary appeal and cross appeal of a Tenth District Court of Appeals decision holding that a claim that prison privatization provisions in the budget bill stated a claim for a violation of the “one subject” rule and remanding the case for further proceedings and a determination of the appropriate relief) (to be argued May 20, 2015). *See State ex rel. Ohio Civil Service Employees Association v. State*, 2 N.E.3d 304, 2013-Ohio-4505 (2013).

At the conclusion of Mr. Steinglass’s presentation Chair Mills suggested the committee have a discussion about which issues merit attention, and to identify the committee’s priorities going forward based on this information.

Chair Mills then asked Mr. Steinglass about the provision in Article II, Section 4, which was revised in the 1970s, regarding holding dual office. Chair Mills said he thinks the intent of the provision was to allow those who were notaries public to be able to continue to serve in the General Assembly, but he does not think governors can serve as a governor and as a notary public and wonders if the committee could look at that issue. He also asked when Nebraska created a unicameral legislature. Mr. Steinglass answered he thinks it may have been in the 1930s. Committee member Rep. Mike Curtin said Nebraska adopted a unicameral legislature in 1937, as approved by voters.

Committee member, former governor, Bob Taft asked why Article II, Section 26 has an exception for public schools. Mr. Steinglass answered that he has information on this issue and will do a presentation on this topic.

Commission member Vice Chair Paula Brooks also asked about Section 26 (Legislative Submissions/Referenda) indicating that she would like to know if other states have a similar provision. Specifically, she is wondering if Maryland might have this provision. Mr. Steinglass said he would look into this.

Reports and Recommendations:

Article II, Section 2 (Election and Term Limits of State Legislators)

Chair Mills then recognized Executive Director Steven C. Hollon, who had a question for the committee regarding its approval, at the April meeting, of two separate reports and recommendations regarding Article II, Section 2 (term limits). Director Hollon asked whether the committee would like to combine the two separate reports and recommendations, which set out two different options for amending the term limits contained in Article II, Section 2, into one report and recommendation. Chair Mills said that the idea is now that both options will go separately and that the committee would let the full Commission combine the options into one report and recommendation if that is the Commission's preference. Chair Mills said he is not sure the committee needs further votes on this.

Chair Mills then acknowledged individuals who were present for the purpose of testifying on the issue of extending term limits.

Chair Mills recognized Ray Warrick, who is the owner of Business Resource Associates, an advisory resource for small businesses, and the fiscal officer for Hamilton Township, located in Warren County, Ohio. Mr. Warrick said he has filed paperwork with the Secretary of State to start a Political Action Committee called "Eight is Enough Ohio." The PAC will be challenging the proposed expansion of legislative term limits. Mr. Warrick said that in private sector, businesses that do not attend to customers will not be successful. However, on the government side, customers can be ignored. Individuals who serve in government work for the taxpayers and must keep their interests foremost. He continued saying the majority of taxpayers of Ohio are not in favor of expanding term limits. The previous fiscal officer had been in office for 33 years. After the community became aware of numerous accounting errors made, the fiscal officer resigned. Mr. Warrick was then appointed fiscal officer for his township. After an audit was conducted by the State Auditor, the township was placed in fiscal emergency. Mr. Warrick said this was a good example of what can happen when there are no term limits. Mr. Warrick requested the Commission consider this in coming to a conclusion regarding expanding term limits.

Chair Mills thanked Mr. Warrick for his remarks and opened the floor for questions. Rep. Curtin commented that, in Ohio, there are term limits for all state officeholders and state legislators, and there are a few cities which have term limits for officers, but most do not. Rep. Curtin asked whether Mr. Warrick's support for term limits extends to township trustees or other local government officials. Mr. Warrick answered "absolutely."

Chair Mills then recognized Phillip Blumel, who is President of U.S. Term Limits, a grassroots lobbying organization. Mr. Blumel said that special interests and lobbyists are offering money to pay for campaigns against term limits. He said Ohio's term limits are already loose by national standards. He continued by saying that term limits encourage transparency in government. He said eight-year term limits are the most common in the nation and has become the American standard. He emphasized that there is no call for expanded term limits for Ohio

legislators. Mr. Blumel urged the committee to respect Ohio voters and stand down from this proposal. He then invited questions from the committee.

Chair Mills asked about Mr. Blumel's use of the term "special interest," and whether he would consider U.S. Term Limits a "special interest" group. Mr. Blumel answered in the affirmative.

There being no further questions for Mr. Blumel, Chair Mills then directed the committee to other items on the agenda.

Committee Discussion:

Sub. SJR 1 – Public Office Compensation Commission

Chair Mills asked if anyone present wanted to provide testimony on the Public Official Compensation Commission resolution, Sub. SJR 1, which is currently pending in the General Assembly. There were no responses.

HJR 2 - Congressional Redistricting

Chair Mills asked if anyone present wanted to provide comments regarding the congressional redistricting resolution, HJR 2, which is pending in the House. Rep. Kathleen Clyde and Rep. Mike Curtin made a presentation to the committee on this issue at the April meeting. Professor Richard Gunther from the Ohio State University Political Science Department indicated that he will have formal testimony on that subject at the next meeting of the committee.

Adjournment:

There being no new or old business to come before the committee, Chair Mills said the committee will meet next month to discuss congressional redistricting, as well as to get input from committee members about their preferences in terms of future topics to be taken up by the committee. The meeting adjourned at 12:05 p.m.

Attachments:

- Notice
- Agenda
- Roll call sheet

Approval:

These minutes of the May 14, 2015 meeting of the Legislative Branch and Executive Branch Committee were approved at the June 11, 2015 meeting of the committee.

Frederick E. Mills, Chair

Paula Brooks, Vice-Chair

As Introduced

**131st General Assembly
Regular Session
2015-2016**

H. J. R. No. 2

Representatives Clyde, Curtin

**Cosponsors: Representatives Antonio, Smith, K., Stinziano, Leland, Driehaus,
Bishoff, Johnson, G., Celebrezze, Ashford, Fedor, Lepore-Hagan, Sheehy**

AJOINT RESOLUTION

Proposing to enact Sections 1, 2, 3, 4, 5, 6, 7, 8, and 9 1
of Article XIX of the Constitution of the State of 2
Ohio to revise the redistricting process for 3
congressional districts. 4

Be it resolved by the General Assembly of the State of 5
Ohio, three-fifths of the members elected to each house 6
concurring herein, that there shall be submitted to the electors 7
of the state, in the manner prescribed by law at the general 8
election to be held on November 3, 2015, a proposal to enact 9
Sections 1, 2, 3, 4, 5, 6, 7, 8, and 9 of Article XIX of the 10
Constitution of the State of Ohio to read as follows: 11

ARTICLE XIX 12

Section 1. (A) The Ohio redistricting commission shall be 13
responsible for the redistricting of this state for congress. 14
The commission shall consist of the following seven members: 15

(1) The governor; 16

(2) The auditor of state; 17

| | |
|---|----------------------------------|
| <u>(3) The secretary of state;</u> | 18 |
| <u>(4) One person appointed by the speaker of the house of representatives;</u> | 19 20 |
| <u>(5) One person appointed by the legislative leader of the largest political party in the house of representatives of which the speaker of the house of representatives is not a member;</u> | 21 22 23 |
| <u>(6) One person appointed by the president of the senate;</u> <u>and</u> | 24 25 |
| <u>(7) One person appointed by the legislative leader of the largest political party in the senate of which the president of the senate is not a member.</u> | 26 27 28 |
| <u>The legislative leaders in the senate and the house of representatives of each of the two largest political parties represented in the general assembly, acting jointly by political party, shall appoint a member of the commission to serve as a co-chairperson of the commission.</u> | 29 30 31 32 33 |
| <u>(B)(1) Unless otherwise specified in this article, a simple majority of the commission members shall be required for any action by the commission.</u> | 34 35 36 |
| <u>(2)(a) Except as otherwise provided in division (B)(2)(b) of this section, a majority vote of the members of the commission, including at least one member of the commission who is a member of each of the two largest political parties represented in the general assembly, shall be required to do any of the following:</u> | 37 38 39 40 41 42 |
| <u>(i) Adopt rules of the commission;</u> | 43 |
| <u>(ii) Hire staff for the commission;</u> | 44 |
| <u>(iii) Expend funds.</u> | 45 |

(b) If the commission is unable to agree, by the vote 46
required under division (B) (2) (a) of this section, on the manner 47
in which funds should be expended, each co-chairperson of the 48
commission shall have the authority to expend one-half of the 49
funds that have been appropriated to the commission. 50

(3) The affirmative vote of four members of the 51
commission, including at least two members of the commission who 52
represent each of the two largest political parties represented 53
in the general assembly, shall be required to adopt any 54
congressional district plan. For the purpose of this division, a 55
member of the commission shall be considered to represent a 56
political party if the member was appointed to the commission by 57
a member of that political party or if, in the case of the 58
governor, the auditor of state, or the secretary of state, the 59
member is a member of that political party. 60

(C) At the first meeting of the commission, which the 61
governor shall convene only in a year ending in the numeral one, 62
except as provided in Sections 6 and 7 of this article, the 63
commission shall set a schedule for the adoption of procedural 64
rules for the operation of the commission. 65

The commission shall release to the public a proposed 66
congressional district plan for the boundaries for the 67
prescribed number of congressional districts as apportioned to 68
the state pursuant to Section 2 of Article I of the Constitution 69
of the United States. The commission shall draft the proposed 70
plan in the manner prescribed in this article. Before adopting, 71
but after introducing, a proposed plan, the commission shall 72
conduct a minimum of three public hearings across the state to 73
present the proposed plan and shall seek public input regarding 74
the proposed plan. All meetings of the commission shall be open 75
to the public. Meetings shall be broadcast by electronic means 76

of transmission using a medium readily accessible by the general public. 77
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The commission shall adopt a final congressional district plan not later than the first day of September of a year ending in the numeral one. After the commission adopts a final plan, the commission shall promptly file the plan with the secretary of state. Upon filing with the secretary of state, the plan shall become effective. 79
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Four weeks after the adoption of a congressional district plan, the commission shall be automatically dissolved. 85
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(D) The general assembly shall be responsible for making the appropriations it determines necessary in order for the commission to perform its duties under this article. 87
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Section 2. Each congressional district shall be entitled to a single representative in the United States house of representatives in each congress. 90
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Section 3. (A) The whole population of the state, as determined by the federal decennial census or, if such is unavailable, such other basis as the general assembly may direct, shall be divided by the number of congressional districts apportioned to the state pursuant to Section 2 of Article I of the Constitution of the United States, and the quotient shall be the congressional ratio of representation for ten years next succeeding such redistricting. 93
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(B) A congressional district plan shall comply with all of the requirements of division (B) of this section. 101
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(1) The population of each congressional district shall be as equal to the congressional ratio of representation as practicable. 103
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(2) Any congressional district plan adopted by the 106
commission shall comply with all applicable provisions of the 107
constitutions of Ohio and the United States and of federal law. 108

(3) Every congressional district shall be composed of 109
contiguous territory, and the boundary of each district shall be 110
a single nonintersecting continuous line. 111

(C) Congressional districts shall be created and numbered 112
in the following order of priority, to the extent that such 113
order is consistent with the foregoing standards: 114

(1) Proceeding in succession from the largest to the 115
smallest, each county containing population greater than one 116
congressional ratio of representation shall be divided into as 117
many congressional districts as it has whole ratios of 118
representation. Any fraction of the population in excess of a 119
whole ratio shall be a part of only one adjoining congressional 120
district. 121

(2) Each county containing population equal to the 122
congressional ratio of representation shall be designated a 123
congressional district. 124

(3) The remaining territory of the state shall be divided 125
into congressional districts by combining the areas of counties, 126
municipal corporations, and townships. Where feasible, no county 127
shall be split more than once. 128

(D) (1) A county, municipal corporation, or township is 129
considered to be split if any contiguous portion of its 130
territory is not contained entirely within one district. 131

(2) Where the requirements of divisions (B) and (C) of 132
this section cannot feasibly be attained by forming a 133
congressional district from whole municipal corporations and 134

townships, the district shall be formed by splitting not more 135
than one municipal corporation or township. If the commission 136
must choose between multiple municipal corporations or townships 137
for the purpose of splitting a municipal corporation or township 138
under this division, the municipal corporation or township with 139
the smallest population shall be split. 140

(E) (1) If it is not possible for the commission to comply 141
with all of the requirements of divisions (B), (C), and (D) of 142
this section in drawing a particular congressional district, the 143
commission shall take the first action listed below that makes 144
it possible for the commission to draw that district: 145

(a) Notwithstanding division (D) (2) of this section, the 146
commission shall create the district by splitting two municipal 147
corporations or townships. If the commission must choose between 148
more than two municipal corporations or townships for the 149
purpose of splitting municipal corporations and townships under 150
this division, the municipal corporations or townships shall be 151
split in order of population, proceeding from the smallest to 152
the largest. 153

(b) Notwithstanding division (C) (2) of this section, the 154
commission shall create the district by splitting, once, a 155
single county that contains a population equal to the 156
congressional ratio of representation. 157

(c) Notwithstanding division (C) (1) of this section, the 158
commission shall create the district by including in two 159
districts portions of the territory that remain after a county 160
that contains a population of more than one congressional ratio 161
of representation has been divided into as many congressional 162
districts as it has whole ratios of representation. 163

(2) If the commission takes an action under division (E) 164

(1) of this section, the commission shall include in the 165
congressional district plan a statement explaining which action 166
the commission took under that division and the reason the 167
commission took that action. 168

(3) If the commission complies with divisions (E) (1) and 169
(2) of this section in drawing a district, the commission shall 170
not be considered to have violated division (C) (1), (C) (2), or 171
(D) (2) of this section, as applicable, in drawing that district, 172
for the purpose of an analysis under division (D) of Section 7 173
of this article. 174

Section 4. The Ohio redistricting commission shall attempt 175
to draw a congressional district plan that meets all of the 176
following standards: 177

(A) No congressional district plan shall be drawn 178
primarily to favor or disfavor a political party. 179

(B) The statewide proportion of districts whose voters, 180
based on statewide state and federal partisan general election 181
results during the last ten years, favor each political party 182
shall correspond closely to the statewide preferences of the 183
voters of Ohio. 184

(C) Congressional districts shall be compact. 185

Nothing in this section permits the commission to violate 186
the district standards described in Section 2, 3, or 5 of this 187
article. 188

Section 5. Notwithstanding the fact that boundaries of 189
counties, municipal corporations, and townships within a 190
district may be changed, district boundaries shall be created by 191
using the boundaries of counties, municipal corporations, and 192
townships as they exist at the time of the federal decennial 193

census on which the redistricting is based, or, if unavailable, 194
on such other basis as the general assembly has directed. 195

Section 6. (A) (1) If the Ohio redistricting commission 196
fails to adopt a final congressional district plan not later 197
than the first day of September of a year ending in the numeral 198
one, in accordance with Section 1 of this article, the 199
commission shall introduce a proposed congressional district 200
plan by a simple majority vote of the commission. 201

(2) After introducing a proposed congressional district 202
plan under division (A) (1) of this section, the commission shall 203
hold a public hearing concerning the proposed plan, at which the 204
public may offer testimony and at which the commission may adopt 205
amendments to the proposed plan. Members of the commission 206
should attend the hearing; however, only a quorum of the members 207
of the commission is required to conduct the hearing. 208

(3) After the hearing described in division (A) (2) of this 209
section is held, and not later than the fifteenth day of 210
September of a year ending in the numeral one, the commission 211
shall adopt a final congressional district plan, either by the 212
vote required to adopt a plan under division (B) (3) of Section 1 213
of this article or by a simple majority vote of the commission. 214

(B) If the commission adopts a final congressional 215
district plan in accordance with division (A) (3) of this section 216
by the vote required to adopt a plan under division (B) (3) of 217
Section 1 of this article, the plan shall take effect upon 218
filing with the secretary of state and shall remain effective 219
until the next year ending in the numeral one, except as 220
provided in Section 7 of this article. 221

(C) (1) (a) Except as otherwise provided in division (C) (1) 222
(b) of this section, if the commission adopts a final 223

congressional district plan in accordance with division (A) (3) 224
of this section by a simple majority vote of the commission, and 225
not by the vote required to adopt a plan under division (B) (3) 226
of Section 1 of this article, the plan shall take effect upon 227
filing with the secretary of state and shall remain effective 228
until two general elections for the United States house of 229
representatives have occurred under the plan. 230

(b) If the commission adopts a final congressional 231
district plan in accordance with division (A) (3) of this section 232
by a simple majority vote of the commission, and not by the vote 233
required to adopt a plan under division (B) of Section 1 of this 234
article, and that plan is adopted to replace a plan that ceased 235
to be effective under division (C) (1) (a) of this section before 236
a year ending in the numeral one, the plan adopted under this 237
division shall take effect upon filing with the secretary of 238
state and shall remain effective until a year ending in the 239
numeral one, except as provided in Section 7 of this article. 240

(2) A final congressional district plan adopted under 241
division (C) (1) (a) or (b) of this section shall include a 242
statement explaining what the commission determined to be the 243
statewide preferences of the voters of Ohio and the manner in 244
which the statewide proportion of districts in the plan whose 245
voters, based on statewide state and federal partisan general 246
election results during the last ten years, favor each political 247
party corresponds closely to those preferences, as described in 248
division (B) of Section 4 of this article. At the time the plan 249
is adopted, a member of the commission who does not vote in 250
favor of the plan may submit a declaration of the member's 251
opinion concerning the statement included with the plan. 252

(D) After a congressional district plan adopted under 253
division (C) (1) (a) of this section ceases to be effective, and 254

not earlier than the first day of July of the year following the 255
year in which the plan ceased to be effective, the commission 256
shall be reconstituted as provided in Section 1 of this article, 257
convene, and adopt a new congressional district plan in 258
accordance with this article, to be used until the next time for 259
redistricting under this article. The commission shall draw the 260
new congressional district plan using the same population and 261
county, municipal corporation, and township boundary data as 262
were used to draw the previous plan adopted under division (C) 263
of this section. 264

Section 7. (A) The supreme court of Ohio shall have 265
exclusive, original jurisdiction in all cases arising under this 266
article. 267

(B) In the event that any section of this constitution 268
relating to redistricting, any congressional district plan made 269
by the Ohio redistricting commission, or any district is 270
determined to be invalid by an unappealed final order of a court 271
of competent jurisdiction then, notwithstanding any other 272
provisions of this constitution, the commission shall be 273
reconstituted as provided in Section 1 of this article, convene, 274
and ascertain and determine a congressional district plan in 275
conformity with such provisions of this constitution as are then 276
valid, to be used until the next time for redistricting under 277
this article in conformity with such provisions of this 278
constitution as are then valid. 279

(C) (1) No court shall order, in any circumstance, the 280
implementation or enforcement of any congressional district plan 281
that has not been approved by the commission in the manner 282
prescribed by this article. 283

(2) No court shall order the commission to adopt a 284

particular congressional district plan or to draw a particular 285
district. 286

(3) If the supreme court of Ohio determines that a 287
congressional district plan adopted by the commission does not 288
comply with the requirements of Section 2, 3, or 5 of this 289
article, the available remedies shall be as follows: 290

(a) If the court finds that the plan contains one or more 291
isolated violations of those requirements, the court shall order 292
the commission to amend the plan to correct the violation. 293

(b) If, in considering a plan adopted under division (C) 294
of Section 6 of this article, the court determines that both of 295
the following are true, the court shall order the commission to 296
adopt a new congressional district plan in accordance with this 297
article: 298

(i) The plan significantly violates those requirements in 299
a manner that materially affects the ability of the plan to 300
contain districts whose voters favor political parties in an 301
overall proportion that corresponds closely to the statewide 302
political party preferences of the voters of Ohio, as described 303
in division (B) of Section 4 of this article. 304

(ii) The statewide proportion of districts in the plan 305
whose voters, based on statewide state and federal partisan 306
general election results during the last ten years, favor each 307
political party does not correspond closely to the statewide 308
preferences of the voters of Ohio. 309

Section 8. If a court of competent jurisdiction issues an 310
unappealed final order that the general assembly must be 311
responsible for the redistricting of this state for congress, 312
all of the following shall apply: 313

(A) The general assembly shall adopt a final congressional district plan not later than the first day of September of a year ending in the numeral one. 314
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(B) The congressional district plan shall comply with the requirements of Sections 2, 3, and 5 of this article. 317
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(C) The general assembly shall attempt to comply with the standards described in Section 4 of this article in drawing the congressional district plan. 319
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(D) Section 7 of this article shall apply to a congressional district plan adopted by the general assembly. 322
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Section 9. The various provisions of this article are intended to be severable, and the invalidity of one or more of such provisions shall not affect the validity of the remaining provisions. 324
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EFFECTIVE DATE 328

If adopted by a majority of the electors voting on this proposal, Sections 1, 2, 3, 4, 5, 6, 7, 8, and 9 of Article XIX of the Constitution of the State of Ohio enacted by this proposal take effect January 1, 2021. 329
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332

As Adopted by the Senate

131st General Assembly

Regular Session

2015-2016

Sub. S. J. R. No. 1

Senator Faber

**Cosponsors: Senators Widener, Patton, Oelslager, Obhof, Williams, Seitz,
LaRose, Bacon, Beagle, Hottinger, Coley, Balderson, Brown, Burke, Hite,
Hughes, Jones, Lehner, Manning, Peterson, Sawyer, Tavares, Thomas,
Uecker, Yuko**

JOINT RESOLUTION

Proposing to amend Sections 4, 20, and 31 of Article 1
II, Section 19 of Article III, and Section 6 of 2
Article IV and to enact Section 20a of Article II 3
of the Constitution of the State of Ohio to 4
establish the Public Office Compensation 5
Commission. 6

Be it resolved by the General Assembly of the State of 7
Ohio, three-fifths of the members elected to each house 8
concurring herein, that there shall be submitted to the 9
electors of the state, in the manner prescribed by law at the 10
general election to be held on November 3, 2015, a proposal 11
to amend Sections 4, 20, and 31 of Article II, Section 19 of 12
Article III, and Section 6 of Article IV and to enact Section 13
20a of Article II of the Constitution of the State of Ohio to 14
read as follows: 15

ARTICLE II 16

Section 4. No member of the general assembly shall, 17
during the term of office for which ~~he~~the member was 18
elected, unless during such term ~~he~~the member resigns 19
therefrom, hold any public office under the United States, 20
or this state, or a political subdivision thereof; but this 21
provision does not extend to officers of a political party, 22
notaries public, or officers of the militia or of the United 23
States armed forces. 24

No member of the general assembly shall, during the 25
term of office for which ~~he~~the member was elected, or for 26
one year thereafter, be appointed to any public office under 27
this state, which office was created ~~or the compensation of~~ 28
~~which was increased,~~ during the term of office for which ~~he~~ 29
the member was elected. 30

Section 20. The General Assembly, in cases not provided 31
for in this constitution, shall fix the term of office and 32
the compensation of all officers; but no change therein 33
shall affect the salary of any officer during ~~his~~the 34
officer's existing term of office, unless the office be 35
abolished. 36

Section 20a. (A) The Public Office Compensation 37
Commission is created. The Commission consists of the 38
following nine voting members: two members appointed by the 39
Governor; two members appointed by the President of the 40
Senate; two members appointed by the Speaker of the House of 41
Representatives; one member appointed by the legislative 42
leader of the largest political party in the Senate of which 43
the President of the Senate is not a member; one member 44
appointed by the legislative leader of the largest political 45
party in the House of Representatives of which the Speaker 46
of the House of Representatives is not a member; and one 47

member appointed by the Chief Justice of the Supreme Court. 48
The following are not eligible to be appointed as a member 49
of the Commission: (1) an officer or employee of the state 50
or a political subdivision of the state or a family member, 51
as defined by law, of an officer or employee of the state or 52
a political subdivision of the state; (2) an individual who, 53
within twelve months before appointment, was a candidate for 54
election to a public office in the state; or (3) an 55
individual who engages during at least a portion of the 56
individual's time to actively advocate legislation on behalf 57
of another. 58

Terms of members of the Commission are for two years. 59
Members may not serve more than four consecutive terms. The 60
Commission chairperson shall be selected by majority vote of 61
all members of the Commission. Members are not entitled to 62
compensation, but shall be reimbursed for actual and 63
necessary expenses incurred in the performance of Commission 64
duties. A vacancy among the members of the Commission shall 65
be filled in the manner prescribed for the original 66
appointment. A member may be removed from the Commission 67
only by that member's designated appointing authority and 68
only if it is found that the member is inefficient or 69
derelict in the discharge of the member's duties. 70

(B) (1) The Public Office Compensation Commission shall 71
meet each even-numbered year to review the current 72
compensation of each elected public office in the state. The 73
Commission shall consider such factors as are provided by 74
law, including the amount of compensation paid to similarly 75
skilled individuals in the private sector, the amount of 76
compensation paid to individuals in comparable elected 77
public offices in other states, and the current financial 78

condition of and within Ohio. After completing its review, 79
the Commission, by vote of at least five of its members, 80
shall prepare a proposed compensation plan that sets forth 81
the compensation of each elected public office in the state. 82
The Commission shall prepare a report of its proposed 83
compensation plan and promptly submit the report to the 84
Governor, the President of the Senate, the legislative 85
leader of the largest political party in the Senate of which 86
the President of the Senate is not a member, the Speaker of 87
the House of Representatives, the legislative leader of the 88
largest political party in the House of Representatives of 89
which the Speaker of the House of Representatives is not a 90
member, and the Chief Justice of the Supreme Court. The 91
Commission shall present the proposed compensation plan and 92
report at not less than three public hearings in the state 93
in order to obtain public input regarding the proposed 94
compensation plan. After conducting its public hearings, the 95
Commission, by vote of at least five of its members, shall 96
issue a final compensation plan that sets forth the 97
compensation of each elected public office in the state. The 98
Commission shall prepare a report of its final compensation 99
plan not later than the last day of December in each even- 100
numbered year and, upon completion of the report, promptly 101
submit it to the Governor, the President of the Senate, the 102
legislative leader of the largest political party in the 103
Senate of which the President of the Senate is not a member, 104
the Speaker of the House of Representatives, the legislative 105
leader of the largest political party in the House of 106
Representatives of which the Speaker of the House of 107
Representatives is not a member, and the Chief Justice of 108
the Supreme Court. 109

If a proposed or final compensation plan increases or 110
decreases the compensation amount of an elected public 111
office by greater than the lesser of the following, the 112
Commission shall include, in its accompanying report, 113
specific factors that support the increase or decrease: 114

(a) Three per cent; or 115

(b) The percentage increase, if any, in the consumer 116
price index, or a generally available comparable index, over 117
the twelve-month period that ends on the thirtieth day of 118
September of the immediately preceding year, rounded to the 119
nearest one-tenth of one per cent. 120

(2) The compensation amounts set forth in the final 121
compensation plan for each elected public office in the 122
state shall take effect on the first day of July of the 123
following odd-numbered year unless, before that day, the 124
General Assembly, by a three-fifths vote of the members 125
elected to each house, adopts a concurrent resolution 126
rejecting one or more of the compensation amounts. In that 127
event, only those compensation amounts not rejected by the 128
General Assembly shall take effect on that date. 129

If the General Assembly rejects a final compensation 130
plan or portion thereof, a member of the General Assembly 131
who, at the time the plan was voted on, voted or would have 132
been entitled to vote thereon, is not entitled to an 133
increase in compensation for the duration of the member's 134
term of office. 135

(3) The compensation amount established under this 136
section for a judicial office may be decreased during a 137
judicial officer's existing term of office only if both of 138
the following conditions are met: 139

(a) The General Assembly passes a bill by a three- 140
fifths vote of the members elected to each house that 141
declares a state of fiscal emergency requiring an in-term 142
decrease in compensation and decreases the compensation 143
amount for every elected public office by the same 144
percentage. 145

(b) The Governor signs the bill. 146

(C) This section does not affect the compensation of a 147
county officer elected under a county charter that has been 148
adopted under Article X, Sections 3 and 4 of this 149
constitution, or the compensation of an officer of a 150
municipal corporation elected under the power of local self- 151
government as exercised by a municipal corporation under 152
Article XVIII, Sections 3 and 7 of this constitution. 153

(D) This section shall otherwise be implemented in the 154
manner and to the extent provided by the General Assembly by 155
law. 156

Section 31. ~~The members and officers of the General~~ 157
~~Assembly shall receive a fixed compensation, to be~~ 158
~~prescribed by law, and no other allowance or perquisites,~~ 159
~~either in the payment of postage or otherwise; and no change~~ 160
~~in their compensation shall take effect during their term of~~ 161
~~office. as provided for in Article II, Section 20a of this~~ 162
constitution. 163

ARTICLE III 164

Section 19. The officers mentioned in this article 165
shall, at stated times, receive, for their services, a 166
~~compensation to be established by law, which shall neither~~ 167
~~be increased nor diminished during the period for which they~~ 168

~~shall have been elected as provided for in Article II,~~ 169
~~Section 20a of this constitution.~~ 170

ARTICLE IV 171

Section 6. (A) (1) The chief justice and the justices of 172
the supreme court shall be elected by the electors of the 173
state at large, for terms of not less than six years. 174

(2) The judges of the courts of appeals shall be 175
elected by the electors of their respective appellate 176
districts, for terms of not less than six years. 177

(3) The judges of the courts of common pleas and the 178
divisions thereof shall be elected by the electors of the 179
counties, districts, or, as may be provided by law, other 180
subdivisions, in which their respective courts are located, 181
for terms of not less than six years, and each judge of a 182
court of common pleas or division thereof shall reside 183
during ~~his~~ the judge's term of office in the county, 184
district, or subdivision in which ~~his~~ the judge's court is 185
located. 186

(4) Terms of office of all judges shall begin on the 187
days fixed by law, and laws shall be enacted to prescribe 188
the times and mode of their election. 189

(B) The judges of the supreme court, courts of appeals, 190
courts of common pleas, and divisions thereof, and of all 191
courts of record established by law, shall, at stated times, 192
receive, for their services such compensation as ~~may be~~ 193
~~provided by law, which shall not be diminished during their~~ 194
~~term of office~~ for in Article II, Section 20a of this 195
constitution. The compensation of all judges of the supreme 196
court, except that of the chief justice, shall be the same. 197

The compensation of all judges of the courts of appeals 198
shall be the same. Common pleas judges and judges of 199
divisions thereof, and judges of all courts of record 200
established by law shall receive such compensation as ~~may be~~ 201
~~provided by law~~ for in Article II, Section 20a of this 202
constitution. Judges shall ~~receive no fees or perquisites,~~ 203
~~nor not~~ hold any other office of profit or trust, under the 204
authority of this state, or of the United States. All votes 205
for any judge, for any elective office, except a judicial 206
office, under the authority of this state, given by the 207
general assembly, or the people shall be void. 208

(C) No person shall be elected or appointed to any 209
judicial office if on or before the day when ~~he~~ the person 210
shall assume the office and enter upon the discharge of its 211
duties ~~he~~ the person shall have attained the age of seventy 212
years. Any voluntarily retired judge, or any judge who is 213
retired under this section, may be assigned with ~~his~~ the 214
judge's consent, by the chief justice or acting chief 215
justice of the supreme court to active duty as a judge and 216
while so serving shall receive the established compensation 217
for such office, computed upon a per diem basis, in addition 218
to any retirement benefits to which ~~he~~ the judge may be 219
entitled. Laws may be passed providing retirement benefits 220
for judges. 221

SCHEDULE I 222

The Public Office Compensation Commission shall meet in 223
2015 to review the current compensation of each elected 224
public office in the state. The Commission shall issue a 225
proposed compensation plan and final compensation plan, and 226
the accompanying reports, not later than ~~December 31,~~ 227
~~2015~~ February 29, 2016, in accordance with the process in 228

Article II, Section 20a of the Constitution. 229

The compensation amounts set forth in the final 230
compensation plan for each elected public office in the 231
state shall take effect on July 1, 2016, unless, before that 232
day, the General Assembly, by a three-fifths vote of the 233
members elected to each house, adopts a concurrent 234
resolution rejecting one or more of the compensation 235
amounts. In that event, only those compensation amounts not 236
rejected by the General Assembly shall take effect on that 237
date. 238

If the General Assembly rejects a final compensation 239
plan or portion thereof, a member of the General Assembly 240
who, at the time the plan was voted on, voted or would have 241
been entitled to vote thereon, is not entitled to an 242
increase in compensation for the duration of the member's 243
term of office. 244

SCHEDULE II 245

The term of an initial appointment to the Commission 246
begins upon appointment and ends December 31, 2017. 247

If, by November 13, 2015, one or more appointments have 248
not been made to the Commission, a majority of the members 249
of the Commission who have been appointed by that date shall 250
appoint, not later than November 15, 2015, a sufficient 251
number of individuals to the Commission so that the 252
Commission consists of nine voting members, and shall 253
promptly notify the Governor, President of the Senate, 254
Speaker of the House of Representatives, Minority Leader of 255
the Senate, Minority Leader of the House of Representatives, 256
and Chief Justice of the Supreme Court appointing 257
authorities listed in Division (A) of Section 20a of Article 258

| | |
|--|-----|
| <u>II of the Ohio Constitution</u> of the appointments. | 259 |
| SCHEDULE III | 260 |
| Some of the proposed amendments to Ohio Constitution, | 261 |
| Article II, Sections 4 and 20, and Article IV, Section 6, | 262 |
| replace gender specific language with gender neutral | 263 |
| language. These amendments are not intended to make | 264 |
| substantive changes in the Ohio Constitution. The gender | 265 |
| neutral language shall be interpreted as a restatement of, | 266 |
| and substituted in a continuing way for, the corresponding | 267 |
| gender specific language existing prior to adoption of the | 268 |
| proposal. | 269 |
| EFFECTIVE DATE AND REPEAL | 270 |
| If adopted by a majority of the electors voting on this | 271 |
| proposal, Sections 4, 20, and 31 of Article II, Section 19 | 272 |
| of Article III, and Section 6 of Article IV of the | 273 |
| Constitution of the State of Ohio as amended by this | 274 |
| proposal and Section 20a of Article II of the Constitution | 275 |
| of the State of Ohio shall take effect immediately and | 276 |
| existing Sections 4, 20, and 31 of Article II, Section 19 of | 277 |
| Article III, and Section 6 of Article IV of the Constitution | 278 |
| of the State of Ohio are repealed effective immediately. | 279 |



Ohio Legislative Service Commission

Resolution Analysis

Jennifer A. Parker

S.J.R. 1

131st General Assembly
(As Introduced)

Sens. Faber, Widener, Patton, Oelslager, Obhof, Williams, Seitz, LaRose, Bacon, Beagle, Hottinger

RESOLUTION SUMMARY

- Creates the Public Office Compensation Commission consisting of nine voting members.
- Requires the Commission, in each even-numbered year, to review the compensation of elected public offices in the state.
- Requires the Commission to create a proposed compensation plan and a report, and to present the plan and report at not less than three public hearings to receive public input.
- Requires the Commission to issue a final compensation plan and a report not later than December 31 of each even-numbered year.
- Allows the General Assembly to reject one or more of the final compensation amounts.
- Provides that the final compensation plan issued by the Commission takes effect July 1 of the following odd-numbered year except insofar as compensation amounts have been rejected by the General Assembly.
- Requires the Commission to create its *initial* final compensation plan not later than December 31, 2015, and provides that the compensation amounts therein take effect July 1, 2016, unless rejected by the General Assembly.
- Specifies that the creation and operation of the Commission does not affect the compensation of nonjudicial elected public offices in municipal corporations and charter counties having home rule.

- Removes the prohibition against General Assembly members receiving "allowances or perquisites" in addition to a fixed compensation.
- Limits the prohibition against General Assembly members receiving in-term increases in compensation to apply only when the General Assembly has, during a member's term, rejected the Commission's final compensation plan.
- Removes the prohibition against compensation of judges of courts of record being diminished during a term of office.
- Eliminates the prohibition against a member of the General Assembly, during the member's term or for one year thereafter, from being appointed to a public office the compensation of which was increased during the member's term.
- Eliminates the prohibition against executive officers' compensation being increased or decreased during the period for which the officer was elected.

CONTENT AND OPERATION

The joint resolution proposes an amendment to the Ohio Constitution that establishes a Public Office Compensation Commission to review and set the compensation of elected public offices, subject to rejection by the General Assembly. The proposal is to be submitted to the electors at the general election to be held on November 3, 2015.

Duties of the Public Office Compensation Commission

The Public Office Compensation Commission is required to meet each even-numbered year to review the current compensation of each elected public office in the state.¹ Currently, the General Assembly establishes, by law, the compensation of all officers,² of all executive officers,³ and of justices of the Supreme Court and judges of the courts of appeals, courts of common pleas, and divisions thereof, and of all courts of record established by law.⁴ Under the proposal, the Commission, instead of the General Assembly, is to establish the compensation of all elected public offices.⁵ When

¹ Ohio Const., art. II, sec. 20a(B)(1).

² Ohio Const., art. II, sec. 20.

³ Ohio Const., art. III, sec. 19.

⁴ Ohio Const., art. IV, sec. 6(B).

⁵ Ohio Const., art. II, sec. 20a(B)(1).



reviewing the current compensation of elected public offices, the Commission must consider factors provided by law, including the amount of compensation paid to similarly skilled individuals in the private sector, the amount of compensation paid to individuals in comparable elected public offices in other states, and the current financial condition of and within Ohio.⁶

After completing its review, the Commission must prepare, by vote of at least five of its members, a proposed compensation plan that sets forth the compensation amounts for each elected public office in the state, and must prepare a report of the proposed compensation plan. The Commission must present the proposed compensation plan and the report at not less than three public hearings in the state to obtain public input regarding the plan. After conducting the public hearings, the Commission must issue, by vote of at least five of its members, a final compensation plan. The Commission must prepare a report of the final compensation plan not later than the last day of December in each even-numbered year. When a proposed or final compensation plan increases or decreases the compensation amount of an elected public office by more than the lesser of 3% or the percentage increase, if any, in the consumer price index,⁷ the Commission must include specific factors that support the increase or decrease in its accompanying report.⁸

Effective date of final compensation plan; rejection of compensation amounts by General Assembly

The compensation amounts set forth in the final compensation plan for each elected public office take effect on the first day of July of the following odd-numbered year unless, before that day, the General Assembly, by a three-fifths vote of the members elected to each house, adopts a concurrent resolution rejecting one or more of the compensation amounts. If the General Assembly rejects a final compensation plan or portion thereof, a member of the General Assembly who, at the time the plan was voted on, voted or would have been entitled to vote on it, is not entitled to an increase in compensation for the duration of the member's term of office.⁹

⁶ Ohio Const., art. II, sec. 20a(B)(1).

⁷ Measured over the 12-month period that ends on the 30th day of September of the immediately preceding year, rounded to the nearest $\frac{1}{10}$ of 1%.

⁸ Ohio Const., art. II, sec. 20a(B)(1).

⁹ Ohio Const., art. II, sec. 20a(B)(2).



Initial actions of the Commission

The Commission must meet in 2015 to review the current compensation of each public office. The proposed and final compensation plans and the accompanying reports must be issued not later than December 31, 2015. The compensation amounts in the initial final compensation plan are to take effect July 1, 2016, unless rejected by the General Assembly as described above. If the General Assembly rejects the initial final compensation plan, or a portion thereof, a member of the General Assembly who, at the time the plan was voted on, voted or would have been entitled to vote on it, is not entitled to an increase in compensation for the duration of the member's term of office.¹⁰

Membership of the Commission

The Commission is to consist of nine members appointed as follows: two by the Governor, two by the President of the Senate, two by the Speaker of the House of Representatives, one by the Minority Leader of the Senate, one by the Minority Leader of the House of Representatives, and one by the Chief Justice of the Supreme Court. The following individuals are not eligible to be appointed as a member of the Commission: (1) an officer or employee of the state or a political subdivision of the state, or a family member, as defined by statute, of an officer or employee of the state or a political subdivision of the state, (2) an individual who was a candidate for election to public office in the state within 12 months before appointment, or (3) an individual who engages during at least a portion of the individual's time to actively advocate legislation on behalf of another.

Members serve two-year terms and may not serve more than four consecutive terms. The Commission is to select its chairperson by a majority vote. Members do not receive compensation, but must be reimbursed for actual and necessary expenses incurred in the performance of Commission duties. Vacancies on the Commission are to be filled in the manner prescribed for the original appointment.¹¹

Initial appointments

The term of an initial appointment to the Commission is to begin upon appointment and end December 31, 2017. If, by November 13, 2015, one or more appointments have not been made, a majority of the Commission members who have been appointed are to appoint, not later than November 15, 2015, a sufficient number of individuals so that the Commission consists of nine members. The Commission must give notice of the appointments to the Governor, President and Minority Leader of the

¹⁰ Schedule I.

¹¹ Ohio Const., art II, sec. 20a(A).



Senate, Speaker and Minority Leader of the House, and Chief Justice of the Supreme Court.¹²

Compensation of charter county or municipal elected officer unaffected

The proposal specifies that the creation and operation of the Commission does not affect the compensation of a county officer elected under a county charter or the compensation of an officer of a municipality elected under the power of local self-government as exercised by a municipality under the Home Rule Amendment to the Ohio Constitution.¹³

Miscellaneous

The Constitution currently prohibits the compensation of a judge of a court of record from being diminished in term. The proposal removes this prohibition.¹⁴

The Constitution also prohibits the compensation of members of the General Assembly from being changed in term. The proposal removes this prohibition as well.¹⁵ But, as described above, it does specify that if the General Assembly rejects all or a portion of the Commission's final compensation plan, a member who, at the time the plan was voted on, voted or would have been entitled to vote on it, is not entitled to an increase in compensation during the member's term of office.¹⁶

The proposal eliminates the Constitutional prohibition against a member of the General Assembly being appointed to a public office, during the member's term or for one year thereafter, if the compensation of the office was increased during the member's term.¹⁷

The proposal eliminates the prohibition against certain executive officers, during the period for which the officers were elected, from receiving an increase or decrease in compensation. The proposal also requires the General Assembly to set the compensation of all nonelected officers not otherwise provided for in the Constitution,

¹² Schedule II.

¹³ Ohio Const., art. II, sec. 20a(C); Ohio Const., art. X, Secs. 3 and 4 (county home rule); Ohio Const., art. XVIII, secs. 3 and 7 (municipal home rule).

¹⁴ Ohio Const., art. IV, sec. 6.

¹⁵ Ohio Const., art. II, sec. 31.

¹⁶ Ohio Const., art. II, sec. 20a(B)(2).

¹⁷ Ohio Const., art. II, sec. 4.

and specifies that that salary cannot change during the officer's existing term, unless the office is abolished.¹⁸

HISTORY

| ACTION | DATE |
|------------|----------|
| Introduced | 02-02-15 |

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¹⁸ Ohio Const., art. II, sec. 20 and art. III, sec. 19.



Legislative Branch and Executive Branch Committee

Planning Worksheet (June 2015)

| Article II - Legislative | |
|--------------------------|---|
| Sec. 2 | Election and term of state legislators (1967, am. 1992) |
| Notes: | |
| Sec. 3 | Residence requirements for state legislators (1851, am. 1967) |
| Notes: | |
| Sec. 4 | Dual office and conflict of interest prohibited (1851, am. 1973) |
| Notes: | |
| Sec. 5 | Who shall not hold office (1851) |
| Notes: | |
| Sec. 6 | Powers of each house (1851, am. 1973) |
| Notes: | |
| Sec. 7 | Organization of each house of the General Assembly (1851, am. 1973) |
| Notes: | |
| Sec. 8 | Sessions of the General Assembly (1973) |
| Notes: | |
| Sec. 9 | House and Senate Journals (yeas and nays) (1851, am. 1973) |
| Notes: | |
| Sec. 10 | Rights of members to protest (1851) |
| Notes: | |
| Sec. 11 | Filling vacancy in House or Senate (1851, am. 1961, 1968, 1973) |
| Notes: | |
| Sec. 12 | Privilege of members from arrest, and of speech (1851) |
| Notes: | |
| Sec. 13 | Legislative sessions to be public; exceptions (1851) |
| Notes: | |
| Sec. 14 | Power of adjournment (1851, am. 1973) |
| Notes: | |
| Sec. 15 | How bill shall be passed (1973) |
| Notes: | |

Legislative Branch and Executive Branch Committee

Planning Worksheet (June 2015)

| | |
|---------|---|
| Sec. 16 | Bills to be signed by governor; veto (1851, am. 1903, 1912, 1973) |
| Notes: | |
| Sec. 17 | Repealed - referred to the signing of all bills and joint resolutions by the presiding officer of each house (1851, rep. 1973) |
| Notes: | |
| Sec. 18 | Repealed - referred to the style of laws (1851, rep. 1973) |
| Notes: | |
| Sec. 19 | Repealed - referred to the exclusion of senators and representatives from appointment to any civil office of this state (1851, rep. 1973) |
| Notes: | |
| Sec. 20 | Term of office, and compensation of officers in certain cases (1851) |
| Notes: | |
| Sec. 21 | Contested elections (1851) |
| Notes: | |
| Sec. 22 | Appropriations (1851) |
| Notes: | |
| Sec. 23 | Impeachments; how instituted and conducted (1851) |
| Notes: | |
| Sec. 24 | Officers liable to impeachment; consequences (1851) |
| Notes: | |
| Sec. 25 | Repealed - when sessions commence (1851, rep. 1973) |
| Notes: | |
| Sec. 26 | Laws to have a uniform operation (1851) |
| Notes: | |
| Sec. 27 | Election and appointment of officers; filling vacancies (1851, am. 1953) |
| Notes: | |
| Sec. 28 | Retroactive laws (1851) |
| Notes: | |
| Sec. 29 | No extra compensation; exceptions (1851) |
| Notes: | |
| Sec. 30 | New counties (1851) |

Legislative Branch and Executive Branch Committee

Planning Worksheet (June 2015)

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| Notes: | |
| Sec. 31 | Compensation of members and officers of the General Assembly (1851) |
| Notes: | |
| Sec. 32 | Divorces and judicial power (1851) |
| Notes: | |
| Sec. 33 | Mechanics' and contractors' liens (1912) |
| Notes: | |
| Sec. 34 | Welfare of employees (1912) |
| Notes: | |
| Sec. 34a | Minimum Wage (2006) |
| Notes: | |
| Sec. 35 | Workers' compensation (1912, am. 1923) |
| Notes: | |
| Sec. 36 | Conservation of natural resources (1912, am. 1973) |
| Notes: | |
| Sec. 37 | Workday and workweek on public projects (1912) |
| Notes: | |
| Sec. 38 | Removal of officials for misconduct (1912) |
| Notes: | |
| Sec. 39 | Regulating expert testimony in criminal trials (1912) |
| Notes: | |
| Sec. 40 | Registering and warranting land titles (1912) |
| Notes: | |
| Sec. 41 | Prison labor (1912, am. 1978) |
| Notes: | |
| Sec. 42 | Continuity of government operations in emergencies caused by enemy attack (1961) |
| Notes: | |

Legislative Branch and Executive Branch Committee

Planning Worksheet (June 2015)

| Article III - Executive | |
|-------------------------|---|
| Sec. 1 | Executive department; key state officers (1851, am. 1885) |
| Notes: | |
| Sec. 1a | Joint vote cast for governor and lieutenant (1976) |
| Notes: | |
| Sec. 1b | Lieutenant governor duties assigned by governor (1976) |
| Notes: | |
| Sec. 2 | Term of office of key state officers (1851, am. 1954, 1992) |
| Notes: | |
| Sec. 3 | Counting votes for key state officers (1851, am. 1976) |
| Notes: | |
| Sec. 4 | Repealed - referred to returns of election made to the secretary of state when there is no session of the General Assembly in January after an election (1851, rep. 1976) |
| Notes: | |
| Sec. 5 | Executive power vested in governor (1851) |
| Notes: | |
| Sec. 6 | Governor to see that laws executed; may require written information (1851) |
| Notes: | |
| Sec. 7 | Governor's annual message to General Assembly; recommendations for legislators (1851) |
| Notes: | |
| Sec. 8 | Governor may convene special session of legislature with limited purposes (1851, am. 1912) |
| Notes: | |
| Sec. 9 | When he may adjourn the legislature (1851) |
| Notes: | |
| Sec. 10 | Governor is commander-in-chief of militia (1851) |
| Notes: | |
| Sec. 11 | Governor may grant reprieves, commutations and pardons (1851, am. 1995) |
| Notes: | |
| Sec. 12 | Seal of the state, and by whom kept (1851) |
| Notes: | |

Legislative Branch and Executive Branch Committee

Planning Worksheet (June 2015)

| | |
|----------|--|
| Sec. 13 | How grants and commissions issued (1851) |
| Notes: | |
| Sec. 14 | Who is ineligible for governor (1851) |
| Notes: | |
| Sec. 15 | Succession in case of vacancy in office of governor (1976) |
| Notes: | |
| Sec. 16 | Repealed - referred to duties of Lieutenant Governor (1851, rep. 1976) |
| Notes: | |
| Sec. 17 | If a vacancy shall occur while executing the office of governor, who shall act (1976) |
| Notes: | |
| Sec. 17a | Filling a vacancy in the office of lieutenant governor (1989) |
| Notes: | |
| Sec. 18 | Governor to fill vacancies in key state offices (1851, am. 1969) |
| Notes: | |
| Sec. 19 | Compensation of key state officers (1851) |
| Notes: | |
| Sec. 20 | Annual report of executive officers (1851) |
| Notes: | |
| Sec. 21 | Appointments to office; advice and consent of Senate (1961) |
| Notes: | |
| Sec. 22 | Supreme Court to determine disability of governor or governor elect; succession (1976) |
| Notes: | |

Legislative Branch and Executive Branch Committee

Planning Worksheet (June 2015)

| Article IX - Militia | |
|----------------------|--|
| Sec. 1 | Who shall perform military duty (1851, am. 1953, 1961) |
| Notes: | |
| Sec. 2 | Repealed – provided for the election of certain officers (1851, rep. 1953) |
| Notes: | |
| Sec. 3 | Appointment of militia officers (1851, am. 1961) |
| Notes: | |
| Sec. 4 | Power of governor to call forth militia (1851, am. 1961) |
| Notes: | |
| Sec. 5 | Public arms; arsenals (1851) |
| Notes: | |

Legislative Branch and Executive Branch Committee

Planning Worksheet (June 2015)

| Article XI - Apportionment | |
|----------------------------|---|
| Sec. 1 | Persons responsible for apportionment of state for members of General Assembly (19667) |
| Notes: | |
| Sec. 2 | Ratio of representation in house and senate (1967) |
| Notes: | |
| Sec. 3 | Population of each House of Representatives district (1967) |
| Notes: | |
| Sec. 4 | Population of each Senate district (1967) |
| Notes: | |
| Sec. 5 | Representation for each house and senate district (1967) |
| Notes: | |
| Sec. 6 | Creation of district boundaries; change at end of decennial period (1967) |
| Notes: | |
| Sec. 6a | Repealed – provided additional senators for districts with a ratio of representation greater than one (1956, rep. 1967) |
| Notes: | |
| Sec. 7 | Boundary lines of House and Representatives districts (1967) |
| Notes: | |
| Sec. 8 | Determination of number of House of Representatives districts within each county (1967) |
| Notes: | |
| Sec. 9 | When population of county is fraction of ratio of representation (1967) |
| Notes: | |
| Sec. 10 | Division of state into house districts; standards (1967) |
| Notes: | |
| Sec. 11 | Senate districts; formation (1967) |
| Notes: | |
| Sec. 12 | Term of senators on change of district boundaries of Senate (1967) |
| Notes: | |
| Sec. 13 | Jurisdiction of Supreme Court, effect of determination of unconstitutionality; apportionment (1967) |

Legislative Branch and Executive Branch Committee

Planning Worksheet (June 2015)

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| Notes: | |
| Sec. 14 | Continuation of present district boundaries (1967) |
| Notes: | |
| Sec. 15 | Severability provision (1967) |
| Notes: | |

| Article XIV - Ohio Livestock Care Standards Board | |
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| Sec. 1 | Ohio Livestock Care Standards Board (2009) |
| Notes: | |
| | Prior article XIV: Jurisprudence, §1 – 3, Repealed – provided for the appointment of three commissioners by the General Assembly to revise the practice, pleadings, forms and proceedings of the courts of record of the state and to provide a uniform mode of proceeding (1851, rep. 1953) |
| Notes: | |



OHIO CONSTITUTIONAL MODERNIZATION COMMISSION

TO: Chair Frederick E. Mills, Vice Chair Paula Brooks, and
Members of the Legislative Branch and Executive Branch Committee

CC: Steven C. Hollon, Executive Director

FROM: Steven H. Steinglass, Senior Policy Advisor

RE: Article II Issues

DATE: May 7, 2015

At the December 11, 2014 meeting of the Legislative Branch and Executive Branch Committee, I provided a general overview of the provisions contained in Article II of the Ohio Constitution and identified issues that might merit further consideration by the committee. This memorandum builds on that presentation and provides additional information about Article II issues that the committee might wish to review. Attached to this memorandum is a summary of the highlights of my December 11, 2014 presentation.

This memorandum will not address issues already considered or being considered by the committee, including congressional redistricting, term limits, and the creation of a public office compensation commission.

1970s Review of Article II

One of the major accomplishments of the 1970s Ohio Constitutional Revision Commission ("1970s Commission") was its thorough review of Article II and the recommendations that it made concerning approximately 10 sections of this Article. The committee may wish to learn more about not only what was accomplished as a result of this legislative review, but also which proposals did not make it out of the Commission and which recommendations, if any, never made it to the ballot.

Sections 1 and 1a to 1g - Plenary Power, Initiative and Referendum

These sections were assigned to the Constitutional Revision and Updating Committee.

Section 2 - Length of Legislative Terms

The committee recently has approved a report and recommendation that would extend the existing term limits for state legislators from eight years to twelve years.

Section 3 - Residency Requirements for State Legislators

The one-year residency requirement adopted in 1851 permitted legislators to live outside their district as long as they lived within the county in which their district was located. The 1973 amendment required legislators to live in their districts.

Section 4 - Dual Office and Conflict of Interest Prohibited

This provision was revised as a result of the 1970s Commission's review of Article II.

Section 5 - Embezzlers Holding Public Office

This provision that has not changed since its adoption in 1851 prohibits persons convicted of embezzlement from holding public office. This provision was the subject of two attempted repeals in the 1970s. A recommendation by the 1970s Commission to repeal this provision was part of a three-issue joint resolution the Ohio Supreme Court removed from the ballot in 1972 for violating the "one amendment" rule of Article XVI, Section 1. A stand-alone proposal to repeal Article II, Section 5 was rejected by the voters on May 8, 1973, by a vote of 848,743 to 530,232.

The constitution has two related provisions on the ability of those convicted of felonies to hold public office. Under Article XV, Section 4, "no person shall be elected or appointed unless possessed of the qualifications of an elector." Article V, Section 1 establishes the qualifications of an elector, and Article V, Section 4 gives the General Assembly the power to exclude from the privilege of voting, or of being eligible to office, any person convicted of a felony." Thus, with the exception of the special provision for "embezzlers," the right to serve in the General Assembly (and in other public offices) tracks the right to vote.

The committee may want to review the continued presence in the constitution of a provision specifically barring only those convicted of embezzlement from holding "any office in this state." The committee may also want to examine the relationship of the embezzlement provisions with other provisions dealing with eligibility for service in public office.

Section 6 - Powers of Each House

This provision was revised as a result of the 1970s Commission's review of Article II.

Section 7 - Organization of each House of the General Assembly

This provision was revised as a result of the 1970s Commission's review of Article II.

Section 8 - Annual Sessions and Special Sessions

Under the 1802 constitution, sessions of the General Assembly were annual, but the 1851 constitution sought to reduce the power of the General Assembly by creating biennial sessions. By 1857, however, the General Assembly was again meeting in annual sessions through a parliamentary device; they would “recess” at the end of the regular session and a second session would be held in “adjournment” during the second year. This practice continued until 1973, when this section was amended to conform the constitution to the prevailing practice. Under the new section, the General Assembly is able to have annual sessions by convening the first regular session in odd-numbered years and a second regular session in the following year.

The second part of this section defines special sessions of the General Assembly. Before 1973, only the governor (in accordance with Article III, Section 8) could call special sessions of the legislature. The 1973 amendment to this section allows either the governor or the presiding officers of both houses, acting jointly, to convene special sessions. The proclamation convening special sessions under this section may, but need not, limit the purpose of the session. The delegation to the General Assembly of the power to convene special sessions came largely in response to a report of the Citizens Conference on State Legislatures in the early 1970’s. The report ranked Ohio forty out of the fifty states in the control the legislature had over its own activities and in its independence from the other branches of government. One of the reasons given in the report was the General Assembly’s lack of power to call special sessions.

Section 9 - House and Senate Journals

This provision was revised as a result of the 1970s Commission’s review of Article II.

Section 10 - Rights of Members to Protest

Adopted in 1851, this provision gives any member of either house the right to protest against any act or resolution and to have the protest and the reasons for it entered without alteration in the journal.

Section 11 - Filling Vacancy in House or Senate Seat

This provision was revised as a result of the 1970s Commission’s review of Article II.

Section 12 - Privilege of Member from Arrest

Adopted in 1851, this provision provides that members of the General Assembly are privileged from arrest while going to and from the General Assembly.

Section 13 - Legislative Sessions to Be Public

Adopted in 1851, this provision requires legislative sessions to be public unless two-thirds of those present conclude that secrecy is required.

Section 14 - Power of Adjournment

This provision was revised as a result of the 1970s Commission's review of Article II.

Section 15 - How Bills Shall Be Passed

This provision was revised as a result of the 1970s Commission's review of Article II.

Section 15(D) - One-Subject Requirement

Article II, Section 15(D) provides that “[n]o bill shall contain more than one subject, which shall be clearly expressed in its title.” This provision has been the subject of much litigation during the last 35 years, including an important case now pending before the Ohio Supreme Court. *See State ex rel. Ohio Civil Service Employees Association v. State*, No. 2014-0319 (accepting discretionary appeal and cross appeal of a Tenth District Court of Appeals decision holding that a claim that prison privatization provisions in the budget bill stated a claim for a violation of the “one subject” rule and remanding the case for further proceedings and a determination of the appropriate relief) (to be argued May 20, 2015). *See State ex rel. Ohio Civil Service Employees Association v. State*, 2 N.E.3d 304, 2013-Ohio-4505 (2013).

Section 16 - Bills to Be Signed by Governor; Veto

This provision was revised as a result of the 1970s Commission's review of Article II.

Section 17, 18 & 19- Signing of Bills; Style of Laws; Appointment to Civil Office

These provisions were repealed as a result of the 1970s Commission's review of Article II.

Section 20 - Term of Office and Compensation

Adopted in 1851, this provision gives the General Assembly the power to fix the compensation of officers, but bars any change during the term of office.

Section 21 - Contested Elections

Adopted in 1851, this provision gives the General Assembly the authority to determine how the trial of contested elections shall be conducted.

Section 22 - Appropriations

Adopted in 1851, this provision requires an appropriation to draw money from the treasury and bars appropriations for longer than two years.

Sections 23, 24, and 38 - Impeachment and Removal of Officers for Misconduct

Section 23, and its companion Section 24, gives the House sole power of impeachment of state officials, with the Senate responsible for impeachment trials and impeachment and removal of public officials. In addition, Section 38 permits the General Assembly to pass laws providing for the prompt removal of state officials for “any misconduct involving moral turpitude or for other causes.” In addition, under Article IV, Section 17 both judges may be removed with notice and an opportunity to be heard by concurrent resolution of supported by two-thirds of the members of both houses of the General Assembly.

Section 25 - When Sessions Commence

This provision was repealed as a result of the 1970s Commission’s review of Article II.

Section 26 - Legislative Submissions/Referenda

Article II, Section 26, which is best known as the provision that requires the uniform operation of laws throughout the state, also contains a provision by which, in limited circumstances involving education, the General Assembly may submit proposed statutes to the voters for their approval. The text of Section 26, with the legislative submission italicized, is as follows:

All laws, of a general nature, shall have a uniform operation throughout the state; *nor, shall any act, except such as relates to public schools, be passed, to take effect upon the approval of any other authority than the General Assembly,* except, as otherwise provided in this constitution. [Emphasis added.]

As far as I have been able to determine, this referendum procedure has only been used on one occasion. In 1998, the General Assembly, in response to the Ohio Supreme Court’s decision in *DeRolph v. State*, 78 Ohio St.3d 193, 677 N.E.2d 733 (1997), presented the voters with a proposal to increase the sales tax and other taxes to support education. The court upheld this use of a legislative submission/referendum, *see State ex rel. Taft v. Franklin County Court of Common Pleas*, 81 Ohio St.3d 480, 482, 692 N.E.2d 560, 562 (1998) (“[T]he general prohibition in Section 26, Article II against enactment of legislation whose effectiveness is dependent upon approval of another authority does not apply to legislation relating to public schools.”), but the voters rejected the proposal by a substantial margin. Unlike Ohio, some states, especially California and Washington, have broad provisions for submitting proposed legislation to the voters and make frequent use of this procedure.

Section 27 - Election and Appointment of Officers; Filling Vacancies

This provision addresses the power of the General Assembly to determine the manner for the appointment of officers (not otherwise provided for in the constitution), but denies the General Assembly the power to make appointments itself.

Section 28 - Retroactive Laws

Adopted in 1851, this provision has been the subject of much litigation. Unlike the prohibition on ex post facto criminal laws, this provision broadly bars the adoption of civil laws including but not limited to retroactive laws that impair contracts.

Section 29 - No Extra Compensation

Adopted in 1851, this provision limits the circumstances in which extra compensation may be made after the services have been rendered.

Section 30 - New Counties

Adopted in 1851, this provision outlines the procedures for creating new counties, none of which may contain less than 400 square miles of territory.

Section 31 - Compensation of Members and Officers of the General Assembly

Adopted in 1851, this provision addresses the compensation for members of the General Assembly.

Section 32 - Divorces and Judicial Power

Adopted in 1851, this provision prohibits the General Assembly from granting divorces; it also bars the General Assembly from exercising the judicial power.

Section 34a - Minimum Wage

Adopted in 2006 by initiative, this provision establishes a state minimum wage and provides for an automatic annual increase

Section 36 - Conservation of Natural Resources

In addition to authorizing the passage of laws to encourage forestry and agriculture, this provision permits non-uniform taxation of land devoted exclusively to agricultural use.

Constitutional Overrides of Supreme Court Decisions

Several provisions of Article II have their origin in the efforts of the 1912 Constitutional Convention to override decisions of the Ohio Supreme Court (or to avoid future decisions that the delegates feared would be forthcoming). Most of these decisions called into question the power of the General Assembly to adopt social or employee welfare legislation. Typically, these provisions only authorized the General Assembly to do that which it could do under its plenary power.

These provisions include:

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| Section 33 | Mechanics' and Contractor's Liens |
| Section 34 | Welfare of Employees |
| Section 35 | Workers' Compensation |
| Section 37 | Workday and Workweek on Public Projects |
| Section 39 | Regulating Expert Testimony in Criminal Trials |
| Section 40 | Registering and Warranting Land Titles |
| Section 41 | Prison Labor |

Two of these provisions, Section 33, and Section 34, have supremacy clauses that immunize statutes enacted under their authority from all state constitutional requirements. *E.g.*, “No other provision of the constitution shall impair or limit this power.”

Section 42 - Continuity of Government Operations in Emergencies Caused by Enemy Attack

Adopted in 1961, this provision requires the General Assembly to pass laws to provide for the continuation of government in the event of an enemy attack.

Unicameralism

Only one of the 50 states, Nebraska, has rejected the use of a bicameral legislature. This issue did not arise during the 1970s Commission proceedings, and to date no member of the current Commission has expressed interest in considering the abandonment of a bicameral legislature. A leading authority on state constitutional law has observed that the “contemporary case for bicameralism, in the wake of *Reynolds v. Sims* [the one-man, one-vote case], is weaker than it has been in the past.” *See* Alan Tarr, *Bicameralism or Unicameralism?* (Testimony before the Majority Policy Committee, Pennsylvania Legislature) (April 2010). Nonetheless, there has been little interest throughout the country, and voters in Montana and North Dakota defeated proposals for unicameral legislatures. *Id.*

ATTACHMENT

SUMMARY OF DECEMBER 11, 2014, PRESENTATION

OVERVIEW OF ARTICLE II AND ITS HISTORY

SUMMARY OF DECEMBER PRESENTATION

This summary is an expansion of my December 11, 2014 presentation.

Plenary Power

In adopting a constitution, the people of Ohio delegated all legislative power to the General Assembly subject only to other constitutional limitations. This grant of legislative power differs fundamentally from the grant of legislative power to Congress under the federal constitution. Unlike the U.S. Constitution, which grants Congress specific, enumerated powers, the Ohio Constitution “is primarily a limitation on the legislative power of the General Assembly.” *See State v. Warner*, 55 Ohio St.3d 31, 564 N.E.2d 18 (1990). Thus, the General Assembly may enact any law not prohibited by the state or federal constitutions, and a law passed by the General Assembly is presumed constitutional unless it is incapable of a fair reconciliation with the constitution.

Separation of Powers

Ohio does not have a constitutional provision expressly regulating the separation of powers among the branches of government, and is one of a minority of states without such a provision. Nonetheless, the Ohio Supreme Court has held that the doctrine of separation of powers “is implicitly embedded in the entire framework of those sections of the Ohio Constitution that define the substance and scope of powers granted to the three branches of government.”

History of Article II

1802 Ohio Constitution

- The Legislative Article was Article I, reflecting the importance of the General Assembly
- General Assembly appointed judges as well as the secretary of state, the treasurer, the auditor, and the chief military officers
- Almost no limitations on the power of the General Assembly
- General Assembly operated primarily through special legislation/private bills
- Governor did not have the veto power

1851 Ohio Constitution

- General Assembly lost the power of appointment
- Voters were given the right to elect judges and other statewide officials (auditor, attorney general, secretary of state, treasurer)
- Governor still lacked the veto power
- Introduced limitations on the power of the General Assembly

Post-1851 Amendments

- 1903 Governor given the veto
- 1912 Direct democracy proposals from the 1912 Constitutional Convention gave the people the power of the initiative and referendum
- 1973 Major review and re-organization as a result of the work of the 1970s Ohio Constitutional Revision Commission
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Overview of Changes in Article II of the 1851 Constitution

- Article II is one of the most frequently amended Articles of the Ohio Constitution
- Originally, Article II had 32 sections
- 15 of the original sections have never been amended
- 5 of the original sections were amended in 1973 as part of the legislative reorganization that resulted from the recommendations of the 1970s Commission
- 4 of the original sections were amended (apart from the 1973 reorganization) some multiple times
- 4 of the original sections were repealed in 1973 as part of the legislative reorganization that resulted from the recommendations of the 1970s Commission
- 6 new sections that were adopted as a result of the recommendations of the 1912 Constitutional Convention have never been amended
- 4 new sections that were adopted as a result of the recommendations of the 1912 Constitutional Convention were subsequently amended