



OHIO CONSTITUTIONAL MODERNIZATION COMMISSION

Legislative Branch and Executive Branch Committee

Frederick E. Mills, Chair
Hon. Paula Brooks, Vice-chair

Part II

April 14, 2016

Ohio Statehouse
Room 018

OCMC Legislative Branch and Executive Branch Committee

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OHIO CONSTITUTIONAL MODERNIZATION COMMISSION

MEMORANDUM

TO: Chair Fred Mills, Vice-chair Paula Brooks, and
Members of the Legislative Branch and Executive Branch Committee

FROM: Steven C. Hollon, Executive Director

DATE: April 7, 2016

RE: Grouping of Article II Sections by Topic for Review by the Committee

This memorandum summarizes the various sections contained in Article II that have been assigned to the Legislative Branch and Executive Branch Committee. The summaries are grouped into topical categories as a means of aiding the committee in its review and analysis of the provisions.

Category I – Section 1 (Legislative Power)

There is just one section in this category. It deals with vesting the legislative authority of government in the General Assembly and reserving to the people certain powers, such as the initiative and referendum. The sections on the initiative and referendum are closely related to the legislative authority and contain related numbering in the constitution, but they have been separately assigned to the Constitutional Revision and Updating Committee.

Section 1 – In Whom Power Vested (1851, amend. 1912, 1918, and 1953)

- This section states that the “legislative power of the state shall be vested in a General Assembly consisting of a Senate and House of Representatives” and then goes on to state that the people reserve to themselves the power of the initiative and referendum to propose and reject laws passed by the General Assembly. The section also states that the limitations place on the General Assembly by the constitution shall also “be deemed limitations on the power of the people to enact laws.”

The committee may wish to consider revising this provision into a more readable format. One possible format is provided at Attachment A. The suggested format sets out the powers in a cleaner fashion, which aids in reader comprehension without changing the meaning. However, suggesting that this section be amended for the sole purpose of clarity may not be a sufficient reason to change it.

Sections 1a through 1g – General Powers of Initiative and Referendum; Ballot Board (1912, amend. 2008)

- These sections deal with the powers of the initiative and referendum. They have been assigned to the Constitutional Revision and Updating Committee. An overriding question is whether the seven sections dealing with this topic should be removed from Article II and placed in a new article dealing with this topic specifically, or whether they should be retained in this article as numbered. This question may require some discussion between the chairs of the Legislative Branch and Executive Branch Committee (Mills) and the Constitutional Revision and Updating Committee (Mulvihill), or a joint meeting of the committees.

Category II – Section 2 (Election of Legislators)

There is just one section in this category, which deals with the election and terms of the members of the General Assembly.

Section 2 – Election and Term of State Legislators (1967, amend. 1992)

- This section deals with the election and terms of state legislators, including the term limitation language that was added to the constitution in 1992. The committee has already dealt with this topic and passed two separate reports and recommendations on the issue of term limits which have not yet been considered by the full Commission.

There is no need for the committee to take any further action on this section.

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

Sections 3, 4, 5, 11, and 31 deal with residency requirements and restrictions on those who serve in the General Assembly, the method for filling a vacancy of a member of the General Assembly, and the compensation of the members and officers of that body.

When reviewing these sections, and before preparing a single report and recommendation on these provisions, the committee may wish to consider whether some of the provisions should remain in Article II or whether they should be moved to another article dealing with officeholders in general. See Category VIII (Officeholders) below.

Section 3 – Residence Requirements (1851, amend. 1967)

- This section states that senators and representatives shall have lived in their districts for one year prior to their election.

Section 4 – Dual Office and Conflict of Interest Prohibited (1851, amend. 1973)

- This section sets out restrictions that no member of the General Assembly shall hold any other public office while serving as a member, except for an office in a political party, as a notary public, or an officer in the militia or of the United States armed forces. This is one of the topics the committee may wish to consider moving out of Article II and placing in an article dealing with officeholders in general. See Category VIII (Officeholders) below.

Section 5 – Who Shall Not Hold Office (1851)

- This section states that no person holding money for public disbursement shall have a seat in the General Assembly until accounting for and paying moneys into the treasury. It also states that no person convicted of embezzlement of public funds shall hold any office in the state. This last disability goes beyond just those serving in the General Assembly and applies to all offices. The committee may wish to consider removing this restriction from this section, and placing it in an article dealing with officeholders in general. See Category VIII (Officeholders) below.

Section 11 – Filling Vacancy in House or Senate Seat (1851, amend. 1961, 1968, 1973)

- This fairly lengthy section deals with how vacancies shall be filled in the Senate and House of Representatives.

Section 31 – Compensation of Members and Officers of the General Assembly (1851)

- This section states that members and officers of the General Assembly shall receive a fixed compensation to be prescribed by law and no other allowances and perquisites, and that no change in their compensation shall take place during their term in office.

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

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

Section 6 – Powers of Each House (1851, amend. 1973)

- This provision provides for several, somewhat unrelated items, such as (i) each house shall be the judge of the election and qualifications of its members; (ii) each house may punish its members for disorderly conduct; (iii) a majority shall constitute a quorum to do business; and (iv) each house has all powers necessary to obtain information affecting legislative action, including the powers to enforce the attendance and testimony of witnesses.

Section 7 – Organization of Each House of the General Assembly (1851, amend. 1973)

- This section states that the mode of operating each house of the General Assembly shall be prescribed by law, sets out the titles for the presiding officer of each house, and indicates that each house shall determine its own rules of proceeding.

Section 8 – Sessions of the General Assembly (1973)

- This section provides when regular and special sessions of the General Assembly may be convened, who may convene them.

Section 9 – House and Senate Journals (1851, amend. 1973)

- This section states that each house of the General Assembly shall keep a correct journal of its proceedings, and that on the passage of every bill the vote shall be taken by yeas and nays.

Section 13 – Legislative Sessions to be Public (1851)

- This section provides that the proceedings of both houses shall be public, except when two-thirds of those present find that secrecy is required.

Section 14 – Power of Adjournment (1851, amend. 1973)

- This provision states that neither house shall adjourn for more than five days without the consent of the other, nor reconvene in any place other than which the two houses are in session.

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

Sections 10 and 12 deal with the rights and privileges of the members of the General Assembly, specifically noted in the constitution. It makes sense that they should be considered by the committee at the same time and reviewed in the same report and recommendation.

Section 10 – Rights of Members to Protest (1851)

- This section states that any member of either house has the right to protest against any act or resolution, and that such protest shall be entered upon the journal.

Section 12 – Privileges of Members from Arrest (1851)

- This section deals with the immunity of members of the General Assembly (i) from arrest in going to or returning from a session, except for treason, felony or breach of the peace, and (ii) for any speech or debate.

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

The four sections in this category deal with the process for enacting bills by the General Assembly, the requirement for the Governor’s signature, how laws are to be applied, and restrictions on their enactment. These sections can be dealt with at the same time and in one report and recommendation. However, since these sections refer to actions by both the General Assembly and the Governor, and the effect of laws generally, a question the committee may wish to address is whether this grouping of provisions should be removed from Article II and placed in its own separate article that deals with enacting laws. I have provided at Attachment B a version of what this new separate article might look like.

Section 15 – How Bills Shall Be Passed (1973)

- This section details how bills shall be passed in the General Assembly, including requirements on the style of the laws, the one subject rule, and signing by the presiding officer.

Section 16 – Bills to be signed by Governor (1851, amend. 1903, 1912, 1973)

- This section details the requirements for the governor’s signature on bills, the veto of bills, veto overrides by the General Assembly, and bills becoming law without the governor’s signature.

Section 26 – Laws to have Uniform Operation (1851)

- This section states that laws of a general nature will have uniform operation throughout the state.

Section 28 – Retroactive Laws (1851)

- This section states that the General Assembly shall have no power to pass retroactive laws or laws impairing the obligation of contracts.

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

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

Section 33 – Mechanics’ and Contractor’s Liens (1912)

- This section states that laws may be passed to allow for labors and materialmen to place liens on property for which they have provided labor or material.

Section 34 – Welfare of Employees (1912)

- This section states that laws may be passed regulating the hours of labor, and providing for the comfort, health, safety, and general welfare of employees.

Section 34a – Minimum Wage (2006)

- Sets a minimum wage for every employer in the state to pay their employees.

Section 35 – Workers’ Compensation (1912, amend. 1923)

- This section states that laws may be passed to provide compensation for workers and their dependents for death, injuries, and occupational disease occurring in the course of one’s employment.

Section 37 – Workday and Workweek on Public Projects (1912)

- This section states that not more than eight hours shall constitute a day’s work and not more than 48 hours shall constitute a week’s work on public work projects.

Proposed Section – No Public Resources in Collection of Labor Dues

- This proposal, submitted to the Commission by a private citizen, would prohibit the use of public resources to assist a labor organization in collecting dues or service fees from wages of public employees.

Proposed Section – Right to Work/Workplace Freedom

- This proposal, submitted to the Commission by a private citizen, would prohibit a person, as a condition of employment, from becoming a member of a labor organization or paying dues to a union organization.

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

The sections noted below deal with various topics that concern officers and officeholders, including their term, compensation, impeachment and removal, and filling of vacancies.

Section 20 – Term of Office, and Compensation of Officers in Certain Cases (1851)

- This section provides that the General Assembly, in cases not provided for in the constitution, shall fix the term of office and compensation for all officers.

Section 23 – Impeachments (1851)

- This section states the general procedures for impeachment, including that the House of Representatives shall have the sole power of impeachment, which shall be tried by the Senate and require the concurrence of two-thirds of the senators.

Section 24 – Officers Liable to Impeachment (1851)

- This section states the offices liable to impeachment, including the governor, judges, and all state officers.

Sections 27 – Election and Appointment of Officers; Filing of Vacancies (1851)

- This section states that the election and appointment of all officers not provided by the constitution shall be as directed by law.

Section 38 – Removal of Officials for Misconduct (1912)

- This section states that laws shall be passed providing for the prompt removal from office of all officers, including state officers, judges, and members of the General Assembly, for misconduct involving moral turpitude, in addition to the method of impeachment.

In addition, there are two other sections in Article II (as noted in Category III above) that the committee might consider combining with these five sections to form a new and separate article that focuses on the topic of officeholders. The two sections in Article II are as follows:

Section 4 – Dual Office and Conflict of Interest Prohibited (1851, amend. 1973)

- This section sets out that no member of the General Assembly shall hold any other public office while serving as a member, except for an office in a political party, as a notary public, or an officer in the militia or of the United States armed forces. The committee may wish to consider making this a requirement as to all officeholders in the state.

Section 5 – Who Shall Not Hold Office (1851)

- This section states that no person holding money for public disbursement shall have a seat in the General Assembly until accounting for and paying moneys into the treasury. It also states that no person convicted of embezzlement of public funds shall hold any office in the state. This last disability goes beyond just those serving in the General Assembly and applies to all offices.

There are also two other sections in the constitution, at Article XV (Miscellaneous), that might be combined with the sections noted above to round out a separate article on officeholders. They are as follows:

Section 4 – Qualified Electors (1851, amend. 1913, 1953)

- This section states that no person shall be elected or appointed to any office in the state unless they are qualified as an elector.

Section 7 – Oaths of Officers (1851)

- This section states that every person chosen or appointed to any office shall, before entering into office, shall take an oath or affirmation to support the Constitution of the United States, and Ohio, and also an oath of office.

Finally, one other topic the committee may want to consider is the creation of a salary commission and, in so doing, whether such a section should be added to the sections noted above in the creation of a new article setting out the general requirements for all officeholders in state and local government.

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

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

Section 21 – Contested Elections (1851)

- This section states that the General Assembly shall determine before what authority and in what manner elections shall be conducted. While this affirmative granting of authority may not be necessary in order for the General Assembly to enact legislation regarding elections, if the Commission wishes to retain this grant then perhaps it should be reviewed by the Bill of Rights and Voting Committee and the section transferred to Article V (Elections).

Section 22 – Appropriations (1851)

- This section states that no money shall be drawn from the treasury, except in pursuance of a specific appropriation, and that no appropriation shall be made for more than two years. This does not fit neatly into other articles or for review by other committees. The closest one that might be considered would be the Finance, Taxation, and Economic Development Committee, but neither Article VIII (Public Debt and Public Works) nor Article XII (Finance and Taxation) seem like clean places for this provision to land.

Section 30 – New Counties (1851)

- This section deals with the creation of new counties. It states that no new county shall contain less than 400 square miles or be reduced below that level, and notes that any changes as to county lines and county seats shall be submitted to the electors of the counties to be affected. The question is whether this section should remain in this article for review by this committee or whether review of the provision should be transferred to the Education, Public Institutions, and Local Government Committee, which has been tasked with reviewing Article X (County and Township Organizations) to determine whether his provision should be transferred to that article.

Section 32 – Divorces and Judicial Power (1851)

- This section states that the judicial branch shall grant no divorce or exercise any judicial power not granted in the constitution. This section could be transferred to the Judicial Branch and Administration of Justice Committee for its review and perhaps a suggestion that it recommend the adoption of a provision in Article IV that states the issuance of a divorce shall be the sole determination of the judicial branch as provided by law.

Section 39 – Expert Testimony in Criminal Trials (1912)

- This section states that laws may be passed for the regulation of the use of expert witnesses and expert testimony in criminal proceedings. The committee should consider transferring this provision to the Judicial Branch and Administration of Justice Committee for its review. With the passage of the Modern Courts Amendment in 1968, rule-making authority was largely transferred to the Supreme Court, with some oversight by the General Assembly. This provision is largely, if not totally, obsolete and the committee could also recommend its repeal.

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

Section 36 deals with the topic of natural resources, as set out below. There are also other provisions located in different articles of the constitution that deal with the topics of (i) private property and eminent domain; (ii) the protection of private property rights in ground water, lakes, and water courses; and (iii) Ohio Livestock Care Standards Board, also as set out below.

Collectively, these four topics deal with the larger issue of the preservation of natural resources and rights in private property versus the interest of the state in conserving natural resources and regulating methods for their use and extraction.

Two of the provisions noted above are assigned to the Legislative Branch and Executive Branch Committee, and are as follows:

Section 36 – Conservation of Natural Resources (1912, amend. 1973)

- This section focuses on two topics. The first part of the provision deals with taxation of forestry and agriculture. The second section deals with the conservation of natural resources and the regulation of their use and extraction.

Article XIV, Section 1 – Ohio Livestock Care Standards Board (2009)

- This section, as passed by initiative in 2009, deals with the creation and operation of the Ohio Livestock Care Standards Board, governing the care and well-being of livestock and poultry.

The other two topics provisions mentioned above are assigned to the Bill of Rights and Voting Committee, and are as follows:

Article I, Section 19 – Eminent Domain (1851)

- This section discusses the foundational principle of eminent domain as placed in Article I of the constitution dealing with the Bill of Rights.

Article I, Section 19b – Preservation of Private Property Rights in Ground Water, Lakes, and Other Watercourses (2009)

- This section discusses the protection of Ohio property owners' riparian rights.

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

Conclusion

There is plenty of work for the committee's consideration. Determining the order and grouping of topics will aid staff in the preparation of reports and recommendations for the committee's approval and submission to the full Commission.

ATTACHMENT A**ARTICLE II – LEGISLATIVE BRANCH***Section 1 – Legislative Power*

(A) The legislative power of the state shall be vested in a General Assembly, consisting of a Senate and House of Representatives, and in the people, as they shall specifically reserve to themselves in this constitution. ~~but the~~

(B) ~~The~~ people reserve ~~to themselves~~ the power to propose to the General Assembly laws and amendments to the constitution, and to adopt or reject the same at the polls on a referendum vote, as ~~hereinafter~~ provided in this constitution.

(C) ~~They also~~ The people reserve the power to adopt or reject any law, section of any law, or any item to any law, appropriating money passed by the General Assembly, except as ~~herein after~~ provided in this constitution.

(D) The people reserve the power, ~~and~~ independent of the General Assembly, to propose amendments to the constitution and to adopt or reject the same at the polls, as provided in this constitution.

(E) The limitations expressed in ~~the~~ this constitution, on the power of the General Assembly to enact laws, shall be deemed limitations on the power of the people to enact laws.

Currently Art. II, Sec. 1 (1851, amend. 1912, 1918, 1953)

ATTACHMENT B

ARTICLE ___ - ENACTING LAWS

Section 1 – Bills

The General Assembly shall enact no law except by bill, and no bill shall be passed without the concurrence of a majority of the members elected in each house. Bills may originate in either house, ~~but~~ and may be altered, amended, or rejected in the other.

Currently Art. II, Sec. 15(A) (1973)

Section 2 – Style of Laws

The style of the laws of this state shall be, “be it enacted by the General Assembly of the state of Ohio.”

Currently Art. II, Sec. 15(B) (1973)

Section 3 – Consideration of Bills

Every bill shall be considered by each house on three different days, unless two-thirds of the members elected to the house in which it is pending suspend this requirement, ~~and every~~. Every individual consideration of a bill or action suspending the requirement shall be recorded in the journal of the respective house. No bill ~~may~~ shall be passed until ~~the bill~~ it has been reproduced and distributed to members of the house in which it is pending and every amendment been made available upon a member’s request.

Currently Art. II, Sec. 15(C) (1973)

Section 4 – One Subject

No bill shall contain more than one subject, which shall be clearly expressed in its title.

Currently part of Art. II, Sec. 15(D) (1973)

Section 5 – Vote

On the passage of every bill, the vote ~~in either of each~~ house, ~~the vote shall be taken~~ determined by yeas and nays, and ~~entered upon~~ the names of the members voting for and against the bill shall be ~~the~~ entered upon the journal.

Currently part of Art. II, Sec. 9 (1973)

Section 6 – Entire Act

No law shall be revived or amended unless the new act contains the entire act revived, or the section or sections amended, and the section or sections amended shall be repealed.

Currently part of Art. II, Sec. 15(D) (1973)

Section 7 – Certifying Passage of Bill

Every bill which has passed both houses of the General Assembly shall be signed by the presiding officer of each house to certify that the procedural requirements for passage have been met and shall be presented forthwith to the governor for his approval.

Currently Art. II, Sec. 15(E) (1973)

Section 8 – Certifying Passage of Joint Resolution

Every joint resolution which has been adopted in both house of the General Assembly shall be signed by the presiding officer of each house to certify that the procedural requirements for adoption have been met and shall forthwith be filed with the secretary of state.

Currently Art. II, Sec. 15(F) (1973)

Section 9 – Signing by Governor; Filing with Secretary of State

If the governor approves an act passed by the General Assembly, ~~he~~ the governor shall sign it, ~~it becomes law~~ and ~~he shall~~ file it with the secretary of state, whereupon it becomes law.

Currently part of Art. II, Sec. 16 (1973)

Section 10 – Veto by Governor; Reconsideration by General Assembly

(A) If ~~he~~ the governor does not approve ~~it~~ an act passed by the General Assembly, ~~he~~ the governor shall return it, with ~~his~~ the governor's objections in writing, to the house in which it originated, which shall enter the objections at large upon its journal, and may then reconsider the vote on its passage.

(B) If three-fifths of the members ~~elected to~~ of the house of origin vote to repass the bill, it shall be sent, with the objections of the governor, to the other house, which may also reconsider the vote on its passage. If three-fifths of the members ~~elected to~~ of the second house vote to repass it, ~~it~~ the bill becomes law notwithstanding the objections of the governor, and the presiding officer of the second house shall file it with the secretary of state. In no case shall a bill be repassed by a smaller vote that is required by the constitution on its original passage. In all cases of reconsideration, the vote of each house shall be determined by yeas and nays, and the names of the members voting for and against the bill shall be entered upon the journal.

(C) If a bill is not returned by the governor within ten days, Sundays excepted, after being presented to ~~him~~ the governor, it becomes law in like manner as if ~~he~~ the governor has signed it, unless the General Assembly by adjournment prevents its return; in which case, it becomes law unless, within ten days after adjournment, it is filed by ~~him~~ the governor, with ~~his~~ the governor's objections in writing, in the office of the secretary of state. The governor shall file with the secretary of state every bill not returned by ~~him~~ the governor to the house of origin that becomes law without ~~his~~ the governor's signature.

(D) The governor may disapprove any item or items in any bill making an appropriation of money and the item or items, so disapproved, shall be void, unless repassed in the manner prescribed by this section for the repassage of a bill.

Currently Art. II, Sec. 16 (1851, amend. 1903, 1912, 1973)

Section 11 – Laws Shall Have Uniform Operation

All laws, of a general nature, shall have a uniform operation throughout the state; nor shall any act, except as it 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.

Currently Art. II, Section 26 (1851)

Section 12 – Retroactive Laws

The General Assembly shall have no power to pass retroactive laws, or laws impairing the obligation of contracts; but may, by general laws, authorize courts to carry into effect, upon such terms as shall be just and equitable, the manifest intention of parties, and officers, by curing omissions, defects, and errors, in instruments and proceedings, arising out of their want of conformity with the laws of the state.

Currently Art. II, Section 28 (1851)

Section 13 – Tax Levies, Appropriations, and Emergency Laws; Immediate Effect

(A) Laws providing for tax levies, appropriations for the current expenses of the state government and state institutions, and emergency laws necessary for the immediate preservation of the public peace, health or safety, shall go into immediate effect.

(B) ~~Such~~ Emergency laws shall require the vote of two-thirds of ~~all~~ the members ~~elected to~~ in each ~~branch~~ house of the General Assembly, and the reasons for such necessity shall be set forth in one section of the law, which section shall be passed only upon a yea or nay vote, upon a separate roll call vote thereon.

(C) Laws mentioned in this section shall not be subject to the referendum as set out in Article ____, Section ____ of this constitution.

Currently Art. II, Sec. 1d (1912)

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OHIO CONSTITUTIONAL MODERNIZATION COMMISSION

2016 Meeting Dates

May 12

June 9

July 14

August 11

September 8

October 13

November 10

December 8