



OHIO CONSTITUTIONAL MODERNIZATION COMMISSION

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Legislative Branch and Executive Branch Committee

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

Part I

November 10, 2016

Ohio Statehouse  
Room 017

## **OCMC Legislative Branch and Executive Branch Committee**

Chair Mr. Fred Mills  
Vice-chair Ms. Paula Brooks  
Mr. Herb Asher  
Sen. Bill Coley  
Rep. Mike Curtin  
Ms. Jo Ann Davidson  
Rep. Robert McColley  
Governor Bob Taft  
Ms. Petee Talley  
Sen. Charleta Tavares  
Ms. Kathleen Trafford

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**OHIO CONSTITUTIONAL MODERNIZATION COMMISSION**  
**LEGISLATIVE BRANCH AND EXECUTIVE BRANCH COMMITTEE**

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**THURSDAY, NOVEMBER 10, 2016**  
**2:00 P.M.**  
**OHIO STATEHOUSE ROOM 017**

**AGENDA**

- I. Call to Order
- II. Roll Call
- III. Approval of Minutes
  - Meeting of October 13, 2016
- IV. Presentation
  - “Legislative Privilege in State Legislatures”

*[Draft Minutes – attached]*

Steven F. Huefner  
Assistant Professor of Law  
Moritz College of Law  
The Ohio State University

*[Law review article by Steven F. Heufner titled “The Neglected Value of the Legislative Privilege in State Legislatures,” William & Mary Law Review, Vol. 45, Issue 1(2003) – previously circulated by email]*

## V. Reports and Recommendations

- Article II, Sections 3, 4, 5, and 11 (Member Qualifications and Vacancies)
  - First Presentation
  - Public Comment
  - Committee Discussion
  - **Possible Action Item: Consideration and Adoption**

*[Report and Recommendation – attached]*

- Article II, Sections 6, 7, 8, 9, 13, and 14 (Conducting Business of the General Assembly)
  - First Presentation
  - Public Comment
  - Committee Discussion
  - **Possible Action Item: Consideration and Adoption**

*[Report and Recommendation – attached]*

## VI. Committee Discussion

- Compensation Commission

The committee chair will lead discussion regarding the concept of a pay commission for members of the general assembly and statewide elected officials.

*[Resolution Analysis of Sub. S.J.R.1, 131<sup>st</sup> General Assembly, regarding a Public Office Compensation Commission, as prepared by the Legislative Service Commission – attached]*

*[Memorandum by Hailey C. Akah titled “Comparing State Compensation Commissions,” dated March 2, 2015 – attached]*

## VII. Next Steps

- The committee chair will lead discussion regarding the next steps the committee wishes to take in preparation for upcoming meetings.

*[Memorandum by Steven C. Hollon titled “Grouping of Article II Sections by Topic for Review by the Committee,” dated April 7, 2016 – attached]*

*[Planning Worksheet – attached]*

VIII. Old Business

IX. New Business

X. Public Comment

XI. Adjourn

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## OHIO CONSTITUTIONAL MODERNIZATION COMMISSION

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### MINUTES OF THE LEGISLATIVE BRANCH AND EXECUTIVE BRANCH COMMITTEE FOR THE MEETING HELD THURSDAY, OCTOBER 13, 2016

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

Chair Fred Mills called the meeting of the Legislative Branch and Executive Branch Committee to order at 2:34 p.m.

#### **Members Present:**

A quorum was present with Chair Mills and committee members Asher, Curtin, Davidson, McColley, Taft, and Tavares in attendance.

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

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

#### **Reports and Recommendations:**

Chair Mills began the meeting by referencing that he asked Steven C. Hollon, executive director, to have staff prepare reports and recommendations for some of the categories described in Mr. Hollon's memorandum grouping sections of Article II according to subject matter. Chair Mills said the committee now has two reports and recommendations that begin to address the committee's ideas regarding two of the categories described in Mr. Hollon's memorandum. He said this is not an official presentation, but a review of the initial draft of the reports and recommendations. Chair Mills said there will be a first presentation at the committee's next meeting, which he said will occur in November. Chair Mills said the committee will be meeting every month through January 2017.

*Article II, Sections 3, 4, 5, 11, and 31  
(Qualifications, Vacancy, and Compensation of Members of the General Assembly)*

Mr. Hollon reviewed the report and recommendation for Article II, Sections 3, 4, 5, 11, and 31, which deal with the qualifications and compensation of members of the General Assembly, as

well as providing for filling vacancies in legislative seats. Mr. Hollon said the report and recommendation documents that the sections originally were adopted as part of the 1851 constitution. He described that Section 3 requires legislators to live in their districts. He continued that Section 4, amended in 1973, restricts members of the General Assembly from holding any other public office, except as specified. Addressing Section 5, Mr. Hollon said the report and recommendation indicates the section prohibits persons convicted of embezzlement from serving in the General Assembly, and prevents persons holding money for public disbursement from serving until they account for and pay that money into the treasury. Mr. Hollon outlined the report and recommendation's discussion of Section 11, which defines how vacancies are to be filled, as well as Section 31, which prescribes the compensation of members and officers of the General Assembly.

Mr. Hollon reviewed the report and recommendation's discussion of the Ohio Constitutional Revision Commission's recommendations in the 1970s. He indicated that the in-depth review of the 1970s Commission resulted in voters adopting several amendments to these sections, with other related recommendations being rejected at the polls. Mr. Hollon noted the report and recommendation's summary of two Supreme Court of Ohio decisions interpreting the sections, specifically Section 3, defining what constitutes the legislator's home county, and Section 4, defining what is meant by the prohibition on legislators holding public office during their terms. Mr. Hollon noted that the report and recommendation is incomplete because staff requires input from the committee regarding the disposition of these sections. Mr. Hollon asked whether the committee might consider moving Sections 4 and 5 to another article that would deal solely with officeholders.

Chair Mills then opened the floor for discussion on the report and recommendation. Committee member Bob Taft asked about testimony at an earlier meeting related to constitutionally creating a compensation commission to determine legislative salaries. Chair Mills provided a history of that issue before the committee, indicating that this was a concept proposed by the Senate in both the last General Assembly and in the current one. Chair Mills said the committee heard initial testimony from the Senate majority counsel, Frank Strigari, and held a general discussion about that concept. He added, in an effort to have additional testimony, and because the proposal would cover all officials in the state other than home rule municipalities, he asked Mr. Hollon to solicit interest from entities representing those interests. He said there was no indication that any interested groups wanted to testify. So, Chair Mills said, the committee held two hearings on the issue and no further action was taken at that point.

Representative Mike Curtin cautioned that he would not want to delve into a proposed broad amendment dealing with compensation of other levels of government without research to see what current city charters say, and what current practices are. He noted the state has 160 city charters, and he knows dual compensation is prohibited at least in the Columbus charter and probably in others. Rep. Curtin said it would take a lot of diligence to find out what the current practices are before contemplating a state constitutional amendment on that topic.

Mr. Hollon said what he was asking was whether holding two different elected offices is an issue.

Chair Mills asked whether any of the other committees are looking at this issue from other perspectives. Mr. Hollon said no, rather the question is whether this committee wants there to be

a separate constitutional article with all the requirements for officeholders of the state. Mr. Hollon directed the committee to Category VII in his memorandum, relating to the term of office. He said all of these sections are scattered around the constitution, but deal with other officeholders who are not in the legislative branch. He said that is one way the committee could go, but that he is not making a recommendation.

Senator Charleta Tavares, seeking clarification, asked if Mr. Hollon is just trying to streamline the constitution and make it more user friendly with respect to officeholders, but not to change the specific duties. Mr. Hollon said there are restrictions related to all officeholders, and that is why he considered the possibility of grouping them together in one article.

Sen. Tavares said, on the issue of the compensation commission, there has been no recommendation for whether to deal with that separately. Chair Mills said he would be happy to have additional hearings on the subject if anyone is interested. Sen. Tavares suggested that if the committee could hear from another state or level of government about their experiences it would be useful. Chair Mills said he will work with staff on that.

Gov. Taft said, on that same topic, there should be conversation about whether there is an argument for a compensation commission that would deal only with state legislative salaries. He said, currently, legislators have to set their own salaries, and this creates an appearance of interest that can create problems that do not exist if the legislature is setting salaries for other government officials. He said it would be good to hear from legislative leaders next year about that topic.

Committee member Jo Ann Davidson agreed there are some ideas that Rep. Curtin suggested that would be good. But, she cautioned, the committee needs to prioritize, considering the limited time remaining. She said, if the current legislature has refused to move anything on the concept of a compensation commission, then the committee should consider how to prioritize the issues that are still before it.

Regarding Section 11, relating to filling vacancies, Chair Mills agreed the committee should not recommend a change without a great deal of study. He said it is important to fill vacancies in the General Assembly, and the current provision has allowed that to be done efficiently since the 1970s. Mr. Hollon said his point had been that it might be good to separate the section into paragraphs in order to make it easier to read. Sen. Tavares reiterated Mr. Hollon's point, saying it is a good goal to make the constitution succinct and readable.

*Article II, Sections 6, 7, 8, 9, 13, and 14  
(Conducting Business of the General Assembly)*

Mr. Hollon then described the report and recommendation for Article II, Sections 6, 7, 8, 9, 13, and 14, all dealing with the subject of the General Assembly's methods for conducting its business. Mr. Hollon indicated that the report and recommendation covers Section 6, relating to the powers of each house of the General Assembly; Section 7, providing for the organization of each house of the General Assembly; Section 8, governing the legislative calendar; Section 9, relating to the requirement of keeping a journal of proceedings; Section 13, requiring open meetings; and Section 14, controlling the ability of either house to adjourn.

Mr. Hollon then reviewed the various recommendations of the 1970s Commission, including revisions allowing each house to punish members for disorderly conduct, to expel members, and to enforce rules and procedures promoting the orderly transaction of its business; moving a portion of former Section 8 that had described the procedure for selecting legislative officers, including the president of the senate and the speaker of the house of representatives; adding a statement confirming that each house may determine its own procedural rules; replacing former Section 8 with a new section detailing what constitutes a “session” of the General Assembly; and expanding from two days to five days the amount of time each house may adjourn without the consent of the other house. He said these recommendations were part of a package of ballot issues approved by voters on May 8, 1973. Mr. Hollon indicated that the report and recommendation described that Section 13, requiring the General Assembly to hold open meetings, was not addressed by the 1970s Commission and has not been amended since its adoption in 1851.

Mr. Hollon also discussed that the report and recommendation outlines two Supreme Court of Ohio cases addressing these sections, one defining what constitutes a “term” of the General Assembly, and one reinforcing Section 7’s expression of the self-governing power of the General Assembly. Mr. Hollon said the report and recommendation does not reach a conclusion about the will of the committee as to the disposition of these sections, a question the committee still needs to answer.

Chair Mills then opened up the floor for questions or comments.

Sen. Tavares drew the committee’s attention to Section 8, relating to the legislative calendar. Noting there is no prescribed number of days or months the General Assembly meets, she wondered if there is anything prohibiting the General Assembly from reducing or determining for itself how often it meets, since that is not spelled out in the constitution.

Mr. Hollon agreed, saying many states have a requirement about that. Chair Mills also agreed there are no restrictions. He said there are arguments that perhaps there should be some language on this point, but he thinks the general feeling has been the General Assembly should control its own calendar, and that, without a constitutional provision, they have the ability to do that without restrictions. Sen. Tavares agreed, saying maybe the legislature could then prescribe fewer days of meeting rather than meeting virtually full time. She said “We are supposed to be a citizen legislature, which is difficult if we don’t have our foot in the real world.” She said, as she talks to her colleagues throughout the country, she hears they can get their legislative work done in fewer days. She said, because of their legislative obligations, legislators outside of Columbus cannot have alternate employment unless they own their own business.

Chair Mills said the topics contained in these reports and recommendations will be coming up at the next meeting, so members with concerns or others who may wish to testify can contribute at that time.

Gov. Taft asked where the committee stands regarding a compensation commission to set compensation for the legislature. He wondered if there is any point in directing some inquiries to the newly elected leaders in order to determine the interest of majority and minority leaders in reviewing that question. Chair Mills said it is his intention that the committee will mark these two draft reports and recommendations as recommending no change, but he will work with staff

to see what other states do with regard to compensation commissions, as well as reaching out to leadership, so that the committee might continue a discussion of a compensation commission. Gov. Taft noted the committee should prioritize its time, and if there is no interest by legislators, then the committee should not spend time on it.

Chair Mills noted it is the committee's intention to look at the additional categories in Mr. Hollon's memorandum, indicating he will work with staff to come up with draft recommendations on those as well.

Mr. Hollon acknowledged Shari O'Neill, Commission counsel, as well as student interns Sara Leigh and Andrew Weaver, for their assistance in drafting the reports and recommendations. He said he will send the committee a copy of the 1970s Commission committee work on those sections. Chair Mills remarked that a strength of the 1970s Commission was that they took care of the Article II sections that were problems, so he is not sure there are many substantive issues for the committee to address. However, he said, the committee needs to work through that question.

Raising a matter under old business, Sen. Tavares asked Chair Mills for an update regarding the progress of the committee's consideration of Congressional redistricting. Chair Mills said there are efforts being made behind the scenes to continue that discussion. He said, at the appropriate time, if there is anything to report he will call a public meeting. He said he does not know what the odds are that an agreement will be reached, but the effort has not stopped.

Committee member Herb Asher asked whether Chair Mills senses that, if a compromise is reached, it would gain the approval of the General Assembly. Chair Mills said he hopes that would be the case, but he has no inside knowledge about that possibility. Mr. Asher commended Chair Mills for his efforts on the issue.

### **Adjournment:**

There being no further business to come before the committee, the meeting was adjourned at 3:31 p.m.

### **Approval:**

The minutes of the October 31, 2016 meeting of the Legislative Branch and Executive Branch Committee were approved at the November 10, 2016 meeting of the committee.

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Frederick E. Mills, Chair

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Paula Brooks, Vice-chair

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## OHIO CONSTITUTIONAL MODERNIZATION COMMISSION

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### REPORT AND RECOMMENDATION OF THE LEGISLATIVE BRANCH AND EXECUTIVE BRANCH COMMITTEE

#### OHIO CONSTITUTION ARTICLE II SECTIONS 3, 4, 5, AND 11

#### MEMBER QUALIFICATIONS AND VACANCIES IN THE GENERAL ASSEMBLY

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The Legislative Branch and Executive Branch Committee of the Ohio Constitutional Modernization Commission issues this report and recommendation regarding Sections 3, 4, 5, and 11 of Article II of the Ohio Constitution concerning member qualifications and filling vacancies in the General Assembly. It is issued pursuant to Rule 8.2 of the Ohio Constitutional Modernization Commission's Rules of Procedure and Conduct.

#### **Recommendation**

*The committee recommends that Article II, Sections 3, 4, 5, and 11 of the Ohio Constitution be retained in their current form.*

#### **Background**

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

Article II, Sections 3, 4, 5, and 11 address the qualifications of members of the General Assembly, as well as providing for filling vacancies in legislative seats. Originally adopted as part of the 1851 constitution, the sections specifically describe residency requirements and restrictions on those who serve in the General Assembly, and the method for filling a vacancy in the General Assembly. While subject to several proposals for change since 1851, only some amendments have been approved by the electorate.

Section 3, adopted in 1851 and amended in 1967, states that senators and representatives shall have lived in their districts for one year prior to their election:

Senators and representatives shall have resided in their respective districts one year next preceding their election, unless they shall have been absent on the public business of the United States, or of this State.

Delegates at the Constitutional Convention of 1851 addressed a concern, raised by Charles Reemelin of Hamilton County, that legislators were not always residents of the communities they represented. As Reemelin observed, “under a fair and equal representation,” it would be more ideal for representatives to live closer so as to have interests “more identical with [their constituents]”.<sup>1</sup> Thus, as adopted in 1851, the provision required legislators to live in their respective counties or districts for at least a year before their election, with the 1967 amendment only removing the reference to “counties” in order to satisfy legislative apportionment requirements.

Section 4, adopted in 1851 and amended in 1973, restricts members of the General Assembly, while serving, from holding any other public office, except as specified. The section additionally acknowledges the ethical concerns raised by legislators creating future employment for themselves, preventing General Assembly members from later being appointed to offices created or enhanced during their term of office:

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

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

Section 5, unchanged since 1851, prohibits persons convicted of embezzlement from serving in the General Assembly, and prevents persons holding money for public disbursement from serving until they account for and pay that money into the treasury:

No person hereafter convicted of an embezzlement of the public funds, shall hold any office in this State; nor shall any person, holding public money for disbursement, or otherwise, have a seat in the General Assembly, until he shall have accounted for, and paid such money into the treasury.

Delegates to the 1851 convention addressed the matter of convicted or disbursement-holding individuals being able to gain seats in the General Assembly. As originally proposed, the amendment would have read: “No person who shall be convicted of a defalcation or embezzlement of the public funds, shall be capable of holding any office of trust, honor or profit; nor shall any person holding any public money for disbursement, or otherwise, have a seat in either house of the General Assembly, until such person shall have accounted for and paid into the Treasury all money for which he may be accountable or liable.”<sup>2</sup> However, when the

discussion of the section came up, many delegates were unclear on the intended application and purpose of the proposed amendment, with delegate Peter Hitchcock of Geauga County supposing that the goal was to “disqualify any person who had been guilty of criminally appropriating the public funds” for personal intentions. Ultimately, the convention agreed to add the word “hereafter” to make the phrase “no person who shall hereafter be,” and to remove the word “defalcation.”<sup>3</sup>

Section 11, adopted in 1851 and amended in 1961, 1968, and 1973, defines how vacancies shall be filled in the Senate and House of Representatives:

A vacancy in the Senate or in the House of Representatives for any cause, including the failure of a member-elect to qualify for office, shall be filled by election by the members of the Senate or the members of the House of Representatives, as the case may be, who are affiliated with the same political party as the person last elected by the electors to the seat which has become vacant. A vacancy occurring before or during the first twenty months of a Senatorial term shall be filled temporarily by election as provided in this section, for only that portion of the term which will expire on the thirty-first day of December following the next general election occurring in an even-numbered year after the vacancy occurs, at which election the seat shall be filled by the electors as provided by law for the remaining, unexpired portion of the term, the member-elect so chosen to take office on the first day in January next following such election. No person shall be elected to fill a vacancy in the Senate or House of Representatives, as the case may be, unless he meets the qualifications set forth in this Constitution and the laws of this state for the seat in which the vacancy occurs. An election to fill a vacancy shall be accomplished, notwithstanding the provisions of section 27, Article II of this Constitution, by the adoption of a resolution, while the Senate or the House of Representatives, as the case may be, is in session, with the taking of the yeas and nays of the members of the Senate or the House of Representatives, as the case may be, affiliated with the same political party as the person last elected to the seat in which the vacancy occurs. The adoption of such resolution shall require the affirmative vote of a majority of the members elected to the Senate or the House of Representatives, as the case may be, entitled to vote thereon. Such vote shall be spread upon the journal of the Senate or the House of Representatives, as the case may be, and certified to the Secretary of State by the clerk thereof. The Secretary of State shall, upon receipt of such certification, issue a certificate of election to the person so elected and upon presentation of such certificate to the Senate or the House of Representatives, as the case may be, the person so elected shall take the oath of office and become a member of the Senate or the House of Representatives, as the case may be, for the term for which he was so elected.

As initially proposed by a committee of the 1851 convention, Section 11 read “All vacancies which may happen in either House, shall as soon as possible, be filled by an election, and the Governor shall issue the necessary writs of election according to law.”<sup>4</sup> But delegate John L. Green of Ross County expressed a concern that handling the matter in this way would cause

delay in the legislature’s consideration of important matters while waiting for an election to fill the vacancy.<sup>5</sup> Another delegate, George Collings of Adams County, proposed to strike the words “as soon as possible,” which was approved, as well as a proposal by A. G. Brown of Athens County to eliminate the word “an” before “election.” Motions to add “prescribed by law” and a policy relating to the governor issuing “a writ of election” to fill legislative vacancies were declined.<sup>6</sup> Some delegates desired to give the governor a role in filling vacancies, while others emphasized that the General Assembly should have the ability to create law to address vacancies. As adopted by voters in 1851, the provision read: “All vacancies which may happen in either house shall, for the unexpired term, be filled by election, as shall be directed by law.”

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

Sections 3, 4, 5, and 11 all date to the 1851 constitution. As discussed below, Sections 3 and 11 were amended in the 1960s before undergoing revision in the 1970s. During that era, the Ohio Constitutional Revision Commission (1970s Commission) studied Article II in depth and made extensive recommendations concerning the qualifications of members of the General Assembly, their compensation, and how to fill vacancies in the General Assembly when necessary.<sup>7</sup>

#### *Section 3 (Residence Requirements for State Legislators)*

In 1967, voters approved, by a margin of 59.17 percent to 40.83 percent, a state legislative district apportionment amendment that included amending Section 3 to replace a reference to the legislators’ places of residence as “counties,” with a reference to their districts.<sup>8</sup> The Legislative-Executive Committee of the 1970s Commission considered whether to change the provision, focusing on whether to recommend a requirement for a candidate to be a resident of the district for a certain period of time prior to election, and a requirement that a candidate maintain residency in that district throughout his or her term. Seeking to allow a candidate the opportunity to change residency prior to election, the committee recommended the following language:<sup>9</sup>

Senators and Representatives shall have resided in their respective districts on the day that they become candidates for the general assembly, as provided by law, and shall remain residents during their respective terms unless they are absent on the public business of the United States or of this State.<sup>10</sup>

However, the recommendation failed to achieve the support of a two-thirds majority of the full 1970s Commission, resulting in no recommendation for change being adopted.<sup>11</sup> The general concern was that the proposed amendment would alter the constitution beyond its scope, removing the secretary of state’s authority to require a legislator to be an elector of a district. A further concern was that having no residency requirement for the duration of the legislator’s term likely would lead the matter of representation to become a campaign issue.<sup>12</sup>

#### *Section 4 (Dual Office and Conflict of Interest Prohibited)*

Recognizing the definitional problems in the previous version of Section 4, which prevented persons “holding office under the authority of the United States” or holding “any lucrative office

under the authority” of the state of Ohio, from serving in the General Assembly, the Legislative-Executive Committee of the 1970s Commission recommended replacing the ambiguous and outdated phrases with a reference to holding “public office.”<sup>13</sup> The committee considered the definition of public officer expressed in case law, but ultimately recognized that the General Assembly has the authority to define public office by statute.<sup>14</sup> The full 1970s Commission accepted the committee’s recommendation, eliminating a previous exemption for township officers and justices of the peace, and adding an exemption for officers of the United States armed forces.<sup>15</sup>

The 1970s Commission also recommended the repeal of Article II, Section 19, and the placement in Section 4 of Section 19’s prohibition on a legislator being appointed to a public office that either was created or had its compensation increased during the legislator’s term of office or for one year thereafter.<sup>16</sup> The 1970s Commission noted that the Citizens Conference on State Legislatures favored including a period of time in the language.<sup>17</sup> In recommending these changes, the 1970s Commission asserted the revisions essentially were non-substantive, noting the “wisdom of prohibiting public conflicts” of interest.<sup>18</sup>

The recommendations regarding Section 4 were part of a package of revisions that included changes related to Article II, Sections 4, 6, 7, 8, 9, 11, 14, 16, 17, 18, 19, and 25.<sup>19</sup> Presented to voters on May 8, 1973, the issue passed by a vote of 680,870 to 572,980.<sup>20</sup>

#### *Section 5 (Who Shall Not Hold Office)*

Section 5 currently reads the same as it did when first adopted in 1851. The provision prevents persons convicted of embezzlement from holding public office, and requires persons holding public money for disbursement from serving on the legislature until they have accounted for the money and paid it into the treasury. The 1970s Commission recommended the repeal of Section 5, considering it unnecessary due to the establishment of other qualifications for service in the General Assembly, and from a belief that such matters should be left to statutory law.<sup>21</sup> Moreover, the 1970s Commission observed that Article V, Section 4, declaring felony convicts to be ineligible for public office; and Article XV, Section 4, requiring elected officials to possess the qualifications of an elector; sufficiently articulated the ability of the General Assembly to prescribe qualifications for holding office.<sup>22</sup> Thus, the 1970s Commission determined Section 5 was obsolete.<sup>23</sup> However, the voters rejected the measure at the polls on May 8, 1973 by a margin of 61.55 percent to 38.45 percent.<sup>24</sup>

#### *Section 11 (Filling Vacancy in House or Senate Seat)*

Section 11, relating to how the two chambers of the General Assembly fill vacant seats, has been amended three times since 1851.<sup>25</sup> The 1851 version of Section 11 reads: “All vacancies which may happen in either House shall, for the unexpired term, be filled by election, as shall be directed by law.”<sup>26</sup> After being successfully presented to voters as a legislatively-referred amendment on November 7, 1961, the detailed procedures set forth in Section 11 applied only to vacancies in the Senate.<sup>27</sup> Vacancies in the House were still to be “filled by election as shall be directed by law.”<sup>28</sup> The 1968 version of Section 11, which made the procedure to fill vacancies

the same in both houses, was legislatively proposed and adopted by the electorate on May 7, 1968 by an overwhelming majority vote of 1,020,500 for and 487,938 against.<sup>29</sup>

The 1970s Commission called its recommendation to amend Section 11 to eliminate inconsistencies between the procedures for election and for appointment “corrective,” rather than substantive.<sup>30</sup> Thus, the 1970s Commission advocated revising the language adopted by the 1961 and 1968 amendments in favor of more precise terms, ultimately using the word “elected” in place of “appointed.”<sup>31</sup> As with the changes to Sections 3 and 4, the recommended change to Section 11 was adopted by voters as part of the package of ballot issues proposed on May 8, 1973.

### **Litigation Involving the Provisions**

Only two Supreme Court of Ohio cases related to Sections 3, 4, 5, or 11 have been issued since the review of these sections by the 1970s Commission.

In *State ex rel. Husted v. Brunner*, 123 Ohio St. 3d 288, 2009-Ohio-5327, 915 N.E.2d 1215, the Supreme Court of Ohio addressed a case that arose when the secretary of state canceled a state legislator’s voter registration on the grounds that the extensive time he was spending in Columbus in the service of the General Assembly meant he was no longer a resident of his home county for voting purposes. In concluding that the legislator’s home county remained his residence for voting purposes, the Court analyzed the requirements of Section 3, noting that the provision “ensures that a state legislator’s absence from the district on official duties does not jeopardize his or her right to claim a full year’s residence in the district.” *Id.* at ¶ 29. Thus, the Court held the legislator was eligible to remain on the poll books as a registered elector in Montgomery County. *Id.* at ¶ 35.

In *State ex rel. Meshel v. Keip*, 66 Ohio St.2d 379, 423 N.E.2d 60, the Court considered a claim that the state controlling board had unlawfully transferred rail transportation appropriations. Among other arguments, relator had asserted that the controlling board’s actions were unconstitutional because six of its seven members also were legislators, in violation of Article II, Section 4. Specifically, relator claimed that Section 4’s prohibition on legislators from holding public office during their term prevented legislators from serving on the controlling board. The Court disagreed, observing that, for controlling board members to be holding a public office, the controlling board must be said to exercise some portion of the state’s sovereign power. The Court found that the controlling board did not exercise independent power in the disposition of public property or have the power to incur financial obligations on behalf of the county or state, and so legislators did not violate Section 4 by simultaneously serving on the controlling board. *Id.*, 66 Ohio St.2d at 387-88, 423 N.E.2d at 66.

### **Presentations and Resources Considered**

#### *Hollon Presentation*

On July 14, 2016, Steven C. Hollon, executive director, described that Sections 3, 4, 5, and 11 deal with residency requirements and restrictions on those who serve in the General Assembly,

and the method for filling a vacant seat of the General Assembly. Mr. Hollon suggested that, because these provisions cover related subject matter, they could be reviewed together and addressed in a single report and recommendation.

## Discussion and Consideration

In discussing Article II, Sections 3, 4, 5, and 11, the committee determined the revision of the sections in the 1970s adequately addressed any previous concerns. The committee further considered that the sections continue to appropriately and effectively guide the legislature's organization and operation, and so should be retained.

## Conclusion

The Legislative Branch and Executive Branch Committee concludes that Article II, Sections 3, 4, 5, and 11 should be retained in their current form.

## Date Issued

After formal consideration by the Legislative Branch and Executive Branch Committee on November 10, 2016 the committee voted to issue this report and recommendation on

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## Endnotes

<sup>1</sup> *Report of the Debates and Proceedings of the Convention for the Revision of the Constitution of the State of Ohio, 1850-51*, 2 vols. (Columbus: S. Medary, 1851), 102.

<sup>2</sup> *Id.* at 163-164.

<sup>3</sup> *Id.* at 258; Isaac F. Patterson, *The Constitutions of Ohio: Amendments and Proposed Amendments*. (Cleveland: Arthur H. Clark Co., 1912), 110.

<sup>4</sup> *Report of the Debates, supra*, at 163.

<sup>5</sup> *Id.* at 230.

<sup>6</sup> *Id.* at 232.

<sup>7</sup> Ohio Constitutional Revision Commission, Recommendations for Amendments to the Ohio Constitution, Part 1, Administration, Organization, and Procedures of the General Assembly (Dec. 31, 1971). Available at: <http://www.lsc.ohio.gov/ocrc/recommendations%20pt1%20general%20assembly.pdf> (last visited Oct. 12, 2016). See also, Ohio Constitutional Revision Commission, Recommendations for Amendments to the Ohio Constitution, Final Report (June 30, 1977). Available at: <http://www.lsc.ohio.gov/ocrc/final%20report%20index%20to%20proceedings%20and%20research.pdf> (last visited Oct. 12, 2016).

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<sup>8</sup> Ohio Secretary of State, *Amendment and Legislation: Proposed Constitutional Amendments, Initiated Legislation, and Laws Challenged by Referendum, Submitted to the Elector*, 13 (updated May 23, 2016). Available at: <http://www.sos.state.oh.us/sos/upload/elections/historical/issuehist.pdf> (last visited Sept. 23, 2016).

The amendment removed the word “counties” so that Section 3 reads “shall have resided in their respective districts.”

<sup>9</sup> Ohio Constitutional Revision Commission, *Recommendations for Amendments to the Ohio Constitution, Proceedings Research, Volume 1*, 39 (Jan. 8, 1970). Available at: <http://www.lsc.ohio.gov/ocrc/v1%20pgs%201-548%20meetings%20beginning%201-8-1970.pdf> (last visited Sept. 23, 2016).

<sup>10</sup> *Id.*, Vol. 2 at 1096.

<sup>11</sup> Ohio Constitutional Revision Commission, *Recommendations for Amendments to the Ohio Constitution, Proceedings Research*, *supra*, at 42.

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

<sup>15</sup> Ohio Constitutional Revision Commission, *Recommendations for Amendments to the Ohio Constitution, Part I, Administration, Organization, and Procedures of the General Assembly*, *supra*, at 20; *see also*, Ohio Constitutional Revision Commission, *Recommendations for Amendments to the Ohio Constitution, Final Report*, *supra*, at 100.

<sup>16</sup> Ohio Constitutional Revision Commission, *Recommendations for Amendments to the Ohio Constitution, Part I, Administration, Organization, and Procedures of the General Assembly*, *supra*, at 17-20; *see also*, Ohio Constitutional Revision Commission, *Recommendations for Amendments to the Ohio Constitution, Final Report*, *supra*, at 97-100.

<sup>17</sup> Ohio Constitutional Revision Commission, *Recommendations for Amendments to the Ohio Constitution, Part I, Administration, Organization, and Procedures of the General Assembly*, *supra*, at 22; *see also*, Ohio Constitutional Revision Commission, *Recommendations for Amendments to the Ohio Constitution, Final Report*, *supra*, at 102.

<sup>18</sup> *Id.*

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

*See* [https://ballotpedia.org/Ohio\\_Procedures\\_of\\_the\\_General\\_Assembly,\\_Amendment\\_6\\_\(May\\_1973\)](https://ballotpedia.org/Ohio_Procedures_of_the_General_Assembly,_Amendment_6_(May_1973)) (last visited Oct. 6, 2016), citing the *Toledo Blade*, May 7, 1973, <https://news.google.com/newspapers?id=8QhPAAAIBAJ&sjid=RAIEAAAIBAJ&pg=7444,4723240&hl=en> (last visited Oct. 6, 2016).

<sup>20</sup> Ohio Secretary of State, *Amendment and Legislation: Proposed Constitutional Amendments, Initiated Legislation, and Laws Challenged by Referendum, Submitted to the Elector*, 14 (updated May 23, 2016). Available at: <http://www.sos.state.oh.us/sos/upload/elections/historical/issuehist.pdf> (last visited Sept. 23, 2016).

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<sup>21</sup> Ohio Constitutional Revision Commission, Recommendations for Amendments to the Ohio Constitution, Part I, Administration, Organization, and Procedures of the General Assembly, *supra*, at 23; *see also*, Ohio Constitutional Revision Commission, Recommendations for Amendments to the Ohio Constitution, Final Report, *supra*, at 103.

<sup>22</sup> *Id.*

<sup>23</sup> Ohio Constitutional Revision Commission, Recommendations for Amendments to the Ohio Constitution, Part I, Administration, Organization, and Procedures of the General Assembly, *supra*, at 24; *see also*, Ohio Constitutional Revision Commission, Recommendations for Amendments to the Ohio Constitution, Final Report, *supra*, at 104.

<sup>24</sup> Ohio Secretary of State, *Amendment and Legislation: Proposed Constitutional Amendments, Initiated Legislation, and Laws Challenged by Referendum, Submitted to the Elector*, 14 (updated May 23, 2016). Available at: <http://www.sos.state.oh.us/sos/upload/elections/historical/issuehist.pdf> (last visited Sept. 23, 2016).

<sup>25</sup> Ohio Constitutional Revision Commission, Recommendations for Amendments to the Ohio Constitution, Part I, Administration, Organization, and Procedures of the General Assembly, *supra*, at 26; *see also*, Ohio Constitutional Revision Commission, Recommendations for Amendments to the Ohio Constitution, Final Report, *supra*, at 106.

<sup>26</sup> *Id.*

<sup>27</sup> Ohio Constitutional Revision Commission, Recommendations for Amendments to the Ohio Constitution, Part I, Administration, Organization, and Procedures of the General Assembly, *supra*, at 37; *see also*, Ohio Constitutional Revision Commission, Recommendations for Amendments to the Ohio Constitution, Final Report, *supra*, at 117.

*See* <https://www.law.csuohio.edu/sites/default/files/lawlibrary/ohioconlaw/vacancies2.jpg> (last visited Oct. 12, 2016)(providing the full text of the 1961 proposed amendment to the Constitution).

<sup>28</sup> Ohio Constitutional Revision Commission, Recommendations for Amendments to the Ohio Constitution, Part I, Administration, Organization, and Procedures of the General Assembly, *supra*, at 37; *see also*, Ohio Constitutional Revision Commission, Recommendations for Amendments to the Ohio Constitution, Final Report, *supra*, at 117.

<sup>29</sup> *Id.*

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

<sup>31</sup> *Id.*

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## OHIO CONSTITUTIONAL MODERNIZATION COMMISSION

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### REPORT AND RECOMMENDATION OF THE LEGISLATIVE BRANCH AND EXECUTIVE BRANCH COMMITTEE

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

#### CONDUCTING BUSINESS OF THE GENERAL ASSEMBLY

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The Legislative Branch and Executive Branch Committee of the Ohio Constitutional Modernization Commission issues this report and recommendation regarding Article II, Sections 6, 7, 8, 9, 13, and 14 of the Ohio Constitution concerning the organization of the General Assembly and the basic standards for conducting the business of the body. It is issued pursuant to Rule 8.2 of the Ohio Constitutional Modernization Commission's Rules of Procedure and Conduct.

#### **Recommendation**

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

#### **Background**

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

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

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

Each House may punish its members for disorderly conduct and, with the concurrence of two-thirds of the members elected thereto, expel a member, but not the second time for the same cause. Each House has all powers necessary to

provide for its safety and the undisturbed transaction of its business, and to obtain, through committees or otherwise, information affecting legislative action under consideration or in contemplation, or with reference to any alleged breach of its privileges or misconduct of its members, and to that end to enforce the attendance and testimony of witnesses, and the production of books and papers.

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

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

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

Each House shall determine its own rules of proceeding.

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

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

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

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

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

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

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

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

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

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

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

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

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

The 1970s Commission sought to maintain the journal-keeping requirement in Section 9, acknowledging that similar legislative recordkeeping requirements are standard in most, if not all, state constitutions, as well as in the United States Constitution. However, the 1970s Commission recommended that a portion of the section, which mandated that no law could be passed without the concurrence of a majority of the members of each chamber, be moved to a proposed new Section 15.<sup>7</sup>

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

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

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

### **Litigation Involving the Provision**

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

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

General Assembly, which are annual and two in number during each biennial term.” *Id.*, 64 Ohio St.3d at 21, 591 N.E.2d at 1193. Thus, the first regular session was said to convene when each house is called to order by its respective presiding officer on the relevant day in January in the odd-numbered year, and the second regular session then convenes automatically on the same day of the following year. *Id.*

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

## **Presentations and Resources Considered**

### *Hollon Presentation*

In his presentation to the committee on July 14, 2016, Steven C. Hollon, executive director, said the sections in this category deal with the organization and power of the General Assembly, providing basic standards for conducting the business of the body. He observed that, of the six sections in this category, four were adopted in 1851 and then amended in 1973, one was adopted in 1851 and has never been amended, and one was adopted in 1973. Mr. Hollon said the subject matter of these provision supports creating one report and recommendation to report the committee’s work on the topics.

## **Discussion and Consideration**

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

## Conclusion

The Legislative Branch and Executive Branch Committee concludes that Article II, Sections 6, 7, 8, 9, 13, and 14 should be retained in their current form.

## Date Issued

After formal consideration by the Legislative Branch and Executive Branch Committee on November 10, 2016, the committee voted to issue this report and recommendation on \_\_\_\_\_.

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## Endnotes

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

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

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

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

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

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

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

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

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

*See* [https://ballotpedia.org/Ohio\\_Procedures\\_of\\_the\\_General\\_Assembly,\\_Amendment\\_6\\_\(May\\_1973\)](https://ballotpedia.org/Ohio_Procedures_of_the_General_Assembly,_Amendment_6_(May_1973)) (last visited Oct. 6, 2016), citing the *Toledo Blade*, May 7, 1973, available at <https://news.google.com/newspapers?id=8QhPAAAAIIBAJ&sjid=RAIEAAAIBAJ&pg=7444,4723240&hl=en> (last visited Oct. 6, 2016).

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



**OHIO CONSTITUTIONAL MODERNIZATION COMMISSION**

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**MEMORANDUM**

**TO:** Fred Mills, Chair; Paula Brooks, Vice-chair; 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

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This memorandum provides summaries of 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 that might aid the committee in its review of the provisions.

It is very important to note that this is not a proposal, but merely a means of categorizing the topics in this and other articles that might aid the committee in its review and analysis of these 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 place 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 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 to these five sections, there are two other sections in Article II (as noted in Category III above) that might be combined with these sections to form a new and separate article that focuses on the topic of officeholders. The two sections in Article II (as noted in Category III above) 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 and determining the order and grouping of topics for its review 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 the 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 the 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 the 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 the constitution.

(E) The limitations expressed in the 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 (1973)*

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 (1973)*

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 (1973)*

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.

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## OHIO CONSTITUTIONAL MODERNIZATION COMMISSION

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### **2016 Meeting Dates**

December 8

### **2017 Meeting Dates**

January 12

February 9

March 9

April 13

May 11

June 8

July 13

August 10

September 14

October 12

November 9

December 14