



OHIO CONSTITUTIONAL MODERNIZATION COMMISSION

Legislative Branch and Executive Branch Committee Report



Issued July 1, 2017

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OCMC Concluding Reports Series

Final Report Part 1: Commission Proceedings

Final Report Part 2: Commission Recommendations

Report of the Bill of Rights and Voting Committee

Report of the Constitutional Revision and Updating Committee

Report of the Education, Public Institutions, and Local Government Committee

Report of the Finance, Taxation, and Economic Development Committee

Report of the Judicial Branch and Administration of Justice Committee

Report of the Legislative Branch and Executive Branch Committee

Letter from the Chair



OHIO CONSTITUTIONAL MODERNIZATION COMMISSION

June 23, 2017

Senator Charleta B. Tavares, Co-chair
Senate Building
1 Capitol Square, 2nd Floor
Columbus, Ohio 43215

Representative Jonathan Dever, Co-chair
Riffe Center for Government and the Arts
77 South High Street
13th Floor
Columbus, Ohio 43215

Dear Co-chairs Tavares and Dever,

On behalf of the Legislative Branch and Executive Branch Committee, I present the committee's final report. The committee's charge was to review the sections of Article II relating to the legislature, as well as Article III, which incorporates sections governing the executive branch. The committee also was assigned select provisions of Article V, relating to term limits for U.S. senators and representatives, as well as Article XI, which addresses apportionment and Congressional redistricting. Finally, the committee was assigned Article IX, providing for a state militia.

The committee's review and discussion were integral to a bipartisan effort in the General Assembly to reform the state reapportionment procedure that met success at the polls in November 2015. The committee moved on to consider whether a similar reform could be adopted for Congressional redistricting, but was not able to reach a consensus on that matter. The committee also spent significant time considering a proposal to lengthen legislative term limits, as well as discussing a proposal to establish a public official compensation commission.

The committee did spend several of its 33 meetings reviewing procedures and practices of the General Assembly, ultimately concluding that changes adopted in the 1970s were working well and that there is no need for revision at this time.

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Because so much of our review was dedicated to complex topics that were of great interest both to the General Assembly and to the public, and because the life of the Commission was shortened, we did not have time to address the remaining articles in our charge. Nevertheless, because our review touched on timely issues relating to the function and form of representational government, the committee was an important forum for considering and understanding democratic goals and norms, and for contemplating ideas that benefited from a bipartisan, cooperative approach.

I always found our group to be engaged and knowledgeable, and I particularly appreciate the seriousness with which they undertook their responsibility as members of the Commission. Despite the controversial nature of some of our topics, committee members strove to find common ground and, in many cases, did so.

I am proud of the committee's efforts, and pleased to present you with this report of our proceedings.

Very truly yours,



Frederick E. Mills, Chair

Legislative Branch and Executive Branch Committee

Enclosure

I. Introduction

This Report of the Legislative Branch and Executive Branch Committee (“LEB Committee”) is issued pursuant to the conclusion of the work of the Ohio Constitutional Modernization Commission (“Commission”). It contains a summary of the committee’s organization and work products, including topics discussed and all recommendations made to the Commission.

The Commission was established in 2011 by enactment of Am. House Bill 188 by the 129th Ohio General Assembly. The Commission was charged with:

- Studying the Ohio Constitution;
- Promoting an exchange of experiences and suggestions respecting desired changes in the constitution;
- Considering the problems pertaining to the amendment of the constitution;
- Making recommendations from time to time to the General Assembly for the amendment of the constitution.

The Commission used six subject matter committees for the purpose of reviewing constitutional provisions: Education, Public Institutions, and Local Government Committee; Finance, Taxation, and Economic Development Committee; Judicial Branch and Administration of Justice Committee; Bill of Rights and Voting Committee; Constitutional Revision and Updating Committee; and Legislative Branch and Executive Branch Committee. There is a separate report for each committee providing a summary of its work and recommendations to the Commission.

The LEB Committee was assigned the responsibility of reviewing the following sections of the Ohio Constitution:

- Article II (Legislative)
 - Sections 2 through 42
- Article III (Executive)
- Article IX (Militia)
- Article XI (Apportionment)
- Article XIV (Livestock Care Standards Board)

In addition, all committees could be assigned to review other issues or proposed constitutional amendments as needed by the Coordinating Committee or the Commission.

II. Membership of the Committee

Under Rule 6.2, each member of the Commission was assigned to serve on two subject matter committees. In total, eleven members were appointed to the Legislative Branch and Executive Branch Committee.

The following individuals were serving on the LEB Committee in June 2017:

- Frederick E. Mills Chair
- Paula Brooks Vice-chair
- Herb Asher
- Sen. Bill Coley
- Rep. Hearcel F. Craig
- Jo Ann Davidson
- Rep. Robert McColley
- Gov. Robert A. Taft
- Pierrette Talley
- Sen. Charleta B. Tavares
- Kathleen M. Trafford

Legislative Branch and Executive Branch Committee Meeting



III. Summary of Recommendations

In total, the LEB Committee made four recommendations to the Commission. Table 1 summarizes the recommendations including when they were made and the Commission's action.

Under Rules 8.3 and 9.4 of the Commission Rules of Procedure and Conduct, a committee recommendation for no change to the Constitution required consideration at one scheduled meeting and a majority vote in favor, while a recommendation for change required consideration at two meetings and a vote in favor by a majority of the committee members. Following a favorable vote, a recommendation was forwarded to the Coordinating Committee to review the recommendation as to form. After Coordinating Committee approval, the recommendation was then sent to the Commission co-chairs to place on the Commission agenda.

Each recommendation was the subject of a separate report containing the background and discussion regarding the affected constitutional provisions. The separate report for each recommendation is available in Appendix 1.

In some cases, constitutional sections were the subject of discussion by the committee but no recommendation was made. In other cases, there were constitutional sections assigned to the committee that were not able to be discussed before the closure of the Commission. Appendix 3 contains a status summary of all sections assigned to the committee, including those which did not progress to the Commission.

Table 1: Legislative Branch and Executive Branch Committee Recommendations

Constitutional provision	Topic	Recommendation	Committee approval	Commission action	Vote
Art. II, § 2	State Legislator Term Limits	Revise	Apr. 9, 2015	Not considered	None
Art. II, §§ 3, 4, 5, 11	Member Qualifications and Vacancies in the General Assembly	Retain	Dec. 15, 2016	Adopted Apr. 13, 2017	25-0
Art. II, §§ 6–9, 13, 14	Conducting Business of the General Assembly	Retain	Dec. 15, 2016	Adopted Apr. 13, 2017	25-0
Art. II, §§ 10, 12	Rights and Privileges of Members of the General Assembly	Retain	Mar. 9, 2017	Adopted Apr. 13, 2017	25-0

IV. Summary Proceedings of the Legislative Branch and Executive Branch Committee

(NOTE: The full record of committee minutes is presented in Appendix 2.)

2013-2014

In 2013-2014, the committee primarily addressed the topic of legislative redistricting, both in relation to plans for how Ohio draws districts for members of the General Assembly (also referred to as apportionment under Article XI of the Ohio Constitution), and plans for how Ohio sets congressional districts for United States Representatives and Senators, provision for which is not currently part of the Ohio Constitution. The committee also began discussion of the question of term limits for Ohio legislators, as provided for in Article II, Section 2, and considered whether it would be advisable to lengthen term limits for state representatives from the current limit of four two-year terms to six two-year terms, and to lengthen term limits for state senators from the current limit of two four-year terms to three four-year terms.

Speakers who appeared before the committee included Ohio State University Political Science Professor Emeritus Paul A. Beck, and Ohio State University Moritz College of Law Professors David Stebenne and Edward B. Foley, all three of whom participated in a panel discussion in which they discussed the history of and considerations relating to the redistricting/apportionment issue. The committee also heard testimony regarding redistricting from Ann Henkener of the League of Women Voters of Ohio, Ohio State University Political Science Professor Emeritus Richard Gunther, Political Science Professor Thomas L. Brunell of the University of Texas at Dallas, Political Science Professor John Dinan of Wake Forest University's Department of Politics and International Affairs, and Professor John Green, Director of the Ray C. Bliss Institute of Applied Politics at the University of Akron. The committee also was assisted by a presentation by Lynda Jacobsen of the Ohio Legislative Service Commission relating to the guiding principles of redistricting and apportionment.

Reports and Recommendations

The conclusion of 2014 saw renewed efforts in the General Assembly to independently adopt a joint resolution regarding redistricting that would submit the issue to voters without involvement of the Ohio Constitutional Modernization Commission. The committee anticipated the possibility of a need for further review and the preparation of a report and recommendation should the General Assembly defer action on proposals to reform the legislative reapportionment process.

2015-2016

In 2015, the committee considered whether to recommend a change to Article II, Section 2, relating to term limits for state legislators. The committee concluded that term limits for state representatives should be lengthened from the current limit of four two-year terms to six two-year terms, with term limits for state senators to be extended from the current limit of two four-year terms to three four-year terms. The committee decided to allow the full Commission to decide whether the extension should apply to sitting legislators.

Speakers who appeared before the committee to discuss term limits included Tony Seegers, director of state policy for the Ohio Farm Bureau Federation, Ray Warrick, who heads "Eight is Enough,"

an organization lobbying to keep term limits at eight years, and Phillip Blumel of U.S. Term Limits, a national organization advocating the use of term limits.

In February, the committee considered a proposal to create a public official pay commission, and on this topic heard from Frank Strigari, legal counsel to the Senate Majority Caucus.

With the assistance of discussions in the Legislative Branch and Executive Branch Committee, at the conclusion of 2014, the 130th General Assembly adopted a resolution to create a redistricting commission to draw the state legislative districts. The resolution appeared as Issue 1 on the November 2015 ballot, and was approved by voters by a wide margin. As a result, Article XI was amended, with Sections 1 through 15 being repealed, and new Sections 1 through 10 being enacted. The effective date of the new sections is January 1, 2021.

In the fall of 2015, the committee reviewed and discussed two pending General Assembly resolutions that, if adopted, would ask voters to approve the use of a commission to draw Congressional districts. The committee heard presentations by Rep. Kathleen Clyde and Rep. Michael F. Curtin, who presented on their sponsored resolution, H.J.R. 2, as well as from Sen. Frank LaRose and Sen. Tom Sawyer, who presented on their sponsored resolution, S.J.R. 2. In November 2015, Rep. Clyde and Rep. Curtin returned to the podium to discuss with the committee a draft of a new proposed resolution combining features of both the House and Senate resolutions. Throughout its review and discussion of the topic of legislative and Congressional redistricting, the committee heard presentations by Richard Gunther, professor emeritus of The Ohio State University, Ann Henkener of the League of Women Voters of Ohio, Catherine Turcer of Common Cause Ohio, and Carrie Wimbish of the Ohio Voter Rights Coalition, all of whom advocated for redistricting reform.

The fall of 2015 also saw the committee begin its review of Article II, Section 15(D), the “one subject rule” that restricts legislative enactments to a single subject. After hearing a summary of Ohio Supreme Court decisions interpreting the rule by Commission Counsel Shari L. O’Neill, the committee also heard a presentation on the history of the one-subject rule by Attorney John Kulewicz.

In 2016, the committee continued its discussion of Congressional redistricting reform, forming a subcommittee to address specific components of a possible recommendation. The committee also received a memorandum and presentation from Executive Director Steven C. Hollon in which the various sections of Article II were grouped into categories to facilitate committee discussion as well as to streamline the preparation of reports and recommendations. Based on the recognition that Article II, Section 31 addresses compensation of members of the General Assembly, in the fall of 2016 the committee renewed its consideration of a concept first discussed in early 2015 relating to the creation of a public official pay commission that would be charged with determining salaries for legislators and other public officials. In addition, in November 2016, the committee heard a presentation by Ohio State University Moritz College of Law Professor Steven F. Huefner on the subject of legislative privilege, a concept memorialized in the constitution at Article II, Section 12, containing the “speech or debate” clause.

Reports and Recommendations

The committee issued a report and recommendation with two separate options for addressing Article II, Section 2 (Election and Term of State Legislators). One option recommends extending

term limits from eight years to 12 years, but only allowing newly-elected legislators the benefit of the extension. The other option recommends extending the limits for all legislators.

In addition, in December 2016, the committee heard a first presentation of two reports and recommendations. The first report and recommendation, addressing Article II, Sections 3, 4, 5, and 11, describes that these sections relate to the qualifications of members of the General Assembly, as well as providing for filling vacancies in legislative seats. The second report and recommendation, covering Article II, Sections 6, 7, 8, 9, 13, and 14, indicates that these sections concern the organization of the General Assembly and the basic standards for conducting the business of the body. Both reports and recommendations conclude that no change is needed for the sections, which were reviewed and, in some cases, revised in the 1970s as a result of work performed by the Ohio Constitutional Revision Commission.

2017

During 2017, the committee received helpful presentations by Attorney William K. Weisenberg, on “Article II, Section 8 and ‘Lame Duck’ Sessions”; by Shari L. O’Neill, interim executive director and counsel, on “Constitutional and Statutory Provisions Related to the Speech or Debate Privilege;” by Sarah Pierce and Bridget Coontz, assistant attorneys general in the Constitutional Offices Division on “Legislative Privilege in a Litigation Setting;” and by Camille Wimbish, director of the Ohio Voter Rights Coalition. In addition, the committee received valuable input from Carrie Davis, executive director of the League of Women Voters of Ohio, and from Richard Gunther, professor emeritus of the Ohio State University.

The committee also began its review of Article III (Executive), but did not have the opportunity to vote on any recommendations. The committee did, however, identify topics that it was interested in examining further, including: Section 21 (Appointment to Office; Advice and Consent of Senate), and Article XV, Section 4 (which prohibits anyone from being elected or appointed to any office in the state unless that person has the qualifications of an elector).

Reports and Recommendations

Reports and recommendations that the committee had approved in 2016 for no change in Article II, Sections 3, 4, 5, and 11 (Member Qualifications and Vacancies in the General Assembly), and in Article II, Sections 6, 7, 8, 9, 13, and 14 (Conducting Business of the General Assembly) were approved by the full Commission on April 13, 2017.

In 2017, the committee adopted a report and recommendation that there be no changes in Article II, Sections 10 (Rights of Members to Protest) and Section 12 (Rights and Privileges of Members of the General Assembly), which was adopted by the full Commission on April 13, 2017.

The committee also considered a report and recommendation that there be no changes in Article II, Sections 15, 16, 26, and 28, relating to the manner in which the General Assembly enacts laws, but the committee did not have the chance to take any action on this recommendation.

Appendix 1

Legislative Branch and Executive Branch Committee

Reports & Recommendations of the Committee

Reports & Recommendations of the Committee

Constitutional provision	Topic
Art. II, § 2	State Legislator Term Limits
Art. II, §§ 3, 4, 5, 11	Member Qualifications and Vacancies in the General Assembly
Art. II, §§ 6–9, 13, 14	Conducting Business of the General Assembly
Art. II, §§ 10, 12	Rights and Privileges of Members of the General Assembly



OHIO CONSTITUTIONAL MODERNIZATION COMMISSION

REPORT AND RECOMMENDATION OF THE LEGISLATIVE BRANCH AND EXECUTIVE BRANCH COMMITTEE

OHIO CONSTITUTION ARTICLE II, SECTION 2

ELECTION AND TERM OF STATE LEGISLATORS [OPTION ONE]

The Legislative Branch and Executive Branch Committee of the Ohio Constitutional Modernization Commission issues this report and recommendation regarding Article II, Section 2 of the Ohio Constitution concerning the election and term of state legislators. 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, Section 2 be amended to add one term to the current limit imposed on state senators, and two terms to the current limit imposed on state representatives. The committee further recommends that Article II, Section 2 be amended to allow legislators holding office at the time of the effective date of the amendment to continue to serve up to a total of 12 consecutive years.

Background

Article II, Section 2, reads as follows:

Representatives shall be elected biennially by the electors of the respective house of representatives districts; their term of office shall commence on the first day of January next thereafter and continue two years.

Senators shall be elected by the electors of the respective senate districts; their terms of office shall commence on the first day of January next after their election. All terms of senators which commence on the first day of January, 1969 shall be four years, and all terms which commence on the first day of January, 1971 shall be four years. Thereafter, except for the filling of vacancies for

unexpired terms, senators shall be elected to and hold office for terms of four years.

No person shall hold the office of State Senator for a period of longer than two successive terms of four years. No person shall hold the office of State Representative for a period longer than four successive terms of two years. Terms shall be considered successive unless separated by a period of four or more years. Only terms beginning on or after January 1, 1993 shall be considered in determining an individual's eligibility to hold office.

In determining the eligibility of an individual to hold office in accordance [with] to this article, (A) time spent in an office in fulfillment of a term to which another person was first elected shall not be considered provided that a period of at least four years passed between the time, if any, [in] which the individual previously held that office, and the time the individual is elected or appointed to fulfill the unexpired term; and (B) a person who is elected to an office in a regularly scheduled general election and resigns prior to the completion of the term for which he or she was elected, shall be considered to have served the full term in that office.

Article II concerns the Legislative Branch, providing the organizational structure and membership requirements of the General Assembly, the governor's veto power, and the procedures for initiative and referendum.

Amendments, Proposed Amendments, and Other Review

The 1802 Constitution provided for terms of only one year for representatives and two years for senators.¹ The 1851 Constitution increased the terms to two years for each. Term lengths of two years for senators remained in place until 1956, when voters approved, by a vote of 57.4 percent to 42.6 percent, an amendment that increased the term of office to four years.² Another amendment in 1967 staggered senate terms, requiring only half of the senate to stand for election at a time.³

In the early 1990s, some 21 states enacted state legislative term limits, responding to public opinion that "career politicians" were to blame for perceived governmental deficiencies.⁴ In line with that trend, Ohio voters adopted an amendment limiting all state legislators to eight consecutive years of service, with the result that senators may only serve two successive terms of four years, and representatives may only serve four successive terms of two years.⁵ Placed on the ballot by initiative petition as Issue 3, the measure was approved on November 3, 1992 by a margin of 2,982,285 to 1,378,009, or 68.4 percent to 31.6 percent.⁶

In the 1970s, the Ohio Constitutional Revision Commission did not review this provision.

Litigation Involving the Provision

Article II, Section 2 has not been the subject of litigation; however, similar state constitutional provisions by which Ohio and other states imposed term limits upon federal congressional offices were rejected in *U.S. Term Limits, Inc. v. Thornton*, 514 U.S. 779 (1995) (“Allowing individual States to adopt their own qualifications for congressional service would be inconsistent with the Framers' vision of a uniform National Legislature representing the people of the United States.”).

Presentations and Resources Considered

The committee received two presentations from John C. Green, Ph.D., Director of the Bliss Institute of Applied Politics at the University of Akron, and one presentation from Ann Henkener, First Vice President of the League of Women Voters of Ohio on this issue.

First Green Presentation

John C. Green first presented to the committee on April 10, 2014. According to Dr. Green, Ohio’s model, called the “common model,” imposes eight-year consecutive limits in each chamber, while other models include six- or eight-year consecutive limits for the house and senate respectively, twelve-year lifetime limitations in both chambers combined, and twelve-year consecutive limits in each chamber. Dr. Green indicated that, between 1997 and 2012, six states repealed or struck down term limits, while one state enacted term limits. Thus, in 2014, 15 states had legislative term limits.

Describing the impact of legislative term limits, Dr. Green stated that term limits have impeded the development of legislative leaders, reducing leaders’ agenda-setting and coalition-building capabilities. He further indicated that the limits reduce the influence of the legislative branch in state government, instead empowering the executive branch, administrative agencies, nonpartisan staff, and lobbyists. Dr. Green also indicated that term limits increase partisanship and reduce the time legislators have to accomplish legislative goals. He noted that term limits have failed to achieve the goal of increasing the number of “citizen legislators,” as opposed to career legislators. Dr. Green observed that term limits have not increased gender, racial, or ethnic diversity in state legislatures.

Dr. Green stated that term limits have had only a modest impact on the electoral process, with no increase in the overall competitiveness of elections, no decrease in campaign spending, and an increase in the role of party caucuses in legislative campaigns. Dr. Green opined that, despite these drawbacks, term limits will continue to have strong public support. However, he stated that increasing the limits from 8 years to 12 years may alleviate the problem of a diminished role for legislative leadership. He also indicated that allowing former legislators to return to office mitigates some of the impact of term limits.

Second Green Presentation

In his second presentation to the committee, on June 12, 2014, Dr. Green presented polling data related to term limits. Conducted by the Center for Marketing and Opinion Research for the Bliss Institute in April 2014, the “2014 Akron Buckeye Poll” surveyed a random sample of 1,078 registered Ohio voters, including both landline and cell phone users. Participants were asked whether they thought term limits produced poor government or good government and whether the limits have helped or hurt the state. The resulting data, with a margin of error of plus or minus three percentage points, indicates that 57 percent of those polled indicated they thought that term limits have helped the state, with 30 percent stating that the limits hurt the state and 13 percent having no opinion. These figures may be compared with 2005 polling data indicating that 59 percent of voters believed that term limits help the state, with 30 percent saying the limits hurt the state and 11 percent indicating they had no opinion.

Asked whether term limits should be kept at eight years, extended to 12 years, or repealed altogether, 70 percent of those polled favored keeping term limits at eight years, with 13 percent willing to extend the limits to 12 years, 12 percent agreeing that they should be repealed altogether, and five percent having no opinion. Queried as to whether they could accept an increase in the limit to 12 years, 38 percent of participants answered that they were firm on keeping the total number of years served at eight, with 32 percent willing to accept a 12-year limit, 13 percent being firm on a 12-year limit, 12 percent supporting a complete repeal of term limits, and five percent having no opinion.

Asked whether they would support increasing state legislative terms by two years, meaning that representatives would serve a four-year term and senators a six-year term, 61 percent of participants indicated they would support such a measure, with 36 percent indicating they would not and three percent having no opinion.

Sixty-two percent of participants stated that it should take a legislator less than five years to learn the job, while 28 percent said five-to-ten years was appropriate, seven percent identifying more than 10 years as the correct time span, and three percent having no opinion.

Henkener Presentation

Ann Henkener, First Vice President of the League of Women Voters of Ohio (“League”), presented to the committee on July 10, 2014. According to Ms. Henkener, the League’s long opposition to term limits is based upon the rationale that terms are inherently limited to two years for representatives and four years for senators, requiring legislators to seek re-election at the end of those terms. Ms. Henkener asserted that the arguments against term limits as presented by the League to voters in 1992, when the current version of Article II, Section 2 appeared on the ballot, have proved mostly true. As she described them, those arguments are that term limits create more “lame duck” legislators, reduce competition for legislative seats, result in less-experienced legislators, reduce institutional memory, impede long-term thinking about societal problems, and increase the power of staff, bureaucrats, and lobbyists. Ms. Henkener opined that voters continue to support the concept of term limits because they are perceived as a counterbalance to problems attributed to the redistricting process. She stated that if redistricting reform occurs,

allowing for more competitive districts, then voters might look more favorably on extending term limits.

Conclusion

The Legislative Branch and Executive Branch Committee concludes that Article II, Section 2 should be amended to expand term limits for state senators by one term, and for state representatives by two terms. The committee also concludes that these extensions should apply to legislators who are in office at the time of the effective date of an amendment, with the result that senators serving their first term would be eligible to hold office for two more four-year terms, while senators in their second term would be eligible for one additional four-year term. Likewise, representatives in their first term may hold office for five more two-year terms, those in their second term would be permitted four more two-year terms, and so on. The modified provision additionally would allow newly-elected legislators to be eligible to serve twelve consecutive years in their respective houses.

The committee also recommends that Article II, Section 2 be reorganized to first describe the length of term and term limits for state senators, followed by a description of the length of term and term limits for state representatives. This reorganization does not substantially change the meaning of the provision but is intended to assist the reader's comprehension of the meaning of the section. These proposed changes bring the format of the section in line with the structure of other sections in Article II.

Thus, the committee recommends Section 2 be amended as shown in Attachment A, which provides a marked-up version of the provision. Attachment B provides a clean version of Section 2, if the proposed amendment is adopted.

Date Issued

After formal consideration by the Legislative Branch and Executive Branch Committee on March 12, 2015, and April 9, 2015, the committee voted to issue this report and recommendation on April 9, 2015.

Endnotes

¹ Steven H. Steinglass & Gino J. Scarselli, *The Ohio State Constitution*, 140 (2nd prtg. 2011).

² Michael F. Curtin, *Ohio Politics Almanac*, 83 (3rd ed. 2015).

³ Steinglass & Scarselli, *supra*.

⁴ Steven F. Huefner, *Term Limits in State Legislative Elections: Less Value for More Money?*, 79 Ind. L.J. 427, 428 (2004).

⁵ Steinglass & Scarselli, *supra*, at 141.

⁶ *Id.*, Appendix B.



OHIO CONSTITUTIONAL MODERNIZATION COMMISSION

REPORT AND RECOMMENDATION OF THE LEGISLATIVE BRANCH AND EXECUTIVE BRANCH COMMITTEE

OHIO CONSTITUTION ARTICLE II, SECTION 2

ELECTION AND TERM OF STATE LEGISLATORS [OPTION TWO]

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Recommendation

The committee recommends that Article II, Section 2 be amended to allow all newly-elected state legislators to serve a total of twelve consecutive years, consisting of three four-year terms for senators and six two-year terms for representatives. The committee also recommends that this expansion of the current eight-year limit on consecutive terms of legislative service not apply to current members of the General Assembly, with the result that all members already in office at the time of the effective date of the amendment would be limited to eight years consecutive service.

Background

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Litigation Involving the Provision

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Presentations and Resources Considered

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First Green Presentation

John C. Green first presented to the committee on April 10, 2014. According to Dr. Green, Ohio’s model, called the “common model,” imposes eight-year consecutive limits in each chamber, while other models include six- or eight-year consecutive limits for the house and senate respectively, twelve-year lifetime limitations in both chambers combined, and twelve-year consecutive limits in each chamber. Dr. Green indicated that, between 1997 and 2012, six states repealed or struck down term limits, while one state enacted term limits. Thus, in 2014, 15 states had legislative term limits.

Describing the impact of legislative term limits, Dr. Green stated that term limits have impeded the development of legislative leaders, reducing leaders’ agenda-setting and coalition-building capabilities. He further indicated that the limits reduce the influence of the legislative branch in state government, instead empowering the executive branch, administrative agencies, nonpartisan staff, and lobbyists. Dr. Green also indicated that term limits increase partisanship and reduce the time legislators have to accomplish legislative goals. He noted that term limits have failed to achieve the goal of increasing the number of “citizen legislators,” as opposed to career legislators. Dr. Green observed that term limits have not increased gender, racial, or ethnic diversity in state legislatures.

Dr. Green stated that term limits have had only a modest impact on the electoral process, with no increase in the overall competitiveness of elections, no decrease in campaign spending, and an increase in the role of party caucuses in legislative campaigns. Dr. Green opined that, despite these drawbacks, term limits will continue to have strong public support. However, he stated that increasing the limits from 8 years to 12 years may alleviate the problem of a diminished role for legislative leadership. He also indicated that allowing former legislators to return to office mitigates some of the impact of term limits.

Second Green Presentation

In his second presentation to the committee, on June 12, 2014, Dr. Green presented polling data related to term limits. Conducted by the Center for Marketing and Opinion Research for the Bliss Institute in April 2014, the “2014 Akron Buckeye Poll” surveyed a random sample of 1,078 registered Ohio voters, including both landline and cell phone users. Participants were asked whether they thought term limits produced poor government or good government and whether the limits have helped or hurt the state. The resulting data, with a margin of error of plus or minus three percentage points, indicates that 57 percent of those polled indicated they thought that term limits have helped the state, with 30 percent stating that the limits hurt the state and 13 percent having no opinion. These figures may be compared with 2005 polling data indicating that 59 percent of voters believed that term limits help the state, with 30 percent saying the limits hurt the state and 11 percent indicating they had no opinion.

Asked whether term limits should be kept at eight years, extended to 12 years, or repealed altogether, 70 percent of those polled favored keeping term limits at eight years, with 13 percent willing to extend the limits to 12 years, 12 percent agreeing that they should be repealed altogether, and five percent having no opinion. Queried as to whether they could accept an increase in the limit to 12 years, 38 percent of participants answered that they were firm on keeping the total number of years served at eight, with 32 percent willing to accept a 12-year limit, 13 percent being firm on a 12-year limit, 12 percent supporting a complete repeal of term limits, and five percent having no opinion.

Asked whether they would support increasing state legislative terms by two years, meaning that representatives would serve a four-year term and senators a six-year term, 61 percent of participants indicated they would support such a measure, with 36 percent indicating they would not and three percent having no opinion.

Sixty-two percent of participants stated that it should take a legislator less than five years to learn the job, while 28 percent said five-to-ten years was appropriate, seven percent identifying more than 10 years as the correct time span, and three percent having no opinion.

Henkener Presentation

Ann Henkener, First Vice President of the League of Women Voters of Ohio (“League”), presented to the committee on July 10, 2014. According to Ms. Henkener, the League’s long opposition to term limits is based upon the rationale that terms are inherently limited to two years for representatives and four years for senators, requiring legislators to seek re-election at the end of those terms. Ms. Henkener asserted that the arguments against term limits as presented by the League to voters in 1992, when the current version of Article II, Section 2 appeared on the ballot, have proved mostly true. As she described them, those arguments are that term limits create more “lame duck” legislators, reduce competition for legislative seats, result in less-experienced legislators, reduce institutional memory, impede long-term thinking about societal problems, and increase the power of staff, bureaucrats, and lobbyists. Ms. Henkener opined that voters continue to support the concept of term limits because they are perceived as a counterbalance to problems attributed to the redistricting process. She stated that if redistricting reform occurs,

allowing for more competitive districts, then voters might look more favorably on extending term limits.

Conclusion

The Legislative Branch and Executive Branch Committee concludes that Article II, Section 2 should be amended to expand term limits for newly-elected state senators by one term, and for state representatives by two terms. The committee does not recommend extending term limits for current members of the General Assembly, who would be limited to eight consecutive years of service in their respective houses.

The committee also recommends that Article II, Section 2 be reorganized to first describe the length of term and term limits for state senators, followed by a description of the length of term and term limits for state representatives. This reorganization is intended to assist the reader's comprehension of the meaning of the section. The committee further recommends that the provision be reorganized to include a supplemental paragraph entitled "Effective Date and Repeal," consisting of a description of when the provision, if adopted, would take effect. The committee also recommends the inclusion of "Schedule 1," consisting of an explanation that the extended term limits contained in the revised provision will only apply to newly appointed or elected legislators. These proposed changes bring the format of the section in line with the structure of other sections in Article II.

Therefore, the committee recommends Section 2 be amended as shown in Attachment A, which provides a marked-up version of the provision. Attachment B provides a clean version of Section 2, if the proposed amendment is adopted.

Date Issued

After formal consideration by the Legislative Branch and Executive Branch Committee on March 12, 2015, and April 9, 2015, the committee voted to issue this report and recommendation on April 9, 2015.

Endnotes

¹ Steven H. Steinglass & Gino J. Scarselli, *The Ohio State Constitution*, 140 (2nd prtg. 2011).

² Michael F. Curtin, *Ohio Politics Almanac*, 83 (3rd ed. 2015).

³ Steinglass & Scarselli, *supra*.

⁴ Steven F. Huefner, *Term Limits in State Legislative Elections: Less Value for More Money?*, 79 Ind. L.J. 427, 428 (2004).

⁵ Steinglass & Scarselli, *supra*, at 141.

⁶ *Id.*, Appendix B.

Option Two

Article II, Section 2

~~Representatives shall be elected biennially by the electors of the respective House of Representatives districts; their term of office shall commence on the first day of January next thereafter and continue two years.~~

Senators shall be elected by the electors of the respective Senate districts; ~~their~~ Their ~~terms~~ term of office of a senator shall commence on the first day of January ~~next after their~~ following the election. All terms of senators which commence on the first day of January, 1969 shall be four years, and all terms which commence on the first day of January, 1971 shall be four years. Thereafter, except for the filling of vacancies for unexpired terms, senators shall be elected to and hold office for terms of four years. No person shall hold the office of senator for a period longer than three successive terms of four years. Terms shall be considered successive unless separated by a period of four or more years.

Representatives shall be elected biennially by the electors of the respective House of Representative districts. The term of office of a representative shall commence on the first day of January following the election and continue two years. No person shall hold the office of representative for a period longer than six successive terms of two years. Terms shall be considered successive unless separated by a period of four or more years.

~~No person shall hold the office of State Senator for a period of longer than two successive terms of four years. No person shall hold the office of State Representative for a period longer than four successive terms of two years. Terms shall be considered successive unless separated by a period of four or more years. Only terms beginning on or after January 1, 1993 shall be considered in determining an individual's eligibility to hold office.~~

In determining the eligibility of an individual to hold office in accordance ~~to~~ with this article, (A) time spent in an office in fulfillment of a term to which another person was first elected shall not be considered provided that a period of at least four years passed between the time, if any, in which the individual previously held that office, and the time the individual is elected or appointed to fulfill the unexpired term; and (B) a person who is elected to an office in a regularly scheduled general election and resigns prior to the completion of the term for which he or she was elected, shall be considered to have served the full term in that office.

EFFECTIVE DATE AND REPEAL

If adopted by a majority of the electors voting on this proposal, Section 2 of Article II as amended by this proposal shall take effect on January 1, 2017, and existing Section 2 of Article II shall be repealed effective January 1, 2017.

SCHEDULE 1

The version of Section 2 of Article II in effect on December 31, 2016, shall apply to senators and representatives who are in office on that date.

The version of Section 2 of Article II as amended by this proposal shall first apply to senators and representatives who are appointed or elected on or after the effective date of this amendment and who are not in office on December 31, 2016.

Option Two

Article II, Section 2

Senators shall be elected by the electors of the respective Senate districts. The term of office of a senator shall commence on the first day of January following the election. All terms of senators which commence on the first day of January 1969 shall be four years, and all terms which commence on the first day of January 1971 shall be four years. Thereafter, except for the filling of vacancies for unexpired terms, senators shall be elected to and hold office for terms of four years. No person shall hold the office of senator for a period longer than three successive terms of four years. Terms shall be considered successive unless separated by a period of four or more years.

Representatives shall be elected biennially by the electors of the respective House of Representatives districts. The term of office of a representative shall commence on the first day of January following the election and continue two years. No person shall hold the office of representative for a period longer than six successive terms of two years. Terms shall be considered successive unless separated by a period of four or more years.

In determining the eligibility of an individual to hold office in accordance with this article, (A) time spent in an office in fulfillment of a term to which another person was first elected shall not be considered provided that a period of at least four years passed between the time, if any, in which the individual previously held that office, and the time the individual is elected or appointed to fulfill the unexpired term; and (B) a person who is elected to an office in a regularly scheduled general election and resigns prior to the completion of the term for which he or she was elected, shall be considered to have served the full term in that office.

EFFECTIVE DATE AND REPEAL

If adopted by a majority of the electors voting on this proposal, Section 2 of Article II as amended by this proposal shall take effect on January 1, 2017, and existing Section 2 of Article II shall be repealed effective January 1, 2017.

SCHEDULE 1

The version of Section 2 of Article II in effect on December 31, 2016 shall apply to senators and representatives who are in office on that date.

The version of Section 2 of Article II as amended by this proposal shall first apply to senators and representatives who are appointed or elected after the effective date of this amendment and who are not in office on December 31, 2016.



OHIO CONSTITUTIONAL MODERNIZATION COMMISSION

REPORT AND RECOMMENDATION OF THE LEGISLATIVE BRANCH AND EXECUTIVE BRANCH COMMITTEE

OHIO CONSTITUTION ARTICLE II SECTIONS 10 AND 12

RIGHTS AND PRIVILEGES OF MEMBERS OF THE GENERAL ASSEMBLY

The Legislative Branch and Executive Branch Committee of the Ohio Constitutional Modernization Commission issues this report and recommendation regarding Sections 10 and 12 of Article II of the Ohio Constitution concerning General Assembly members' rights of protest, and their privileges against arrest and of speech. 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 no change be made to Article II, Sections 10 and 12 of the Ohio Constitution and that the provisions 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.

Section 10 (Rights of Members to Protest)

Section 10, unaltered since 1851, provides:

Any member of either House shall have the right to protest against any act, or resolution thereof; and such protest, and the reasons therefor, shall, without alteration, commitment, or delay, be entered upon the journal.

Section 10 was slightly revised from the version adopted in the 1802 constitution, which reads:

Any two members of either house shall have liberty to dissent from, and protest against, any act or resolution which they may think injurious to the public or any individual, and have the reasons of their dissent entered on the journals.

The right of legislative members to protest, and to have their objections recorded in the journal, has its origins in the House of Lords of the British Parliament, where the right of written dissent was recognized as a privilege of the upper house.¹ Recording the dissent in the house journal was the minority's recognized method of registering political objection, but the protests would also appear in the press, and for this reason the decision to protest, and the wording of the objection, were carefully considered.²

While the right of protest is ancient, its use was uncommon until the 18th century, when it was promoted by the rise of partisan factionalism in Parliament and a growing public interest in politics that encouraged dissenters to air their protests in the court of public opinion.³ By the close of the century, American state constitutions began to include the right of legislative members to dissent and have their protest journalized, with several of the original 13 colonies adopting the measure in their state constitutions, including New Hampshire, North Carolina, and South Carolina.⁴ Tennessee followed suit in its 1796 constitution, with Ohio's provision being included in the 1802 constitution.^{5 6}

Although about a dozen states maintain a similar provision in their constitutions, the United States Constitution contains no equivalent, merely providing at Article I, Section 5, Clause 3, that "Each House shall keep a Journal of its Proceedings, and from time to time publish the same, excepting such Parts as may, in their Judgment require Secrecy; and the Yeas and Nays of the Members of either House on any question shall, at the Desire of one fifth of those Present, be entered on the Journal." Commenting on the absence of a similar provision in the U.S. Constitution, the Ohio Constitutional Revision Commission (1970s Commission) observed that dissents in Congress are preserved by the publication of debates in the Congressional Record.⁷

Section 12 (Privilege of Members from Arrest, and of Speech)

Section 12 has not been altered since its adoption in 1851. It provides:

Senators and Representatives, during the session of the General Assembly, and in going to, and returning from the same, shall be privileged from arrest, in all cases, except treason, felony, or breach of the peace; and for any speech, or debate, in either House, they shall not be questioned elsewhere.

Section 12 is nearly identical to Article I, Section 13 of the 1802 constitution, which reads:

Senators and Representatives shall, in all cases, except treason, felony, or breach of the peace, be privileged from arrest during the session of the General Assembly, and in going to and returning from the same; and for any speech or debate in either house, they shall not be questioned in any other place.

The idea that legislative representatives must be able to freely engage in debate, consult with staff and constituents, and travel to and from legislative session without hindrance, was challenged in 17th century England when the Crown and Parliament clashed over their competing roles.⁸ A particularly dramatic 1641 incident in which King Charles II stormed into Parliament demanding the arrest of members he deemed treasonous cemented the belief that an independent legislative body was essential to a democratic form of government, and the “freedom of speech and debates” for parliamentary members subsequently was included in the English Bill of Rights of 1689.⁹

By the time the U.S. Constitution was drafted, the privilege was accepted as a necessary democratic protection, and it was incorporated in Article I, Section 6, Clause 1, apparently without debate.¹⁰ Various forms of the privilege also made their way into state constitutions, with nearly all states adopting constitutional provisions that protect legislative speech or debate.¹¹

Amendments, Proposed Amendments, and Other Review

Section 10 was reviewed by the Committee to Study the Legislature of the 1970s Commission. On October 15, 1971, that committee issued a report in which it indicated the right to protest on the record originated in an era in which legislators had no other ability to communicate their objection to legislation. The committee concluded that because dissenting legislators now have the ability to publicize their views in the news media, the provision is “an anachronism and appropriate for removal.”¹² Despite this recommendation, the question was not taken up by the full 1970s Commission, and, thus, the section remains as it was adopted in 1851.

The 1970s Commission did not address Section 12, thus, it also remains in its 1851 form.

Litigation Involving the Provisions

The Supreme Court of Ohio has not had occasion to review Article II, Section 10 since the 1970s, however, the Court has reviewed Article II, Section 12.

In *Costanzo v. Gaul*, 62 Ohio St.2d 106, 403 N.E.2d 979 (1980), the plaintiff sued a city councilman who, in explaining why the plaintiff’s rezoning request had not been accepted, allegedly made defamatory statements about plaintiff to the press. In *Costanzo*, the Court considered whether the privilege of speech or debate was limited to the General Assembly, or whether communications by members of a city council also qualified for protection. The Court held the councilman, like a state legislator, was entitled to absolute privilege so long as his published statement concerned a matter reasonably within his legislative duties.

Two Ohio Court of Appeals cases also bear mentioning. In *Kniskern v. Amstutz*, 144 Ohio App.3d 495, 760 N.E.2d 876 (8th Dist. 2001), the Cuyahoga County Court of Appeals addressed whether a civil rights violation case could be maintained against 72 state legislators who voted in favor of tort reform legislation in 1996.¹³ In dismissing, the appellate court emphasized that legislators acting in their legislative capacities enjoy immunity from lawsuit, even where, later, the enacted law is held unconstitutional. *Id.*, 144 Ohio App.3d at 497, 760 N.E.2d at 877-78.

In *City of Dublin v. State*, 138 Ohio App.3d 753, 742 N.E.2d 232 (10th Dist. 2000), the Franklin County Court of Appeals considered whether private meetings between legislators and corporate representatives were privileged from discovery in a case alleging portions of the state biennial budget bill unconstitutionally restricted municipalities from regulating public utilities. Noting that state court precedent primarily focused on immunity from suit – an issue not present in the facts of the case – the court sought guidance from federal case law holding that the speech or debate protection also provides evidentiary privilege against the use of statements made in the course of the legislative process. *Id.*, 144 Ohio App.3d at 758, 742 N.E.2d at 236. Following the rationale that the purpose of the speech or debate clause is to protect the legislator from the “harassment of hostile questioning,” rather than to encourage secrecy, the court concluded that “requiring legislators to divulge the identity of corporate representatives with whom they have had private, off-the-public-record meetings” does not infringe on an integral part of the legislative process and so does not violate legislative privilege. *Id.*, 144 Ohio App.3d at 760, 742 N.E.2d at 237.

Presentations and Resources Considered

Hollon Presentation

In July 2016, Steven C. Hollon, executive director, described that Sections 10 and 12 were related in that both deal with the freedoms and privileges of legislators to express their views and to perform their legislative duties without interference. Mr. Hollon suggested that, because these provisions cover related subject matter, they could be reviewed together and addressed in a single report and recommendation.

Huefner Presentation

In November 2016, Steven F. Huefner, assistant professor of law at the Ohio State University Moritz College of Law, presented on legislative privilege as set forth in Article II, Section 12.

Prof. Huefner, whose career included a position assisting the United States Senate’s efforts to protect and enforce its privileges, said the existence of the legislative privilege is about protecting the separation of powers, a concept that goes back to when the British Parliament was subservient to the Crown. He said the clause is intended to protect members of a legislative body from retaliation for actions taken in the performance of their official legislative duties. He noted the provision derives from the concept that, while all public representatives are subject to political retaliation, legislators should not be subject to retaliation by the executive or judicial branch, which could use their power to make the legislative branch subservient. Prof. Huefner said provisions protecting legislators from retaliation for speech or debate remain, even though the clashes in England have not been part of the American experience.

Noting there are justifications for continuing the privilege, Prof. Huefner nonetheless commented that the countervailing pressure is for legislative activities to be open and public. He said the privilege should apply to staff as well as to legislators, but it is not always interpreted that way in the states.

Addressing the section’s additional privilege against arrest, Prof. Huefner explained the privilege is against a citizen’s civil arrest, which was occasionally used to detain members of a legislative body to prevent them from performing their legislative duty. He said the privilege excuses members of the legislature from being subject to civil arrest in all cases except treason, felony, and breach of the peace.

Regarding the prohibition against legislators being questioned elsewhere for any speech or debate, Prof. Huefner described the conduct and types of questioning covered. He said, by its terms, the provision protects members of the legislature, but for that protection to be fully effective, legislative staff members ought to be within the scope of that privilege if the legislative member desires the privilege to cover the staffer. He said it is the member’s privilege to encompass the staff that is serving the member in connection with the work. Prof. Huefner said the privilege should cover broadly all the essential legislative activities, a privilege that may go beyond the official duties of the legislators. He noted there are duties performed that may not be expressly legislative.

Prof. Huefner said the remaining question is whether the privilege protects legislators only against liability or whether it also protects them against having to testify. He remarked that, if the phrase indicating they shall not be questioned “elsewhere” is only taken at face value, it is easy to argue legislators cannot be subpoenaed about what they have done, even if they are not defendants. But, he said, although this is how federal courts construe the rule, this is not always how state courts have construed it. He said the privilege against questioning includes being required to produce documents.

Prof. Huefner added the privilege raises questions about freedom of information laws, commenting that an argument could be made that an individual legislator could extend his or her privilege to the entire legislative body. He said, at the same time, the privilege only provides that members should be free from questioning elsewhere, meaning outside the legislature, so that legislators are always accountable to the public for what they do in legislative session, including ethics investigations, deciding what parts of the process to conduct in public session, and by videotaping floor and committee sessions. He said the legislature can choose to create paper documents as a way of making its activities more readily available to the public. Despite this, he said, it is his view that legislators need the ability to insulate themselves against the possibility that disgruntled constituents or other branches of government might be able to obtain information for harassment purposes.

O’Neill Presentation

On February 9, 2017, Shari L. O’Neill, interim executive director and counsel to the Commission, presented to the committee on legislative privilege as applied to legislative staff. Based on a fifty-state survey, Ms. O’Neill said nearly all states provide some type of protection to legislators when performing their legislative duties, with most providing both a speech or debate privilege that protects legislators from having to testify or answer in any other place for statements made in the course of their legislative activity, and a legislative immunity that protects legislators against civil or criminal arrest or process during session, during a period

before and/or after session, and while traveling to and from session. She noted only Florida and North Carolina lack a constitutional provision relating to legislative privilege or immunity, although a North Carolina statute protects legislative speech and the Florida Supreme Court has recognized a legislative privilege as being available under the separation of powers doctrine. Ms. O'Neill indicated no state constitutions mention or protect legislative staff in their constitutional provisions relating to legislative privileges and immunities, although statutory protections are available in at least some states.

Reviewing state statutory provisions, Ms. O'Neill noted that several states expressly protect communications between legislators and their staff, particularly in the context of discovery requests in a litigation setting. She explained that, although Ohio's statute, R.C. 101.30, requires legislative staff to maintain a confidential relationship with General Assembly members and General Assembly staff, it does not expressly provide a privilege to legislative staff. She said R.C. 101.30 also does not indicate that legislative documents are not discoverable, and does not address whether legislative staff could be required to testify in court about their work on legislation. She added that the statute does not discuss oral communications between legislators and staff or expressly address communications that may occur between interested parties and legislative staff on behalf of legislators.

Pierce and Coontz Presentation

On February 9, 2017, the committee heard a presentation by two assistant attorneys general from the Constitutional Offices of the Office of the Ohio Attorney General, Sarah Pierce and Bridget Coontz. Ms. Pierce indicated that she and Ms. Coontz provide representation to General Assembly members in legal matters that arise in the course of legislators' official duties. She said there are few Ohio cases discussing legislative privilege, and Ohio courts often analyze the speech or debate clause as being co-extensive of the federal clause.

Ms. Pierce said the first case to discuss the topic at any length is *City of Dublin v. State, supra*, a case involving a challenge to a budget bill. In that case, the plaintiff noticed a sitting senator for deposition, and submitted interrogatories to General Assembly members and their staffs. She said the trial court quashed all of the discovery requests on the ground of privilege. Ms. Pierce indicated that when the case was appealed to the Tenth District Court of Appeals, the appellate court decision included an extensive analysis of legislative privilege, extending the privilege to all meetings and discussion. She said, however, the court did allow interrogatories to go to the lobbyists who had meetings with legislators.

Ms. Pierce described a second case relating to legislative privilege, *Vercellotti v. Husted*, 174 Ohio App.3d 609, 2008-Ohio-149, 883 N.E.2d 1112, in which the plaintiffs noticed depositions of sitting General Assembly members, as well as one legislative aide and one member of the Legislative Service Commission. The trial court granted a protective order preventing legislative members from having to appear for deposition. A Legislative Service Commission employee testified at a hearing about the committee meeting itself, but the state successfully asserted that conversations with legislators were privileged.

Ms. Pierce described that her office has raised legislative privilege in a number of cases in which motions to quash subpoenas were granted, or subpoenas were withdrawn, but said these issues were resolved without a court decision or analysis. She said when her office responds to discovery requests, it relies on R.C. 101.30 to assert a confidential relationship between the General Assembly and legislative staff.

Ms. Coontz said some legislatures voluntarily comply with discovery requests, adding that courts generally follow the wishes of the legislative member. She said, in the typical case, members are non-parties, and courts are reluctant to pull in members and staff for testimony.

Discussion and Consideration

In discussing Article II, Sections 10 and 12, the committee considered research indicating that most states protect the right to protest as well as providing a legislative privilege against having to answer in court or other places for words undertaken in the furtherance of the legislator's official duties.

Addressing the right to register a protest in the journal, as described in Section 12, the committee noted that the procedure allows General Assembly members who disagree with a procedural ruling against them, or a procedure that was not followed, to hand a written protest to the clerk. The protest is then included in the journal of that day's business, allowing a permanent record of that protest.

Regarding the committee report from the 1970s Commission recommending repeal of Section 10, committee members expressed that the section still has relevance despite the proliferation of multiple media and internet news outlets because the journal is the official record of the business of the General Assembly, and the member filing the protest can directly control the message being communicated. Committee members also noted that the protest allows legislators to counteract the fact that legislative minutes are vague, that legislative intent is not expressed in the legislation, and that bill sponsors are not required to explain their reasons for sponsoring the bill. Committee members also noted that a legislator may vote with the majority but may agree with the minority that the procedure for enacting the legislation was improper. In that case, because the legislator cannot speak through his or her vote, committee members indicated it is important to maintain the right to protest.

Regarding the issue of legislative privilege as provided in Section 12, some committee members expressed that because legislative members officially speak through their vote and their comments during session, other types of communications are properly viewed as being privileged. Members additionally indicated that legislative privilege helps to maintain the separation of powers, noting that many communications that occur in the executive and judicial branches of government are recognized as privileged. At the same time, committee members recognized that legislators are acting on behalf of citizens and should, as much as possible, maintain transparency as they conduct their duties. Addressing the confidentiality of communications between legislators and legislative staff, committee members observed that the privilege allows legislators to effectively perform their role.

Conclusion

The Legislative Branch and Executive Branch Committee concludes that Article II, Sections 10 and 12 continue to serve the General Assembly by facilitating the need for members to register their dissent or protest in the journal, by allowing them privately to consult and obtain the advice of staff as they consider policy and prepare legislation, and by preventing legislators from having to answer in court for speech undertaken in their legislative capacity.

Therefore, the committee concludes that Article II, Sections 10 and 12 should be maintained in their present form.

Date Issued

After formal consideration by the Legislative Branch and Executive Branch Committee on March 9, 2017, the committee voted unanimously to issue this report and recommendation on March 9, 2017.

Endnotes

¹ William C. Lowe, *The House of Lords, Party, and Public Opinion: Opposition Use of the Protest, 1760-1782*, 11 *Albion* 2 (1979) 143, 143-44. Available at: <https://www.jstor.org/stable/4048271> (last visited Jan. 10, 2017).

² *Id.* at 144.

³ *Id.* at 143; *A Short History of Parliament: England, Great Britain, the United Kingdom, Ireland and Scotland* 156 (Clyve Jones, ed. 2009).

⁴ North Carolina Const., art. II, § 18 provides: “Any member of either house may dissent from and protest against any act or resolve which he may think injurious to the public or to any individual, and have the reasons of his dissent entered on the journal.”

South Carolina Const. art. III, § 22 provides, in part: “Any member of either house shall have liberty to dissent from and protest against any Act or resolution which he may think injurious to the public or to an individual, and have the reasons of his dissent entered on the journal.”

New Hampshire Const. Part II, Art. 24 provides, in part: “And any member of the senate, or house of representatives, shall have a right, on motion made at the time for that purpose to have his protest, or dissent, with the reasons, against any vote, resolve, or bill passed, entered on the journal.”

⁵ A copy of the Tennessee Constitution of 1796 is available at: <http://teva.contentdm.oclc.org/cdm/fullbrowser/collection/tfd/id/380/rv/compoundobject/cpd/421/rec/7> accessed 1/9/17 (last visited Jan. 9, 2017).

⁶ In fact, Tennessee’s constitution is recognized as providing, or at least influencing, most of the text of Ohio’s first constitution. Steven H. Steinglass & Gino J. Scarselli, *The Ohio State Constitution* 22 (2nd prt. 2011), citing Howard McDonald, *A Study in Constitution Making – Ohio: 1802-1874*, Ph.D. Dissertation, Univ. of Michigan, 27 (1916).

⁷ Ohio Constitutional Revision Commission (1970-77), Recommendations for Amendments to the Ohio Constitution, Proceedings Research, Volume 3, 1109, <http://www.lsc.ohio.gov/ocrc/v3%20pgs%201098-1369%20legislative-executive%201370-1646%20finance-taxation.pdf> (last visited Jan. 9, 2017).

⁸ Michael L. Shenkman, *Talking About Speech or Debate: Revisiting Legislative Immunity: Introduction*, 32 Yale L. & Pol’y Rev. 351, 357-58 (2014).

⁹ *Id.* at 358-59; Steven F. Huefner, *The Neglected Value of the Legislative Privilege in State Legislatures*, 45 Wm. & Mary L. Rev. 221, 229-30 (2003).

¹⁰ U.S. Const. art. I, § 6, cl. 1 states that members of both Houses “shall in all Cases, except Treason, Felony and Breach of the Peace, be privileged from Arrest during their attendance at the Session of their Respective Houses, and in going to and from the same, and for any Speech or Debate in either House, they shall not be questioned in any other place.”

For a comprehensive history of the speech or debate clause in the U.S. Constitution and the British Constitution, see Josh Chafetz, *Democracy’s Privileged Few: Legislative Privilege and Democratic Norms in the British and American Constitutions* (2007).

¹¹ Huefner, *supra*, at 235-37.

¹² *Ohio Constitutional Revision Commission*, *supra* note 7, at 1110.

¹³ The full cite of this case is *Kniskern v. Amstutz*, 144 Ohio App.3d 495, 760 N.E.2d 876 (8th Dist. 2001), dismissed, 93 Ohio St.3d 1458, 756 N.E.2d 1235 (2001), cert. denied, 535 U.S. 990 (2002).



OHIO CONSTITUTIONAL MODERNIZATION COMMISSION

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

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]”.¹ 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.”² 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.”³

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.”⁴ 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.⁵ 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.⁶ 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.⁷

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.⁸ 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:⁹

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.¹⁰

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.¹¹ 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.¹²

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.”¹³ 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.¹⁴ 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.¹⁵

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.¹⁶ The 1970s Commission noted that the Citizens Conference on State Legislatures favored including a period of time in the language.¹⁷ In recommending these changes, the 1970s Commission asserted the revisions essentially were non-substantive, noting the “wisdom of prohibiting public conflicts” of interest.¹⁸

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 25.¹⁹ Presented to voters on May 8, 1973, the issue passed by a vote of 680,870 to 572,980.²⁰

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.²¹ 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.²² Thus, the 1970s Commission determined Section 5 was obsolete.²³ However, the voters rejected the measure at the polls on May 8, 1973 by a margin of 61.55 percent to 38.45 percent.²⁴

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 1851.²⁵ 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.”²⁶ 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.²⁷ Vacancies in the House were still to be “filled by election as shall be directed by law.”²⁸ 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.²⁹

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.³⁰ 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.”³¹ 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 December 15, 2016, the committee voted to issue this report and recommendation on December 15, 2016.

Endnotes

¹ *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.

² *Id.* at 163-164.

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

⁴ *Report of the Debates, supra*, at 163.

⁵ *Id.* at 230.

⁶ *Id.* at 232.

⁷ 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).

⁸ 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.”

⁹ 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).

¹⁰ *Id.*, Vol. 2 at 1096.

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

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.*

¹⁵ 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.

¹⁶ 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.

¹⁷ 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.

¹⁸ *Id.*

¹⁹ 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=8QhPAAAAIIBAJ&sjid=RAIEAAAAIIBAJ&pg=7444,4723240&hl=en> (last visited Oct. 6, 2016).

²⁰ 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).

²¹ 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.

²² *Id.*

²³ 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.

²⁴ 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).

²⁵ 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.

²⁶ *Id.*

²⁷ 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).

²⁸ 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.

²⁹ *Id.*

³⁰ *Id.*

³¹ *Id.*



OHIO CONSTITUTIONAL MODERNIZATION COMMISSION

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

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 15.¹

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.²

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.³

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.⁴ 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."⁵ 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.⁶

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 15.⁷

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.”⁸

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.⁹ The measure passed by a margin of 54.30 percent to 45.70 percent.¹⁰

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 December 15, 2016, the committee voted to issue this report and recommendation on December 15, 2016.

Endnotes

¹ 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).

² *Id.* at 25.

³ *Id.* at 26-29.

⁴ *Id.* at 30.

⁵ *Id.* at 31-32.

⁶ *Id.* at 32-33.

⁷ *Id.* at 33-34.

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

⁹ 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=8QhPAAAAIBAJ&sjid=RAIEAAAIBAJ&pg=7444,4723240&hl=en> (last visited Oct. 6, 2016).

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

Appendix 2

Legislative Branch and Executive Branch Committee

Minutes of the Committee

Minutes of the Committee

NOTE: In the early years of the Commission, committee records were kept on an ad hoc basis by various individuals assisting the Commission. Unfortunately, this left committee records, in particular, in a haphazard state. After the hiring of permanent staff in 2014, committee records were regularly kept and put into a standardized format. In addition, staff revised early committee minutes, where available, to put them into the standardized format and to correct any errors or omission discovered during the process. Both the original and revised minutes have been retained with the full files of the Commission; however, the revised minutes have been endorsed as the official record of the committee and are the only documents included here.



OHIO CONSTITUTIONAL MODERNIZATION COMMISSION

REVISED MINUTES OF THE LEGISLATIVE BRANCH AND EXECUTIVE BRANCH COMMITTEE

FOR THE MEETING HELD
THURSDAY, JUNE 13, 2013

Call to Order:

Chair Fred Mills called the meeting of the Legislative Branch and Executive Branch Committee to order at 11:30 a.m.

Members Present:

A quorum was present, including Chair Mills, Vice-chair Brooks, and committee members Sykes, Taft, and Trafford in attendance.

Approval of Minutes:

This being the first meeting of the committee, there were no minutes to approve.

Discussion:

Chair Mills called on members to recommend high priority issues that should be looked at by the committee.

Senior Policy Advisor Steve H. Steinglass provided an overview of several documents he submitted to the committee.

The committee discussed reapportionment and redistricting, as well as term limits, as major issues to be addressed

The question was raised as to whether reapportionment was an issue the Commission should consider, or if it should be left to the General Assembly. Committee members agreed that redistricting would be a high priority. The committee agreed that the impact of term limits in Ohio should be considered as a high priority as well.

The committee discussed the importance of outreach, expert testimony, and groups that could lead the discussion and provide expertise on issues before the committee.

Meeting times were discussed and the formation of a social committee was suggested so that members of the Commission could get to know one another.

Adjournment:

There being no further business to come before the committee, the meeting was adjourned at 12:30 p.m.

Approval:

The minutes of the June 13, 2013 meeting of the Legislative Branch and Executive Branch Committee were approved at the July 10, 2013 meeting of the committee.

/s/ Frederick E. Mills
Frederick E. Mills, Chair

/s/ Paula Brooks
Paula Brooks, Vice-chair



OHIO CONSTITUTIONAL MODERNIZATION COMMISSION

REVISED MINUTES OF THE LEGISLATIVE BRANCH AND EXECUTIVE BRANCH COMMITTEE

FOR THE MEETING HELD
THURSDAY, JULY 10, 2013

Call to Order:

Chair Fred Mills called the meeting of the Legislative Branch and Executive Branch Committee to order at 11:30 a.m.

Members Present:

A quorum was present with Chair Mills, Vice-chair Brooks, and committee members Macon, Sykes, Taft, Tavares, and Trafford in attendance.

Approval of Minutes:

The minutes of the June 13, 2013 meeting of the committee were reviewed and approved.

Discussion:

Chair Mills introduced Paul A. Beck, professor emeritus of history and law at the Ohio State University, and David Stebenne, professor of history and law at the Ohio State University, and Edward B. Foley, director of election law at the Ohio State University Moritz College of Law.

The professors each presented to the committee regarding the history and future concerns of reapportionment and redistricting in the state of Ohio.

Prof. Beck discussed his concerns as well as the effects of gerrymandering.

Prof. Stebenne presented an article he had written and distributed it to the committee. He emphasized that there is no “gold standard” regarding redistricting. He recommended modifications to the seven-member reapportionment board.

Prof. Foley emphasized that the committee should take a long-term approach to changes made regarding reapportionment and redistricting. He recommended changes that could be made to

the seven-member reapportionment board as well as suggesting that the current “Ohio plan” be looked at, not only for modification but for complete replacement by a new singular body.

The committee then asked the professors about specific details of the different plans.

Adjournment:

There being no further business to come before the committee, the meeting was adjourned at 2:50 p.m.

Approval:

The minutes of the July 10, 2013 meeting of the Legislative Branch and Executive Branch Committee were approved at the August 8, 2013 meeting of the committee.

/s/ Frederick E. Mills

Frederick E. Mills, Chair

/s/ Paula Brooks

Paula Brooks, Vice-chair



OHIO CONSTITUTIONAL MODERNIZATION COMMISSION

REVISED MINUTES OF THE LEGISLATIVE BRANCH AND EXECUTIVE BRANCH COMMITTEE

FOR THE MEETING HELD
THURSDAY, AUGUST 8, 2013

Call to Order:

Chair Fred Mills called the meeting of the Legislative Branch and Executive Branch Committee to order at 9:05 a.m.

Members Present:

A quorum was present with Chair Mills, Vice-chair Brooks, and committee members Davidson, Coley, Stautberg, Sykes, Tavares, and Trafford in attendance.

Approval of Minutes:

The minutes of the July 10, 2013 meeting of the committee were reviewed and approved.

Presentations and Discussion:

Chair Mills introduced Ann Henkener, director and legislative director of the League of Women Voters of Ohio, who presented regarding redistricting in Ohio and the effects of gerrymandering. Ms. Henkener argued for a set of standards that would result in competitive districts and fair representation.

Chair Mills also recognized Richard Gunther, professor emeritus of political science at the Ohio State University, who presented regarding gerrymandering and the benefits of competitive districts.

Both presenters agreed that Ohio's districts should be representative of its population, stating that because of gerrymandering, districts in Ohio were not being fairly represented.

Representative Vernon Sykes offered an outline of his redistricting plan, which included a competition decided by a mathematical process. He said this competition would be open to the public. Rep. Sykes closed by saying that any plan should be chosen by a unanimous vote.

Adjournment:

There being no further business to come before the committee, the meeting was adjourned at 10:20 a.m.

Approval:

The minutes of the August 8, 2013 meeting of the Legislative Branch and Executive Branch Committee were approved.

/s/ Frederick E. Mills
Frederick E. Mills, Chair

/s/ Paula Brooks
Paula Brooks, Vice-chair



OHIO CONSTITUTIONAL MODERNIZATION COMMISSION

REVISED MINUTES OF THE LEGISLATIVE BRANCH AND EXECUTIVE BRANCH COMMITTEE FOR THE MEETING HELD THURSDAY, OCTOBER 10, 2013

Call to Order:

Chair Fred Mills called the meeting of the Legislative Branch and Executive Branch Committee to order.

Members Present:

A quorum was present.

Approval of Minutes:

The previous minutes were approved.

Presentations and Discussion:

As reported by Chair Mills, the committee heard a presentation from Attorney Lynda Jacobsen of the Legislative Service Commission with regard to Guiding Principles of Redistricting and Reapportionment. The Committee also heard from Senator Frank LaRose, sponsor of Senate Joint Resolution 3 of the 130th General Assembly. Sen. LaRose was speaking on behalf of himself and Senator Tom Sawyer concerning their attempt to amend the current Ohio apportionment and redistricting process.

Chair Mills also reported that the committee continued its deliberations on a point-by-point basis comparing the current constitutional model with SJR 3 and Representative Vernon Sykes' draft proposal (LSC 130 1364-1). Chair Mills indicated there was committee consensus on two decisions: 1) that any recommended change of the constitutional apportionment and redistricting process should contain a single body that will perform for both legislative districts and congressional districts; and 2) that the newly created redistricting commission should be required to pass new maps with at least one minority vote and a super majority decision.

Adjournment:

There being no further business to come before the committee, the meeting was adjourned.

Approval:

The minutes of the October 10, 2013, meeting of the Legislative Branch and Executive Branch Committee were approved.

/s/ Frederick E. Mills

Frederick E. Mills, Chair

/s/ Paula Brooks

Paula Brooks, Vice-chair



OHIO CONSTITUTIONAL MODERNIZATION COMMISSION

REVISED MINUTES OF THE LEGISLATIVE BRANCH AND EXECUTIVE BRANCH COMMITTEE FOR THE MEETING HELD THURSDAY, NOVEMBER 14, 2013

Call to Order:

Chair Fred Mills called the meeting of the Legislative Branch and Executive Branch Committee to order.

Members Present:

A quorum was present.

Approval of Minutes:

The previous minutes were approved.

Presentations and Discussion:

As reported by Chair Mills, the committee heard a presentation from Thomas L. Brunell, professor of political science at the University of Texas at Dallas, who has written a number of books and articles on the subject of redistricting. Prof. Brunell stated he does not believe in a competitive district formula, but rather posits that districts that are packed with similar-minded voters are preferable to 50/50 districts. Chair Mills reported a lively discussion occurred between committee members and Prof. Brunell relative to the various criteria necessary for the redistricting and reapportionment process.

Chair Mills reported the committee intends to continue its discussion of consensus points for the purpose of drafting a redistricting reform proposal at its December meeting, indicating the committee may devote additional meetings to this subject in the next calendar year.

Adjournment:

There being no further business to come before the committee, the meeting was adjourned.

Approval:

The minutes of the November 14, 2013 meeting of the Legislative Branch and Executive Branch Committee were approved.

/s/ Frederick E. Mills

Frederick E. Mills, Chair

/s/ Paula Brooks

Paula Brooks, Vice-chair



OHIO CONSTITUTIONAL MODERNIZATION COMMISSION

REVISED MINUTES OF THE LEGISLATIVE BRANCH AND EXECUTIVE BRANCH COMMITTEE FOR THE MEETING HELD THURSDAY, DECEMBER 12, 2013

Call to Order:

Chair Fred Mills called the meeting of the Legislative Branch and Executive Branch Committee to order.

Members Present:

A quorum was present.

Approval of Minutes:

The previous minutes were approved.

Presentations and Discussion:

As reported by Chair Mills, the committee continued its deliberations with regard to consensus items relative to reapportionment and redistricting in the State of Ohio. He reported good progress, indicating the committee is encouraged that a consensus document can be agreed to at the January 2014 meeting. For that meeting, Chair Mills reported he will draft the document and it will be circulated to members of the committee before the meeting. In addition, he indicated the committee requested that several issues be further researched by the Legislative Service Commission and that request has been made through the proper legislative channels.

Adjournment:

There being no further business to come before the committee, the meeting was adjourned.

Approval:

The minutes of the December 12, 2013, meeting of the Legislative Branch and Executive Branch Committee were approved.

/s/ Frederick E. Mills

Frederick E. Mills, Chair

/s/ Paula Brooks

Paula Brooks, Vice-chair



OHIO CONSTITUTIONAL MODERNIZATION COMMISSION

REVISED MINUTES OF THE LEGISLATIVE BRANCH AND EXECUTIVE BRANCH COMMITTEE

FOR THE MEETING HELD
THURSDAY, FEBRUARY 13, 2014

Call to Order:

Chair Fred Mills called the meeting of the Legislative Branch and Executive Branch Committee to order at 12:39 p.m.

Members Present:

A quorum was present.

Approval of Minutes:

The minutes of the previous meeting were read, but not accepted. Chair Mills called on committee member Kathleen Trafford, who moved to amend the minutes to reflect that a consensus was not reached on the impasse resolution. Chair Mills instructed the clerk to amend the minutes.

Presentations and Discussion:

Chair Mills introduced new committee member, Pierrette Talley.

After reviewing the key factors in any redistricting reform proposal, Chair Mills opened the floor to discuss:

- The criteria used to measure the maps and guide the map-drawer's hand;
- The mechanism for impasse resolution; and
- The composition of the map-drawing body.

Chair Mills distributed an Ohio Legislative Service Commission memorandum, which answered questions previously raised by the committee.

Chair Mills recognized John Dinan, professor of political science at Wake Forest University, who presented on the various ways other states overcome impasse. Prof. Dinan responded to questions asked by committee members.

Adjournment:

There being no further business to come before the committee, the meeting was adjourned at 2:16 p.m.

Approval:

The minutes of the February 13, 2014, meeting of the Legislative Branch and Executive Branch Committee were approved at the April 10, 2014 meeting of the committee.

/s/ Frederick E. Mills
Frederick E. Mills, Chair

/s/ Paula Brooks
Paula Brooks, Vice-chair



OHIO CONSTITUTIONAL MODERNIZATION COMMISSION

REVISED MINUTES OF THE LEGISLATIVE BRANCH AND EXECUTIVE BRANCH COMMITTEE

FOR THE MEETING HELD
THURSDAY, APRIL 10, 2014

Call to Order:

Chair Fred Mills called the meeting of the Legislative Branch and Executive Branch Committee to order at 12:36 p.m.

Members Present:

A quorum was present, with Chair Mills, Vice-chair Brooks, and committee members Davidson, Macon, Huffman, Coley, Talley, Taft, and Trafford in attendance.

Approval of Minutes:

The minutes of the February 13, 2014 meeting of the committee were reviewed and approved.

Presentations and Discussion:

Chair Mills recognized John Green, professor of political science at the Ray C. Bliss Institute of Applied Politics at the University of Akron, who presented on the subject of term limits.

Committee members asked Prof. Green a variety of questions relating to the history and purpose of term limits, including whether Ohio's term limit provision is similar to provisions in other states in relation to the number of years needed for a legislator to sit out until being able to return to the same chamber, the differences between executive branch term limits and legislative branch term limits, when an expansion of term limits should take effect, and public opinion on the issue. Committee members also wondered about the effect of redistricting on term limits, and on competition within districts, and whether there is link between redistricting and lengthening term limits. Other questions related to the impact of term limits on campaign financing, and on whether expansion of term limits would affect the diversity of the legislature's composition. In addition, committee members also asked Prof. Green's opinion on which state offices would be benefited from an expansion of term limits, and which might benefit from a restriction.

Adjournment:

There being no further business to come before the committee, the meeting was adjourned at 1:47 p.m.

Approval:

The minutes of the April 10, 2014, meeting of the Legislative Branch and Executive Branch Committee were approved at the June 12, 2014 meeting of the committee.

/s/ Frederick E. Mills

Frederick E. Mills, Chair

/s/ Paula Brooks

Paula Brooks, Vice-chair



OHIO CONSTITUTIONAL MODERNIZATION COMMISSION

REVISED MINUTES OF THE LEGISLATIVE BRANCH AND EXECUTIVE BRANCH COMMITTEE

FOR THE MEETING HELD
THURSDAY, JUNE 12, 2014

Call to Order:

Chair Fred Mills called the meeting of the Legislative Branch and Executive Branch Committee to order at 9:22 a.m.

Members Present:

A quorum was present, with Chair Mills, Vice-chair Brooks, and committee members Davidson, Macon, Sykes, Talley, Taft, and Trafford in attendance.

Approval of Minutes:

The minutes of the April 10, 2014 meeting of the committee were reviewed and approved.

Presentations and Discussion:

Chair Mills recognized John Green, professor of political science at the Ray C. Bliss Institute of Applied Politics at the University of Akron, who presented on the subject of poll results.

Committee members asked Prof. Green various questions, including his recommendation for a redistricting plan that would be most acceptable to voters and his opinion on what he believes voters want in regard to term limits. Committee members also asked about the ability of a bipartisan redistricting panel to cooperate with the secretary of state, a partisan official member. Other members asked about lengthening term limits in other states and the challenges of passing a complicated issue that would require voter education. Committee members asked about Prof. Green's survey, wondering about the number of participants who were contacted via a landline versus a mobile phone and if those numbers affected the results or give insight into the demographics of participants. Chair Mills asked for clarification on the usage of "technical experts" in the survey and whether this was the first time that a survey on the lengthening of term limits was conducted.

Following Prof. Green's presentation, Governor Bob Taft asked the committee whether an issue on the ballot such as extending term limits by two years would be in sync with the existing term limit language in the Ohio Constitution or whether the passage of such a measure would create a conflict.

Adjournment:

There being no further business to come before the committee, the meeting was adjourned at 10:15 a.m.

Approval:

The minutes of the June 12, 2014, meeting of the Legislative Branch and Executive Branch Committee were approved at the July 10, 2014 meeting of the committee.

/s/ Frederick E. Mills
Frederick E. Mills, Chair

/s/ Paula Brooks
Paula Brooks, Vice-chair



OHIO CONSTITUTIONAL MODERNIZATION COMMISSION

REVISED MINUTES OF THE LEGISLATIVE BRANCH AND EXECUTIVE BRANCH COMMITTEE

FOR THE MEETING HELD
THURSDAY, JULY 10, 2014

Call to Order:

Chair Fred Mills called the meeting of the Legislative Branch and Executive Branch Committee to order at 10:21 a.m.

Members Present:

A quorum was present, with Chair Mills, Vice-chair Brooks, and committee members Davidson, Macon, Sykes, and Tavares in attendance.

Approval of Minutes:

The minutes of the June 12, 2014 meeting of the committee were reviewed and approved.

Presentations and Discussion:

Chair Mills recognized Anne Henkener, director and legislative director of the League of Women Voters of Ohio, who presented on the issue of term limits.

Following her presentation, committee members asked questions regarding the connection between efforts regarding redistricting and term limits, whether lengthening term limits would increase candidate competitiveness in districts, if increased competition would result in decreasing voter frustration and increasing voter trust, and why the League of Women Voters is generally against term limits.

Following Ms. Henkener's presentation, Chair Mills informed the committee of a recent article published in the Cleveland *Plain Dealer*, which discussed the Legislative Branch and Executive Branch Committee's work on term limits. Chair Mills noted that an invitation to the newspaper had been extended to attend the committee's meetings; however, no response has been received thus far.

Adjournment:

There being no further business to come before the committee, the meeting was adjourned at 10:44 a.m.

Approval:

The minutes of the July 10, 2014, meeting of the Legislative Branch and Executive Branch Committee were approved at the October 9, 2014 meeting of the committee.

/s/ Frederick E. Mills

Frederick E. Mills, Chair

/s/ Paula Brooks

Paula Brooks, Vice-chair

Co-Chair
Charleta B. Tavares
Assistant Minority Leader
15th Senate District



Co-Chair
William G. Batchelder, Speaker
69th House District

OHIO CONSTITUTIONAL MODERNIZATION COMMISSION

MINUTES OF THE LEGISLATIVE BRANCH & EXECUTIVE BRANCH COMMITTEE

FOR THE MEETING HELD
THURSDAY, OCTOBER 9, 2014

Call to Order:

Chair Mills called the meeting of the Legislative Branch and Executive Branch Committee to order at 2:40 p.m.

Members Present:

A quorum was present with committee members Mills, Brooks, Coley, Davidson, Macon, Sykes, Taft, Tavares and Trafford in attendance.

Approval of Minutes:

The committee approved the minutes of the July 10, 2014 meeting.

Topics Discussed:

Apportionment and Redistricting Proposal

Sarah Cherry, Legal Counsel, Minority Caucus, Ohio House of Representatives presented on the differences between SJR1 and Modified SJR1.

Arizona State Leg. v. Arizona Ind. Redistricting Comm., U.S. Sup. Ct. Docket No. 13-1314

Steve Steinglass spoke on the case of Arizona State Legislature v. Arizona Independent Redistricting Commission, Case No. CV-12-01211 (D. Ariz. Feb. 21, 2014). The case involves Proposition 106, an initiated amendment that took redistricting from the Arizona State Legislature and put it in the hands of a five-person commission. The plan applies only to congressional redistricting, not to state apportionment. In Arizona, the redistricting commission was created through the initiative process, which is different from what is being proposed in Ohio.

The issue is whether the enactment creating the Arizona Redistricting Commission violates the U.S. Constitution, specifically U.S. Const. Art. I § 4, the Elections Clause. The matter was decided by a three-judge panel of the Federal District Court in Arizona, and is now being directly appealed to the U.S. Supreme Court, which should issue a decision by June 2015.

Adjournment:

With no further business to come before the committee, the meeting adjourned at 3:45 p.m.

Attachments:

- Notice
- Agenda
- Roll call sheet
- Proposed language in options under consideration
- Biographical sketch of Sarah Cherry
- Prepared remarks of Sarah Cherry
- Arizona State Leg. v. Arizona Ind. Redistricting Comm., U.S. Sup. Ct. Docket No. 13-1314

Approval:

The minutes of the September 11, 2014 meeting of the Legislative Branch and Executive Branch Committee were approved at the November 13, 2014 meeting of the committee.

/s/ Fred Mills

Frederick E. Mills, Chair

/s/ Paula Brooks

Paula Brooks, Vice-chair



OHIO CONSTITUTIONAL MODERNIZATION COMMISSION

MINUTES OF THE LEGISLATIVE BRANCH & EXECUTIVE BRANCH COMMITTEE

FOR THE MEETING HELD
THURSDAY, NOVEMBER 13, 2014

Call to Order:

Chair Mills called the meeting of the Legislative Branch and Executive Branch Committee to order at 2:40 p.m.

Members Present:

A quorum was present with committee members Mills, Brooks, Coley, Davidson, Huffman, Macon, Sykes, Taft, Talley, Tavares and Trafford in attendance.

Approval of Minutes:

The committee approved the minutes of the October 9, 2014 meeting.

Topics Discussed:

Apportionment and Redistricting Proposal

Rep. Matt Huffman gave a presentation on House Joint Resolution 11, relating to federal congressional redistricting, and House Joint Resolution 12, relating to state district apportionment.

Rep. Huffman remarked that the current system gives little incentive for the majority party to protect the rights of the minority, a situation he is trying to correct with the proposed resolutions, which he said give increasing incentive to the majority party to consider the minority. According to Rep. Huffman, in the past, the plans have rewarded obstructionists. He acknowledged that his plan is not perfect but does give incentive to the majority to consider the minority.

Under the proposed plan described in House Joint Resolution 12, a seven-member Redistricting Commission consisting of the Governor, the Secretary of State, the Auditor of State, and designees of four caucus leaders must approve an apportionment map by a majority of at least four members, including one minority member. If this occurs, the process is complete and the map is effective for 10 years. However, if the Redistricting Commission does not approve a

map, a majority vote of the Governor, Secretary of State, and Auditor of State approves an interim map (with legislative designees having no vote). That map would then be used in the next election, at which time voters also would be asked to decide whether the redistricting commission should reconvene to redraw the districts. If that ballot question fails, the map is effective for half the remaining legislative elections before the new census, but if the map expires before the next census a new map must be drawn by the then-current commission. If the ballot question passes, the process starts over and a new map would be drawn by the entire seven-member Redistricting Commission.

Under the proposed plan described in House Joint Resolution 11, there would be a six-member Joint Legislative Committee comprised of two majority and one minority member from each chamber. If at least four members, including one minority member approve a proposed map, then that becomes the map that will be effective for ten years and the process would be complete. If no minority party vote is included in the vote to adopt a map, or if the General Assembly does not adopt the map put forth by the committee, then the map would automatically become effective and used for the next election, at which time the voters also would be asked to decide whether the General Assembly should draw new congressional districts. If the ballot question fails, the map would be effective for half the remaining legislative elections before the new census. If the map expires before the next census, then a new map would be drawn by the then-current General Assembly. If the ballot question passes, the process would start over and a new map would be drawn by the General Assembly.

Rep. Huffman stated that because the plan requires voter involvement if the parties fail to cooperate, there will be incentive to avoid the partisanship that has created problems in getting agreement on past redistricting plans. Rep. Huffman indicated he intends to testify to the House Legislative Oversight Committee in order to get the House and Senate ultimately to consider this proposal. He then invited questions from members of the committee.

Commissioner Paula Brooks said she is concerned by the proposal because it does not provide a good fail safe. She said she needs more time to review it, but that her impression is that it could result in an ad infinitum situation because people will forget how bad an experience can be until they are again in the middle of it.

Rep. Huffman agreed, but said the fact that his plan provides for an immediate cost because ten years from now no one will care about the issue. Commissioner Brooks asked whether this plan drops the minority requirement after Step 1, and Rep. Huffman said that if voters say redraw the map, they have to go back to get minority member approval.

Senator Bill Coley asked whether the committee should wait for the U.S. Supreme Court to decide the Arizona redistricting case Steve Steinglass had presented on during last month's meeting. Rep. Huffman said that his proposal as to reapportionment, at least, would be unaffected by any Supreme Court decision on congressional redistricting procedures, and so should not be held up by waiting for the court. He said if the General Assembly approves his proposal, it would go on the ballot for voters to approve by November of 2015.

Speaker JoAnn Davidson said she would like to compare Rep. Huffman's plan to that of Rep. Vernon Sykes which was presented at the last meeting. Rep. Huffman said his plan has an automatic "go to ballot" solution if there is no consensus and does not require going through the referendum process.

Rep. Sykes said his problem with the proposal is that it still gives the majority the authority to make the decision and that there is not enough incentive to encourage minority participation. He wondered whether Rep. Huffman is open to other kinds of defaults.

Sen. Charleta Tavares expressed her concern that, two years after the creation of the Commission, participants have failed to come to an agreement about redistricting either in the Commission or in the General Assembly. She observed that because one party has such a strong majority in the General Assembly, Rep. Huffman's proposed legislation could pass with no support from the minority party. She also said she was concerned that the proposal was being rushed through the legislature during the lame duck session, recognizing that the beauty of having the Commission handle redistricting is that the Commission is more bipartisan.

Rep. Huffman said this plan has many of the same elements as Rep. Sykes' plan and that there must be minority buy in for it to work. Sen. Tavares said that perspective is important because if the minority doesn't believe its voice is protected then there is an impasse. She said she does not believe there has been full discussion of this issue yet in this committee, but that it is now being rushed through the General Assembly.

Rep. Sykes stated that the proposal is timely and that there is a unique opportunity now for the Commission and the General Assembly to recommend a plan for approval during the lame duck session. He suggested one way to improve Rep. Huffman's plan would be for there to be a default commission of four members consisting of majority and minority members from the House and Senate who then select a fifth person before the map drawing begins. Then, if the original seven members couldn't agree on a map by a certain date, this "default" commission would decide the question. Rep. Sykes said he has a list of minimal considerations that must go into a plan (as per criteria under federal law, for example) and that he will give that list to Rep. Huffman.

Governor Bob Taft asked why Rep. Huffman is so concerned about the federal courts being used as an impasse mechanism. Rep. Huffman said anytime there is control by an outside entity it creates a problem, and that the people, rather than the judges, should decide the issue. He said judges have their own bias, and unelected federal judges should not make the decision.

Ann Henkener of the League of Women Voters then presented on behalf of herself and Catherine Turcer of Common Cause Ohio. Ms. Henkener said that Ohio is a 50/50 state and should not follow a "winner takes all" formula. She said there must be bipartisan buy in on any plan, and that she was encouraged by the discussion before this committee today as some progress is being made. She directed the committee to prior information provided by the League, emphasizing that a citizens' commission is preferred to one including elected officials but the real end goal must be geographical shapes that make sense to voters.

Richard Gunther, Professor Emeritus of Political Science, at Ohio State University, also presented on this topic. He expressed his opinion that Rep. Huffman's proposal had moved away from Senate Joint Resolution 1 (which had passed in the Senate by a 32-1 vote), and that the new proposal was a different track that worsened, rather than improved, the situation. He said the plan for there to be six members with four of the six to be majority party members did not give any credible incentive that would respect minority views, and that current checks and balances would be removed under the new plan. He also said that redrawing a map could mean as little as some minor movements of existing lines, so that the threat that a map would be redrawn may not prevent the majority from having the map it wants. He said the proposal reinforces majoritarian biases that currently exist.

Speaker Davidson asked whether, assuming the majority in the House and Senate remained, the outcome under the plan would always be the same. Prof. Gunther said that given the gerrymandering of maps in the past, a similar outcome would be inevitable, and having two minority members on the commission would be irrelevant. Rep. Huffman argued, however, that the entire legislature has to approve the new plan, so saying only six are involved is not right. Rep. Huffman also objected to Prof. Gunther's characterization of the future makeup of the General Assembly being 100 percent the same because this could not be predicted. Prof. Gunther responded that gerrymandering has created disproportionality that is more serious than ever, and that he has data indicating that 60 percent of the current seats held by each party will remain the same in the future under the current map. He said currently Ohio has a score of 23, which is the third worst system in the world for redistricting maps. Rep. Huffman objected to this data, stating that it does not take into account variables such as whether the data is compiled during a presidential election year, whether there are opponents to some candidates, or other factors. He also stated that federal law and the Civil Rights Act prevent some line drawing that might be considered to create a more fair system. Prof. Gunther said he stood by his data and that it is possible to incorporate his data without creating a legal violation.

Sen. Coley said that local races drive voters, and that Prof. Gunther is making some broad assumptions that aren't necessarily involved in election outcomes.

Adjournment:

With no further business to come before the committee, the meeting adjourned at 3:45 p.m.

Attachments:

- Notice
- Agenda
- Roll call sheet
- HJR11
- HJR12
- Proposed congressional redistricting flow chart
- Proposed general assembly redistricting flow chart
- Prepared remarks of Anne Henkener
- Prepared remarks of Prof. Richard Gunther

Approval:

These minutes of the November 13, 2014 meeting of the Legislative Branch and Executive Branch Committee were approved at the December 11, 2014 meeting of the committee.

/s/ Fred Mills

Frederick E. Mills, Chair

/s/ Paula Brooks

Paula Brooks, Vice-chair



OHIO CONSTITUTIONAL MODERNIZATION COMMISSION

MINUTES OF THE LEGISLATIVE BRANCH & EXECUTIVE BRANCH COMMITTEE

FOR THE MEETING HELD THURSDAY, DECEMBER 11, 2014

Call to Order:

Chair Mills called the meeting of the Legislative Branch and Executive Branch Committee to order at 12:50 p.m.

Members Present:

A quorum was present with committee members Mills, Davidson, Huffman, Sykes, Taft, Talley, and Trafford in attendance.

Approval of Minutes:

The committee approved the minutes of the November 13, 2014 meeting.

Topics Discussed:

Apportionment and Redistricting Proposal

Rep. Huffman provided an update on House Joint Resolution 11 (HJR11 - Congressional Redistricting) and House Joint Resolution 12 (HJR12 – General Assembly Redistricting), both of which he presented to the committee at the November meeting.

Rep. Huffman noted that the purpose of introducing the joint resolutions was to stimulate activity on this issue in the General Assembly. He reported that over the course of the past month, Rep. Sykes and Mr. Jacobson, both Commission members, led a series of meetings and negotiations with senators and staff from both chambers. He gave Senate and House staff much credit, as well as advisors, including Mr. Jacobson, who were very helpful.

Rep. Huffman noted that the general concepts of the joint resolutions were formed in early September, when he and Rep. Sykes began to discuss the proposals on a regular basis. There had been a series of proposals in the past which failed due to lack of real negotiation. Rep. Sykes attended all the meetings and time was spent going through all of the minute details.

Initially, the resolutions were introduced together. However, Rep. Huffman said it seemed each time they tried to move forward, someone from either side would object. Redistricting is a very complicated process on its own, but by adding layers of political interests on top of that, it gets even more complicated. It was then decided to handle each resolution separately.

Rep. Huffman said HJR11 (dealing with Congressional redistricting) stalled due to the pending decision from U.S. Supreme Court on the Arizona case.

HJR12 (dealing with General Assembly redistricting) passed out of the House on a bipartisan basis with four opposed: three Republicans and one Democrat. The Constitution enshrines majority rule and minority rights. Rep. Huffman said unless the Democrats approve there is no reason to put this issue on the ballot. They were able to get that accomplished.

Rep. Huffman said the Senate then introduced a resolution, and efforts were made to reconcile the differences between the two proposals. Rep. Huffman is confident they will return a product everyone will like.

Invited to make further comment, Rep. Sykes added that Rep. Huffman's role was prominent. Rep. Huffman has been working on this for at least three years, and his openness, staff, and support of bipartisanship, have all contributed to the success of the process. Rep. Sykes expressed his hope that the Senate will come up with something everyone can be a part of.

Chair Mills thanked both representatives for their work. Rep. Huffman said the work of the Legislative Branch and Executive Branch Committee during the past year was very important and that the independent analysis of various witnesses coming before the committee helped him and others understand the process of coming to agreement about the plan. The Legislative Branch and Executive Branch Committee's role in bringing information to the public and being part of the discussion has been invaluable.

Committee member Talley asked about the drawing of congressional districts, and whether that work goes away if the legislature acts on HRJ 12, or if the Commission will still be involved with it. Would the resolution go to the voters for ratification? Chair Mills explained that if the General Assembly does pass something it would go on the November ballot; as introduced in the Senate it would be on May ballot. The General Assembly will have to put it before the voters.

Chair Mills further explained, regarding congressional redistricting, the policy makers have spoken; they do not want to move forward with this proposal at this time, preferring to wait for a decision to be handed down from the United States Supreme Court in the case of *Arizona State Legislature v. Arizona Independent Redistricting Commission*, 997 F. Supp.2d 1047 (D. Ariz. 2014).

Rep. Sykes said the referendum issue was paramount to many democratic members of the General Assembly. There have been some discussions about this issue and that, with a referendum, a map is needed for the interim. However, signatures would need to be collected and an election held to determine if the map will stand. The solution was to propose a process whereby, instead of having to collect signatures, or wait on an election return, the process just recognizes that the map automatically must be redrawn if there is no bipartisan plan.

Rep. Huffman further stated there is no reason the congressional redistricting process has to look the same, be the same, or have the same concepts as the statewide redistricting process.

Article II Overview

Steven Steinglass, Senior Policy Advisor to the Commission, presented an overview of Article II, reviewed topics the committee might consider at future meetings.

Mr. Steinglass distributed a copy of the Ohio Constitution. He then proceeded with a description of several of the sections of Article II, providing background information and identifying issues.

He began by stating that Article II embodies the Ohio approach to separation of powers which as a doctrine is alive and well in Ohio. Most states have an explicit separation of powers provision; Ohio doesn't, neither does the U.S. Constitution. As the federal courts have applied the principle on the federal level, Ohio courts have found separation of powers implicit in the way in which our Constitution is organized.

Mr. Steinglass also noted the different ways in which state and federal constitutions are organized. The U.S. Constitution is a document of limited power, meaning that Congress only has powers it can specifically tie to a provision in the U.S. Constitution. In Ohio, the state constitution provides plenary power.

Mr. Steinglass described the history of Article II as being one of the most frequently amended of all the articles. It is the third most frequently amended article, having been amended at least 15 times since 1851, reflecting an evolving set of expectations concerning the legislature and state government. The General Assembly originally had power to select many statewide offices.

Mr. Steinglass noted there are 43 provisions as set out in Article II. Of the 43 provisions, 15 date back to 1851 and never have been changed. Six provisions date back to the 1912 Constitution and never have been changed. Fourteen provisions have roots in the 1973 reorganization of the General Assembly. Of those fourteen, four have been repealed.

In 1912, there were a substantial number of changes to Article II, including Section 1. Though this committee is not charged with Section 1 (the Constitutional Revision and Updating Committee is reviewing it), this section is where the 1912 Constitutional Convention put direct democracy in place through the referendum.

Portions of Article II, Section 2, regarding term limits, are unnecessary as being a transitional piece that describes how the state went from two years to four years for terms in the Senate. This committee is continuing to look at the subject of term limits.

Article II, Section 5 prohibits holding office by those convicted of embezzling public funds. This provision was on the ballot in 1972 as a result of the recommendation of the Ohio Constitutional Revision Commission, but was knocked off the ballot due to the single subject rule.

According to Mr. Steinglass, Article II, Section 8, regarding regular and special sessions, may not be relevant today. The state has gone through a series of steps, with the current provision dating from 1973. We now have annual sessions. There is language about who can call special session. The General Assembly does not have the power standing alone. Ohio deviates from other states on this.

Article II, Section 10, regarding the right of members to protest, has not changed since 1851.

Article II, Section 11, relates to filling vacancies and has changed multiple times since 1851. It used to be a requirement that vacancies could be filled by elections, but in 1961 a process was established letting each party fill its vacancies.

Article II, Section 12, provides for legislative members to be free from arrest during, going to, or returning from a session of the General Assembly, and provides for their freedom of speech in either chamber.

Article II, Section 15(D), provides the often-cited one subject rule, which has undergone significant change over the years. Mr. Steinglass indicated that a good topic for discussion would be how that provision applies to modern legislative function.

Article II, Section 16, relates to the governor's veto power, and has been the subject of recent Ohio Supreme Court litigation.

Article II, Sections 17, 18, and 19, all have been repealed, and their subjects put into other sections.

Article II, Section 21: earlier versions of the published Constitution erred in not accurately quoting Section 21, which actually reads: "The general assembly shall determine, by law, before what authority, and in what manner, the trial of contested elections shall be conducted."

Article II, Section 23, relates to impeachments. There are a number of sections dealing with impeachments. Compared to Wisconsin, Ohio has weak recall but strong direct democracy; while Wisconsin has strong recall but weak direct democracy. Very few impeachments have occurred. It was commonly used in early 19th century, especially against judges. It has not been used very often since.

Article II, Section 25, was moved to another section.

Article II, Section 26, uniform operation of laws, reflects that in 1851, the General Assembly was required to do business differently, because most legislation in Ohio was private legislation. This provision requires the General Assembly to represent all people. There is a portion of Section 26 that is not well understood and is even more rarely utilized. Some states have a procedure where if the state wants to gain approval for a controversial provision, they can put the issue on the ballot. That kind of plebiscite is not part of Ohio government. However, this particular provision has been interpreted to permit the General Assembly to adopt something subject to the approval of any other authority.

This was attempted in the 1990s on a sales tax issue. In terms of voter response it was not successful, but in terms of guidance from Legislative Service Commission, it was. Mr. Steinglass mentioned this because Speaker Kurfess had asked if we want more of this, and because three proponents of the 1990 measure serve on this committee.

Article II, Section 27, involves the filling of vacancies.

Article II, Section 28, involves retroactive laws.

Article II, Section 30, relates to creating new counties. The 1802 Constitution had a provision saying a county had to be at least 400 square miles; this was repeated in the 1851 Constitution. The 1851 Constitution created additional protection for the integrity of counties, when there were 87 counties created. Once this new provision was enacted, no new counties were created under its control.

In 1851 the General Assembly lost the power to grant divorces, by adoption of Article II, Section 32.

Article II, Sections 33 through 41, are sections created by the 1912 Constitutional Convention. Section 33 is the “courts have gone too far” provision. One part of the language is a little odd. If the General Assembly has plenary power and can do what it wants, why do we need a specific provision saying it may pass laws to allow mechanics’ liens? The problem was there were constitutional limitations that prevented the exercise of the limitations in that case; this was almost a supremacy clause. It was very broadly and oddly worded.

Article II, Section 34, was enacted after the Ohio Supreme Court held minimum wage statutes to be unconstitutional. The last phrase gives this provision its force because it says no other provision shall limit this power. When the Ohio Supreme Court upheld public employee collective bargaining in the Rocky River case [*Rocky River v. State Employment Relations Bd.*, 39 Ohio St. 3d 196, 530 N.E.2d 1 (1988)], it relied on that last phrase as reason to refuse to do home rule analysis. Also, see durational residency requirements for city employees. This was challenged as a violation of home rule when the Ohio Supreme Court used this last sentence. Though it appears to be an innocuous sentence, it is not.

Article II, Section 35, relates to workers compensation. This was designed to create a constitutional foundation for the workers compensation program.

Article II, Section 36, is the origin of the conservation provision, and the current issue of taxation of agricultural lands.

Article II, Section 42, deals with the continuity of government in periods of emergency resulting from enemy attack, which arose during the nuclear threat posed during the Cold War. It was adopted in 1961.

At the conclusion of Mr. Steinglass’ presentation, Chair Mills asked the committee to discuss thoughts on these topics and what might constitute the subject of future meetings.

Chair Mills noted the committee would like to deal with term limits and a salary commission for elected office holders. Other committee members mentioned the single subject rule, noting that in some cases it does put a cloud on the legislation. In addition, others expressed the thought that the committee should resume discussion about term limits.

It was also noted that Section 30, regarding the creation of new counties, seems to be oddly placed, and might be more suitable as part of the jurisdiction of the Education, Public Institutions, and Local Government Committee. It was suggested that this committee might want to hand that provision off to that committee.

Mr. Steinglass suggested the committee might benefit from a short memo summarizing the work of the 1970s Commission as a way to begin to focus on the agenda for this committee.

Committee member Davidson suggested that if the sections were divided into groups that relate to each other, the committee might be able to clean up everything in one particular area at the same time.

Chair Mills likes the idea of clustering the sections, and also the memorandum about the 1970s Commission, and asked whether these could be ready for the next meeting. He also noted that there are sections on impeachment and removal from office scattered throughout the Constitution, and wondered whether this committee should or could cluster those sections even though they are not in this article.

Governor Taft suggested the committee should hear testimony and further information on Section 26, relating to plebiscites, and to learn more about the workers compensation provision and what kind of constraints there are on that provision.

Ms. Davidson also mentioned that sending the school funding issue to the ballot in 1997 is an example of the types of things in the Constitution no one pays attention to until it comes out and you have to pay attention.

Chair Mills asked Mr. Steinglass to prepare a similar review of Article III for a future meeting.

Ms. Davidson asked if there is resolution on redistricting and it will be on the November ballot, should the committee expedite a term limit discussion so that it could follow the same path? Chair Mills agreed that this was a good idea.

Adjournment:

With no further business to come before the committee, the meeting adjourned at 2:15 p.m.

Attachments:

- Notice
- Agenda
- Roll call sheet

Approval:

These minutes of the December 11, 2014 meeting of the Legislative Branch and Executive Branch Committee were approved at the February 12, 2015 meeting of the committee.

/s/ Fred Mills

Frederick E. Mills, Chair

/s/ Paula Brooks

Paula Brooks, Vice-chair



OHIO CONSTITUTIONAL MODERNIZATION COMMISSION

MINUTES OF THE LEGISLATIVE BRANCH & EXECUTIVE BRANCH COMMITTEE

FOR THE MEETING HELD
THURSDAY, FEBRUARY 12, 2015

Call to Order:

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

Members Present:

A quorum was present with committee members Mills, Brooks, Davidson, Taft, Tavares, and Trafford in attendance.

Approval of Minutes:

The minutes of the December 11, 2014, meeting of the committee were approved.

Presentation:

Frank Strigari
Majority Counsel
Ohio Senate

Senate Majority Counsel Frank Strigari presented on Senate Joint Resolution 1 (SJR 1) regarding the creation of the Public Office Compensation Commission (POCC).

Mr. Strigari provided an outline of SJR 1, which would change the way the Ohio Constitution provides for how the salaries for elected officials are set. Currently, the General Assembly is constitutionally required to pass legislation that establishes compensation rates for public officials. This includes members and officers of the General Assembly, executive officers, the chief justice and the justices of the Supreme Court, the judges of the courts of appeals, the judges of the courts of common pleas, and county public officials, except for those officials elected under home rule.

Mr. Strigari noted that the General Assembly has not passed legislation to raise the salaries of public officials since it passed HB 712 in 2000. HB 712 included an annual cost of living

adjustment that ended in 2008. He emphasized that all public officials have been receiving the same salary since 2008.

Mr. Strigari also noted that 19 states have established compensation commissions. Of those 19, 13 were created by amendments to state statutes. This occurred in states such as Arizona, Arkansas, California, Hawaii, Idaho, Maryland, Texas, Washington, and West Virginia. The other six states that have compensation commissions established such a commission via statute. Mr. Strigari highlighted Arkansas, which passed a constitutional amendment establishing a compensation commission in November 2014. This commission is charged with compensating judges, legislators, and other elected officials. Mr. Strigari noted that the Arkansas Compensation Commission has been meeting frequently and is preparing to submit a pay plan soon.

He also highlighted the City of Columbus, which has established a compensation commission recently. In a statement about the newly created compensation commission, Mayor Mike Coleman said the commission, which puts the power to decide the pay of elected officials in the hands of the people, was an emerging best practice, and was “the right thing to do.” Mr. Strigari noted that compensation commissions seem to be gaining traction.

After presenting this background, Mr. Strigari discussed the provisions contained in SJR 1. SJR 1 would constitutionally establish the POCC, which would set salaries for elected officials in Ohio, except for those officials elected under home rule. If SJR 1 is adopted by three-fifths of each house before August 2015, it will be placed on the November 2015 ballot. SJR 1 is nearly identical to SJR 9, which was presented in the last General Assembly. SJR 9 was passed unanimously in the Senate in December 2014, but did not pass the House.

Mr. Strigari asserted that the central question to determine the success of SRJ 1 is whether the electors want legislators to establish their own salaries.

Mr. Strigari then detailed the organization of the proposed compensation commission. There would be nine voting members: two appointed by the Governor, two appointed by the President of the Senate, two appointed by the Speaker of the House of Representatives, one appointed by the Minority Leader of the Senate, one appointed by the Minority Leader of the House of Representatives, and one appointed by the Chief Justice of the Supreme Court. Additionally, some individuals would be prohibited from membership. These individuals include officers and employees of the state, family members of officers and employees of the state, individuals who have run for public office in the state in the last 12 months, and lobbyists. Members will be appointed to two-year terms and may serve four consecutive terms, but cannot serve more than eight years total.

The POCC would be required to meet every two years to review its compensation plan. The commission would prepare a draft of its compensation plan, have at least three public hearings to garner feedback from the public, and then prepare its final compensation plan by December 31 of every even numbered year. The final compensation plan would become law on July 1 of the following odd numbered year, unless the General Assembly opposes the proposed plan by concurrent resolution. Mr. Strigari also noted that, should the POCC raise salaries by more than the rise in cost of living, such a raise would need to be justified.

Mr. Strigari highlighted that SJR 1 would require the newly established compensation commission to meet immediately. If SJR 1 is approved, the compensation commission would need to set compensation levels by December 31 of this year, and those compensation rates would go into effect by July of next year. Mr. Strigari stressed that a compensation commission will work more quickly than any legislation on the subject. He then thanked the chairs and members of the Legislative Branch and Executive Branch Committee and opened the floor for questions.

Vice Chair Brooks asked about the characterization of compensation commissions as an emerging best practice. She enquired as to what documentation there was for such an assertion. She noted that she had not heard of any data from the National Association of Counties. Mr. Strigari said that little documentation exists on the success of compensation commissions, but that the National Conference of State Legislatures had some information. Mr. Strigari plans to provide Chair Mills with this information.

Vice Chair Brooks also inquired about the lobbyist exception to membership on the compensation commission. She stated that under Governor Celeste, when lobbyists were not documented in detail, the Governor passed an Executive Order that dealt with companies that had a matter before an agency for an extended period of time. These companies were considered lobbyists under the Executive Order. Vice Chair Brooks asked whether SJR 1 included this definition of lobbyist in its exception to membership on the compensation commission. Mr. Strigari replied that SJR 1 did not include any definition of that type. Vice Chair Brooks stated that such a definition should be considered.

Committee member Trafford asked about the breadth of the compensation commission's jurisdiction, and how non-elected officials would be distinguished from regular government employees. Mr. Strigari stated that the intention of the language is to give the POCC jurisdiction over the same individuals for which the General Assembly currently establishes salaries. Ms. Trafford commented on the ambiguity in case law about who is an employee and who is a non-elected official, and asked Mr. Strigari how such ambiguity should be handled in the Ohio Constitution. Mr. Strigari stated that the non-elected officials' language is meant to capture county boards of elections officials. These are individuals who are appointed, but have salaries established by the General Assembly. Mr. Strigari also noted that the Legislative Services Commission helped draft the language, and suggestions on drafting are welcome.

Ms. Trafford asked whether this bill has been passed by the Senate. Mr. Strigari stated that SJR 9, a nearly identical bill, was unanimously passed by the Senate. However, SJR 1 is still in committee.

Chair Mills opened the floor for additional questions. He noted that the staff of the Ohio Constitutional Modernization Commission can create drafting options to be considered by the committee. Mr. Strigari noted that sufficient time exists to make sure that the language is appropriate. Senator Tavares added it is an opportune time to take language proposals before the Senate Finance Committee.

Committee Discussion:

Chair Mills then brought up two other important issues to discuss: redistricting and term limits. Because these issues may go on the ballot this year, Chair Mills plans to hold committee meetings every month for the foreseeable future.

Redistricting Proposal

Chair Mills gave an overview of the work the committee has done on redistricting thus far. For many months, the committee has heard testimony on redistricting. In November and December 2014, the General Assembly moved forward with HJR 12, which affects the districts of the General Assembly. HJR 12 will be on the ballot this year. Because the committee is well informed on the redistricting issue, Chair Mills wondered whether it is appropriate for this committee to take a stance in support of the issue as it appears on the ballot. He then opened the floor for discussion on that issue.

Committee member Taft asked a broader question: is it the proper role of this commission to take positions on issues we did not initiate? Chair Mills affirmed that Mr. Taft re-phrased his question well and opened the floor for thoughts on the issue.

Ms. Trafford asserted several reasons why the committee might not want to weigh in on ballot issues. She stated that it is not in the purview of the committee to approve or criticize actions that the General Assembly may take independently of the Commission's recommendations. She mentioned that it may confuse or mislead the voters about where the policy originated. Senator Tavares responded that the committee has been highly involved in the redistricting issue and has discussed it at length. This may be a reason to analyze the ballot issue and see if it meets the goals of this committee. It might be a good idea even though the process is out of order. Senator Tavares commented that typically, the General Assembly would review recommendations of the Commission and not the other way around.

Vice Chair Brooks asked how the 1970s Ohio Constitutional Revision Commission decided to handle such issues. Chair Mills responded that his understanding is that no plan was put into place by the 1970s Commission, but that the issue could be researched. Committee member Davidson then mentioned that the current Commission should create a policy that defines its role in responding to ballot issues on which it is well informed. She stated similar situations will arise with the General Assembly in the future. Chair Mills asked for comments from OCMC Executive Director Steve Hollon and Counsel to the Commission, Shari O'Neill.

Ms. O'Neill affirmed Chair Mills's point; this issue was raised with the 1970s Commission but was never resolved. Ms. O'Neill offered to write a brief memo on the issue. Mr. Hollon stated that he informally raised the issue with the Joint Legislative Ethics Commission, and that while they did not give an outright prohibition, they did not state there would be no violation if members of the Commission choose to speak about items on the ballot. That choice is a matter for Commission leadership and authority given to the Commission by the General Assembly as to whether they want the Commission to speak out on ballot issues.

Chair Mills confirmed that this issue is on the agenda of the full commission, which will meet later today.

Legislative Term Limits

Chair Mills introduced the discussion on term limits and opened the floor to Mr. Hollon for an overview of that issue. Mr. Hollon called the Committee's attention to part two of the meeting materials, specifically the memo he wrote on options for amending Ohio Constitution Article II, Section 2, discussing term limits. The OCMC staff created two options for amending this section of the Constitution. The first option is to increase the term limit from 8 to 12 years and apply that increase to current members of the General Assembly. The second option is to increase the term limit from 8 to 12 years but it would not to apply to current members of the General Assembly.

Chair Mills asked whether there were any substantive questions about the proposals. There were none. Chair Mills then asked whether there were any questions on the merits.

Ms. Trafford inquired about the rationale for the two proposals. Chair Mills responded that the first option is more likely to be acceptable to 3/5 of the General Assembly, but that the second option is more likely to be acceptable to the voters. He also stated that testimony favors the change from 8 to 12 years, but also indicated that voters do not want to remove term limits entirely.

Committee member Taft asked whether other states have applied lifetime service requirements. Steve Steinglass, Senior Policy Advisor to the Commission addressed this question. Mr. Steinglass stated that some states do have lifetime service requirements. Some states limit how many consecutive terms a representative can serve, and others limit how many total terms representatives can serve. Mr. Steinglass also noted that there have been no successful repeals of constitutionally embedded term limits in the country. The only successes have been in lengthening the terms. In fact, Arkansas lengthened its term limits in November.

Mr. Taft then asked about the chart on the second page of Mr. Steinglass's memo. Mr. Steinglass explained that this chart shows which states have limits on consecutive terms. Only 15 states have consecutive term limits. Six states have repealed them, but the repeals occurred in states where the term limits were adopted by the legislature itself. Mr. Taft asked how many states have lifetime bans. Mr. Steinglass replied that six states have lifetime bans.

Ms. Davidson asked whether extending term limits would apply to sitting members of the General Assembly or only to those newly elected. Mr. Steinglass stated that in situations of prospective extension, there is much success. In California, there was a campaign to extend term limits for sitting legislators. That proposal failed. It was reintroduced a few years later, but only applied to newly elected members. Mr. Steinglass stated that while these examples exist, the number of states that have attempted an extension of term limits is small; it's misleading to say that a trend has occurred.

Vice Chair Brooks asked to clarify how many total states have term limits. Mr. Steinglass answered that 15 states currently have term limits. Vice Chair Brooks then confirmed that there

are no emerging best practices in regards to term limits. Mr. Steinglass agreed that trends are difficult to find.

Chair Mills inquired about options for how to proceed. Ms. Trafford stated if there is a compelling reason to extend term limits from 8 to 12 years, it should be done sooner rather than later. The only reason to delay the extension, she noted, would be that the amendment might be more likely to succeed.

Mr. Taft stated that, if the Committee decides to proceed, he would like to discuss the policy pros and cons of a lifetime limit on service in the General Assembly. Mr. Taft is interested in lifetime bans irrespective of chamber.

Chair Mills called for public comments. There were none. He stated that the term limits issue will re-appear on the March agenda. Chair Mills expressed that he would like to bring the issue for a vote at that meeting. Mr. Hollon reminded the Committee that, once it votes and approves a recommendation that will constitute a first draft. A second draft would then go to the full Commission the following month.

Adjournment:

With no further business to come before the committee, the meeting adjourned at 12:08 p.m.

Attachments:

- Notice
- Agenda
- Roll call sheet

Approval:

These minutes of the February 12, 2015 meeting of the Legislative Branch and Executive Branch Committee were approved at the March 12, 2015 meeting of the committee.

/s/ Frederick E. Mills

Frederick E. Mills, Chair

/s/ Paula Brooks

Paula Brooks, Vice Chair



OHIO CONSTITUTIONAL MODERNIZATION COMMISSION

MINUTES OF THE LEGISLATIVE BRANCH & EXECUTIVE BRANCH COMMITTEE

FOR THE MEETING HELD
THURSDAY, MARCH 12, 2015

Call to Order:

Chair Mills called the meeting of the Legislative Branch and Executive Branch Committee to order at 11:00 a.m.

Members Present:

A quorum was present with committee members Mills, Asher, Coley, Curtin, Davidson, Manning, Taft, Talley, Tavares, and Trafford in attendance.

Approval of Minutes:

The minutes of the February 12, 2015, meeting of the committee were approved.

Presentation:

Term Limits

Rob Walgate

Vice President

American Policy Roundtable

Rob Walgate, Vice President of the American Policy Roundtable made a presentation on term limits for Ohio legislators.

Mr. Walgate provided a history of how term limits language originated in the Ohio Constitution in 1992, concessions that were made in favor of the legislature at that time, and the risk of upsetting the careful balance of existing language.

Mr. Walgate identified four concessions which were made when the constitutional provisions on term limits were added to the constitution and which he believes favored the legislature:

- 1) Public opinion and a majority of the widely diverse coalition of supporting organizations favored a total of six years in office; however,

the committee agreed to eight years to maintain a proper balance of powers between the legislature, members of the executive branch, and the governor.

- 2) Public opinion wanted immediate implementation of term limits; however, the committee chose to grandfather the existing legislature so no years previously served would be held against then current legislators.
- 3) Public opinion, and the original consensus of the committee, was to not permit lawmakers to move from one chamber of the legislature to the other and by so doing serve more than a total of eight years in the legislature. Language was drafted with “eight years and out” provision. The committee however avoided this language, which allowed elected officials to double the eight-year term in office, provided they move to the other chamber. In addition, the committee left such movement open-ended so a lawmaker could repeat the process indefinitely if the voters so chose.
- 4) The fourth concession allowed for a member serving a partial term to not have that term count against the eight-year limit. This was done to prevent penalizing anyone willing to step into office on behalf of someone unable to complete the term.

Mr. Walgate said it is important to acknowledge the careful balance of existing language. Several of these provisions have made Ohio term limits laws most effective and permitted a good number of lawmakers the opportunity to serve for a lifetime in the legislature. He also said this debunks the myth that seniority and institutional knowledge have disappeared from the Ohio legislature.

Mr. Walgate continued by saying that regarding the existing proposals, the people of Ohio are not asking for these changes; no petitions have been drawn nor have any signatures been gathered. He believes this is being done in the interest of politicians and their lobbying allies who are advocating these changes, which uniquely serve them.

Mr. Walgate expressed his concern that this amendment would be placed on the ballot at taxpayer expense and absent taxpayer request. He also stated his concerns with this issue being on the ballot in an off-election year, where turnout is typically low, instead of on the ballot during the presidential election, where turnout is much higher.

Committee member Sen. Charleta Tavares asked how many residents of the state of Ohio participated in the final decision to implement term limits.

Mr. Walgate replied that, in the 1990s, they had thousands of petitions. Today we are not hearing a consensus of the will of the people that it should be changed.

Sen. Tavares then asked if it was a majority of the registered voters that voted in that election. It is usually a small vocal minority that participates.

Mr. Walgate replied the high turnout was because it was a presidential election year. If you want a fair assessment, that is as close as you might get.

Committee member Herb Asher asked Mr. Walgate if what he described as those who want change as “career politicians and lobbying allies,” then does he believe newspaper editorial boards are lobbying allies or that the League of Women Voters are lobbying allies? He continued by saying this was an interesting way of describing those groups, and that the tone doesn’t reflect broader concerns. Mr. Asher said that as he views American politics, he does not like the argument that the majority wants this. He further commented the more discussion you have the more you realize it is not the kind of open-and-shut discussion as Mr. Walgate portrays it.

Mr. Walgate apologized for his tone. He said, when there is talk about amending the constitution, undoing term limits causes concern because much effort went into this.

Mr. Asher said if one goes back to 1992, there was an anti-incumbent, anti-democratic tone regarding the U.S. House of Representatives. However, the groups that carried this were the groups that were legitimately concerned, but very ideological. It was a partisan and ideological group, but they spoke nicely about how bad career politicians were. This wasn’t the rank and file citizenry rising up in arms. The reality Mr. Walgate describes is not the one Mr. Asher recalls.

Mr. Walgate said the people who collected the signatures were the general citizens rather than paid signature gatherers. The threat of constant turnover in the General Assembly has not played out.

Committee member Rep. Mike Curtin commented all term limits are not created equal; there is variation among the states. What is the ideal, does the roundtable have a number? Is there a model that Mr. Walgate’s organization supports?

Mr. Walgate replied that the model they look at is the 1992 amendment. His organization has not complained about twenty-year veterans in the General Assembly. He said the organization does not have a platform that everyone should follow.

Sen. Coley said he is aware Mr. Walgate’s organization does work in Florida and Tennessee. Florida’s term limits are similar to Ohio, Tennessee’s are not. Has Mr. Walgate seen a difference in the quality of legislators in these states? What is the experience in the three different states?

Mr. Walgate replied all state legislatures operate differently. In Florida, the length of their session is very short.

Committee member Bob Taft asked if in those states without term limits, what bad things are happening without term limits that might not be happening if term limits were in place?

Mr. Walgate replied that leadership in Ohio in the 70s and 80s was static. It was not a bad thing to see the legislature change. It is not true that we will lose our institutional knowledge. How important is it if, as what happened in Ohio recently, we pass up someone who has institutional knowledge to be speaker and pick someone else?

Mr. Walgate also said he hasn't found a state where term limits have been repealed by the people.

Ms. Davidson commented the states that do not have limits are not rushing to add them and some states have repealed. With no huge movement on this issue, has public opinion shifted?

Mr. Walgate replied that repeals have been by the courts, not the legislatures. In Ohio, we had citizens who came together to work to get this on the ballot. He is not seeing Ohio citizens working together on extending or eliminating term limits.

Ms. Davidson said if the Commission wants to do this it ultimately would involve people voting.

Mr. Walgate replied this issue was cherry-picked out of the constitution, unlike the other provisions. Shouldn't we look at other issues? To which Ms. Davidson replied we are here to look at the whole constitution.

Sen. Tavares said the whole initiation of term limits was led by an entity, so to say that the people were initiating this, without the efforts of an entity, is not exactly accurate. Whether it was his organization or others, it was still an effort by a larger organization. Sen. Tavares remarked that she still wants to know if it was a majority of the registered voters that made the decision, which makes a huge difference for her.

Mr. Walgate said he will get the numbers for her. When we look at the early 90s it was much different then as there were no paid signature gatherers. Sen. Tavares remarked that now, not every effort utilizes paid signature gatherers.

Mr. Asher said he agrees that signatures were collected by people unpaid in 1992. But the history of this is that there was a political movement that took advantage of distaste for the U.S. Congress, particularly the House of Representatives. There was clear partisan and ideological motivation in that Democrats held the House for many years and had grown arrogant. The irony was that a lot of other office holders got swept up in this. Who got protected was the U.S. Congress when the U.S. Supreme Court ruled that state constitutions could not impose term limits on federal legislators. It is misleading to suggest this was a spontaneous rejection of long term incumbency. Ms. Davidson's comments are appropriate; perhaps now giving Ohioans a chance to revisit their decision is a reasonable thing. They may confirm it. But there are many more people critical of term limits other than career politicians and their lobbying allies.

Mr. Asher continued saying the point of the 1992 issue was that the U.S. Congress had been arrogant; many Republicans who ran in 1994 when the Republicans took control had pledged that they would only serve three terms. To demonstrate how political all of this was, many of those members who took that pledge discovered that seniority has its benefits and decided to run again and if their voters re-elected them, that it is okay. That was a politicized environment that was partisan and ideological. Today, we see people from all backgrounds who think it is worthwhile to revisit the issue.

Mr. Walgate said the fact that there are good people who are term limited doesn't matter; the nightmare that was predicted to be the outcome of term limits hasn't happened.

Chair Mills commented that he takes exception to the "cherry-pick" term. The redistricting discussion in this committee led to it being on the ballot this year. We have a good system for redistricting reform going on to the ballot, and this committee played a role.

Mr. Walgate apologized for the offense. He emphasized that no one understands the need for the proposed extension of term limits. It will create an imbalance of power, and his organization doesn't see the need for it.

Report and Recommendation:

Executive Director Steven C. Hollon then presented two versions of a report and recommendation for Article II, Section 2 on term limits.

Chair Mills asked if the committee had any technical questions, and no one did. He then asked for public comment. Carolyn Harding, a concerned citizen, asked to speak. She questioned why representatives have two-year rather than four-year terms. She asked the committee to consider four-year terms for representatives. She does like term limits because they give other people voices, but she likes four-year terms for each chamber.

Committee Discussion:

Election and Term of State Legislators

The committee then held a discussion among members. Chair Mills noted this was the first presentation of the report and recommendation. The topic of term limits will be on the agenda for the April meeting, at which time he expects a formal vote.

Committee member Kathleen Trafford asked whether anyone knows why it is only two years for representatives. Mr. Asher answered that there has been traditionally the notion of the House being "the people's house," and House members having to go back to the electorate more frequently seemed to fit that notion. The Senate has been viewed as a more elite or prestigious organization. There has been a different methodology for selecting U.S. Senators historically, with senators representing geography and representatives representing the people. Other states have followed this model.

Sen. Coley remarked the House always feels that, because an election is always looming, representatives tend to be more sensitive to the concerns of the district and more susceptible to strong feelings on bills. The Senate, by contrast, is viewed as being more deliberative because it has the time. The Senate is considered as having a better opportunity to deal with priorities of citizens because it does not always have to go with the flavor of the day.

Sen. Tavares observed that members of the House stay in touch with the electorate when they have to run every two years. When members know they have four years, there is a longer period of time and the people do not hold senators accountable as frequently; the electorate has four

years to forget. With a two-year term, the voters will remember what the representative did or did not do.

Ms. Harding commented that this gives the lobbyists more power as well. She believes this should be examined, although she appreciates that two-year terms do keep representatives in touch with the people. She believes the lobbyists see the legislators more often than the people do.

Sen. Tavares disagreed saying it is wrong to stereotype legislators because they are individuals, and handle their responsibilities in different ways.

Chair Mills then asked whether anyone had opinions on the options reflected in the two versions of the report and recommendation.

Committee member Rep. Mike Curtin prefaced his remarks by saying that he is speaking for himself, rather than in his legislative capacity because the House Democratic caucus has not discussed this issue. He said that selecting Option One, which gives all legislators 12 successive years, reduces the likelihood that voters will approve it as it looks to be self-serving. He predicted that if the proposal is to extend the terms of current members, it will be pounded by editorial boards and “we walk into a buzz saw.” He said, over the years, polls have shown that two thirds of people think term limits are a good thing and wouldn’t repeal them. That majority hasn’t changed much. Rep. Curtin continued by saying the Commission will have a big educational campaign ahead of it if Option One goes forward. He would vote for Option One, not Option Two. He said that the state needs redistricting reform and this should be the primary goal. It would endanger redistricting reform to put Option One on the ballot in November.

Ms. Davidson said she agrees with Rep. Curtin to a certain extent. But she said the committee would step on its own argument by applying the extension only to new legislators. She said the justification for extending the limits is to retain experience in the legislature. Not applying the extension to current legislatures defeats the purpose because those experienced people will be out. When term limits took effect in the 1990s, Ohio lost 700 years of experience in the legislature. If we really believe extending the limits is a good thing, limiting the extension to newly elected members will eliminate a lot of members whom we have an opportunity to preserve.

Sen. Tavares said she agrees with Rep. Curtin that it would be self-serving to put the term limit issue - regardless of which option - on the ballot before we get the redistricting proposal through; redistricting has to be the first step. She remarked that the committee has not discussed timing. Does it have to go on the ballot in this next election?

Rep. Curtin said if redistricting passes this November, and Option One goes on the 2016 ballot, it would be a whole different thing.

Chair Mills said his intent is to recommend Option One or Option Two to the Commission and then to the General Assembly, which can put it on the ballot whenever they want to. The discussion and decision in this committee is a first step.

Dr. Asher asked whether it was anticipated that the committee would make a recommendation about the timing. He observed that both options get greater credibility if the committee already has taken redistricting to the electorate and that gets approved.

Chair Mills said there will be a second discussion of this at the April 9th committee meeting, indicating there will hopefully be a vote at that meeting.

SJR 1 – Public Office Compensation Commission

Chair Mills then raised the issue of whether Ohio should have a Public Office Compensation Commission, drawing attention to a memorandum by Commission staff regarding these commissions as they have been created in other states. Although the committee will not discuss this topic today due to time, he asked the committee to review the memo, for discussion at the next committee meeting. He said the committee will solicit testimony from interested parties at the next meeting on this topic.

Mr. Hollon acknowledged the work of Ohio State University Moritz College of Law Intern Hailey Akah in creating the pay commission memorandum.

Other Discussion

Chair Mills welcomed three new members to the committee: Representatives Mike Curtin and Nathan Manning, and Herb Asher.

Chair Mills said monthly committee meetings will continue for the foreseeable future.

Adjournment:

With no further business to come before the committee, the meeting adjourned at 12:30 p.m.

Attachments:

- Notice
- Agenda
- Roll call sheet
- Biographical sketch of Rob Walgate
- Prepared remarks of Rob Walgate

Approval:

These minutes of the March 12, 2015 meeting of the Legislative Branch and Executive Branch Committee were approved at the April 9, 2015 meeting of the committee.

/s/ Frederick E. Mills

/s/ Paula Brooks

Frederick E. Mills, Chair

Paula Brooks, Vice Chair



OHIO CONSTITUTIONAL MODERNIZATION COMMISSION

MINUTES OF THE LEGISLATIVE BRANCH AND EXECUTIVE BRANCH COMMITTEE

FOR THE MEETING HELD
THURSDAY, APRIL 9, 2015

Call to Order:

Chair Mills called the meeting of the Legislative Branch and Executive Branch Committee to order at 9:40 a.m.

Members Present:

A quorum was present with committee members Mills, Brooks, Asher, Coley, Curtin, Davidson Tavares, and Trafford in attendance.

Approval of Minutes:

The minutes of the March 12, 2015, meeting of the committee were approved.

Presentations:

Redistricting of Congressional Districts

Representative Kathleen Clyde
75th House District

Representative Clyde presented House Joint Resolution 2 (“HJR 2”) to the Committee. She is a co-sponsor of the resolution, along with Representative Curtin. HJR 2, which proposes to reform congressional districts. It recently was introduced in the House of Representatives.

Rep. Clyde noted that HJR 2 closely mirrors House Joint Resolution 12 (“HJR 12”), the state legislative redistricting reform proposal that passed in the 130th General Assembly. She stated that the work done by the Ohio Constitutional Modernization Commission was instrumental to the passage of HJR 12. Rep. Clyde hopes that the Legislative Branch and Executive Branch Committee, as well as the full Commission, will support and approve HJR 2.

Rep. Clyde emphasized that the passage of HJR 12 did not reform all district line drawing in Ohio because the legislature removed congressional redistricting from HJR 12 before it was passed in December 2014. Rep. Clyde expressed her concern that gerrymandering leads to a legislature that is less responsive to the will of the public.

Rep. Clyde identified the following key points of the redistricting proposal:

- 1) The proposal creates a seven-member bipartisan panel with a least two members from the minority party. The panel will be comprised of four legislative members – two of whom are members of the minority party in each chamber – the Governor, the Auditor of State, and the Secretary of State.
- 2) Two minority votes would be needed to adopt the legislative boundaries for a 10-year period.
- 3) If the panel cannot agree on legislative boundaries, the maps will need to be drawn after four years. During that time, elections could bring new members to the panel.
- 4) If the panel cannot agree a second time, the new map will go into effect for the remaining six years. However, this map must adhere to tougher standards.
- 5) The Ohio Supreme Court is given clear guidance on how to determine if the maps are drawn properly.
- 6) The panel must draw the maps in such a way that minimizes the number of splits of counties, municipalities, and contiguous townships.
- 7) The constitutional provision would explicitly state that “No General Assembly district plan shall be drawn primarily to favor or disfavor a political party.”

Finally, Rep. Clyde addressed the pending U.S. Supreme Court decision in *Arizona State Legislature v. Arizona Independent Redistricting Commission*. If the Court issues a ruling that is inconsistent with the proposal, the power to draw congressional lines will stay with the legislature. The legislature, however, also must adhere to the new rules and fairness criteria listed in HJR 2.

Rep. Curtin then stated his support for HJR 2. He discussed the increasing problem that gerrymandering presents as the state and the nation become increasingly polarized. He also spoke about the previous passage of HJR 12, the success the legislature has experienced with state redistricting reform. Rep. Curtin said a bipartisan plan worked for the General Assembly on state legislative redistricting, which he thought it was impossible and considers a miracle. He said if HJR 12 is adopted by voters, it would bring to a close four decades of partisan gerrymandering that got worse with each decade. He said he studied this subject during his time as a reporter at the *Columbus Dispatch* and he had concluded Ohio wouldn't be able to come up with a bipartisan plan, but “we got it done,” in the General Assembly. He emphasized that congressional redistricting reform is “the last elephant left in the room.” Rep. Curtin

commented that the congressional district maps are some of the most egregious maps in the nation, and mentioned that no one has stood up to defend them. According to Rep. Curtin, none of the districts make any sense because they are not drawn to make sense, and that the district maps are “ridiculous, geographic absurdities.” He expressed his hope that reform will continue. He said, “We had tremendous showing of bipartisan agreement, we want to keep that going.”

Senator Coley responded that he would stand by the congressional maps as they are currently drawn. He also commented that the congressional districts in Ohio are not the worst in the nation, making specific reference to congressional district maps in the south. However, Sen. Coley stated that he agrees that politics should be removed from the process of drawing congressional district lines, which is why he supported state legislative redistricting reform last year.

Sen. Coley then asked whether the representatives should wait until after the Supreme Court rules on *Arizona State Legislature v. Arizona Independent Redistricting Commission* to finalize a plan for congressional redistricting.

Rep. Curtin stated that because of a secondary option built into HJR 2, it is not necessary to wait until the Arizona case is decided. Rep. Curtin said the case can only come out one of two ways: either the word “legislature” in the U.S. Constitution will be interpreted to mean the legislature, or it means the electorate and the legislature. He said because of this, if the court rules that an independent commission cannot do the job of congressional redistricting, then the task will be kept by the General Assembly. He said if the court rules it is permissible for an independent commission to play that role, having a commission is okay. According to Rep. Curtin, under the resolution, “we are covered either way.”

Rep. Clyde agreed, and reported the opinion of legal experts that were consulted in drafting the proposal. These experts indicated that the Arizona case is distinguishable from the current proposal in Ohio. Rep. Clyde said she does not believe the Arizona case will come to bear on HJR 2, but in case it does, the provision that keeps the line-drawing responsibility in the legislature would relieve that problem. Rep. Clyde added that while they were working on these plans, congressional reform was being discussed alongside it. She said that the planned redistricting commission has a legislative role because four legislative members would be on the commission. By contrast, she said the Arizona plan does not have that. She doesn’t think Arizona comes into play but just in case they included the provision allowing for legislature involvement that she has described.

Speaker Davidson asked for the approximate dates by which congressional lines would need to be drawn. Rep. Clyde responded that, while writing the proposal, they attempted to mirror the current timeline used by the General Assembly.

In his final comment, Rep. Curtin stated that the United States Supreme Court is expected to rule on *Arizona State Legislature v. Arizona Independent Redistricting Commission* in June. If that occurs, it would be possible to meet the August filing deadline that would put HJR 2 on the ballot this November. Rep. Curtin is hopeful that this timeline is possible and hopes that the Commission will keep congressional redistricting on its agenda until that time. He said the only

issue is that there is the pending Arizona case, but if the case is resolved in June, they could continue hearings and possibly act in time for the August filing deadline.

Term Limits

Tony Seegers

Director of State Policy

Ohio Farm Bureau Federation

Tony Seegers, Director of State Policy for the Ohio Farm Bureau Federation (“Bureau”), testified about the Bureau’s policy regarding term limits.

First, Mr. Seegers provided an overview on the Farm Bureau’s process for developing its policies. There is a country farm bureau in each of Ohio’s 88 counties. Members of each county farm bureau recommend public policy and, if approved at the annual county bureau meeting, the policy is submitted for review by the state policy development committee and is voted on at the Ohio Farm Bureau Federation’s annual meeting. Mr. Seegers commented on the extensive policy book that is developed annually through this process.

Then, Mr. Seegers presented the Bureau’s policy on term limits. It states, “We support extending the term limit for state legislators to 12 years. We support extending the term length for a state representative from two years to four years and extending the term length for a state senator from four to six years.” Although the Ohio Farm Bureau Federation supports extending term limits from 8 to 12 years, Mr. Seegers noted that the policy does not speak to a lifetime limit of 12 years for service in the legislature.

Mr. Seegers stated that the Bureau’s policy is based on the recognition that limiting the number of years of service reduces institutional and subject-matter expertise in the legislature.

Sen. Tavares asked Mr. Seegers how the Bureau decided to recommend adding two additional years to each chamber’s term. Because of the process by which Bureau policy is drafted, Mr. Seegers stated that he could only speculate about the reasoning behind the recommendation. He noted that adding additional years to a member’s term allows the member to spend less time campaigning. Sen. Tavares asked Mr. Seegers to provide additional information about how that recommendation was reached.

Vice-chair Brooks noted nuance in the Bureau’s policy, which states that other factors, like redistricting, might impact the Bureau’s position. She then asked how redistricting might change the Bureau’s policy on term limits. Mr. Seegers was unsure of the Bureau’s position, but stated that the answer would depend on the specific redistricting proposal the legislature proposed.

Committee member Asher asked whether the Bureau had discussed staggering the terms of legislators. Mr. Seegers had no knowledge of such a discussion. He believes the Bureau would support term staggering as it currently exists.

Governor Taft asked whether the Ohio Farm Bureau Federation has taken a position on congressional redistricting. Mr. Seegers stated that the Bureau does have a policy on redistricting. However, Mr. Seegers did not have that policy with him during the Committee meeting. He agreed to forward the Bureau's redistricting policy to Director Hollon.

Chair Mills asked whether the Bureau's policy is in favor of extending term limits from 8 to 12 years. Mr. Seegers confirmed that such an extension is the key point of the policy.

Committee Discussion:

Term Limits

Chair Mills opened the floor for further discussion of Article II, Section 2, the provision on term limits. At the last meeting, the Commission staff presented two versions of a report and recommendation that would extend term limits from eight to 12 years.

Rep. Curtin reported the position of the House Minority Caucus on the report and recommendation. He stated that he brought both versions to the caucus and asked for their feedback. Approximately 25 members were present at the caucus meeting, and Rep. Curtin said that six of them chose to provide feedback. Of those six, five members were not in favor of either proposal. These members believe redistricting is an important issue that may not pass if it is paired with a controversial issue, like term limit expansion. Rep. Curtin emphasized that these caucus members are not opposed to extending term limits. However, they are concerned about the timing of a term limit proposal on the ballot.

Sen. Tavares reported a similar position expressed by the Senate Minority Caucus. She commented that her caucus also believes redistricting should be on the ballot before term limit expansion. Sen. Tavares then presented an amendment that she prepared for either option of the report and recommendation. The amendment would delay putting the term limit proposal on the ballot until 2016 or later.

Dr. Asher made a motion to adopt both options of the report and recommendation, explaining that adopting both options would have the effect of bringing the issue before the full Commission. This motion was seconded by Vice-Chair Brooks.

Sen. Tavares then made a motion to amend the reports and recommendations to reflect that the committee recommends that the term limit proposal would not be added to the ballot until 2016 or later. Rep. Curtin seconded that motion.

A roll call vote was taken on the motion to amend:

- Mills – yea
- Brooks – yea
- Asher – yea
- Coley – nay
- Curtin – yea

- Davidson – nay
- Taft – yea
- Tavares – yea
- Trafford – yea

The motion to amend passed.

Ms. Trafford asked why the committee should adopt both versions of the report and recommendation. Since only the committee had the benefit of the testimony, she wondered whether the Commission would be confused about the decision to recommend both options.

Dr. Asher replied that the difference between the two versions of the report and recommendation is inherently political. The options have essentially the same merit, but the version selected might impact whether the issue passes when it is put in front of the voters. Dr. Asher stated his belief that the full commission should have the opportunity to weigh in on that political question. He indicated it is better to give both options, rather than requiring the Commission to make the changes. “This puts everything on the table,” he said.

A roll call vote was taken on the adoption of both versions of the report and recommendation:

- Mills – yea
- Brooks – yea
- Asher – yea
- Coley – nay
- Curtin – yea
- Davidson – yea
- Taft – yea
- Tavares – yea
- Trafford – yea

The motioned passed. Chair Mills announced that both versions 1 and 2 of the report and recommendations to extend term limits, with the amendment that will postpone placing the issue on the ballot until 2016 or later, will be sent to the Coordinating Committee for discussion.

SJR 1 – Public Office Compensation Commission

Director Hollon reported that the staff has contacted speakers who will give testimony about the proposed compensation commission. He stated that there are several interested parties who are preparing to give testimony, but they are not prepared to do so at this meeting.

Chair Mills said that he fully intends to hold a meeting next month to discuss SJR 1.

Adjournment:

With no further business to come before the committee, the meeting adjourned at 1:30 p.m.

Attachments:

- Notice
- Agenda
- Roll call sheet
- Prepared remarks of Representative Kathleen Clyde
- Prepared remarks of Tony Seegers

Approval:

These minutes of the April 9, 2015 meeting of the Legislative Branch and Executive Branch Committee were approved at the May 14, 2015 meeting of the committee.

/s/ Frederick E. Mills

Frederick E. Mills, Chair

/s/ Paula Brooks

Paula Brooks, Vice-Chair



OHIO CONSTITUTIONAL MODERNIZATION COMMISSION

MINUTES OF THE LEGISLATIVE BRANCH AND EXECUTIVE BRANCH COMMITTEE

FOR THE MEETING HELD
THURSDAY, MAY 14, 2015

Call to Order:

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

Members Present:

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

Approval of Minutes:

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

Presentations:

“Article II Issues”

Steven H. Steinglass
Senior Policy Advisor

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

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

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

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

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

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

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

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

Reports and Recommendations:

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

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

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

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

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

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

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

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

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

Committee Discussion:

Sub. SJR 1 – Public Office Compensation Commission

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

HJR 2 - Congressional Redistricting

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

Adjournment:

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

Attachments:

- Notice
- Agenda
- Roll call sheet

Approval:

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

/s/ Frederick E. Mills

/s/ Paula Brooks

Frederick E. Mills, Chair

Paula Brooks, Vice-Chair



OHIO CONSTITUTIONAL MODERNIZATION COMMISSION

MINUTES OF THE LEGISLATIVE BRANCH AND EXECUTIVE BRANCH COMMITTEE

FOR THE MEETING HELD
THURSDAY, JUNE 11, 2015

Call to Order:

Chair Fred Mills called the meeting of the Legislative Branch and Executive Branch Committee to order at 2:50 p.m.

Members Present:

A quorum was present with Chair Mills, Vice-chair Brooks, and committee members Asher, Curtin, Manning, Taft, Talley, and Trafford in attendance.

Approval of Minutes:

The minutes of the May 14, 2015 meeting of the committee were approved.

Presentations:

“HJR2 – Congressional Redistricting”

*Ann Henkener
League of women Voters*

Chair Mills recognized Ann Henkener with the League of Women Voters of Ohio, who presented on the topic of HJR 2, Congressional Redistricting, which was recently introduced in the General Assembly by Representatives Kathleen Clyde and Michael Curtin, both of whom are Commission members.

Ms. Henkener began her presentation by stating that current congressional districts are more highly gerrymandered than the state legislative districts. She said that a good reform proposal should provide for strong input from both political parties when drawing maps, with the goal of having Ohio’s General Assembly and Congressional delegations reflecting the even split between the parties in Ohio. She added that the districts should also be drawn to provide voters

choices in general elections, and to have geographical shapes and boundaries that make sense to voters. Ms. Henkener expressed her support for HJR 2, saying that the proposed resolution meets these goals, and that the similar plan for legislative districts has been accepted by large majorities in the General Assembly. She urged the Legislative Branch and Executive Branch Committee to approve the plan set forth in HJR 2, and to send a recommendation to the full Commission for its approval.

“HJR2 – Congressional Redistricting”

*Richard Gunther
Professor Emeritus, Political Science
The Ohio State University*

Professor Gunther expressed his support for the congressional redistricting plan described in HJR 2, describing the problems he sees with the current district lines, such as communities fragmented into separate districts, and the dilution of voting power of citizens by the creation of districts that are not compact. He also described that the current map does not satisfy the interests of fairness, and noted that Ohio’s map is “one of the worst in the democratic world,” because it “reflects a flagrant disregard of the core principle of representative fairness.” Prof. Gunther reiterated statements he had made to this committee in 2013, in which he proposed that the redistricting process be reformed to “encourage and facilitate the representation of communities, to fairly reflect the preferences of voters, and to make it possible to hold elected officials accountable.” He said that otherwise, voting power would be diluted by placing communities with very different and conflicting interests into one district. Prof. Gunther noted that his home district, the 15th District, represents people in 12 counties with little overlap between the suburban parts of Franklin County and the agricultural Ohioans otherwise in the district. Prof. Gunther argued for fairness, noting that in the 2012 election 52 percent of Ohioans voted for Republican candidates for Congress but that Republicans won 75 percent of the seats. He said the difference of 23 percent is among the worst in the democratic world.

According to Prof. Gunther, HJR 2 meets the goals he described because it uses much of the same criteria as was applied in HJR 12 (legislative redistricting), which passed with the broad support of legislators in both houses at the end of the 130th General Assembly. Prof. Gunther concluded by stating that he regards HJR 2 as “an excellent vehicle for achieving meaningful redistricting reform for the foreseeable future.” Prof. Gunther also recommended that the resolution not be approved until after voter approval of HJR 12 (legislative redistricting) which was on the 2015 general election ballot as Issue 1, so that the congressional redistricting proposal would not “trigger intervention by forces outside the state” who would oppose and potentially bring about the defeat of both reform measures.

The committee then asked Prof. Gunther questions about his presentation. Vice Chair Paula Brooks said she was struck by the list of states and nations that were rated for the fairness of their district maps. She asked Prof. Gunther where the list came from. Prof. Gunther said his recommendation regarding fairness came from language in the Florida Constitution. He said the list of disproportionality scores grew out of his political science class, and that the index is used by political science experts. He said other countries are doing a better job of fairly representing

their voters than Ohio. He added that, with computer programs, it is possible to slice and dice so precisely that you can predict outcomes of elections for many years to come. He said the previous map created in 2001 had a score of 18; but Ohio now has increased that score to 23. He said the legislative redistricting reform plan in HJR 12 reverses that trend, and, if adopted, Ohio would “have a notion of representational fairness.”

Governor Bob Taft asked about the word “attempt” appearing in Section 4 of the proposed resolution. He wondered if there has been other location research about how courts interpret the use of the word “attempt” in the context of attempting to achieve fairness. He wondered what would be sufficient to constitute attempt. Prof. Gunther said this is a slippery slope. He said in the case of Florida, a map was appealed to the Florida Supreme Court, which ruled twice that the map was unconstitutional, and sent it back to the legislature, which then moved lines a little without really creating a fair map. He said so long as we have a subjective notion such as “fairness,” it is subject to different interpretations. He said that Ohio’s map currently has 190 splits. According to HJR 12, now Issue 1, if a map has more than six splits it must be declared unconstitutional and sent back for redrawing. He said that requirement will reduce the possibility for gerrymandering. He said one reason using district boundaries is so useful is because it is unequivocal when boundaries are being split, and the question is how much is bad enough to require court intervention. Gov. Taft asked staff for research on how the word “attempt” is interpreted by the courts, or if there was other language possible.

Chair Mills said he is surprised that Prof. Gunther is recommending that a resolution reforming congressional redistricting not be attempted this year. Prof. Gunther said he is representing himself on this as a political scientist. He said putting it on the ballot this year could jeopardize Ohio legislative reform in Issue 1.

Senior Policy Advisory Steven H. Steinglass asked Prof. Gunther about the implications of *Arizona State Legislature v. Arizona Independent Redistricting Comm.*, currently pending before the U.S. Supreme Court. Prof. Gunther said the Ohio plan in HJR 2 is fundamentally different from the Arizona case. He said the U.S. Supreme Court in 1916, in the case of *Ohio ex rel. Davis v. Hildebrant*, 241 U.S. 565, 36 S.Ct. 708 (1916), ruled precisely on this issue, holding that the legislative process is included in the provision allowing for a referendum. He said a second factor is that the Arizona plan provides for a board consisting of nonelected individuals. He said the Ohio plan provides for a majority of commissioners to be legislative representatives, with four of the seven members being legislators. He said this should meet the constitutional requirement that the state legislature determine the conditions for holding an election for congressional representatives.

Gov. Taft noted there is another U.S. Supreme Court case out of Texas, which asks about the criteria for the concept of “one person one vote.” He suggested the committee receive some insight on that issue. He said the outcome of that case could require everyone to go back to the drawing board, but the decision might not come out until a year from now.

Prof. Gunther commented about the population size requirement in drawing maps, noting that, in 2012, the U.S. Supreme Court, in *Tennant v. Jefferson Cty. Comm.*, ___ U.S. ___, 133 S.Ct. 3

(2012), upheld a West Virginia map in which the deviation from exact population equivalents was 0.7 percent.

Rep. Curtin said that he and Rep. Clyde appreciate the committee's willingness to continue to consider this issue.

Committee Discussion:

Sub. SJR 1 – Public Office Compensation Commission

Chair Mills asked for comment regarding SJR 1, a pending measure in the General Assembly that would create a public office compensation commission. No comments were offered.

Next Steps:

Chair Mills then directed the committee's attention to the question of what its next topic of review should be.

Chair Mills said that at the committee meeting in May, Mr. Steinglass presented a planning worksheet on the sections of Article II that the committee has not yet reviewed. He asked whether the committee had opinions about what topics should take priority at future meetings. Executive Director Steven C. Hollon then clarified for the committee that the planning worksheet is being instituted by staff to keep committees up to date. Mr Hollon said he is trying to plan out three meetings in advance.

Chair Mills said one provision that is difficult, but should be addressed, is the single subject rule. He said the Ohio Supreme Court has rendered several decisions in that area, and he would like to see some research and a presentation on where Ohio stands on the single subject rule, after which the committee would discuss it. Gov. Taft mentioned that Sections 33 to 41, adopted in the early 20th century to overcome some controversial rulings by the Ohio Supreme Court, might be a good topic for review.

New Business:

Chair Mills stated that the committee has been meeting every month, and that July is not the normally scheduled month for this committee to meet. He said that unless there is a strong sentiment to meet in July, the committee would go back to its regular schedule. Committee members expressed their support for this plan.

Adjournment:

There being no old business to come before the committee, Chair Mills said the committee will meet next month to discuss congressional redistricting, as well as to get input from committee members about their preferences in terms of future topics to be taken up by the committee. The meeting adjourned at 3:30 p.m.

Approval:

These minutes of the June 11, 2015 meeting of the Legislative Branch and Executive Branch Committee were approved at the September 10, 2015 meeting of the committee.

/s/ Frederick E. Mills

Frederick E. Mills, Chair

/s/ Paula Brooks

Paula Brooks, Vice-chair



OHIO CONSTITUTIONAL MODERNIZATION COMMISSION

MINUTES OF THE LEGISLATIVE BRANCH AND EXECUTIVE BRANCH COMMITTEE

FOR THE MEETING HELD
THURSDAY, SEPTEMBER 10, 2015

Call to Order:

Chair Fred Mills called the meeting of the Legislative Branch and Executive Branch Committee to order at 2:48 p.m.

Members Present:

A quorum was present with Chair Mills, Vice-chair Brooks, and committee members Asher, Curtin, Davidson, Taft, and Tavares in attendance.

Approval of Minutes:

The minutes of the June 11, 2015 meeting of the committee were approved.

Presentations:

“Arizona State Legislature v. Arizona Independent Redistricting Commission”

Steven H. Steinglass
Senior Policy Advisor

The committee first heard a presentation from Senior Policy Advisor Steven H. Steinglass regarding the recently-decided United States Supreme Court case of *Arizona State Legislature v. Arizona Independent Redistricting Commission*, 135 S.Ct. 2652 (2015).

Mr. Steinglass said the Supreme Court’s decision in *Arizona State Legislature* focuses primarily on the procedural issue of whether the initiative may be used to adopt a commission-based process for drawing congressional district lines. He said the decision makes clear that commissions may be used to draw lines for congressional districts. As to the significance of the decision, Mr. Steinglass said it removes an obstacle to the adoption of a commission-based method for drawing congressional district lines, so that the Ohio proposed joint resolutions

delegating responsibility for drawing congressional district lines to a commission, SJR 2 & HJR 2 (131st GA), would seem to pass constitutional muster.

Chair Mills thanked Mr. Steinglass for the review, commenting that the Court had rendered a 5-4 decision. Referencing the discussions the committee has had about congressional redistricting, Senator Charleta Tavares asked Mr. Steinglass if he could confirm there is nothing in the *Arizona State Legislature* decision that would prohibit Ohio from moving forward on proposals related to both legislative and congressional redistricting. Mr. Steinglass agreed that the decision indicates there would be no barrier to this.

Chair Mills noted that there are now two proposals in the General Assembly, one by Representative Michael Curtin and Representative Kathleen Clyde in the House, and one by Senator Frank LaRose and Senator Tom Sawyer in the Senate. He said both Sen. LaRose and Sen. Sawyer were invited to attend the committee meeting to discuss their joint resolution, but they were not available. He said it is his understanding that there is a difference in the two proposals because of the triggering mechanism in Rep. Curtin's proposal. He asked whether staff should prepare an analysis of the differences.

Rep. Curtin said there are slight differences in the two versions. He said those differences cannot be termed substantive, in his view. Rep. Curtin said both proposals mirror the Issue 1 framework on the ballot, referencing the legislative redistricting resolution that will be voted on in November 2015. He said the difference is that the Curtin-Clyde plan and the Sawyer-LaRose plan make proper accommodations for federal law, specifically population deviations and other factors.

Mr. Steinglass said one of the significant features of the *Arizona State Legislature* case is that it basically allows the state constitution and the initiative to adopt changes in the voting process. He said the legislature no longer has the final word on issues that had been assigned to the constitution. He noted other committees of the Commission also will be interested in this topic.

"Use of the Decennial Census for Drawing State Legislative Districts"

Steven H. Steinglass
Senior Policy Advisor

Mr. Steinglass then turned to a review of the use of the decennial census information in a case the United States Supreme Court has accepted for review in the next term, *Evenwel v. Abbott*, 135 S.Ct. 2349 (2015), *noting prob. juris. to Evenwel v. Perry*, 2014 WL 5780507 (W.D. Tex. Nov. 5, 2014). He indicated that, in *Evenwel*, the Court will review a three-judge district court decision that held that the "one-person, one-vote" principle under the Equal Protection Clause allows states to rely exclusively on total population and does not require the use of voter population when drawing state legislative districts. He said that most states follow the same policy as the one under review in the case, but that this is the first time for the Court to directly address whether the use of census-based population numbers must be supplemented with other population measurements such as the total number of registered voters.

Regarding the *Evenwel* issue's impact on Ohio, Steinglass concluded that Article XI, Section 2 of the Ohio Constitution relies on the federal decennial census for drawing district lines for the General Assembly, as does HJR 12 (130th GA), which will be on the November 2015 ballot, and, further, that the two joint resolutions that are pending in the 131st General Assembly, SJR 2 (131st GA) & HJR 2 (131st GA), also use the federal decennial census for congressional redistricting. He concluded that if the Supreme Court requires the use of voter registration to supplement the use of the decennial census, both the current and the proposed methods for drawing legislative district lines in Ohio based on the decennial census could be used initially, but would have to be supplemented by voter registration data.

"Ohio Supreme Court Jurisprudence Relating to the One Subject Rule"

Shari L. O'Neill

Counsel to the Commission

Shari L. O'Neill, Counsel to the Commission, presented to the committee on Ohio Supreme Court case precedent interpreting the one-subject rule found in Article II, Section 15(D). Ms. O'Neill began by mentioning and defining key terms that come up frequently in relation to the rule, including "logrolling," "riders," "directory versus mandatory," and the idea of "plurality of topics" being acceptable while "disunity of subjects" is not.

Ms. O'Neill said that, over the years, the court has moved from interpreting the one-subject rule as being merely directory to now being mandatory, saying that where there is a "manifestly gross and fraudulent violation of the rule," an enactment can be stricken as unconstitutional. She said a one-subject rule violation is frequently argued in the context of general appropriations bills, in which thousands of pages of text can include provisions that create substantive changes in the law. Summarizing the court's jurisprudence in this area, she said that the earmarks of an unconstitutional enactment are that it lacks a common purpose or relationship between specific topics, has no discernible practical, rational, or legitimate basis for the combination, and is a manifestly gross and fraudulent violation. She added that a substantive program created in an appropriations bill is not immune from a one-subject-rule challenge just because funds are also appropriated for that program; and that where there is no rational connection between the specific provision and the broader enactment, with no commonality of subject matters, an enactment would be unconstitutional.

Ms. O'Neill went on to describe the case of *State ex rel. Ohio Civ. Serv. Emps. Assn. v. State*, 2013-Ohio-4505, 2 N.E.3d 304 (10th Dist.), now pending in the Ohio Supreme Court. She said the case involves the inclusion in a large appropriations bill of an enactment that privatized some state prisons and otherwise changed state law with regard to prison operations. When the union sued on behalf of prison employees, the court of appeals reversed the trial court decision that had ruled for the state, finding the court should have conducted an evidentiary review. Ms. O'Neill said the Ohio Supreme Court heard oral argument on May 20, 2015, at which the state argued that the prison privatization provisions did not constitute a substantive change in the law, and that the appropriate question is whether the enactment had an irrational effect on the state budget.

Ms. O'Neill said a decision from the court is pending, and said staff would update the committee once that decision is released.

Chair Mills thanked Ms. O'Neill for the review and asked if the committee had any questions. There being none, Chair Mills indicated that Attorney John Kulewicz, who has written a law review article about the one-subject rule, plans to present to the committee at its next meeting to talk about the history of the provision. Mr. Steinglass commented regarding the one-subject rule that the big question that flows through the litigation is what is the remedy if the rule is violated. Chair Mills said the one-subject provision will be part of the discussion at the next meeting.

Next Steps:

Chair Mills then turned to the planning document provided in the meeting packet to assist the committee in planning what topics to cover next. He asked the committee to think about what it would like to discuss, and whether the committee would like to proceed section by section or if some sections can be combined. He also noted that staff had provided a reference guide to the relevant sections of Article II that will be helpful to the committee in doing its homework.

Executive Director Steven C. Hollon said that the planning worksheet will be in every packet moving forward to help the committee's review and as a way of helping staff try to "tee things up" for future meetings.

Vice-chair Paula Brooks raised that there are three months left in the year in which the committee could meet, and said she wants the committee to discuss congressional redistricting and move it forward.

Governor Bob Taft said that voters will be voting in November on Issue 1, legislative redistricting. He said if the committee waits to see how that goes, the election result will give some insight about what to expect regarding congressional redistricting.

Ms. Brooks asked whether Rep. Curtin and Sen. LaRose could talk to the committee about their respective resolutions, so that the committee could have something prepared for the November meeting.

Mr. Hollon said Sen. LaRose was invited to come and speak at this meeting, but was unavailable. He said the November meeting is already on Sen. LaRose's schedule.

Rep. Curtin said the committee's next regularly scheduled meeting will be November 12, which is nine days after the election. He said the committee will have abundant analysis as to what the vote was. He said that would be a better time to talk about next steps.

Ms. Brooks said her preference would be for the committee to come prepared to take action in November. Chair Mills said he is not sure the committee will be prepared to do so. He said he believes the committee would be ready to discuss the issue, but not necessarily to take action.

Sen. Tavares said the committee had delayed action until the outcome of the *Arizona State Legislature* case, as some members believed that case would affect the legislative redistricting issue. She said she doesn't know why there would be a hesitation to discuss and conclude a review of the issue because the topic is not new to the committee.

Committee member Herb Asher asked whether, if the committee had an October meeting with informational presentations, it might be ready in November for recommendations. Chair Mills pointed out that the committee is not scheduled to meet in October. Gov. Taft said he has no objection to an October meeting.

Chair Mills then asked Mr. Hollon if he could try to accommodate a meeting in October for the committee. Chair Mills pointed out to the committee that it creates logistics difficulties for staff because there are other committees scheduled to meet that day, and could have to meet at the same time.

Rep. Curtin said he agrees with Ms. Brooks and Sen. Tavares that there is urgency regarding congressional redistricting, but that he also agrees with Gov. Taft that if the committee knows how the vote goes on Issue 1, the idea of moving forward will be so much greater in November than in October.

Adjournment:

There being no further business to come before the committee, the meeting was adjourned.

Approval:

These minutes of the September 10, 2015 meeting of the Legislative Branch and Executive Branch Committee were approved at the October 8, 2015 meeting of the committee.

/s/ Frederick E. Mills

Frederick E. Mills, Chair

/s/ Paula Brooks

Paula Brooks, Vice-chair



OHIO CONSTITUTIONAL MODERNIZATION COMMISSION

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

**FOR THE MEETING HELD
THURSDAY, OCTOBER 8, 2015**

Call to Order:

Chair Fred Mills called the meeting of the Legislative Branch and Executive Branch Committee to order at 12:37 p.m.

Members Present:

A quorum was present with Chair Mills, Vice-chair Brooks, and committee members Asher, Coley, Curtin, Davidson, Manning, Taft, and Tavares in attendance.

Approval of Minutes:

The minutes of the September 10, 2015 meeting of the committee were approved.

Presentations:

SJR 2 – Congressional Redistricting

*Senator Frank LaRose
Senate District 27*

*Senator Tom Sawyer
Senate District 28*

Chair Mills welcomed Senator Frank LaRose and Senator Tom Sawyer, who appeared before the committee to introduce and discuss Senate Joint Resolution 2, a resolution they are cosponsoring that proposes to utilize a state commission to draw the lines for United States congressional districts.

Sen. LaRose began by indicating that he and Sen. Sawyer would be presenting as a team. He said that the proposed resolution looks a lot like H.J.R. 12, adopted at the end of the 130th General Assembly and on the ballot in November 2015 as Issue 1. He said that the Arizona case [*Arizona State Legislature v. Arizona Independent Redistricting Comm.*, 576 U.S. ___, 135 S.Ct. 2652 (2015)] had been a concern, but now that the U.S. Supreme Court has resolved that matter by deciding that a state constitutionally could create a commission for drawing congressional district lines, this cleared the way for Ohio to move forward on this issue. Sen. LaRose said he and Sen. Sawyer are trying to get conversation started on this issue, noting that as 2021 approaches, it gets harder to get a consensus for reform. He said while it is still too early for best predictors to tell about the balance of power in 2021, it is timely to address this now.

Sen. LaRose continued that the current “winner-take-all” approach is unsustainable, and is inconsistent with the desire of Ohio voters. He said it is not about what is good for one party or another, because the pendulum swings, but is about what is good for our system. Sen. LaRose observed that competition makes us stronger, a concept that works in politics as well as other venues.

Describing the features of S.J.R. 2, Sen. LaRose said it is modeled off of H.J.R. 12 with some minor differences. He said S.J.R. 2 ensures that the process for General Assembly districts can be applied for congressional districts because it allows for one redistricting commission to draw the lines for both districts. He said that, in conceiving of S.J.R. 2, they recognized it is not good to change maps more than is necessary, and that doing so creates less stability and confusion for voters. He said the resolution contemplates that changes in the map will be an unusual circumstance, recognizing that a temporary or four-year map would be a roll of the dice, and wouldn't be favored. He said, under the plan, if there is no 10-year map, the commission will have failed to do its job because a four-year map is meant to be an emergency scenario. He said the goal was to get away from winner-take-all scenarios. He said their expectation is that a winner will draw a map to his own advantage, so we want to get away from that.

Sen. Sawyer said this issue has become the pressing issue of the decade, and that if we don't reform the redistricting process now, “we won't lose another year, we will lose another decade.” He said previous proposals were overly complicated, and that proponents need to be able to explain this sort of thing in an elevator ride, known as the “30 second explanation.” Sen. Sawyer complimented Sen. LaRose in being able to explain it that way for the Senate, where he got a standing ovation for doing so. Sen. Sawyer said getting the legislation ready to move forward has been a difficult path because first the Arizona case was a concern, and then there was some objection by U.S. House of Representatives Speaker and Ohio Representative John Boehner, who justifiably feared Republican representatives losing their majority in Congress. Sen. Sawyer said now that the Arizona case has been resolved favorably, and Speaker Boehner has decided to resign from Congress, the path has been cleared.

Sen. Sawyer said that, to move forward on congressional redistricting in light of Issue 1, in which the proposal for legislative redistricting is strikingly the same, there is an obvious opportunity here. Sen. Sawyer noted there are some mechanical differences, but they are easily accommodated. Sen. Sawyer also noted that H.J.R. 2, the resolution proposed in the House by Representative Kathleen Clyde and Representative Michael Curtin [in the 131st General

Assembly], followed a similar road map. He said both plans seek the same end. Sen. Sawyer said he would be comfortable using either as the vehicle, but the time is now, emphasizing it is not a matter of losing weeks or months, but a matter of losing years, a decade. He said the current system forces both parties to talk to themselves within themselves, rather than reaching out to each other and building consensus.

The senators having concluded their remarks, Chair Mills then opened up the floor to questions.

Committee member Paula Brooks thanked the senators for their presentation, commenting that today is the “National Day of the Child,” which symbolizes to her the need to act sooner rather than later on this issue. She said the parties may bicker and differ, but we have consensus as is shown here by an outstanding effort by Republicans and Democrats coming together on this issue. She thanked them as a county commissioner who sees these issues get played out in funding decisions. Ms. Brooks said with this approach we will get the best ideas, and competition in the marketplace.

Sen. LaRose thanked Ms. Brooks for her comments, and added that he wanted to thank and recognize Rep. Clyde and Rep. Curtin for their work on this issue. He said they, too, have been passionate, as well as interested civic groups are interested. Sen. LaRose emphasized that it is important not to let another decade go by without fixing the congressional districts.

Governor Bob Taft drew attention to the provision’s requirement that no appointed member of the commission shall be a current member of Congress, a prohibition he said he supports and understands. He asked whether the senators have thought of also prohibiting current members of the Ohio General Assembly from serving on the commission as some of them may be future candidates for Congress. Sen. LaRose directed Gov. Taft to Issue 1, which in fact has that prohibition, saying that what he and Sen. Sawyer conceive is that there would be one unified commission, so if Issue 1 passes, that should take care of that concern.

Senator Charleta Tavares asked about the harmonization of the language in the resolution on the ballot in November, wondering what specifically is different from what’s on the ballot for the legislative districts versus the congressional districts.

Sen. LaRose answered that by the nature of congressional districts the threshold for the numbers of people in the district is very different from legislative districts. But, he said, by the United States Supreme Court Tennant decision [*Tennant v. Jefferson Cty. Comm.*, 567 U.S. ___, 133 S.Ct. 3 (2012)], when there is a legitimate state interest, there can be more variation. He said it is not necessary to have statistically exact districts, which are impossible to achieve anyway. He said the deviation is one part of it, but there are also requirements for interlocking state house and senate districts that aren’t necessary in the congressional version.

Sen. Sawyer then referenced a comparison document from the Legislative Service Commission that indicates the similarities and differences between S.J.R. 2 and H.J.R. 2, and compares them with H.J.R. 12 (Issue 1). He said the document will be an easy way for committee members to compare the proposals. He noted the only real differences arise from the fact that legislative

districts are steady while congressional ones vary from census to census. He said the rules are more or less compatible and adaptable.

Sen. LaRose said he and Sen. Sawyer don't have pride of authorship, and that they would invite comments or suggestions because the resolution could benefit from the collective wisdom of this panel. He invited members of the committee to meet with them to provide assistance because they want to make sure they get it right.

Answering a question from Sen. Tavares about the timing of the General Assembly's action on the resolution, Sen. LaRose said he doesn't see it as possible for the legislature to act before November, but he anticipates an overwhelming victory for Issue 1, so that will lend support to their efforts. He said the election results will allow them to revise this as needed and move it forward.

Chair Mills asked, procedurally, where is the measure in the senate process, specifically, which hearing has the senate committee had. The senators indicated that the resolution has been introduced and not heard yet.

Answering questions about when the resolution might be placed on the ballot, Sen. LaRose stated that their goal is sooner rather than later. He said 2017 would be good, 2016 is also good, and that getting it to voters as soon as possible, particularly with bipartisan support, would set it up for success.

Sen. Sawyer said he is firmly in favor of 2016, noting that 2017 is more problematic due to voter participation. Sen. LaRose added that the earliest it could be on the ballot is November of 2016. Sen. Sawyer commented that they will have the added advantage of having the state legislative redistricting results to go by.

There being no further questions, Chair Mills then recognized Executive Director Steven C. Hollon, who told the committee that staff would be placing the written testimony of the two senators on the website and providing those comments to committee members as an electronic mail attachment.

Public Comment:

Camille Wimbish
Ohio Voter Rights Coalition

Chair Mills then recognized Camille Wimbish, a representative with the Ohio Voter Rights Coalition, who testified in support of Congressional redistricting reform.

Ms. Wimbish said her organization works to make voting easy and convenient in Ohio, and that they regularly hear from community members who don't vote and don't believe that elected officials represent their interests. She said that the perception is that one's vote doesn't count and that the process is rigged against voters. Ms. Wimbish expressed her organization's support for Issue 1, but said a shortcoming is that it doesn't address congressional redistricting. She said

“Ohio voters want competitive elections, and we deserve to have elected officials who are accountable to us.” She thus urged the committee to support efforts to create fair districts and fair elections for both state and federal legislatures.

Ms. Wimbish then invited questions from the committee.

Senator Bill Coley commented that despite efforts to make it easier to vote, voter participation keeps dropping. He said he appreciates her frustration about voter participation, but asked what should be the response to someone who says we should wait to address congressional districts until we see how legislative redistricting plays out, because once you change it you can't go back.

Ms. Wimbish answered that given the overwhelming support for the state redistricting measure, they are hearing from voters that this is what they want, and anyone can look at the map and see this. She said the message is full steam ahead and do it now.

Sen. Tavares asked Ms. Wimbish what her opinion is about the ease of voting, understanding of what the voting rules are today versus last year, such as when someone can vote or when they can't, wondering if that has had an impact on elections. Ms. Wimbish said her organization has heard many young voters or first time voters who have said they weren't smart enough, or don't have enough information to vote. She said every election the rules change for when early voting occurs, and this confuses the voters who don't pay close attention to that sort of thing. She said she hopes passing Issue 1 will give people more faith in the system.

Sen. Tavares said the low voter turnout at a primary indicates there needs to be more voter education, wondering what Ms. Wimbish believes is the model for education. Ms. Wimbish said education is not a priority, and that we could use greater effort in this regard.

Anne Henkener
League of Women Voters

Chair Mills then recognized Anne Henkener of the League of Women Voters, who appeared before the committee to reiterate some of the same comments she provided to the committee in June on the subject of congressional redistricting. Ms. Henkener thanked Sen. LaRose and Sen. Sawyer, and Rep. Curtin and Rep. Clyde in moving the process along, saying it has been “pretty amazing” that Issue 1 has had wide bipartisan support. Ms. Henkener said she does not remember anything that has received that much broad-based support, and that this is a good bipartisan effort. She noted that, as Ohio State University Professor Emeritus Richard Gunther has told her, electoral proportionality is greater with congressional districts. She said the partisan votes don't match the seats. Ms. Henkener said, “we have opportunities with both the joint resolutions, so we have good structure we can agree on and can do it fairly quickly. She said acting soon is important because voters are getting educated about this topic from Issue 1. She said she would hope the Commission would take due regard of the interest of the voters. Ms. Henkener thus concluded her remarks.

Chair Mills then asked staff to prepare a draft of a recommendation regarding congressional redistricting.

Committee Discussion:

Chair Mills noted that the committee had been given a memorandum (provided on a previous occasion) by Senior Policy Advisor Steven H. Steinglass that outlined the other provisions assigned to the committee to allow the committee to decide what topics to address next. Chair Mills said he intends to have John Kulewicz attend the next meeting to assist the committee in continuing its review of the single subject rule.

Adjournment:

There being no further business to come before the committee, the meeting was adjourned.

Approval:

The minutes of the October 8, 2015 meeting of the Legislative Branch and Executive Branch Committee were approved at the November 12, 2015 meeting of the committee.

/s/ Frederick E. Mills

Frederick E. Mills, Chair

/s/ Paula Brooks

Paula Brooks, Vice-chair



OHIO CONSTITUTIONAL MODERNIZATION COMMISSION

CORRECTED MINUTES OF THE LEGISLATIVE BRANCH AND EXECUTIVE BRANCH COMMITTEE

FOR THE MEETING HELD
THURSDAY, NOVEMBER 12, 2015

Call to Order:

Chair Fred Mills called the meeting of the Legislative Branch and Executive Branch Committee to order at 2:31 p.m.

Members Present:

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

Approval of Minutes:

The minutes of the October 8, 2015 meeting of the committee were approved.

Presentations:

Update on Issue 1 Election Results – Legislative Redistricting

Steven C. Hollon
Executive Director

Chair Mills first recognized Executive Director Steven C. Hollon, who gave an update on the November 3, 2015 election results for State Issue 1 (“Issue 1”), involving legislative redistricting. Director Hollon briefly described the features of House Joint Resolution 12, adopted in the 130th General Assembly and submitted to voters as Issue 1 on the ballot. Director Hollon indicated that the issue passed, with a vote of 71.64 percent in favor and 28.54 percent against.

Article II, Section 15 (D) – One Subject Rule

John J. Kulewicz

Partner

Vorys, Sater, Seymour & Pease

Chair Mills then recognized Attorney John Kulewicz, of the law firm of Vorys, Sater, Seymour & Pease, who presented to the committee on the topic of the one-subject rule contained in Article II, Section 15(D).

Mr. Kulewicz said the rule raises a multitude of issues for consideration. He said Ohio courts originally took a hands-off approach and the legislature enforced the rule itself, adding that, recently, Ohio courts have shown a significant interest in the rule, and it has gained traction outside the legislature. He said courts now invalidate legislation that goes against the rule, and this is a new era for the one-subject rule.

Describing the history of the rule, he said there was little substantive debate about the purpose of it at the 1851 Constitutional Convention. He said the intent of the framers, as discussed by the Ohio Supreme Court in *Pim v. Nicholson* [6 Ohio St. 176 (1856)], is that its purpose is to prevent logrolling. He said the Court in *Pim* held it to be a directory provision only, and that the rule should be enforced by the General Assembly rather than the courts. Mr. Kulewicz described how, in the 1980s, that approach changed, noting that in *State ex rel. Dix v. Celeste* [11 Ohio St.3d 141, 464 N.E.2d 153 (1984)], the Court took the opportunity to analyze whether there was a relationship between the subjects in the legislation. The following year, in *Hoover v. Franklin Cty. Bd. of Commrs.* [19 Ohio St. 3d 1, 482 N.E.2d 575 (1985)], the Court sent the case back to common pleas court for a determination of whether there was more than one subject and, if so, whether the content of the legislation defied rationality.

Mr. Kulewicz described how, in *State ex rel. Hinkle v. Franklin Cty. Bd. of Elections* [62 Ohio St.3d 145, 580 N.E.2d 767 (1991)], the Ohio Supreme Court imposed a remedy, a development that was significant because, in so doing, the Court severed the offending portion of the act. He said former Ohio Supreme Court Justice Andrew Douglas's dissent in that case laid out issues that have been of great significance since then. The Court continued to apply the remedy of severing a portion of the act that it declared invalid in *State ex rel. Ohio AFL-CIO v. Voinovich* [69 Ohio St.3d 225, 631 N.E.2d 582 (1994)], as well as in *Simmons-Harris v. Goff* [86 Ohio St.3d 1, 1999-Ohio-77, 711 N.E.2d 203 (1999)].

Mr. Kulewicz described *State ex rel. Ohio Academy of Trial Lawyers v. Sheward* [86 Ohio St.3d 451, 715 N.E.2d 1062 (1999)] as “a bombshell of a case.” He said in *Sheward*, the Ohio Supreme Court decided that the tort reform bill at issue dealt with so many different topics that the entire bill had to be rejected. He identified the Court's rationale as being that any attempt to identify a primary subject would constitute a legislative exercise. Suggesting the case of *In re Nowak* [104 Ohio St.3d 466, 2004-Ohio-6777] was the Court's “tipping point,” Mr. Kulewicz said *Nowak* rejected *Pim*'s declaration that the one-subject rule was directory only, instead concluding the rule is mandatory. He said that decision redefined the interpretation of the one-subject rule, creating a new generation of litigation.

Mr. Kulewicz then mentioned the pending Ohio Supreme Court case of *State ex rel. Ohio Civ. Serv. Emps. Assn. v. State* [2013-Ohio-4505, 2 N.E.3d 304 (10th Dist.), Supreme Court Case Number 2014-0319], in which the Court will decide whether the Tenth District Court of Appeals properly remanded the case to common pleas court for an evidentiary hearing to determine whether the one-subject rule had been violated.

Mr. Kulewicz concluded that the one-subject rule, a long-dormant provision, is now suddenly an active provision. He added that governors have independent authority to enforce the constitution, and there is now constitutional support for a governor using his veto power on that basis.

Mr. Kulewicz identified the various tests courts apply when legislation is challenged as contradicting the one-subject rule, including: (i) whether there is disunity but not a plurality of subject matter; (ii) whether there is a common purpose to the legislation; and (iii) whether the combination of subjects in the challenged bill has a rationality to it. He said the result is that the General Assembly now must consider the breadth of the legislation it is passing.

He also identified that an expressed rationale for the rule is that it is intended to impede logrolling. But, he said, the type of logrolling the rule prevents is more than one subject in a bill. He said the rule doesn't prevent multiple bills that address one problem. He asked whether logrolling is necessarily something to be condemned.

Reviewing national trends regarding one-subject rules, Mr. Kulewicz said Ohio is one of 43 states that have such a rule, but that there are categorical differences. He said Ohio is one of a few states that regarded the rule as directory. He said 14 states, excluding Ohio, exempt appropriations bills from application of the one-subject rule, while six states confine appropriations bills to appropriations. He said in two states the rule is limited only to the appropriations bill, while 13 states exempt codification and revision bills from application of the rule.

He said the rule, as set out in the provision, has two parts, requiring that no bill shall contain more than one subject, and that the bill's purpose should be expressed in its title. He said 12 state constitutions allow the rule to void legislation only as to subjects not included in the title.

Having concluded his remarks, Mr. Kulewicz then invited questions from the committee.

Representative Michael Curtin asked whether there would be any merit for the General Assembly, through legislation, to attempt to incorporate recent case law into a statute that would provide a road map of what should and should not be done. Mr. Kulewicz answered that idea may have merit, but the risk is that the constitutional provision would still prevail over the statutory provision. He added it also might be hard to avoid a risk that, as in *Sheward*, a court would be concerned that the legislature would be trying to tell the court how to rule.

Rep. Curtin followed up, noting that state constitutions do not contain definitions, and asking how constitutional change might bring more specificity to the rule. Mr. Kulewicz answered that one could embed in the constitution one or the other of these one-subject rule tests, a requirement

of a common purpose or rational relationship, for example. He said that would not end litigation, but would be a step closer to defining what “one subject” is.

Vice-chair Paula Brooks agreed, saying she thinks that clarification would help both the General Assembly and legal practitioners. Mr. Kulewicz said former Ohio Supreme Court Justice Evelyn Stratton, and others, have expressed frustration that it is hard to define what the rule means. He said the rule made sense in 1851. Today, with technology, he said “we have searchable documents and can look right away to see if a different topic is in a bill.” He wondered whether it is worth the time to struggle with this one-subject issue.

Ms. Brooks asked Mr. Kulewicz whether he has a favorite model of interpretation as to the rule. Mr. Kulewicz said no, but that he does like the rational relationship test. He said, however, this does not prevent litigation, as litigation can occur on the issue of whether there is a rational relationship.

Committee member Herb Asher asked, in states that have the rule but do not apply it to appropriations bills, whether there is evidence that appropriations bills have been used to “load up” on subjects in order to get legislation considered. Mr. Asher noted that legislators often have ideas and are looking for a vehicle to attach legislation to, wondering if part of the problem is that the practice of the legislature is such that members themselves are looking for some opportunity or some vehicle. Mr. Kulewicz said he has no evidence that those states are different.

Governor Taft asked whether Mr. Kulewicz thinks the legislature has clear guidance based on the case law, wondering about the impact of *Sheward*. Mr. Kulewicz noted that the majority in *Sheward* said if the one-subject rule was interpreted so broadly as to allow what the General Assembly tried to do with tort reform, one could redo the entirety of state law in two bills. Mr. Kulewicz said the General Assembly has more guidance now than 15 years ago; then there were no consequences for the failure to observe the one-subject rule. He said now the General Assembly knows the courts have rejected rationales that are unsustainable or meaningless as being too broad. So there is some risk involved in enacting legislation that goes too far.

Senator Charleta Tavares asked whether there are any states that have provisions that automatically void legislation that violates the one-subject rule, or whether the determination always requires a court challenge. Mr. Kulewicz answered that there are several states whose constitutions say it shall be void, but that it still is not self-executing, and would require someone to challenge the legislation.

Sen. Tavares followed up, asking whether any states are contemplating revising their constitutional provisions requiring legislation to have only one subject. Mr. Kulewicz said the United States Constitution does not limit Congress in what is included in bills, but there are several efforts underway to attempt to add a one-subject rule.

Committee member Kathleen Trafford offered that one thing the General Assembly could do is to write a very short statute of limitations.

There being no further questions, Chair Mills thanked Mr. Kulewicz for his presentation.

Congressional Redistricting

Steven C. Hollon
Executive Director

Chair Mills then recognized Director Hollon, who presented to the committee a draft of a report and recommendation on the subject of Congressional redistricting. Director Hollon indicated that the report and recommendation provides a history of how Congressional districts have been drawn in Ohio, describes two joint resolutions pending in the General Assembly proposing to change the procedure by having a commission undertake drawing district lines, and outlines various presentations that have been made to the committee on the subject of redistricting. Director Hollon indicated that the report and recommendation does not describe the committee's recommendation with regard to whether and how to reform the Congressional redistricting procedure because the committee has not yet given staff guidance on what it would like to do.

There were no questions for Director Hollon on the report and recommendation.

Committee Discussion

Congressional Redistricting

Chair Mills then indicated that the committee had just received a draft of a new joint resolution drafted by the Legislative Service Commission, identified as "LR 131 0157." He said this draft had been requested by Representatives Kathleen Clyde and Mike Curtin, and was an attempt to reconcile the differences between H.J.R. 2, the House version of a Congressional redistricting resolution, and S.J.R. 2, the Senate version. Chair Mills then invited Rep. Clyde and Rep. Curtin to lead the committee through the differences in the two introduced resolutions and how they have been resolved in the new draft.

Rep. Clyde began by saying "we had a big victory as a Commission and as a state with the success of Issue 1" on the November 2015 ballot. She said the message was clear that voters want to choose their lawmakers, not be chosen by them. She said "We have a mandate from the voters," noting that three-fourths of seats in Congress belong to one party when only half the votes went to that party. She said that makes Ohio one of the most unfair jurisdictions in the world.

She then identified changes in the new draft resolution from the original H.J.R. 2 that she and Rep. Curtin introduced. She said, in the new version, they combined the Congressional redistricting provisions with the legislative provisions, since the same commission will be drawing district lines by using virtually the same rules. She also noted that the result in the U.S. Supreme Court's decision in *Arizona State Legislature v. Arizona Indep. Redistricting Comm.*, 576 U.S. ___, 135 S.Ct. 2652 (2015), means that a commission such as is created by the proposed amendment is constitutionally valid. She said H.J.R. 2 was drafted before the *Arizona State Legislature* decision, and so it has a conditional provision that would have accounted for a

different outcome in the case. She added, now that the case is decided, the new version took those parts out. Rep. Clyde added that the new draft also added a feature of S.J.R. 2 that prevents a sitting member of Congress from being on the commission. In addition, she said the draft removes a provision allowing a county to be split under certain circumstances. She said Congressional districts are larger than state districts, and so that feature is not needed for Congressional redistricting. She added they were concerned about giving the map drawers too much authority to draft alternative rules, and so the new draft is more restrictive in that regard.

Rep. Clyde indicated that the provisions in H.J.R. 2 and S.J.R. 2 are virtually the same regarding the population, but that they chose the language in S.J.R. 2 because they liked it a little better. She said they adopted the S.J.R. 2 provision regarding the court's ability to redraw the lines. In conclusion, Rep. Clyde said they took the best from both the House and Senate versions.

Rep. Curtin thanked the committee for its "yeoman's work" on the issue of redistricting, saying that because Issue 1 was a success at the polls "something good and historic was done." He said this is the moment to act on Congressional redistricting, because "once we get into the 2018 election cycle, and we have a sense of how the winds are blowing, we are going to be immobilized in dealing with this issue. So we have a window; after that we don't have that window for a very long time." He noted an Akron *Beacon Journal* editorial describing that if it isn't done now, it will be 17 years before there is another chance. He said if there is no reform in time for the 2020 Census, there will not be reform until the 2030 Census. He said he would hope the momentum will continue in this committee, and that he wants to keep the bipartisan spirit going for the rest of this year. He said he and Rep. Clyde aren't married to the details in the document, so the real project is not to "make the perfect the enemy of the good."

Chair Mills then opened up the floor for questions.

Gov. Taft asked whether the new draft changes anything approved by voters in state Issue 1. Rep. Clyde and Rep. Curtin said that nothing is changed. Gov. Taft asked whether it included a restriction on a member of Congress being on the proposed commission, recommending that if this is not in the draft it should be added. Rep. Curtin agreed with the point, saying they would be sure it is included.

Sen. Tavares agreed with Rep. Curtin that it is important to keep the bipartisan spirit, saying she would agree a sitting member of the General Assembly should not be on the proposed redistricting commission.

Ms. Trafford asked whether it would be possible for the committee to make a recommendation that left the details to be decided by the General Assembly. Chair Mills said the committee has that option, but that he would prefer the committee to come up with the best language to submit to the General Assembly. He said he would like to see a very thorough, thoughtful product come out of this committee. "We did all the heavy lifting in S.J.R. 1 (introduced in the 130th General Assembly), I would like to get a draft as perfect as we can, knowing the General Assembly would change things."

Rep. Curtin said the legislature has sessions in December, and that if the committee is in agreement, the committee could have the Legislative Service Commission provide a draft.

Ms. Brooks asked about the procedure for approving a report and recommendation. She wondered if the committee would need another special meeting to comply with rules of submitting to the full Commission by the end of the year. Chair Mills said the committee can't do it in that time frame, noting that the General Assembly has until August 2016 to act in time to put it on the ballot. He said he is not sure the committee needs to rush to finish the process by the end of this calendar year, and that he does not intend to call a special meeting in December. But, he said, by the next meeting, the committee should be prepared to discuss these issues. He said they could use the meeting as a drafting session in order to have a thoughtful work product.

Ms. Brooks asked whether the committee could call a special session for the purpose of concluding its work on Congressional redistricting.

Chair Mills said the committee has met as much or more than any other committee, and that he is not in favor of bringing people back to decide something that doesn't need to be decided until August.

Mr. Asher said the committee's goal is to get something finished as early in the new year as possible. He said, if it is January or February, it gives the legislature ample time to work on this.

Chair Mills said that is a fair statement.

Rep. Curtin reiterated with a "personal plea," saying it is important not to wait 17 years to get reform passed.

Sen. Tavares said, in light of the conversation about the time frame, she would agree with Mr. Asher, and that a recommendation should be made sooner rather than later. She said she would rather put it to task as immediately as possible, January or February at the latest. She said otherwise it does not give the General Assembly much time to consider the issue. She said "the longer we wait, the more difficult it becomes, because some members of Congress on both sides of the aisle will be weighing in and will want to do nothing." She said, "If we believe in the voters and what we did with Issue 1, we should be hasty; do it right, but get it on the ballot next year."

Chair Mills agreed that next year is appropriate, but it should be correct. He said "hasty implies sloppy, so let us do it carefully."

Rep. Clyde said she echoes that one way to move quickly is that the committee has a good model in Issue 1, saying she is heartened that "we can come together as a Commission."

Chair Mills then recognized Catherine Turcer, policy analyst for Common Cause Ohio, who addressed the committee on the subject of Congressional redistricting.

Ms. Turcer said, with regard to Issue 1, that “voters changed the quality of democracy,” and that she was encouraged by this result and hopes that the election results will help spur Congressional redistricting reform.

Chair Mills also recognized Richard Gunther, professor emeritus of Political Science with The Ohio State University. Professor Gunther urged the committee to move forward with the proposals by Rep. Clyde and Rep. Curtin. He said he has compared S.J.R. 2 and H.J.R. 2, and that “they are well rooted in Issue 1.” He said he is very concerned that the committee move forward quickly, noting that the negotiations that created Issue 1 were extremely difficult. He emphasized that “it is even more urgent to move forward for Congress than for the state legislature,” noting that the problems with Congressional districts are worse and that the electoral disproportionality is twice as bad as it is for the General Assembly districts. He added that the lack of term limits for Congress means members have a term for life. He concluded that he is “very concerned” about a time line that has an August deadline, because the alternative is a citizen’s initiative. He said if, by January, there is no indication that the legislature will act, there will be a citizen’s initiative that will move forward, so if the committee wants to maintain control over the process, it should keep the process moving forward at a reasonable pace.

Chair Mills clarified his earlier remark, saying he did not mean the committee should wait until August to act, rather, this is the General Assembly’s timeline for placing an issue on the ballot.

Sen. Tavares thanked Professor Gunther, as well as the League of Women Voters and Common Cause for their work on redistricting.

Adjournment:

There being no further business to come before the committee, the meeting was adjourned at 4:05 p.m.

Approval:

The minutes of the November 12, 2015 meeting of the Legislative Branch and Executive Branch Committee were approved at the January 14, 2016 meeting of the committee, and approved as corrected at the March 9, 2017 meeting of the committee.

/s/ Frederick E. Mills
Frederick E. Mills, Chair

/s/ Paula Brooks
Paula Brooks, Vice-chair



OHIO CONSTITUTIONAL MODERNIZATION COMMISSION

MINUTES OF THE LEGISLATIVE BRANCH AND EXECUTIVE BRANCH COMMITTEE

FOR THE MEETING HELD
THURSDAY, JANUARY 14, 2016

Call to Order:

Chair Fred Mills called the meeting of the Legislative Branch and Executive Branch Committee to order at 2:40 p.m.

Members Present:

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

Approval of Minutes:

The minutes of the November 12, 2015 meeting of the committee were approved.

Presentations:

Chair Mills began the meeting by announcing that the only item on the agenda is a first presentation of a report and recommendation on Congressional redistricting. He said the committee began its consideration of the issue in July 2013, and has had nine separate hearings, with testimony from well over a dozen individuals, professors, interest groups, and others. He said the committee waited for the outcome of Issue 1 on the November 2015 ballot, as it relates to state legislative reapportionment, and also waited on the United States Supreme Court to rule on an Arizona case addressing the constitutionality of using a redistricting commission to draw Congressional districts. Chair Mills said the committee has done a thorough job of reviewing the topic, which is why he set it for a first presentation at this meeting. He said, at next meeting, he hopes to take a formal vote.

Chair Mills indicated that several witnesses were present to offer their perspectives on Congressional redistricting, with the first three witnesses from Democratic Voices of Ohio.

Natalie Davis
Policy Director
Democratic Voices of Ohio

Natalie Davis, policy director of Democratic Voices of Ohio, and a recent graduate of the John Glenn College of Public Affairs at the Ohio State University, presented to the committee regarding the impact of gerrymandering on voter turnout for the millennial generation. Ms. Davis identified a 2012 study from the University of Copenhagen indicating that leaving home at age 18 for college or work negatively impacts the likelihood of voting, and that issues surrounding voter identification, residency status of out-of-state students, transportation to polls, and transitioning from dorm life to an off-campus apartment are all challenges that impact student voter turnout. Ms. Davis said, as a college student, she participated in organizations that worked to register students to vote and engage them in the discussions of public policy. She said her conversations with students revealed that her peers were discouraged by a system they believe works against them. She said students concluded that registering to vote and going to the polls was a waste of time because districts were unfairly drawn. She expressed her belief that widespread voter apathy is a result of the gerrymandered districts that discount the value of an individual's vote. Ms. Davis urged committee members to consider the widespread implications of gerrymandering, asking the committee to recommend a Congressional redistricting reform plan that is modeled after the state legislative redistricting plan.

Alex Kass
Executive Director
Democratic Voices of Ohio

Alex Kass, executive director of Democratic Voices of Ohio, also offered a millennial generation perspective on Congressional redistricting. Ms. Kass said that her organization's goal is to "move our state forward, unencumbered by the divisive partisanship that too often sets Ohio back." She said the polarization of Congress has cultivated feelings of apathy for many voters, particularly young voters. She said although she went out of state to college, she returned to Ohio after graduation because she was attracted to possible opportunities for millennial professionals, but then found the priorities of Ohio's elected officials do not represent the priorities of most in her generation. She noted that "millennials are digital natives," having grown up alongside the rise of the internet, social media, mobile communication, and the dominion of data. She suggested that, because millennials occupy a pivotal seat in the electorate, they should have a greater political voice.

Ms. Kass indicated that her office advocated for passage of Issue 1, reaching voters through social media. She said her organization was surprised that people across the entire political spectrum and all age groups responded positively to their message. Ms. Kass said, "fixing our redistricting process is one of the most fundamental ways to move this state and country forward, and the people know it."

Colleen Craig
Communications Manager
Democratic Voices of Ohio

Colleen Craig, communications manager for Democratic Voices of Ohio, provided her perspective as a third-year undergraduate studying public affairs at the Ohio State University. Like her colleagues, she said she has experienced frustration regarding the political climate of polarization in the state, much of which she attributed to gerrymandering.

Ms. Craig indicated that her family had emphasized civic engagement and that she looked forward to having the right to vote when she turned 18, but has felt alienated from the process. She identified statistics indicating that although 40 percent of Ohio voters identify as Republicans and 46 percent identify as Democrats, Congressional Democrats from Ohio are outnumbered three-to-one. Ms. Craig said “Despite our reputation for being a swing-state, the gerrymandered map of Ohio’s Congressional districts has made Ohio a practically inhospitable place” for those “whose politics don’t align with the party in power.” She said all voters deserve competitive elections.

Ms. Craig stated that many of the issues facing her generation, such as student loan debt, accessible healthcare, social acceptance of minorities, and environmental security, are issues that Congress should be considering. She expressed hope that Congressional redistricting reform would help engage her generation in the political process as well as help find bipartisan solutions to issues that concern millennials.

Chair Mills thanked the witnesses for their remarks and asked whether the committee had questions for them.

Thanking the witnesses for bringing a millennial perspective to the Congressional redistricting issue, Senator Charleta Tavares noted that many people have the wrong idea about why millennials are not participating in the electoral process. She asked whether the witnesses know of studies relating to the reduction of voting participation of those young people who are transitional, for instance due to the foster system or because they do not have a permanent home or family. Ms. Davis answered that the study she cited is from Denmark but it does discuss how between 16 and 22 percent of young people leave home because of an unhealthy environment. She said her testimony had focused on students and young people who have parents who are engaged in the political process. Ms. Kass added that she expects to see numbers that are lower if that research exists.

Committee member Paula Brooks commented that, as county commissioner, she had heard that being on a college campus makes it difficult to vote. Ms. Craig said that a student has the discretion either to vote at home using an absentee ballot, or to register and vote in the college community. Ms. Davis said part of the issue is a lack of information available to young voters, who do not realize they can register at their campus address. She also identified a lack of outreach to students, who do not know who their representatives are.

Ms. Brooks followed up, noting even if Congressional redistricting reform occurs, the districts will not change for quite a long time. She asked whether the problems of millennial voting can be mitigated by redistricting reform. Ms. Kass answered that the very act of having current representatives make the decision to put the issue on the ballot would be a strong indication to voters that there is something changing, and they are being heard. She said the public was invigorated by the success of Issue 1, and people she spoke to often did not realize that Congressional redistricting was not a part of that measure.

There being no further questions, Chair Mills then thanked Ms. Davis, Ms. Kass, and Ms. Craig for their remarks.

Renée Hagerty
Ohio Student Association

Chair Mills then recognized Renée Hagerty of the Ohio Student Association to provide her perspective on the relationship of gerrymandering to the concerns of the millennial generation. Ms. Hagerty stated she has been politically engaged from a young age, and recently has worked professionally as a voter registration organizer with the Ohio Student Association. She said she personally registered more than 1,000 voters in less than two months.

Ms. Hagerty said her experience has shown her that, while the youth vote is often courted by politicians, their voices are often minimized. She said “the reality of our state politics * * * has left us with a lifetime of evidence that most of our votes actually do *not* matter.”

Ms. Hagerty cited statistics indicating that 2014 was the lowest youth turnout rate ever for a federal election, and was followed by a year of protests. She said young people do not see their concerns being considered by parties that are locked in gridlock as a result of undemocratic gerrymandering. Ms. Hagerty indicated that youth voters “feel disenfranchised by a system they see as ‘dirty,’ ‘rigged,’ and impossibly large.” Ms. Hagerty urged the committee to support Congressional redistricting reform.

Chair Mills then asked members of the committee if they had questions for Ms. Hagerty.

Sen. Tavares thanked Ms. Hagerty for her testimony, asking whether Ms. Hagerty has data supporting the view that people who feel marginalized are more likely to engage in protest. Ms. Hagerty answered that she registered 1,000 voters, talking to more than she registered. She said many people walked away from the democratic process because they felt they could not do anything else. She said, as a professional, her job is to say individual votes matter, but she is tired of saying things that are difficult to prove.

Committee member Herb Asher asked all four of the witnesses what will be different about youth engagement if Congressional redistricting reform occurs. He commented that there is a broader problem with youth engagement that goes beyond redistricting, related to civic education, media behavior, and other factors. Ms. Davis said she has observed that there are three populations of young people: the unengaged because not interested; the highly engaged; and those who are in the middle. She said those in the middle are people who are aware of what

is happening but are the most discouraged. Ms. Craig said this is a well-educated generation but it is disillusioned. She said if people have a reason to feel more confident in the system, it would help. Ms. Kass noted that, when the system itself is rigged, the reason to participate becomes a nonsensical question. Ms. Hagerty answered that the question at stake is about democracy. She said she does not feel the need to say fixing gerrymandering is going to turn out millennials, rather, the point is that it will fix democracy.

Mr. Asher agreed that millennials are highly-educated, but said they are among the least-informed politically. He acknowledged a need to make the political system more meaningful. He thanked the witnesses for their thoughtful comments.

Representative Kathleen Clyde
Proposed House Joint Resolution LR 131 0157

Chair Mills then recognized Representative Kathleen Clyde who had additional comments and changes to report relating to the proposed House Joint Resolution identified as “LR 131 0157,” which she had presented to the committee at its last meeting. Rep. Clyde said she reviewed the draft report and recommendation relating to Congressional redistricting, and thanked Commission staff for their efforts to compile the committee’s discussion on the issue. She said it is an important step forward to move this report and recommendation for first consideration, to meet again next month, and to get this issue before the full Commission.

Rep. Clyde said she had two minor word changes to the proposed joint resolution. She said one change is that lines 158, 161, and 174 have been amended to remove the word “contiguous” because Congressional districts are larger than state legislative districts. She said that requirement, which had been incorporated in the amendment relating to legislative districts, does not need to be a part of Congressional redistricting reform. Rep. Clyde added that lines 149, 174, and 195 have been changed to indicate the goal of preserving political subdivisions that are at least 30 percent of the size of Congressional districts, rather than 50 percent. She said the 30 percent figure is a better fit, given the larger size of Congressional districts. Rep. Clyde continued that most of the proposed amendment described in LR 131 0157 mirrors what voters chose to support in Issue 1, but because of the difference in size between legislative districts and Congressional districts, it was necessary to make minor changes in the criteria. She said experts and advocates were consulted prior to making these changes.

Chair Mills said he understands the reason for lowering the threshold, but asked why 30 percent was chosen. Rep. Clyde said that number is proportional to the size of the districts. She said, looking at populations of large and small cities, as well as engaging in discussions with experts on the topic, caused them to conclude that 30 percent made sense.

Chair Mills then described how he anticipated the committee would move forward on this issue. He said at the next meeting the committee would be discussing the topic in depth, and that his impression is the majority of the committee believes the committee should act on this issue. He invited the committee to make suggestions for changes to the language, asking that if members noted drafting errors, concerns, or questions, they should bring items to his attention before the next meeting.

Representative Robert McColley asked Rep. Clyde for an example of the practical effect of removing the word “contiguous.” He wondered whether it would be safer to keep that requirement in the proposed amendment.

Rep. Clyde gave an example of cities that have annexed large areas, resulting in multiple Ohio House districts being located within a large metropolitan area. She said, in that situation, it is harder to keep political subdivision all in one district. She said, in that instance, the thought is that, because of the size of Congressional districts, it is not necessary to make that same accommodation.

Mr. Asher asked whether the committee could obtain information about the frequency of noncontiguous municipalities. Acknowledging some examples in Franklin County, he said it would be helpful to know how often this occurs. Chair Mills said that information could be available for the next meeting. Rep. Clyde said her office has some data on this topic that she could share with the committee.

Report and Recommendation:

Steven C. Hollon
Executive Director

Chair Mills then recognized Executive Director Steven C. Hollon, who presented to the committee a draft of a report and recommendation on the subject of Congressional redistricting. Mr. Hollon described the various components of the report and recommendation, specifically indicating that it recommends adding Congressional redistricting to the map-drawing duties of the Ohio Redistricting Commission, a commission recently provided for by the passage of Issue 1. Mr. Hollon indicated that the report and recommendation recommends LR 131 0157, or a substantially-similar proposed joint resolution, as the appropriate vehicle for reforming Ohio’s Congressional redistricting process. Mr. Hollon specifically noted that the report and recommendation describes the history of Congressional redistricting in Ohio, litigation related to the topic, and the presentations of various experts and advocates who have appeared before the committee to describe the process and/or advocate for reforms.

Chair Mills invited committee members to ask any questions they may have about the report and recommendation. Governor Bob Taft noted that the “recommendation” section of the report and recommendation does not track the “conclusion,” suggesting that those sections should both indicate that LR 131 0157 is the proposed joint resolution that is favored by the committee. Agreeing that Gov. Taft had raised an important point, Mr. Hollon said the change would be made in order to clarify the committee’s intent.

Gov. Taft asked about the significance of the use of the phrase “substantially similar” in relation to the committee’s recommendation that a particular draft of a joint resolution be used to present the issue to voters. Mr. Hollon answered that the goal was to allow the committee or the full Commission the flexibility to suggest changes to the draft proposal without it impeding the progress of any action on the report and recommendation. Chair Mills added that he is aware of one or two other changes in addition to what Rep. Clyde mentioned, and that, in the interest of

moving the process forward, the committee will want to be sure the proposed joint resolution is drafted as correctly as possible.

Chair Mills then directed the committee to a chart, prepared by Commission Counsel Shari L. O'Neill, that compared H.J.R. 2, S.J.R. 2, and LR 131 0157. Ms. O'Neill noted that the chart lines up similar sections of the proposed joint resolutions, allowing committee members to easily compare any differences in the proposals. She said that the main difference between LR 131 0157 and the other two proposed joint resolutions is that LR 131 0157 recommends an amendment to Article XI, as it was amended by the passage of Issue 1, while the other two proposed joint resolutions would amend the constitution to create a new article. She also commented that LR 131 0157 expressly prohibits a member of Congress from sitting on the redistricting commission. Rep. Clyde agreed that these were the primary differences.

With regard to the next steps of the committee, Chair Mills said committee members had expressed their availability for a special meeting date of February 4, 2016 to allow a second presentation on the report and recommendation. He asked whether there was any strong objection to the committee meeting on that date at 10:00 a.m., and it was generally agreed that this date and time would be acceptable. Chair Mills said the committee would review any proposed amendments to the report and recommendation at that time, and that he anticipated the committee would take a vote at that meeting.

Adjournment:

There being no further business to come before the committee, the meeting was adjourned at 3:58 p.m.

Approval:

The minutes of the January 14, 2016 meeting of the Legislative Branch and Executive Branch Committee were approved at the February 4, 2016 meeting of the committee.

/s/ Frederick E. Mills

Frederick E. Mills, Chair

/s/ Paula Brooks

Paula Brooks, Vice-chair



OHIO CONSTITUTIONAL MODERNIZATION COMMISSION

MINUTES OF THE LEGISLATIVE BRANCH AND EXECUTIVE BRANCH COMMITTEE FOR THE MEETING HELD THURSDAY, FEBRUARY 4, 2016

Call to Order:

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

Members Present:

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

Approval of Minutes:

The minutes of the January 14, 2016 meeting of the committee were approved.

Report and Recommendation:

Chair Mills announced the committee would be discussing the Congressional redistricting report and recommendation that first was presented at the January 14, 2016 meeting. He asked if members of the audience desired to provide public comment on the topic. There being none, Chair Mills explained that he had intended to bring the report and recommendation up for a final vote upon this second presentation, but realized that concern had arisen regarding what the proposed constitutional amendment should be. He said that, after reviewing recently-provided written comments by Senator Charleta Tavares and Commission member Jeff Jacobson, he concluded the committee was not prepared to discuss each amendment and render a decision today. He said this decision was not without consternation on his part, but that he did not think it was right to let the full Commission handle the matter, nor is the committee prepared to do it today.

He said, instead, he intends to appoint a four-person subcommittee to negotiate a resolution to the points in contention. He said he plans to serve on the subcommittee, along with Vice-chair

Paula Brooks and Sen. Tavares. He added he will invite Representative Robert McColley to be the fourth person on the subcommittee. He said the subcommittee will discuss and resolve individual points raised by both Sen. Tavares and Mr. Jacobson, with a goal of having a second presentation with an agreed-on proposal for the committee to vote on. Chair Mills then invited comments from committee members.

Sen. Tavares thanked Chair Mills for sharing his thoughts. She explained the original proposal was the result of the discussions legislators have had for several years in the House and the Senate, specifically noting the efforts of Representatives Kathleen Clyde and Michael Curtin, and Senators Frank LaRose and Tom Sawyer. Sen. Tavares noted the success of Issue 1 on the November 2015 ballot, an effort that has resulted in legislative redistricting reform. She said proponents of Congressional redistricting reform were told last year that it was necessary to wait until resolution of the Arizona case, then pending in the United States Supreme Court.¹ She said proponents of reform then were asked to wait until after the November 2015 election to see the vote count on legislative redistricting, so again they waited. She said she was prepared to offer amendments today to the proposal by Rep. Clyde last month, and that is why she sent the memorandum outlining those amendments. However, she added, at this point she is still in favor of moving the original proposal forward as was shared before. She said if the committee does not act now it will not get anything through this body, emphasizing that two hearings are required in the full Commission before the issue is presented to the General Assembly. She said if the proposal does not move this year, it will not pass, and so she would like to move forward with the original proposal.

Senator Bill Coley said it is good to bring forward ideas for Congressional redistricting reform, but urged caution. He said the difference in size between General Assembly House districts and Congressional House districts results in problems with drawing the maps. He asked whether those proposing reform have tried to draw a map using the criteria contained in the new proposal. He said the map drawn in 2012 has been criticized, but that it does comply with the principle of “one person, one vote” as well as with the federal Voting Rights Act (VRA). He noted when Ohio is compared to other states, seven states are not considered because they have only one Congressional district. He said of the remaining 43 states, 37 have maps drawn by state legislatures. He added that all six states that have redistricting panels draw the maps have lawsuits challenging those maps. He said Ohio did not have such a law suit because the map that was drawn complied with the law. He said two states with redistricting commissions, Idaho and Hawaii, have maps that were struck down. He said he would like to see what a map would look like based on the criteria outlined in the current proposal.

He further cautioned that, as soon as that map is drawn, the question arises about how the map will look in 2022, because Ohioans move out of their districts or out of state so that the population is changing. He said he applauds the subcommittee idea and the selection of persons to serve on the subcommittee. But, he said, “hand me the map when you hand me the proposal.”

Committee member Herb Asher said when he came to the meeting he was prepared to vote for the original proposal, and complimented the chairman for getting the committee to this point. He continued that he was surprised to see amendments at the last minute, and had read the

¹ *Arizona State Legislature v. Arizona Indep. Redistricting Comm.*, 576 U.S. ____, 135 S.Ct. 2652 (2015).

comments by Sen. Tavares and Mr. Jacobson. He said he has no objection to Chair Mills' plan to have a subcommittee, but it would be helpful to get a better sense of what really motivated these later amendments, and whether these amendments are being pushed by other groups. He wondered what the amendments are accomplishing that merits slowing down the process.

Rep. Curtin commended the work of Chair Mills in bringing this proposal before the committee and the Commission, expressing the hope that it would ultimately come before the electorate. He said he cannot disagree with the subcommittee idea for the purpose of working through the details. He said it seemed to him the broad principles the committee agrees on have been broadly embraced, and that there is agreement that if there is no new plan in place soon, there will be no reform until 2022. He said that outcome is not serving Ohio well, and that most Ohioans believe the current map to be very bad. He noted there are 54 county splits, and a district known as "the snake on the lake," with other districts that stretch "hither and yon." He said "it is not that difficult for well-intentioned people on both sides to draw a map that meets the requirements of case law or the VRA," adding that nothing requires drawing a snakelike district along the lake to create a super-majority district. He said "we can draw a map that is fair, balanced, that respects voting rights, and that does not look like a Rorschach test." He expressed his hope that the committee would engage in expeditious work, requesting that there be a time frame for receiving a work product back from the subcommittee. He also disagreed that it was necessary to see a map before deciding whether the proposal was a good one, stating "the redistricting commission just supported by a majority of Ohioans is entrusted with coming up with a bipartisan map." He added, "if we are mandating someone come up with a map before we push this forward we are going to fail."

Committee member Kathleen Trafford commented that she is one of only two people on the committee who has never held public office or run for office. She said she is purely a member of the public. She said she shares some concerns raised initially, but when she read through the comments of Sen. Tavares and Mr. Jacobson, it made her consider the role of the Commission versus the rule of the legislature. She said the role of the committee is to reach a consensus that something needs to be done, and to conclude that a particular course of action is a good thing to recommend. She said the committee is getting bogged down in too much detail. She said, moving forward, there will be a subcommittee and some "legislative horse-trading," which she understands, but that she disagrees that a committee of the Commission is the place for working out details. She said the committee's role is to forward a proposal, and that if there is fine tuning it should be done by the legislative body. She said "we are not that body, we recommend; they have the final say, they handle the details." She said she would move that the committee move this forward and let it go to the legislature to worry about details. She then made a formal motion that the committee forward the original proposal, and if the legislature wants to provide or change details, that is their prerogative.

Chair Mills stated the motion would be ruled out of order due to its timing, and asked if other committee members had further comments.

Sen. Tavares said she agrees with Ms. Trafford that this is a public body, even though it was appointed and designed by the legislature. She said the legislature will have an opportunity to address the specific details of the proposal, but that the Commission is supposed to promulgate

ideas for amending the Ohio constitution, and is supposed to represent the voices of the people of Ohio, not just the legislators.

Sen. Coley said the proposal takes the drawing of the map away from the legislature, so the legislature cannot fix problems with the map if the proposal is enacted. He said he is not saying draw the map, he is saying prove you can draw a map and not violate the principles. He said he does not believe it can be done. He said if this is a better proposal than what Ohio currently has, “let us see what the 2012 map would look like if this proposal were in place.” He added, “until you show me the map can be done, you are just talking about aspirational goals.”

Mr. Asher said he does not have a sufficient appreciation of the proposed amendments, and does not know if they have technical, substantive, or partisan implications. He said his ultimate goal is to get an amendment on the ballot to be approved by the voters that will improve Congressional redistricting. He concluded that he is uncomfortable with letting the legislature work it out because that could be very divisive. He said he thinks, in the long term, the committee might be better off trying to resolve it first, with the ideal result of having a strong bipartisan recommendation.

Committee member JoAnn Davidson said the success with Issue 1 is informative. She said in that instance there was no animosity when the issue went to the ballot, and not even much debate, and that the measure passed by a large margin. She said that is a good recommendation for taking a little more time to work out a compromise that will guarantee what goes on the ballot has a chance of passing. She said she fully supports Congressional redistricting reform, but agrees with the chair that a subcommittee could negotiate how that will be accomplished.

Rep. Curtin agreed with Ms. Davidson, saying the committee should be endeavoring to put a bipartisan plan in front of the full Commission and the General Assembly. He said he would like to do that by a date certain. He said the committee should have an expectation of when that will occur.

Ms. Trafford said she defers to Mr. Asher, saying she agrees this procedure of having a subcommittee work on the issue makes sense, but she is concerned that the committee is confusing its role with that of the General Assembly.

Ms. Brooks moved that, over the next three weeks, the subcommittee, as proposed by the chair, would meet and come back for the committee’s next meeting prepared with a product that can be discussed, and placed before the committee for a vote. Governor Bob Taft seconded the motion.

Ms. Davidson moved to amend the motion to have the subcommittee act within six weeks for the reason that three weeks is too short. Ms. Brooks agreed to accept Ms. Davidson’s motion as a friendly amendment.

Chair Mills then summarized that the motion on floor is to allow a subcommittee to meet and report back with a work product in a six-week time frame. Mr. Asher clarified that the subcommittee would have “up to” six weeks to perform its task.

Rep. Curtin asked whether the committee is endeavoring to have a work product ready for a vote at the committee's April meeting. Chair Mills answered affirmatively.

Chair Mills asked if there were any objections to the motion. Noting none, he announced that the motion was approved.

With regard to the subcommittee's meeting, Chair Mills said he would provide notice when the meeting is scheduled so that those who would like to attend may do so. He noted that some interested individuals likely would attend, such as Mr. Jacobson and Rep. Clyde, but that the only official voting would come from the subcommittee members.

Chair Mills then recognized Ms. Brooks, who commented that the phrase "justice delayed is justice denied," applies to the issue of Congressional redistricting. She said "we need to get this done now," adding "this last-minute flurry of activity [with regard to the details of the proposal] was very concerning to a lot of people." She expressed the hope that there would not be further delays because "we need to assure the citizens of Ohio that they have a democracy."

Adjournment:

There being no further business to come before the committee, the meeting was adjourned at 10:56 a.m.

Approval:

The minutes of the February 4, 2016 meeting of the Legislative Branch and Executive Branch Committee were approved at the April 14, 2016 meeting of the committee.

/s/ Frederick E. Mills

Frederick E. Mills, Chair

/s/ Paula Brooks

Paula Brooks, Vice-chair



OHIO CONSTITUTIONAL MODERNIZATION COMMISSION

MINUTES OF THE LEGISLATIVE BRANCH AND EXECUTIVE BRANCH COMMITTEE

FOR THE MEETING HELD
THURSDAY, APRIL 14, 2016

Call to Order:

Chair Fred Mills called the meeting of the Legislative Branch and Executive Branch Committee to order at 2:41 p.m.

Members Present:

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

Approval of Minutes:

The minutes of the February 4, 2016 meeting of the committee were approved.

Chair Mills indicated the minutes of the March 9, 2016 meeting of the Subcommittee on Congressional Redistricting would be presented for approval at a future meeting.

Report and Recommendation:

Chair Mills provided a status update on a report and recommendation for a constitutional provision relating to Congressional redistricting. He said because outstanding issues were still being negotiated and discussed at the committee's February 4, 2016 meeting, it was decided that the proposal would be considered by a subcommittee consisting of Chair Mills, Senator Charleta Tavares, Representative Robert McColley, and Vice-chair Paula Brooks. He said, prior to the subcommittee's meeting on March 9, 2016, a working group was formed that included interested parties, and the working group met on several occasions to discuss various options. He then called on Sen. Tavares to give a report on the activities of the working group.

Sen. Tavares thanked working group participants, who included Rep. McColley, Professor Richard Gunther, Commission member Jeff Jacobson, Chris Glassburn, and staff from both the

Senate and House Democratic Caucuses. She said the group basically started with the Congressional redistricting joint resolution draft (“0157”) that was before the committee. She said the 0157 draft was based on the joint resolution for legislative redistricting reform that resulted in Issue 1, which was adopted by voters in November 2015. She said the legislative redistricting structure, consisting of a rules-based system and the requirement of bipartisan support of a ten-year redistricting plan, was retained in the draft joint resolution for Congressional redistricting.

Sen. Tavares described the working group’s process as “engaging and substantive on many fronts.” She said the group considered ideas for making sure that districts preserve communities and that there is fair representation of citizens of Ohio. She noted issues the group still needs to work on, specifically the number of splits between counties and other government subdivisions. She said the group reached consensus on the number of splits, and that “we think we can get there, the parties truly want to make it work,” but that the group needs to consider the size of counties that are included as whole Congressional districts, with a goal of avoiding gerrymandering. She said there are outstanding issues related to the size of the counties that will be protected if they do not have a whole district within that county. She said the group also wants to make sure not to encourage gerrymandering.

Chair Mills said he is not sure he has anything to add, but that it is an ongoing process. He said the committee remains optimistic that it can reach a successful conclusion on the issue but that more meetings and discussions are needed.

There being no questions from committee members or attendees, Chair Mills said the full committee will meet in May, and will have Congressional redistricting on the agenda as being up for a vote, but he is not sure there will be a vote. He said, in the meantime, the people who have been working on this issue will continue to do so.

Sen. Tavares asked whether the timeline for the subcommittee was still in effect. Chair Mills said his opinion is that the subcommittee continues to exist, and that, although it did not conclude its work within the time frame, he does not want to be confined to a time frame. He said it is his plan to continue moving forward, and to have the working group continue its negotiations and send its conclusions back through the subcommittee and then through this committee.

Presentations:

Chair Mills then recognized Steven C. Hollon, executive director of the Commission, to present a memorandum dated April 7, 2016, and titled “Grouping of Article II Sections by Topic for Review by the Committee,” summarizing the sections of Article II assigned to the committee and providing a potential road map for the committee’s completion of its review.

Mr. Hollon observed that many sections of Article II are related and may be grouped together, although they are not sequentially numbered. He said he tried to place these in some broad categories, noting that some sections might lend themselves to consideration by the committee at the same time. Mr. Hollon said his memorandum is not intended as a recommendation for

committee action, but rather to suggest ideas for moving forward. He described that the various sections are grouped into nine or ten categories.

Mr. Hollon suggested the committee could discuss the sections in groups, as well as considering whether Article II should be reorganized to make it easier to read.

Chair Mills thanked Mr. Hollon for the memorandum and presentation and opened the floor for questions.

Committee member Herb Asher asked whether Mr. Hollon had recommendations for organizational restructuring, or whether his focus was on substantive changes.

Mr. Hollon said the committee first should consider whether to group sections together for the purposes of preparing reports and recommendations. He said the committee could secondarily ask whether there should be some reorganization.

Chair Mills expressed that the committee would look at both the structure and substance of the sections of Article II. He said he favors a methodical approach to the review, but the committee should think about policy considerations. He continued that he would like to take the same approach for the committee's review of Article III (Executive Branch). He said his plan at the next meeting is to try to arrive at a consensus about how to proceed, specifically whether to prepare reports and recommendations for each section or to combine sections, whether to make substantive changes in any of the sections, and to identify possible presenters.

Ms. Brooks asked whether the Ohio Constitutional Revision Commission in the 1970s considered reorganizing these sections.

Senior Policy Advisor Steven H. Steinglass answered that the 1970s Commission recommended that sections relating to the initiative and referendum be moved to Article XVI, which would have been a major reorganization, but the General Assembly did not accept that restructuring. He said one major accomplishment of the 1970s Commission was to rework Article II, resulting in multiple sections being revised, moved, or repealed.

Chair Mills noted the 1973 changes that were suggested for Article II modernized much of the legislative article. He said there may not be a need to change those sections, but the committee should review them to be certain. He added he does not think there has been a total review of Article III for some time.

Mr. Steinglass observed that the only Article III changes have related to sections addressing the disability of the governor, and addressing the governor and lieutenant governor running on the same ticket.

Chair Mills asked for questions and comments regarding how the committee should proceed.

Governor Bob Taft asked whether Chair Mills plans to proceed in the numerical order of the sections or whether the committee would first review provisions where there is an apparent need

or desire for change. He suggested the committee might prioritize sections for which there is a sense that change is desirable.

Chair Mills said he has not decided how to proceed, but thought it might be best to stick to a schedule, reviewing the sections item by item. He asked committee members to let him know at the next meeting how they think the committee should proceed.

Adjournment:

There being no further business to come before the committee, the meeting was adjourned at 3:13 p.m.

Approval:

The minutes of the April 14, 2016 meeting of the Legislative Branch and Executive Branch Committee were approved at the May 12, 2016 meeting of the committee.

/s/ Fred Mills

Frederick E. Mills, Chair

/s/ Paula Brooks

Paula Brooks, Vice-chair



OHIO CONSTITUTIONAL MODERNIZATION COMMISSION

MINUTES OF THE LEGISLATIVE BRANCH AND EXECUTIVE BRANCH COMMITTEE

FOR THE MEETING HELD
THURSDAY, MAY 12, 2016

Call to Order:

Chair Fred Mills called the meeting of the Legislative Branch and Executive Branch Committee to order at 3:04 p.m.

Members Present:

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

Approval of Minutes:

The minutes of the April 14, 2016 meeting of the committee were approved.

Report and Recommendation:

Chair Mills provided a status update on a report and recommendation for a constitutional provision relating to Congressional redistricting. He said a couple of working group sessions have occurred in the last month, and that he thought the committee was making progress on a consensus opinion; however, there is “no consensus as of today.” He noted that the committee was sent a proposal by Senator Charleta Tavares in the form of a revised joint resolution that she would like to discuss. Observing that there has been a good faith effort on the part of all parties, including both the subcommittee and the working group, he called on Sen. Tavares to discuss her proposal.

Sen. Tavares agreed with Chair Mills, describing that the subcommittee had worked with individuals representing good government groups in trying to address differences of opinion about what the proposal should look like. She said the proposal designated “LSC 131 157-2” from the Legislative Service Commission (LSC) is fundamentally what was accepted by voters as Issue 1, involving legislative redistricting, in November 2015. She said the proposal has evolved due to the discussions that have occurred.

She noted that one of the issues the two sides have not agreed on is the number of splits of governmental units. She said some believe the fewer the splits, the less likely for there to be gerrymandering. She said the goal was to get as few splits as possible to ensure that communities that were similar would be maintained as much as possible. But, she said, “we are at an impasse at this point in time,” although it is “not for a lack of trying.” She said there were proposals from individuals on the subcommittee as well as from interested parties “who tried to work with us to ensure that we had a fair representational plan.”

Chair Mills then recognized Richard Gunther, professor emeritus of political science at the Ohio State University, who provided remarks about the status of negotiations.

Prof. Gunther said he strongly supported LSC 131 0157, but recommended that the committee consider two amendments being proposed in LSC 131 0157-2 in an effort to close the gap and move to a bipartisan consensus.

He said LSC 131 0157-2 eliminates technical flaws and clarifies and simplifies the language and structure of the proposal.¹ He noted two key amendments that were proposed by Sen. Tavares in February 2016 had been removed, “representing significant concessions in the bargaining process.” He said one amendment would have protected from splits counties with populations greater than 30 percent of a ratio of representation, while the other would have counted as splits the separation of non-contiguous township fragments into different districts.

He noted that, while no full agreement was reached within the working group, consensus appeared to have been established concerning some key issues, and the areas of disagreement were effectively reduced to three. He said the first issue is that of non-contiguous township fragments, which he said LSC 131 0157-2 addresses and resolves.

Identifying a second area of disagreement as “easily solvable,” Prof. Gunther said that issue involves the protection from splits of counties with populations between 50 percent and 100 percent of a ratio of representation. Noting that Jeff Jacobson had objected to this classification as an impediment to map drawing, particularly in Northeast Ohio, Prof. Gunther said this problem could be remedied by limiting this protection to counties also including a city whose population is greater than 15 percent of a ratio of representation. He proposed an amendment that would state:

Each county containing a population of more than fifty percent, but less than one hundred percent of one congressional ratio of representation which also contains a city of more than 15 percent of one congressional ratio of representation shall be included in only one congressional district.

Prof. Gunther identified a third area of disagreement as involving the number of allowable splits. He said, from a good government perspective, that the number of splits should be kept to a minimum. Asserting that the splitting of counties and cities violates the principle of community representation, Prof. Gunther said the larger the number of splits, the more opportunities to

¹ A copy of the draft of LSC 131 015 -2 is provided as Attachment A.

divide communities in the pursuit of favoring one party over another. He said, while sufficient flexibility must be given to map-drawers, keeping the permissible number of splits low is the best protection against gerrymandering. He said the current draft allows for a maximum of one county split and one municipal or township split per Congressional district. He commented that, other things being equal, using that model would mean at least 72 of Ohio counties would remain whole. He further noted that viable maps can be drawn which allow fewer splits than the 16 that would be allowed under the current proposal, using as an example two previous statewide map-drawing competitions, in which ordinary citizens submitted 19 maps that included 13 or fewer splits; and eight maps that included nine or fewer splits.

Prof. Gunther noted that the working group was divided over what should be considered the maximum number of allowable splits, with preferences ranging between maintaining a strict limit of no more than one county split and one municipal/township split per district (a maximum total of 16 of each type statewide), and maintaining a limit of 1.5 county splits and 1.75 municipal/township splits per district. He said he regards the latter preference as much too high. Nevertheless, he said the key to reaching a bipartisan consensus in support of redistricting reform lies in reaching some kind of compromise between those two extremes, urging the committee to explore this option.

Senator Bill Coley asked about the map-drawing competition, wondering how many competitors met the “one man one vote” objective. Prof. Gunther said all maps had to include at least one majority and one minority district. He added that the United States Supreme Court recently ruled in *Tennant v. Jefferson Cty. Comm.*, 567 U.S. ___, 133 S.Ct. 3, 5 (2012), that a deviation of 0.79 is perfectly legitimate if the interest is to pursue other goals in keeping communities intact.

Sen. Coley expressed that no map matched what could be regarded as a perfect split. Speaking from the audience, Catherine Turcer, policy analyst for Common Cause Ohio, said that one map actually satisfied that goal as well as meeting the majority/minority split requirement.

Chair Mills then recognized Jeff Jacobson, a member of the Commission who participated in the working group consideration of the issue.

Mr. Jacobson testified that, in addition to being a current member of the Ohio Constitutional Modernization Commission, his experience includes 16 years as a member of the Ohio House and Senate. He added that, in the 130th General Assembly, he was the primary Republican negotiator for H.J.R. 12, a bipartisan joint resolution for legislative redistricting reform that culminated in the passage of Issue 1 on the November 2015 ballot.

He explained the reason that Issue 1 only dealt with state legislative redistricting, rather than Congressional redistricting, was that Republican negotiators were concerned that including Congress would sink chances of getting legislative redistricting through the General Assembly and approved by the voters. He said he had promised at the time that he would be back to address bipartisan reform of Congressional districts, and has been working with the committee to consider options for Congressional redistricting reform.

Mr. Jacobson said he is pleased to see that proposals under consideration retain the Issue 1 framework. However, he said there are two serious deviations from the bipartisan spirit of Issue

1. He noted he had raised his concerns in emails to members of the committee, observing that Chair Mills had formed a subcommittee to work through the areas of disagreement.

He said Republicans joined those discussions in good faith and attended several “working group” meetings with Democrats and Prof. Gunther, who was representing the “good government” groups. He said the last working group meeting was held four weeks ago, and Republicans had been awaiting a reaction from the other side to compromises that had been put forward at the end of that meeting. He said no response to the last proposal was forthcoming until yesterday, when an email was sent with a new proposal.

Mr. Jacobson explained there were several versions that had been worked on and discussed as negotiators sought a bipartisan solution; however, the latest proposal in front of the committee does not contain important elements of those prior versions, but is the same amendment negotiators started with several months ago. He said, “while Republicans offered compromise after compromise in an attempt to reach agreement, every single proposal was rejected. Not once did the negotiators from the other side give an inch – other than the one time they said, ‘we will do it your way when both sides agree, but our way when they can’t agree.’ That is not compromise, that is not bipartisanship, and that is not at all how we forged Issue 1.”

He then focused on the proposal on the table, indicating it deviates in two ways from Issue 1.

First, he said, the proposal requires that counties with populations greater than half a district cannot be split, but allows any other county to be split. According to Mr. Jacobson, the proposal creates an imbalance of power that favors heavily-Democratic urban centers at the expense of suburban and rural voters in three ways: (1) suburban and rural residents in large counties are required to be kept in the same districts with city residents who outvote them; (2) by forcing those suburban and rural voters to be included with urban centers, the proposal artificially raises the voting power of these Democratic-leaning urban centers at the expense of the rest of the state; and, (3) the proposal provides no protection whatsoever against gerrymandering for residents of smaller counties.

He explained, further, that while the six largest counties containing half of Ohio’s population have special protections, there is nothing to prevent the other half living in the remaining 82 other counties from being assigned, county by county, to districts with no regard to enhancing or even keeping together their voting power. He said, while northeast Ohio has protection, northwestern, southeastern, north central, southern, and western Ohio have no such protection.

Contrasting the proposal with the language in Issue 1, he noted Issue 1 did not give any special protection to counties. Instead, it required that the splitting of large cities be minimized, but gave freedom to line drawers to combine cities and townships to create districts, without regard to most county boundaries. He said cities and townships are the building blocks of Issue 1.

Mr. Jacobson said Republicans first proposed maintaining Issue 1’s rules, offering to reduce Issue 1’s intactness threshold for cities and townships. He added Republicans, in search of a bipartisan solution, offered a compromise that would allow most of the large counties to have some special treatment, as well as offering protection for cities on top of that county protection. He said those options were rejected without any compromise being offered.

Mr. Jacobson noted that he is not referring to the very largest counties that have populations so large that an entire district or more could be drawn from that county alone. He said both Issue 1 and this proposal retain that concept from the old 1967 constitutional amendment.

He continued that, if gerrymandering is the splitting of voting blocs into smaller pieces and combining them in ways that minimizes the impact of some votes, this proposal gerrymanders suburban residents of large counties and fails to provide any protection to small county residents. He added, while this proposal does not allow more than one of those small counties to be split per district, that measure does not prevent gerrymandering, noting “you don’t need to split a small county to gerrymander it – you only have to assign these small counties to districts where they have little impact. The gerrymandering happens because small counties can be assigned to districts however the line drawers wish.” Using a Central Ohio example, he said residents of Dublin in Franklin County would be outvoted by their neighbors in Columbus, while residents of Dublin in Union or Delaware County have no protections whatsoever. He said, if that plan is followed, half of Ohioans residing in counties that mostly favor Republicans may be gerrymandered under this proposal, while the other half residing in counties that mostly favor Democrats must be kept intact. He commented that, “if either Representative Vernon Sykes or I had insisted on anything so partisan, Issue 1 would never even have made it to the House floor.”

Moving on to the other problem he noted with the current proposal, Mr. Jacobson said the proposal allows only one smaller county and one city to be split between districts, with the exception that, if it is impossible to draw the map with only one split, then a second county/city may be split. He said that plan has two problems. First, he said, while Ohio constitutional law has allowed population deviations of 10 percent (or in limited cases under the old system 20 percent), federal courts allow only a much smaller deviation between congressional districts. He said there is no way to ensure for the next fifty years that, as a result of each decennial census, county populations will line up to allow two perfectly-sized districts to be drawn with only one county split between them. He added that, if Ohio has an odd number of districts after the next census, as most experts predict, then one of the districts will not be able to have any split county and must be formed from entire counties. He commented that making a perfect district with only whole counties and no splits is even more difficult than finding two districts that match up perfectly with one split between them. Second, he noted that if line drawers actually were to conclude that they need to make a second split, opponents will use a supercomputer to analyze millions of potential districts to find the one version that does not need a second split, and the map will be invalidated in court.

He said Issue 1 negotiators rejected “gotcha” line drawing rules that were so restrictive as to make compliance virtually impossible, explaining the reason for this was that experience with prior reapportionments had demonstrated the Ohio Supreme Court would “throw up its hands at having too many rules that could not all be followed at the same time, if at all.”

Instead, he said Issue 1 negotiators chose to adopt very specific rules that protected what was most important, and thus ensured that the rules could be followed and would be enforced. He noted, “Because our rules were specific and followable, the negotiators were able to agree to tough enforcement provisions should those rules be violated. If you can draw districts without violating the rules, and you instead choose to violate them, shame on you and there will be real consequences.” He said his concern is that the current proposal risks that the rules could not be followed and the Court would again have to decide whether to impose a punishment for a

violation that could not be avoided. He said, in an effort to avoid this problem, Republicans were willing to look for a method to minimize splitting counties and cities while still ensuring that compliant districts could always be drawn. He said the resulting numbers were high enough to ensure that Ohio map drawers would not need what he called “win-the-lottery luck” to be able to draw districts that do not violate the rules.

He cautioned there is a larger deviation from the spirit of Issue 1, which is that the proposals being considered limit flexibility and make it difficult to produce any legal map. He said Issue 1 provided a fair amount of flexibility with clear rules, allowing the two parties to negotiate to find a map that both sides believe is fair. However, he said the current proposal makes it more likely that the map will be drawn by supercomputers capable of analyzing millions of different combinations of counties, cities, townships, and splits to find the one map that is both legal and most favorable to the majority. He commented “when human beings in good faith are not capable of obeying the Ohio Constitution without the use of supercomputers, we have strayed too far from the democratic process.”

Mr. Jacobson concluded by urging the committee to adopt a proposal that simply applies Issue 1’s rules to Congressional districts.

Sen. Coley noted that, although the courts permit some variations, he has seen courts say the General Assembly did things that the General Assembly did not do. He noted that if a plan is even one person off the target number, the federal courts can strike down the plan.

Mr. Jacobson said it is “win the lottery luck to say whatever the number might be I can find exact pairs of districts and will be able to do that for the whole state.”

Ms. Brooks asked Mr. Jacobson who he is representing in the negotiations. Mr. Jacobson said he does not know how he became the Republican negotiator on Issue 1, but regarding Congressional redistricting he raised objections and concerns as a member of the Commission, and participated as an expert and colleague to Republican members of the Legislative Branch and Executive Branch Subcommittee on Congressional Redistricting.

Committee member Herb Asher asked Prof. Gunther to explain the issue regarding 16 splits versus eight pairs. Prof. Gunther said his major point was there easily can be discussion over how many splits are allowable, a key difference between the position of Democrats and Republicans. He observed this is the easiest kind of issue to resolve because doing so involves developing clear counting rules. He said his reading of that issue depends on the exact language that is used and how that is translated into drawing boundaries, and that the issue is negotiable.

Mr. Jacobson agreed, saying if Prof. Gunther is happy with that, he is happy with that. He noted “it is only when you are allowed to split one between the pair, that there is a problem.” He said the 72-county result is acceptable to him.

Chair Mills then recognized Bethany Sanders, legal counsel for the Ohio Senate Democratic Caucus, who worked with Mr. Jacobson on language and participated in the negotiations.

Ms. Sanders said the definition of what counts as a split is primarily that splits are counted based on the number of splits per district. She said if a portion of county or city is in one district and a

portion is in another district, that arrangement counts as a split. She said she agrees with Prof. Gunther's opinion regarding counties that could be split, a number she would argue is closer to eight, but that has been the position the whole time. She said part of the issue is that negotiators do not know where the votes are on the committee, and would like feedback on what kind of compromise might be acceptable.

Sen. Coley asked how Ms. Sanders is counting, wondering about cities that are in multiple counties. Referencing line 175 of LSC 131 157-2, he said the draft indicates if a municipal corporation or township has territory in more than one county, the portion in each county is considered a separate municipal corporation or township.

There being no further comments or questions, Chair Mills noted the committee was scheduled to discuss other Article II sections by way of planning its next steps but that, in the interests of time, that discussion would occur at another meeting.

Chair Mills expressed disappointment that he had not been briefed on developments and discussions of the working group, commenting that he was unaware of testimony that would be provided at the committee meeting until just before the meeting occurred. He said, in the future, Congressional redistricting negotiations would go through the subcommittee formed for this purpose, and that he would schedule a subcommittee meeting.

Adjournment:

There being no further business to come before the committee, the meeting was adjourned at 3:50 p.m.

Approval:

The minutes of the May 12, 2016 meeting of the Legislative Branch and Executive Branch Committee were approved at the July 14, 2016 meeting of the committee.

/s/ Frederick E. Mills
Frederick E. Mills, Chair

Paula Brooks
Paula Brooks, Vice-chair

LSC 131 0157-2

131st General Assembly
Regular Session
2015-2016

J. R. No.

JOINT RESOLUTION

Proposing to amend the versions of Sections 1, 2, 3, 1
 4, 6, 8, and 9 of Article XI that are scheduled to 2
 take effect January 1, 2021; to amend, for the 3
 purpose of adopting new section numbers as 4
 indicated in parentheses, the versions of Sections 5
 3 (4), 4 (5), 5 (6), 6 (7), 7 (8), 8 (9), 9 (10), 6
 and 10 (11) of Article XI that are scheduled to 7
 take effect January 1, 2021; and to enact new 8
 Section 3 of Article XI of the Constitution of the 9
 State of Ohio to revise the redistricting process 10
 for congressional districts. 11

Be it resolved by the General Assembly of the State of Ohio, 12
 three-fifths of the members elected to each house concurring 13
 herein, that there shall be submitted to the electors of the 14
 state, in the manner prescribed by law at the general election to 15
 be held on November 8, 2016, a proposal to amend the versions of 16
 Sections 1, 2, 3, 4, 6, 8, and 9 of Article XI that are scheduled 17
 to take effect January 1, 2021; to amend, for the purpose of 18
 adopting new section numbers as indicated in parentheses, the 19
 versions of Sections 3 (4), 4 (5), 5 (6), 6 (7), 7 (8), 8 (9), 9 20
 (10), and 10 (11) of Article XI that are scheduled to take effect 21
 January 1, 2021; and to enact new Section 3 of Article XI of the 22
 Constitution of the State of Ohio to read as follows: 23

ARTICLE XI

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

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(1) The governor;

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(2) The auditor of state;

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(3) The secretary of state;

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(4) One person appointed by the speaker of the house of representatives;

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(5) One person appointed by the legislative leader of the largest political party in the house of representatives of which the speaker of the house of representatives is not a member;

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(6) One person appointed by the president of the senate; and

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(7) One person appointed by the legislative leader of the largest political party in the senate of which the president of the senate is not a member.

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No appointed member of the commission shall be a current member of congress.

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The legislative leaders in the senate and the house of representatives of each of the two largest political parties represented in the general assembly, acting jointly by political party, shall appoint a member of the commission to serve as a co-chairperson of the commission.

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(B)(1) Unless otherwise specified in this article, a simple majority of the commission members shall be required for any action by the commission.

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(2)(a) Except as otherwise provided in division (B)(2)(b) of this section, a majority vote of the members of the commission, including at least one member of the commission who is a member of

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each of the two largest political parties represented in the 54
general assembly, shall be required to do any of the following: 55

(i) Adopt rules of the commission; 56

(ii) Hire staff for the commission; 57

(iii) Expend funds. 58

(b) If the commission is unable to agree, by the vote 59
required under division (B)(2)(a) of this section, on the manner 60
in which funds should be expended, each co-chairperson of the 61
commission shall have the authority to expend one-half of the 62
funds that have been appropriated to the commission. 63

(3) The affirmative vote of four members of the commission, 64
including at least two members of the commission who represent 65
each of the two largest political parties represented in the 66
general assembly shall be required to adopt any congressional or 67
general assembly district plan. For the purpose of this division, 68
a member of the commission shall be considered to represent a 69
political party if the member was appointed to the commission by a 70
member of that political party or if, in the case of the governor, 71
the auditor of state, or the secretary of state, the member is a 72
member of that political party. 73

(C) At the first meeting of the commission, which the 74
governor shall convene only in a year ending in the numeral one, 75
except as provided in Sections ~~8~~ 9 and ~~9~~ 10 of this article, the 76
commission shall set a schedule for the adoption of procedural 77
rules for the operation of the commission. 78

The commission shall release to the public a proposed general 79
assembly district plan for the boundaries for each of the 80
ninety-nine house of representatives districts and the 81
thirty-three senate districts. The commission also shall release 82
to the public a proposed congressional district plan for the 83
boundaries for the prescribed number of congressional districts as 84

apportioned to the state pursuant to Section 2 of Article I of the 85
Constitution of the United States. The commission shall draft the 86
proposed ~~plan~~ plans in the manner prescribed in this article. 87

Before 88

Before adopting, but after introducing, a proposed plan, the 89
commission shall conduct a minimum of three public hearings across 90
the state to present the proposed plan and shall seek public input 91
regarding the proposed plan. All meetings of the commission shall 92
be open to the public. Meetings shall be broadcast by electronic 93
means of transmission using a medium readily accessible by the 94
general public. 95

The commission shall adopt a final congressional district 96
plan and a final general assembly district plan not later than the 97
first day of September of a year ending in the numeral one. After 98
the commission adopts a final plan, the commission shall promptly 99
file the plan with the secretary of state. Upon filing with the 100
secretary of state, the plan shall become effective. 101

Four weeks after the adoption of a congressional district 102
plan or a general assembly district plan, whichever is later, the 103
commission shall be automatically dissolved. 104

(D) The general assembly shall be responsible for making the 105
appropriations it determines necessary in order for the commission 106
to perform its duties under this article. 107

Section 2. Each congressional district shall be entitled to a 108
single representative in the United States house of 109
representatives in each congress. Each house of representatives 110
district shall be entitled to a single representative in each 111
general assembly. Each senate district shall be entitled to a 112
single senator in each general assembly. 113

Section 3. (A) The whole population of the state, as 114
determined by the federal decennial census or, if such is 115

unavailable, such other basis as the general assembly may direct, 116
shall be divided by the number of congressional districts 117
apportioned to the state pursuant to Section 2 of Article I of the 118
Constitution of the United States, and the quotient shall be the 119
congressional ratio of representation for ten years next 120
succeeding such redistricting. 121

(B) A congressional district plan shall comply with all of 122
the requirements of division (B) of this section. 123

(1) The commission shall minimize the extent to which each 124
congressional district's population differs from the congressional 125
ratio of representation, as is practicable, while taking into 126
account other legitimate state objectives in the creation of 127
congressional districts. The commission may include in a 128
congressional district plan an explanation of the reason that any 129
district contains a population that is not equal to the 130
congressional ratio of representation. 131

(2) Any congressional district plan adopted by the commission 132
shall comply with all applicable provisions of the constitutions 133
of Ohio and the United States and of federal law. 134

(3) Every congressional district shall be composed of 135
contiguous territory, and the boundary of each district shall be a 136
single nonintersecting continuous line. 137

(C) Congressional districts shall be created and numbered in 138
the following order of priority, to the extent that such order is 139
consistent with the foregoing standards: 140

(1) Proceeding in succession from the largest to the 141
smallest, each county containing population greater than one 142
congressional ratio of representation shall be divided into as 143
many congressional districts contained entirely within that county 144
as it has whole ratios of representation. Any fraction of the 145
population that remains after the county has been divided into as 146

many congressional districts as it has whole ratios of 147
representation shall be a part of only one adjoining congressional 148
district. 149

(2) Each county containing population substantially equal to 150
the congressional ratio of representation shall be designated a 151
congressional district. 152

(3) Each county containing a population of more than fifty 153
per cent, but less than one hundred per cent, of one congressional 154
ratio of representation shall be included in only one 155
congressional district. 156

(4) Except as otherwise provided in division (C)(5) of this 157
section, the remaining territory of the state shall be divided 158
into congressional districts by combining the areas of whole 159
counties, municipal corporations, and townships. 160

(5)(a) Except as otherwise provided in division (C)(5)(b) of 161
this section, in drawing each congressional district, the 162
commission may split one county, except as prohibited under 163
division (C)(1), (2), or (3) of this section, and one municipal 164
corporation or township, in order to create a district that 165
complies with the requirements of this article. 166

(b) If it is not possible to comply with division (C)(5)(a) 167
of this section in creating a congressional district, the 168
commission may split two counties, except as prohibited under 169
division (C)(1), (2), or (3) of this section, and two municipal 170
corporations or townships in order to create the district. 171

(c) Except as required under division (C)(1) of this section, 172
no county, municipal corporation, or township shall be included in 173
more than two congressional districts. 174

(D)(1) Except as otherwise provided in division (D)(2) of 175
this section, a county, municipal corporation, or township is 176
considered to be split if any contiguous portion of its territory 177

is not contained entirely within one district. 178

(2) If a municipal corporation or township has territory in 179
more than one county, the contiguous portion of that municipal 180
corporation or township that lies in each county shall be 181
considered to be a separate municipal corporation or township for 182
the purposes of this section. 183

Section 3 4. (A) The whole population of the state, as 184
determined by the federal decennial census or, if such is 185
unavailable, such other basis as the general assembly may direct, 186
shall be divided by the number "ninety-nine" and by the number 187
"thirty-three" and the quotients shall be the ratio of 188
representation in the house of representatives and in the senate, 189
respectively, for ten years next succeeding such redistricting. 190

(B) A general assembly district plan shall comply with all of 191
the requirements of division (B) of this section. 192

(1) The population of each house of representatives district 193
shall be substantially equal to the ratio of representation in the 194
house of representatives, and the population of each senate 195
district shall be substantially equal to the ratio of 196
representation in the senate, as provided in division (A) of this 197
section. In no event shall any district contain a population of 198
less than ninety-five per cent nor more than one hundred five per 199
cent of the applicable ratio of representation. 200

(2) Any general assembly district plan adopted by the 201
commission shall comply with all applicable provisions of the 202
constitutions of Ohio and the United States and of federal law. 203

(3) Every general assembly district shall be composed of 204
contiguous territory, and the boundary of each district shall be a 205
single nonintersecting continuous line. 206

(C) House of representatives districts shall be created and 207
numbered in the following order of priority, to the extent that 208

such order is consistent with the foregoing standards: 209

(1) Proceeding in succession from the largest to the 210
smallest, each county containing population greater than one 211
hundred five per cent of the ratio of representation in the house 212
of representatives shall be divided into as many house of 213
representatives districts as it has whole ratios of 214
representation. Any fraction of the population in excess of a 215
whole ratio shall be a part of only one adjoining house of 216
representatives district. 217

(2) Each county containing population of not less than 218
ninety-five per cent of the ratio of representation in the house 219
of representatives nor more than one hundred five per cent of the 220
ratio shall be designated a representative district. 221

(3) The remaining territory of the state shall be divided 222
into representative districts by combining the areas of counties, 223
municipal corporations, and townships. Where feasible, no county 224
shall be split more than once. 225

(D)(1)(a) Except as otherwise provided in divisions (D)(1)(b) 226
and (c) of this section, a county, municipal corporation, or 227
township is considered to be split if any contiguous portion of 228
its territory is not contained entirely within one district. 229

(b) If a municipal corporation or township has territory in 230
more than one county, the contiguous portion of that municipal 231
corporation or township that lies in each county shall be 232
considered to be a separate municipal corporation or township for 233
the purposes of this section. 234

(c) If a municipal corporation or township that is located in 235
a county that contains a municipal corporation or township that 236
has a population of more than one ratio of representation is split 237
for the purpose of complying with division (E)(1)(a) or (b) of 238
this section, each portion of that municipal corporation or 239

township shall be considered to be a separate municipal 240
corporation or township for the purposes of this section. 241

(2) Representative districts shall be drawn so as to split 242
the smallest possible number of municipal corporations and 243
townships whose contiguous portions contain a population of more 244
than fifty per cent, but less than one hundred per cent, of one 245
ratio of representation. 246

(3) Where the requirements of divisions (B), (C), and (D) of 247
this section cannot feasibly be attained by forming a 248
representative district from whole municipal corporations and 249
townships, not more than one municipal corporation or township may 250
be split per representative district. 251

(E)(1) If it is not possible for the commission to comply 252
with all of the requirements of divisions (B), (C), and (D) of 253
this section in drawing a particular representative district, the 254
commission shall take the first action listed below that makes it 255
possible for the commission to draw that district: 256

(a) Notwithstanding division (D)(3) of this section, the 257
commission shall create the district by splitting two municipal 258
corporations or townships whose contiguous portions do not contain 259
a population of more than fifty per cent, but less than one 260
hundred per cent, of one ratio of representation. 261

(b) Notwithstanding division (D)(2) of this section, the 262
commission shall create the district by splitting a municipal 263
corporation or township whose contiguous portions contain a 264
population of more than fifty per cent, but less than one hundred 265
per cent, of one ratio of representation. 266

(c) Notwithstanding division (C)(2) of this section, the 267
commission shall create the district by splitting, once, a single 268
county that contains a population of not less than ninety-five per 269
cent of the ratio of representation, but not more than one hundred 270

five per cent of the ratio of representation. 271

(d) Notwithstanding division (C)(1) of this section, the 272
commission shall create the district by including in two districts 273
portions of the territory that remains after a county that 274
contains a population of more than one hundred five per cent of 275
the ratio of representation has been divided into as many house of 276
representatives districts as it has whole ratios of 277
representation. 278

(2) If the commission takes an action under division (E)(1) 279
of this section, the commission shall include in the general 280
assembly district plan a statement explaining which action the 281
commission took under that division and the reason the commission 282
took that action. 283

(3) If the commission complies with divisions (E)(1) and (2) 284
of this section in drawing a district, the commission shall not be 285
considered to have violated division (C)(1), (C)(2), (D)(2), or 286
(D)(3) of this section, as applicable, in drawing that district, 287
for the purpose of an analysis under division (D) of Section 9 10 288
of this article. 289

Section 4 5. (A) Senate districts shall be composed of three 290
contiguous house of representatives districts. 291

(B)(1) A county having at least one whole senate ratio of 292
representation shall have as many senate districts wholly within 293
the boundaries of the county as it has whole senate ratios of 294
representation. Any fraction of the population in excess of a 295
whole ratio shall be a part of only one adjoining senate district. 296

(2) Counties having less than one senate ratio of 297
representation, but at least one house of representatives ratio of 298
representation, shall be part of only one senate district. 299

(3) If it is not possible for the commission to draw 300
representative districts that comply with all of the requirements 301

of this article and that make it possible for the commission to 302
comply with all of the requirements of divisions (B)(1) and (2) of 303
this section, the commission shall draw senate districts so as to 304
commit the fewest possible violations of those divisions. If the 305
commission complies with this division in drawing senate 306
districts, the commission shall not be considered to have violated 307
division (B)(1) or (2) of this section, as applicable, in drawing 308
those districts, for the purpose of an analysis under division (D) 309
of Section ~~9~~ 10 of this article. 310

(C) The number of whole ratios of representation for a county 311
shall be determined by dividing the population of the county by 312
the ratio of representation in the senate determined under 313
division (A) of Section ~~3~~ 4 of this article. 314

(D) Senate districts shall be numbered from one through 315
thirty-three and as provided in Section ~~5~~ 6 of this article. 316

Section ~~5~~ 6. At any time the boundaries of senate districts 317
are changed in any general assembly district plan made pursuant to 318
any provision of this article, a senator whose term will not 319
expire within two years of the time the plan becomes effective 320
shall represent, for the remainder of the term for which the 321
senator was elected, the senate district that contains the largest 322
portion of the population of the district from which the senator 323
was elected, and the district shall be given the number of the 324
district from which the senator was elected. If more than one 325
senator whose term will not so expire would represent the same 326
district by following the provisions of this section, the plan 327
shall designate which senator shall represent the district and 328
shall designate which district the other senator or senators shall 329
represent for the balance of their term or terms. 330

Section ~~6~~ 7. The Ohio redistricting commission shall attempt 331
to draw a congressional district plan and a general assembly 332
district plan that ~~meets~~ meet all of the following standards: 333

(A) No congressional district plan or general assembly 334
district plan shall be drawn primarily to favor or disfavor a 335
political party. 336

(B) The statewide proportion of districts whose voters, based 337
on statewide state and federal partisan general election results 338
during the last ten years, favor each political party shall 339
correspond closely to the statewide preferences of the voters of 340
Ohio. 341

(C) ~~General~~ Congressional districts and general assembly 342
districts shall be compact. 343

Nothing in this section permits the commission to violate the 344
district standards described in Section 2, 3, 4, 5, 6, or 7 8 of 345
this article. 346

Section 7 8. Notwithstanding the fact that boundaries of 347
counties, municipal corporations, and townships within a district 348
may be changed, district boundaries shall be created by using the 349
boundaries of counties, municipal corporations, and townships as 350
they exist at the time of the federal decennial census on which 351
the redistricting is based, or, if unavailable, on such other 352
basis as the general assembly has directed. 353

Section 8 9. (A)(1) If the Ohio redistricting commission 354
fails to adopt a final congressional district plan or a final 355
general assembly district plan not later than the first day of 356
September of a year ending in the numeral one, in accordance with 357
Section 1 of this article, the commission shall introduce a 358
proposed ~~general assembly~~ district plan of the applicable type by 359
a simple majority vote of the commission. 360

(2) After introducing a proposed ~~general assembly~~ district 361
plan under division (A)(1) of this section, the commission shall 362
hold a public hearing concerning the proposed plan, at which the 363
public may offer testimony and at which the commission may adopt 364

amendments to the proposed plan. Members of the commission should 365
attend the hearing; however, only a quorum of the members of the 366
commission is required to conduct the hearing. 367

(3) After the hearing described in division (A)(2) of this 368
section is held, and not later than the fifteenth day of September 369
of a year ending in the numeral one, the commission shall adopt a 370
final ~~general assembly~~ district plan of the applicable type, 371
either by the vote required to adopt a plan under division (B)(3) 372
of Section 1 of this article or by a simple majority vote of the 373
commission. 374

(B) If the commission adopts a final ~~general assembly~~ 375
district plan in accordance with division (A)(3) of this section 376
by the vote required to adopt a plan under division (B)(3) of 377
Section 1 of this article, the plan shall take effect upon filing 378
with the secretary of state and shall remain effective until the 379
next year ending in the numeral one, except as provided in Section 380
9 10 of this article. 381

(C)(1)(a) Except as otherwise provided in division (C)(1)(b) 382
of this section, if the commission adopts a final congressional 383
district plan in accordance with division (A)(3) of this section 384
by a simple majority vote of the commission, and not by the vote 385
required to adopt a plan under division (B)(3) of Section 1 of 386
this article, the plan shall take effect upon filing with the 387
secretary of state and shall remain effective until two general 388
elections for the United States house of representatives have 389
occurred under the plan. 390

Except as otherwise provided in division (C)(1)(b) of this 391
section, if the commission adopts a final general assembly 392
district plan in accordance with division (A)(3) of this section 393
by a simple majority vote of the commission, and not by the vote 394
required to adopt a plan under division (B)(3) of Section 1 of 395
this article, the plan shall take effect upon filing with the 396

secretary of state and shall remain effective until two general 397
elections for the house of representatives have occurred under the 398
plan. 399

(b) If the commission adopts a final ~~general assembly~~ 400
district plan in accordance with division (A)(3) of this section 401
by a simple majority vote of the commission, and not by the vote 402
required to adopt a plan under division (B) of Section 1 of this 403
article, and that plan is adopted to replace a plan that ceased to 404
be effective under division (C)(1)(a) of this section before a 405
year ending in the numeral one, the plan adopted under this 406
division shall take effect upon filing with the secretary of state 407
and shall remain effective until a year ending in the numeral one, 408
except as provided in Section ~~9~~ 10 of this article. 409

(2) A final ~~general assembly~~ district plan adopted under 410
division (C)(1)(a) or (b) of this section shall include a 411
statement explaining what the commission determined to be the 412
statewide preferences of the voters of Ohio and the manner in 413
which the statewide proportion of districts in the plan whose 414
voters, based on statewide state and federal partisan general 415
election results during the last ten years, favor each political 416
party corresponds closely to those preferences, as described in 417
division (B) of Section ~~6~~ 7 of this article. At the time the plan 418
is adopted, a member of the commission who does not vote in favor 419
of the plan may submit a declaration of the member's opinion 420
concerning the statement included with the plan. 421

(D) After a ~~general assembly~~ district plan adopted under 422
division (C)(1)(a) of this section ceases to be effective, and not 423
earlier than the first day of July of the year following the year 424
in which the plan ceased to be effective, the commission shall be 425
reconstituted as provided in Section 1 of this article, convene, 426
and adopt a new ~~general assembly~~ district plan of the applicable 427
type in accordance with this article, to be used until the next 428

time for redistricting under this article. The commission shall 429
draw the new ~~general assembly~~ district plan using the same 430
population and county, municipal corporation, and township 431
boundary data as were used to draw the previous plan adopted under 432
division (C) of this section. 433

Section 9 10. (A) The supreme court of Ohio shall have 434
exclusive, original jurisdiction in all cases arising under this 435
article. 436

(B) In the event that any section of this constitution 437
relating to redistricting, any congressional or general assembly 438
district plan made by the Ohio redistricting commission, or any 439
district is determined to be invalid by an unappealed final order 440
of a court of competent jurisdiction then, notwithstanding any 441
other provisions of this constitution, the commission shall be 442
reconstituted as provided in Section 1 of this article, convene, 443
and ascertain and determine a ~~general assembly~~ district plan of 444
the applicable type in conformity with such provisions of this 445
constitution as are then valid, including, if applicable, 446
establishing terms of office and election of members of the 447
general assembly from districts designated in the plan, to be used 448
until the next time for redistricting under this article in 449
conformity with such provisions of this constitution as are then 450
valid. 451

(C) Notwithstanding any provision of this constitution or any 452
law regarding the residence of senators and representatives, a 453
general assembly district plan made pursuant to this section shall 454
allow thirty days for persons to change residence in order to be 455
eligible for election. 456

(D)(1) No court shall order, in any circumstance, the 457
implementation or enforcement of any congressional or general 458
assembly district plan that has not been approved by the 459
commission in the manner prescribed by this article. 460

(2) No court shall order the commission to adopt a particular congressional or general assembly district plan or to draw a particular district.

(3) If the supreme court of Ohio determines that a congressional or general assembly district plan adopted by the commission does not comply with the requirements of Section 2, 3, 4, 5, 6, or 7 8 of this article, the available remedies shall be as follows:

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

(b) ~~If~~ In the case of a congressional district plan, if the court finds that it is necessary to amend not fewer than two congressional districts to correct violations of those requirements, the court shall declare the plan invalid and shall order the commission to adopt a new congressional district plan in accordance with this article.

In the case of a general assembly district plan, if the court finds that it is necessary to amend not fewer than six house of representatives districts to correct violations of those requirements, to amend not fewer than two senate districts to correct violations of those requirements, or both, the court shall declare the plan invalid and shall order the commission to adopt a new general assembly district plan in accordance with this article.

(c) If, in considering a plan adopted under division (C) of Section ~~8~~ 9 of this article, the court determines that both of the following are true, the court shall order the commission to adopt a new congressional or general assembly district plan, as applicable, in accordance with this article:

(i) The plan significantly violates those requirements in a

manner that materially affects the ability of the plan to contain 492
districts whose voters favor political parties in an overall 493
proportion that corresponds closely to the statewide political 494
party preferences of the voters of Ohio, as described in division 495
(B) of Section ~~6~~ 7 of this article. 496

(ii) The statewide proportion of districts in the plan whose 497
voters, based on statewide state and federal partisan general 498
election results during the last ten years, favor each political 499
party does not correspond closely to the statewide preferences of 500
the voters of Ohio. 501

Section ~~10~~ 11. The various provisions of this article are 502
intended to be severable, and the invalidity of one or more of 503
such provisions shall not affect the validity of the remaining 504
provisions. 505

EFFECTIVE DATE AND REPEAL 506

If adopted by a majority of the electors voting on this 507
proposal, Sections 1, 2, 3 (4), 4 (5), 5 (6), 6 (7), 7 (8), 8 (9), 508
9 (10), and 10 (11) of Article XI amended by this proposal and 509
Section 3 of Article XI enacted by this proposal take effect 510
January 1, 2021, and the existing versions of Sections 1, 2, 3, 4, 511
5, 6, 7, 8, 9, and 10 of Article XI of the Constitution of the 512
State of Ohio that were scheduled to take effect January 1, 2021, 513
are repealed from that effective date. 514



OHIO CONSTITUTIONAL MODERNIZATION COMMISSION

MINUTES OF THE LEGISLATIVE BRANCH AND EXECUTIVE BRANCH COMMITTEE

FOR THE MEETING HELD
THURSDAY, JULY 14, 2016

Call to Order:

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

Members Present:

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

Approval of Minutes:

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

Presentation:

“Grouping of Article II Sections”

Steven C. Hollon

Executive Director

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

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

Category I – Section 1 (Legislative Power)

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

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

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

Category II – Section 2 (Election of Legislators)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Adjournment:

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

Approval:

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

/s/ Frederick E. Mills

Frederick E. Mills, Chair

/s/ Paula Brooks

Paula Brooks, Vice-chair



OHIO CONSTITUTIONAL MODERNIZATION COMMISSION

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 July 14, 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 13, 2016 meeting of the Legislative Branch and Executive Branch Committee were approved at the December 15, 2016 meeting of the committee.

/s/ Frederick E. Mills
Frederick E. Mills, Chair

/s/ Paula Brooks
Paula Brooks, Vice-chair



OHIO CONSTITUTIONAL MODERNIZATION COMMISSION

MINUTES OF THE LEGISLATIVE BRANCH AND EXECUTIVE BRANCH COMMITTEE FOR THE MEETING HELD THURSDAY, NOVEMBER 10, 2016

Call to Order:

Chair Fred Mills called the meeting of the Legislative Branch and Executive Branch Committee to order at 2:17 p.m.

Members Present:

A quorum was not present with Chair Mills and committee members Curtin, Davidson, and Taft in attendance.

Approval of Minutes:

There being no quorum, the minutes of the October 13, 2016 meeting of the committee were not approved.

Presentation:

*“Legislative Privilege in State Legislatures”
Steven F. Huefner, Assistant Professor of Law
Moritz College of Law
The Ohio State University*

In relation to the committee’s review of Article II, Section 12 (Privilege of Members from Arrest, and of Speech), Chair Mills recognized Professor Steven F. Huefner of the Moritz College of Law to present on the topic of legislative privilege in state legislatures. Prof. Huefner said he comes to the question of legislative privilege from having spent five years assisting the United States Senate in efforts to protect and enforce its privileges, including those provided by Article I, Section 6, Clause 1 of the United States Constitution.

He indicated that, after coming to Ohio in 2000, he wrote an article about state legislative privilege provisions based on his observations of how those provisions were being interpreted in different ways than he was familiar with in the U.S. Senate.¹

Prof. Huefner said, particularly with regard to the *DeRolph* litigation,² there were multiple occasions in which staffers in the General Assembly were asked and in some cases required to provide testimony regarding how the legislature dealt with the school funding issue. He said the existence of the legislative privilege is about protecting the separation of powers, a concept that goes back to when the British Parliament was subservient to the Crown. He said, in the 17th century, drama ensued when King Charles I entered Parliament seeking offenders he wanted to punish for treasonous behavior. Prof. Huefner said Parliament was able to resist that intrusion, but the incident resulted in the English Bill of Rights including the predecessor of the speech or debate clause.

He said the clause is intended to protect members of a legislative body from retaliation by the executive branch for how they perform their official duties. The provision derives from the concept that, while all public representatives are subject to political retaliation, they should not be subject to retaliation by the executive or judicial branch, which could use their power to make the legislative branch subservient.

Prof. Huefner said provisions protecting legislators from retaliation for speech or debate remain, even though the clashes in England have not been part of the American experience.

Noting there are justifications for continuing the privilege, Prof. Huefner nonetheless commented that the countervailing pressure is for legislative activities to be open and public. The need for transparency sometimes includes pressure to force legislatures and their staffs to be even more forthcoming and provide information. He noted the trial court required testimony from a staffer while protecting the legislators themselves. He said the privilege should apply to staff as well as to legislators, but it is not always interpreted that way in the states.

Article II, Section 12 extends a privilege against arrest as well as the speech or debate privilege. Prof. Huefner said he had occasion to help the U.S. Senate understand the federal counterpart. He described an incident in the late 1990s when West Virginia Senator Robert Byrd was stopped on his way back to his Washington, D.C. suburban home and, when asked for identification, he produced his U.S. Senate identification card. The traffic officer decided not to cite him, but the story that became public was that the officer said he could not cite Sen. Byrd because, as a member of Congress, he was privileged against arrest. Prof. Huefner said that is not true; rather, it is a privilege against a citizen's civil arrest, which was occasionally used to detain members of a legislative body to prevent them performing their legislative duty. The privilege only excuses

¹ Steven F. Huefner, *The Neglected Value of the Legislative Privilege in State Legislatures*, 45 Wm. & Mary L. Rev. 221 (2003), <http://scholarship.law.wm.edu/wmlr/vol45/iss1/4> (last visited Nov. 14, 2016).

² See *DeRolph v. State*, 78 Ohio St.3d 193, 1997-Ohio-84, 677 N.E.2d 733 (*DeRolph I*); *DeRolph v. State*, 89 Ohio St.3d 1, 2000-Ohio-437, 728 N.E.2d 993 (*DeRolph II*); *DeRolph v. State*, 93 Ohio St.3d 309, 2001-Ohio-1343, 754 N.E.2d 1184 (*DeRolph III*); and *DeRolph v. State*, 97 Ohio St.3d 434, 2002-Ohio-6750, 780 N.E.2d 529 (*DeRolph IV*).

members of the legislature from being arrested in all cases except treason, felony, and breach of the peace.

Addressing the prohibition against legislators being questioned elsewhere for any speech or debate, Prof. Huefner described what conduct and types of questioning is covered. He said by its terms the provision protects members of the legislature, but he thinks for that protection to be fully effective, legislative staff members ought to be within the scope of that privilege if the legislative member desires the privilege to cover the staffer. He said it is the member's privilege to encompass the staff that is serving the member in connection with the work they are doing. Prof. Huefner said the privilege should cover broadly all the essential legislative activities, a privilege that may go beyond the official duties of the legislators. He noted there are duties performed that may not be expressly legislative.

He said the remaining question is whether the privilege should be construed to protect the legislators only against liability or whether it also protects them against having to testify. The provision itself states they shall not be questioned elsewhere. He remarked that, if that statement is only taken at face value it is easy to argue legislators cannot be subpoenaed about what they have done, even if they are not defendants. But, he said, although this is how federal courts construe the rule, this is not always how state courts have construed it. He said the privilege against questioning includes being required to produce documents.

He said the privilege raises questions about freedom of information laws, commenting that an argument could be made that an individual legislator could extend his or her privilege to the entire legislative body. He said, at the same time, the privilege only provides that members should be free from questioning elsewhere, meaning outside the legislature, so that the legislature is always accountable to the public for what they do in legislative session, including ethics investigations, deciding what parts of the process to conduct in public session, and by videotaping floor and committee sessions. He said the legislature can choose to create paper documents as a way of making its activities more readily available to the public. Despite this, he said, it is his view that legislators need to be able to a degree to insulate themselves against the possibility that disgruntled constituents or other branches of government might be able to get information to harass them.

Prof. Huefner having concluded his remarks, Chair Mills asked committee members for questions or comments.

Representative Mike Curtin asked if Prof. Huefner could summarize where Ohio may be deficient in defining the privilege.

Prof. Huefner said his worry is that Ohio courts, which have not addressed the topic as frequently as federal courts, have been too willing to see the privilege as not extending to staff. He said he also is concerned that the courts may see the privilege as involving liability and evidentiary use of documents, but not as privileging testimonial inquiry about legislative activity. He said that is what happened in the *City of Dublin* case.

He said the deeper question is whether this is a deficiency in Ohio jurisprudence that should be remedied through judicial construction or through textual change in the provision. He said he is not arguing for a textual change in the provision. He said he will give it more extensive thought.

He said he is not aware of much in the way of change to the language of these analogous provisions in other states that trace back to the founding constitutions. Even when rewritten, the provisions do not demonstrate a substantive change. He said there could be reason to scrap that relatively brief textual language and have something more detailed. But, he cautioned, “once you start putting in detail you have to worry about what you have left out.”

Rep. Curtin followed up, asking whether there are cases to indicate that the privilege would extend not just to sitting legislators but to former legislators if litigation is brought after their service is over.

Prof. Huefner said he is sure at the federal level, at least in dicta, there are cases that make it clear that the privilege is ongoing, and does not just protect during the term of service. He said that sometimes raises interesting questions when the legislator has the privilege but has died, causing the question to become who asserts the privilege when someone seeks information in the legislator’s file.

Committee member Bob Taft asked whether the privilege against arrest language is obsolete. Prof. Huefner said he is not aware that the civil arrest power has been used recently, thus, in theory the power is still there, just not used. He said he can see a stronger argument for a revision for that language rather than revising the speech or debate clause, to clarify what is being excluded. He said a revision could say “privileged from civil arrest but not criminal arrest.” He said he needs to think more about whether a change is justifiable.

Committee member Jo Ann Davidson asked about a situation where, if the legislature determines it needs a quorum, law enforcement can be instructed to bring in members. She wondered if that situation relates to this provision.

Prof. Huefner said it is appropriate for the institution to have that power, but he hopes it is rarely used. He said, historically, it is possible to have the sergeant-of-arms drag people to the floor, but that is different from civil arrest.

Rep. Curtin asked, regarding the *DeRolph* case, whether legislators were compelled to testify or whether their participation was voluntary. Prof. Huefner said wherever the privilege applies it can be waived, and it is not a barrier that prevents giving the testimony if the testimony is voluntarily offered. He said the legislators who testified in *DeRolph* either knowingly waived or were not aware of the privilege, he is not sure which.

Ms. Davidson, recalling her participation as a witness in that litigation, said legislators did testify at the request of the defense, which was the state, so their participation was voluntary.

Chair Mills asked whether there was a subpoena issued in the case involving the LSC staffer. Prof. Huefner said he does not know if they asserted the privilege, but they were subpoenaed. He said there was a successful motion to have those subpoenas quashed.

Ms. Davidson asked whether there is a statutory provision relating to LSC as far as records are concerned, restraining records from being distributed as a protection to the legislator.

Prof. Huefner said on a couple of occasions the General Assembly has desired to pass some statutory provisions that would provide the same type of protection. But, he said, there is a strong argument that even without that provision the documents that LSC produces are for members of the General Assembly related to legislation, and so should be covered by the speech or debate clause. So, he said, the statute does not require interpreting what the constitutional provision means. He said Gov. Taft vetoed one piece of legislation because it provided more protection than the speech or debate would have provided, and the provision itself said it was intended to be redundant, but there was concern about how the court would interpret it. The General Assembly has wanted to use statutory means to be sure its members were protected, but in his view the speech or debate clause would provide that protection.

Chair Mills remarked that the committee has been reviewing Articles II and III, to see what may need to be modernized. He said, in preparation for discussion of Article II, Section 12, he would like to follow up with Prof. Huefner to see if there are some things that maybe could be made clearer.

Prof. Huefner said the Kansas Constitution has one more word in it that may be relevant: it protects against legislators being questioned about speech and debate “or written document.” Prof. Huefner suggested that might be a change to consider.

Adjournment:

There being no further business to come before the committee, the meeting was adjourned at 3:02 p.m.

Approval:

The minutes of the November 10, 2016 meeting of the Legislative Branch and Executive Branch Committee were approved at the December 15, 2016 meeting of the committee, and approved as corrected at the March 9, 2017 meeting of the committee.

/s/ Frederick E. Mills
Frederick E. Mills, Chair

/s/ Paula Brooks
Paula Brooks, Vice-chair



OHIO CONSTITUTIONAL MODERNIZATION COMMISSION

MINUTES OF THE LEGISLATIVE BRANCH AND EXECUTIVE BRANCH COMMITTEE FOR THE MEETING HELD THURSDAY, DECEMBER 15, 2016

Call to Order:

Chair Fred Mills called the meeting of the Legislative Branch and Executive Branch Committee to order at 2:39 p.m.

Members Present:

A quorum was present with Chair Mills, Vice-chair Brooks, and committee members Curtin, Davidson, McColley, Talley, and Tavares in attendance.

Approval of Minutes:

The minutes of the November 10, 2016 meeting of the committee were approved.

Reports and Recommendations:

Article II, Sections 3, 4, 5, and 11 (Member Qualifications and Vacancies)

Chair Mills recognized Steven C. Hollon, executive director, for the purpose of presenting to the committee a report and recommendation for Article II, Sections 3, 4, 5, and 11. Mr. Hollon said the report and recommendation reflects the committee's conclusion that the subject sections be retained in their present form. He said the report indicates the sections require legislators to have lived in their districts for one year prior to election, restrict legislators to holding only one public office, prevent persons convicted of embezzlement from serving in the General Assembly, and define how vacancies in the General Assembly are to be filled. Mr. Hollon said the report describes revisions to Sections 4 and 11 that resulted from the activities of the Ohio Constitutional Revision Commission (1970s Commission), as well as discussing litigation relating to the sections. Mr. Hollon said the report and recommendation summarizes the committee's conclusion that the 1970s review resulted in changes that continue to appropriately and effectively guide the legislature's organization and operation, and so the report recommends no change to Article II, Sections 3, 4, 5, and 11.

Mr. Hollon having completed his presentation, Chair Mills asked if there were comments or questions. There being none, committee member Jo Ann Davidson moved that the report and recommendation be issued by the committee. The motion was seconded by Senator Charleta Tavares. The committee then voted unanimously to issue the report and recommendation.

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

Mr. Hollon then presented a report and recommendation relating to Article II, Sections 6 through 9, and Sections 13 and 14, all relating to the manner in which the General Assembly conducts its business. Mr. Hollon said the report provides summaries of the sections, with Section 6 outlining the powers of each house of the General Assembly, Section 7 allowing for statutes to prescribe the organization of the houses, Section 8 governing the legislative calendar, Section 9 requiring a journal of proceedings, Section 13 requiring open proceedings, and Section 14 controlling the ability of either house to adjourn.

Mr. Hollon continued that the 1970s Commission, in reviewing these sections, issued a comprehensive report recommending the amendment of the legislative sections of Article II, and that these amendments were adopted by voters and continue to serve the state well. He said the report and recommendation describes the limited litigation related to these sections before setting out the committee's conclusion that the legislature is its own best authority for determining how often and how long it should meet. Thus, Mr. Hollon said, the report and recommendation indicates the committee's view that these sections should be retained in their current form.

Mr. Hollon having concluded his presentation, Chair Mills asked if anyone wished to discuss or comment on the report. There being no comments, Sen. Tavares then moved that the committee issue the report and recommendation for Article II, Sections 6, 7, 8, 9, 13, and 11, and committee member Petee Talley seconded the motion. The committee then voted unanimously to issue the report and recommendation for no change to the subject sections.

Chair Mills thanked Mr. Hollon for his presentations, and announced that the two reports and recommendations would now be submitted to the Coordinating Committee for its review as to form before being forwarded to the full Commission.

Presentations and Discussion:

Chair Mills announced that the committee would address the next item on its agenda, which is Congressional redistricting. After providing a brief summary of the committee's work on the topic to date, Chair Mills said the committee would hear from several speakers who wished to address the progress of discussions regarding a proposal for Congressional redistricting.

*Carrie L. Davis, Executive Director
League of Women Voters of Ohio*

Chair Mills introduced Carrie L. Davis, executive director of the League of Women Voters of Ohio, who said she was appearing on behalf of the Fair Districts = Fair Elections Coalition, a group that formed in 2015 to work on Issue 1 on the November 2015 ballot relating to legislative redistricting. She said since the passage of Issue 1, the coalition has shifted its focus to applying the same principles used in relation to legislative redistricting to methods for drawing Congressional districts. She said the coalition concluded it could not wait indefinitely, so it

drafted an alternate proposal which she provided to the committee.¹ She said the purpose of the proposal was to invite public comment.

Describing the proposal, Ms. Davis said the group started with Issue 1 as its template, adapting the document to fit the requirements of Congressional redistricting, and suggesting revisions that fit on one page front and back. She said a goal was to keep the proposal short and simple so that voters can understand it. She said the proposal uses the Ohio Redistricting Commission, created by Issue 1, as the body that will determine the Congressional districts. She said the remaining sections remain unchanged, other than being renumbered. She identified a new Section 3 as spelling out criteria for drawing new districts. Ms. Davis identified the two main criteria as being representational fairness and community preservation, both of which are already written into the Ohio Constitution by virtue of Issue 1. She said the proposed change elevates criteria used in legislative redistricting from aspirational to primary goals when drawing lines for Congress. She said the proposal abandons the complicated rules on splitting, trying to keep it simple and clear.

Explaining some of the specific recommendations in the proposal, Ms. Davis said Section 3(A)(1) explains how the number of districts is determined, while Section 3(A)(2) mirrors the current United States Supreme Court standard regarding the ratio of representation. She said Section 3(B) allows for public submission of district plans because the coalition wanted an opportunity for public participation. Ms. Davis said Section 3(C) lists criteria the redistricting commission would have to follow. She said this was in response to the Ohio Supreme Court decision in *Wilson v. Kasich*, 134 Ohio St.3d 221, 2012-Ohio-5367, 981 N.E.2d 814. She said the proposal gave priority to these criteria in the order in which they are listed, so there would be no confusion, legal question, or risk. She said the Ohio Supreme Court pointed out current law is deficient in this regard, an issue the proposal resolves by setting out the specific criteria in the order of their importance. She noted that Section 3(C)(1) provides that the districts must be composed of contiguous territory with a goal of keeping communities whole. Section 3(C)(2) requires a plan to comply with all applicable provisions of federal and state law. Section 3(C)(3) proposes that the redistricting commission maximize representational fairness. Ms. Davis said the coalition wanted this to be a required criterion in drawing Congressional districts. She said that subsection, requiring a plan “whose statewide proportion of districts most closely corresponds to the partisan preferences of the voters of Ohio” provides for a ten-year look back of Ohio voting history to see how Ohio voters voted over that period.

Ms. Davis said Section 3(C)(4) prevents a plan from being drawn to favor or disfavor a political party or candidate, while Section 3(C)(5) provides a goal of minimizing the number of splits. Ms. Davis described that Section 3(C)(6) allows the redistricting commission to adopt a plan containing more than the fair numerical number of splits, so long as the commission explains the splits, why they were necessary, and how the splits serve the public interest. She said the proposal also requires the commission to hold hearings and adopt a plan by a certain time. She noted that the proposal does not include an impasse provision.

Ms. Davis having concluded her remarks, Chair Mills asked if there were questions.

Representative Mike Curtin asked about the order of the criteria contained in Section 3(C). He wondered if there would be an objection to moving 4 to 3, 5 to 4, and 3 to 5, because

¹ A copy of the proposal is provided as Attachment A.

representational fairness as a higher goal would cause a conflict that would not be there if the order were switched. Ms. Davis said the coalition had lively debates about how to order the requirements. She said representational fairness was a key criterion because currently Ohio does not have that. She offered to raise that issue with the coalition committee with which she is working.

Jeff Jacobson, Commission member

Chair Mills then recognized Jeff Jacobson, a participant in discussions regarding Congressional redistricting, who said he was present to provide a status update on the progress of discussions. He said, on November 7, 2016, he met with Representative Charleta Tavares, Senator-elect Vernon Sykes, and Ohio State University professor emeritus Richard Gunther. He said they began the meeting working from the Issue 1 text, but that an outstanding issue from previous discussions in April 2016 was still unresolved, which is the splitting of counties. He said his position was that districts should be entirely within one county if the county is big enough to have its own district. He said Republicans are concerned that if cities cannot be split, the cities will maintain their Democratic majority. He said cities and townships are the building block of Issue 1, adding that a prohibition on splitting counties protects Democrats from being gerrymandered but not Republicans.

Mr. Jacobson said the Democrats wanted to go down as far as 15 percent, which would have added Dayton and Akron, but not Canton. He said that was the entire distinction between the positions of the two sides, and they have not been able to bridge that gap. He said, in an attempt to accomplish something, he proposed they could go down to 15 percent so long as one of the group of 15-to-25 percent could still be split. He said the Democrats responded with a proposal to extend that to all medium counties, and both sides retired, with the hope of a deal.

Mr. Jacobson said while there were some conversations by email, no response was ever given to that proposal. He said a meeting was scheduled later in November, but it was canceled and has not been rescheduled. He fears the reason is the testimony just given by Ms. Davis, meaning that Democrats wanted the proposal to go beyond his last offer. Mr. Jacobson said he agrees the goal should be to avoid reproducing the same map that has been criticized and that it should not be possible to use the rules to guarantee a certain outcome for one party. He added that results under Issue 1 are not guaranteed for either side, and that makes both sides work together. He said he is dismayed that the bipartisanship of Issue 1 is being abandoned when the discussion group had reached a fair bipartisan compromise. He said Professor Gunther's insistence on county boundaries has been abandoned.

Mr. Jacobson said the goal of the new plan, unlike Issue 1, is to dictate a one-sided political outcome. He said these plans only provide lip service to protecting minority rights. Rather, he said, the focus on the definition of what they are trying to achieve in terms of partisan outcomes.

Chair Mills confirmed that he asked Mr. Jacobson to indicate the history of the discussions and that Mr. Jacobson is correct as to timing. He said he appreciates where the discussions have been in the last year.

Sen. Tavares said she takes exception to some of Mr. Jacobson's comments, adding that just because someone believes there is a goal of gaining a partisan advantage does not mean that was the intent. She said Professor Gunther, who was part of the team that was trying to negotiate,

certainly was not promoting partisanship in the discussions. She said she would agree with the chair that the dates are probably accurate, and that the delay is the fault of many. She recommended the committee put a date certain on when it will get a result. She said there is a date certain on the proposal introduced by Ms. Davis. Sen. Tavares continued that there has to be additional criteria in a Congressional district because those districts change based on the census, and the proposal cannot be exactly like Issue 1. She said, from her perspective, everyone bears some blame, and part of the problem is there was no date certain.

Mr. Jacobson said he agrees that Issue 1 is preferable to a partisan plan. He said it cannot be a date certain if there is no resolution process.

Rep. Curtin said he is not sure who is involved in the discussions, and is not sure who is invited to participate. With regard to the proposal, he said eliminating Section 3(C)(3), relating to representational fairness, and elevating the priority of the requirement that jurisdictions not be split, are principles that people understand. Rep. Curtin said he does not understand Mr. Jacobson's concern about treating all counties the same. Rep. Curtin continued that 68 to 78 of Ohio's 88 counties are "reliably red, year in and year out." He said, if one is talking about blue counties and a need to split, the competitive counties are only 20 to 25 percent of all the counties of Ohio. He said he does not understand the point about it being to the advantage of Democrats to not break up large counties. He said, in his view, the goal should be not to break up any counties.

Mr. Jacobson said one does not protect counties, but rather one protects cities and local governments. He said he would protect the largest ones. He said gerrymandering occurs when map drawers take a large group and cut it into little pieces. He added the problem is the small counties are already small enough. He noted "If there is no protection against gerrymandering, all it benefits are those few larger counties that happen to be where a lot of Democrats live."

Rep. Curtin said Ohioans have lived in counties since before Ohio became a state; people recognize county government. He said he would take issue with the statement that people do not identify with counties. He said he commends the draft resolution submitted by Ms. Davis. He commented, "If we don't protect counties then we are inviting gerrymanderers to split Franklin County more than once."

Mr. Jacobson said there ought to be protections against multiple splits because it is not possible to draw Congressional districts without breaking some county lines. He said there is no such thing as a perfect map. He said his objection was to being told which counties could be split.

Rep. Curtin asked whether Mr. Jacobson would accept a change in the proposal that would remove Section 3(C)(3), about representational fairness, and move up the requirement of minimizing splits, keeping the requirement of an explanation of why additional splits were needed.

Mr. Jacobson said the plan would still require an impasse resolution, and that he could not support a plan that lets disputes go to federal court. He noted the proposal does not allow disputes to go to an Ohio state court.

Chair Mills asked where in the proposal that is stated. Mr. Jacobson said that concept was in an early draft provided to him by Professor Gunther.

Vice-chair Paula Brooks asked, as a procedural matter, to what draft Mr. Jacobson was referring. Mr. Jacobson said he was given an earlier version in October. Ms. Brooks followed up, saying the court provision does not appear in the current draft. She asked when the last time was that the discussion group met. Mr. Jacobson said the group met on November 17, 2016.

Mr. Jacobson said his point is that there is nothing new in the proposal. He said there are slight areas of disagreement but the group is close to a consensus. He said, as drafted, the proposal presented by Ms. Davis is not agreed to.

There being no further questions or comments, Chair Mills said the committee would meet again on January 12, 2017, and would continue to discuss Article II issues. He said there has been some interest in discussing the one-subject rule in relation to the legislative lame-duck session.

Committee member Petee Talley asked whether there are additional meetings planned for the Congressional redistricting subcommittee. Chair Mills answered that he hopes the process is not over. He said there have been emails suggesting next dates for a meeting but there is nothing scheduled at this point. He said he hopes the committee can talk about redistricting again in January.

Sen. Tavares asked whether the discussion group referenced by Mr. Jacobson is an ad hoc committee, a subcommittee, or just a group. Chair Mills said it is just a group. He said if the group can come to an agreement, he will have the subcommittee consider it.

Adjournment:

There being no further business to come before the committee, the meeting was adjourned at 3:53 p.m.

Approval:

The minutes of the December 15, 2016 meeting of the Legislative Branch and Executive Branch Committee were approved at the January 12, 2017 meeting of the committee.

/s/ Frederick E. Mills
Frederick E. Mills, Chair

/s/ Paula Brooks
Paula Brooks, Vice-chair



OHIO CONSTITUTIONAL MODERNIZATION COMMISSION

MINUTES OF THE LEGISLATIVE BRANCH AND EXECUTIVE BRANCH COMMITTEE FOR THE MEETING HELD THURSDAY, JANUARY 12, 2017

Call to Order:

Chair Fred Mills called the meeting of the Legislative Branch and Executive Branch Committee to order at 11:13 a.m.

Members Present:

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

Approval of Minutes:

The minutes of the December 15, 2016 meeting of the committee were approved.

Presentations and Discussion:

Steven C. Hollon
Executive Director

Chair Mills recognized Steven C. Hollon, executive director, for the purpose of presenting the draft of a proposed report and recommendation relating to Article II, Sections 10 and 12.

Mr. Hollon described that the report and recommendation covers two sections of the legislative article relating to the rights and privileges of members of the General Assembly. Mr. Hollon said Section 10 provides a right to protest to members who are in the minority in opposing legislation, allowing them to publicize their dissent in the legislative journal. Mr. Hollon said the report and recommendation outlines the history of the right of protest, which originated with the British Parliament. Mr. Hollon then described Article II, Section 12, which provides legislators a privilege from arrest under certain circumstances while traveling to and from legislative session. He said the section also provides a privilege for legislators' speech or debate, preventing them from being questioned in another setting for communications made in the course of their

legislative duties. Mr. Hollon said the report also describes discussions on these topics by the Ohio Constitutional Revision Commission in the 1970s, as well as litigation in which the sections were at issue. Mr. Hollon continued that the report outlines a presentation on the privilege of speech or debate that was provided to the committee by Professor Steven F. Huefner, of the Ohio State University Moritz College of Law. Mr. Hollon concluded that the report does not indicate the committee's discussion or recommendation on these sections but will do so once the committee has had a full opportunity to conduct its review.

Chair Mills thanked Mr. Hollon for his presentation and sought comment from the committee. He suggested the committee consider whether the speech or debate privilege should include a prohibition against testimony in a litigation setting, and whether the privilege should be extended to legislative staff.

Senator Bill Coley said the discussion in legislative caucus sessions centers on the best way to move forward on legislation that benefits citizens of the state. He said legislative members officially speak through their vote and their comments during session, not through other types of communications. He said he supports maintaining the privilege.

Sen. Charleta Tavares disagreed, saying if legislators are acting on behalf of the citizens, they should not be fearful of what they say or do on citizens' behalf. She said she would like to study this topic a little more, but would hope legislators do not say anything in any setting they would not want their constituents to know.

Sen. Coley clarified that his point was the privilege prevents another branch of government being able to call to task the legislative branch. He noted that conferences on cases conducted by justices of the Supreme Court of Ohio are privileged, as are some executive branch activities, and that members of the legislative branch deserve the same protection in order to effectively do their work. He said, "We are all elected; you cannot have different branches of government infringing on each other."

Committee member Herb Asher said the committee could benefit from more research regarding whether the provision could be modified to expressly extend the privilege to legislative staff. He said it would be useful to see how the privilege works, specifically, under what circumstances a legislator is performing his or her official duties.

Committee member Jo Ann Davidson said the privilege between legislators and employees of the Legislative Service Commission (LSC) still exists, and that the General Assembly has always protected that information. She said if legislators are to effectively perform their role the privilege is necessary. She gave an example from her experience as speaker of the Ohio House, indicating a change in party control can result in employee changes because it is recognized that the relationship between legislator and staff is confidential. She said it is important to keep in mind that there is precedent for protecting confidentiality of the legislator-staff relationship.

Chair Mills agreed, saying the committee could benefit from additional research on the privilege as it relates to legislative staff. Regarding the right of members to record their protest in the journal, he said this right has been exercised over the years, and he is not aware of complaints about legislators' having the ability to register their dissent.

Commenting regarding a report prepared by the committee of the 1970s Commission that reviewed Section 10, Sen. Tavares said she disagrees with the suggestion that because legislators can publicize their protest in the media they do not need a constitutional protection for their ability to dissent. She said the media is not something legislators can control directly, and publication may be fragmented and not reach everyone. She said, considering the recent rise in the use of social media, she would like the committee to consider some modern thinking on this question.

Chair Mills provided the committee with information about how, as a practical matter, a legislator may place a protest in the journal. He said this occurs when an individual member or when a party, usually the minority, does not like the way something came about on the floor of the chamber. He said, for example, there was a procedural ruling against them, or a procedure that was not followed, and the protest would be handed to the clerk and then included in the journal of that day's business. He said this allows a permanent record of that protest.

Sen. Tavares added some instances of the use of the protest have arisen because audio and video recordings are not permitted in committee. She said legislative minutes "are pretty vague, so we don't really capture any protest that takes place in committee hearings, who testified, or who attended." She added legislative intent is not expressed in the legislation, and no explanation is given why a legislator sponsored a bill. She said the committee record is void of any protest information, other than what is in that person's written testimony. She added that proceedings on the floor are livestreamed, so that information is available to the public.

Committee member Mike Curtin noted that, prior to the mid-1990s, a bill request from a legislative member to LSC was a public record. Describing an incident in which communications between a legislator, an interest group, and LSC came under public scrutiny, he said legislation was introduced at that time to make communications between members and LSC privileged. He said it would be helpful to know how other states address communications between legislators and legislative service agencies, and whether those states provide a privilege by statute or by constitutional provision.

Chair Mills said his sense is that the provision granting a right of protest should be maintained, but the committee may wish to revise it. Sen. Coley expressed that there could be a situation in which a legislator may vote with the majority but may agree with the minority that the procedure for enacting the legislation was improper. He said in that case the legislator cannot speak through his or her vote, so it is important to maintain the right to protest.

Chair Mills thanked Mr. Hollon for his presentation, indicating the committee would be hearing more on Sections 10 and 12 at a future meeting.

William K. Weisenberg
Attorney
Article II, Section 8 and "Lame Duck" Sessions

Chair Mills then recognized Attorney William K. Weisenberg, who said he was appearing in his personal capacity to provide comments relating to the portion of the legislative session occurring between the November election and the conclusion of the General Assembly, also known as "lame duck."

Mr. Weisenberg briefly described his prior experience as a lobbyist, indicating that, for many years, he was active in promoting legislation and was present in the statehouse during numerous lame duck sessions.

He said, in his view, lame duck bills create uncertainty. He said Article II, Section 8, relating to sessions of the General Assembly, is well-drafted, providing for a year-round legislature. He said Ohio is one of the few states whose legislature is full time. He said Section 8 also provides for a special session to be called by proclamation. Mr. Weisenberg suggested that Section 8 be amended to provide that, in a post-general-election period of time, the General Assembly may be reconvened only by a proclamation from the governor or a proclamation from the leadership of the General Assembly to address a singular specific issue that could not be subject to unrelated or extraneous issues being added on. He said the lame duck session is not in the best interest of the public or the General Assembly.

Mr. Weisenberg continued that the lame duck session results in legislation that violates the one-subject rule in Article II, Section 15(D). For this reason, he said if Section 8 is amended to allow post-election session only by proclamation, the section also should be amended to prevent extraneous issues being tacked on to a bill being considered at that time.

Mr. Asher said he shares some of Mr. Weisenberg's concerns, but asked if there are some ways the legislature could adopt rules and procedures that would resolve the problems.

Mr. Weisenberg said the General Assembly has the authority to establish its own rules, which it does every session. He said the legislature needs that ability to be sure the way it conducts itself stays within Article II.

Mr. Asher said if an issue is under consideration prior to the election, and further hearings and a vote occur in the lame duck, that is not the same as a situation in which the issue suddenly springs up during the lame duck session. He wondered if the rule could be that no items would be addressed unless there was a previous public discussion or hearing.

Mr. Weisenberg said there can be more than one right answer, and that different proposals could be examined. He said there are issues that the General Assembly will consider over the entire biennium, for example the recodification of criminal statutes.

Mr. Asher said he has respect for the General Assembly, but becomes distressed when he sees the General Assembly subject to substantial criticism by significant parties, such as editorial boards and good government groups. He said this issue is something the General Assembly might address to acknowledge this does not seem to be the way a legislature ought to operate. He expressed hope that Mr. Weisenberg's comments would encourage that discussion.

Mr. Weisenberg said "Our society has become cynical about our public institutions; there is an erosion of public trust and confidence in government," noting that his proposal could be a way help restore public confidence in the system. He said what has troubled him personally is a sense that the public does not know or understand what government does, and his proposed change may be a way to take a positive step in Ohio.

Chair Mills thanked Mr. Weisenberg for his comments.

Turning to the issue of Congressional redistricting, Chair Mills said there was nothing new to report, and there have been no meetings on that topic in the last month. He noted a story in the Columbus *Dispatch* indicating the governor wants to deal with Congressional redistricting in the upcoming state budget.

Looking ahead, Chair Mills indicated his intention is for the committee to meet in February, and that the committee would continue discussion of the reports and recommendations as it works through Article II.

Adjournment:

There being no further business to come before the committee, the meeting was adjourned at 12:01 p.m.

Approval:

The minutes of the January 12, 2017 meeting of the Legislative Branch and Executive Branch Committee were approved at the March 9, 2017 meeting of the committee.

/s/ Frederick E. Mills
Frederick E. Mills, Chair

/s/ Paula Brooks
Paula Brooks, Vice-chair



OHIO CONSTITUTIONAL MODERNIZATION COMMISSION

MINUTES OF THE LEGISLATIVE BRANCH AND EXECUTIVE BRANCH COMMITTEE FOR THE MEETING HELD THURSDAY, FEBRUARY 9, 2017

Call to Order:

Vice-Chair Paula Brooks called the meeting of the Legislative Branch and Executive Branch Committee to order at 2:30 p.m.

Members Present:

A quorum was not present, with Vice-chair Brooks and committee members Davidson and Taft in attendance.

Approval of Minutes:

There being no quorum, the minutes of the January 12, 2017 meeting of the committee were not approved.

Presentations and Discussion:

Shari L. O'Neill

Interim Executive Director and Counsel

"Constitutional and Statutory Provisions Related to the Speech or Debate Privilege"

Vice-chair Brooks recognized Shari L. O'Neill, interim executive director and counsel, for the purpose of presenting on legislative privilege as applied to legislative staff. Based on a fifty-state survey, Ms. O'Neill said nearly all states provide some type of protection to legislators when performing their legislative duties, with most providing both a speech or debate privilege that protects legislators from having to testify or answer in any other place for statements made in the course of their legislative activity, and a legislative immunity that protects legislators against civil or criminal arrest or process during session, during a period before and/or after session, and while traveling to and from session. She noted only Florida and North Carolina lack a constitutional provision relating to legislative privilege or immunity, although a North Carolina

statute protects legislative speech and the Florida Supreme Court has recognized a legislative privilege as being available under the separation of powers doctrine.

Addressing whether any states mention or protect legislative staff in their constitutional provisions relating to legislative privileges and immunities, Ms. O'Neill indicated no state constitutions provide this protection, although statutory protections are available in at least some states.

Reviewing state statutory provisions, Ms. O'Neill noted that several states expressly protect communications between legislators and their staff, particularly in the context of discovery requests in a litigation setting. She explained that, although Ohio's statute, R.C. 101.30, requires legislative staff to maintain a confidential relationship with General Assembly members and General Assembly staff, it does not expressly provide a privilege to legislative staff. She said R.C. 101.30 also does not indicate that legislative documents would not be discoverable, and does not address whether legislative staff could be required to testify in court about their work on legislation. She added that the statute does not discuss oral communications between legislators and staff or expressly address communications that may occur between interested parties and legislative staff on behalf of legislators.

Vice-chair Brooks thanked Ms. O'Neill for her presentation.

*Sarah Pierce and Bridget Coontz, Assistant Attorneys General
Constitutional Offices of the Ohio Attorney General
"Legislative Privilege in a Litigation Setting"*

Vice-chair Brooks introduced Sarah Pierce and Bridget Coontz, two assistant attorneys general from the Constitutional Offices of the Office of the Ohio Attorney General, to present on the topic of legislative privilege in a litigation context. Ms. Pierce indicated that she and Ms. Coontz provide representation to General Assembly members in legal matters that arise in the course of legislators' official duties. She said there are few Ohio cases discussing legislative privilege, and Ohio courts often analyze the speech or debate clause as being co-extensive of the federal clause.

Ms. Pierce said the first case to discuss the topic at any length is *City of Dublin v. State*, 138 Ohio App.3d 753, 742 N.E.2d 232 (10th Dist. 2000), a case involving a challenge to a budget bill. In that case, the plaintiff served a discovery request that included noticing a sitting senator for deposition and submitting interrogatories to General Assembly members and their staffs. She said the trial court quashed all of the discovery requests on the ground of privilege. Ms. Pierce indicated that when the case was appealed to the Tenth District Court of Appeals, the appellate court decision included an extensive analysis of legislative privilege, extending the privilege to all meetings and discussion. She said, however, the court did allow interrogatories to go to the lobbyists who had meetings with legislators.

Ms. Pierce described a second case relating to legislative privilege, *Vercellotti v. Husted*, 174 Ohio App.3d 609, 2008-Ohio-149, 883 N.E.2d 1112, in which the plaintiffs noticed depositions of sitting General Assembly members, as well as one legislative aide and one member of the Legislative Service Commission. The trial court granted a protective order preventing legislative members from having to appear for deposition. A Legislative Service Commission employee testified at a hearing about the committee meeting itself, but the state successfully asserted that conversations with legislators were privileged.

Ms. Pierce described that her office has raised legislative privilege in a number of cases. She identified several cases in which motions to quash subpoenas were granted, or where subpoenas were withdrawn, but said these issues were resolved without a court decision or analysis. She said when her office responds to discovery requests, it relies on R.C. 101.30 to assert a confidential relationship between the General Assembly and legislative staff.

Committee member Jo Ann Davidson asked whether “legislative staff” is considered to be the Legislative Service Commission staff or the General Assembly staff. She said, if one were to ask a legislator, he or she would think it means the legislator’s own staff. Ms. Pierce said that distinction has not caused a problem, and that the terms are defined in R.C. 101.30 for the specific purposes of that statute.

Vice-chair Brooks asked whether the presenters see a need for a change to Article II, Section 12. Ms. Pierce said she can only speak to what has happened in litigation and how the parties and the courts have addressed the issue. She said the issue does come up, and that there is “a deep body of case law on the federal level that the federal courts draw from.”

Vice-chair Brooks asked whether legislators voluntarily comply with discovery requests. Ms. Coontz said some are willing to testify about their communications. She added that the courts generally follow the wishes of the legislative member. She said, in the typical case, members are non-parties, and courts are reluctant to pull in members and staff for testimony.

Vice-chair Brooks asked whether the presenters have looked at how other states handle the issue. Ms. Coontz said they had not.

Vice-chair Brooks thanked Ms. Pierce and Ms. Coontz for their comments.

Moving forward to upcoming topics, Vice-chair Brooks asked for an update on sections the committee still needs to review.

Ms. Davidson suggested that the committee begin considering some issues from the executive branch sections in Article III. Vice-chair Brooks stated that she would confer with Chair Fred Mills regarding the best way to move forward, and that the committee could make further plans at its meeting in March.

Adjournment:

There being no further business to come before the committee, the meeting was adjourned at 3:03 p.m.

Approval:

The minutes of the February 9, 2017 meeting of the Legislative Branch and Executive Branch Committee were approved at the March 9, 2017 meeting of the committee.

/s/ Frederick E. Mills

Frederick E. Mills, Chair

/s/ Paula Brooks

Paula Brooks, Vice-chair



OHIO CONSTITUTIONAL MODERNIZATION COMMISSION

MINUTES OF THE LEGISLATIVE BRANCH AND EXECUTIVE BRANCH COMMITTEE FOR THE MEETING HELD THURSDAY, MARCH 9, 2017

Call to Order:

Committee member Robert Taft, acting on behalf of Chair Fred Mills, called the meeting of the Legislative Branch and Executive Branch Committee to order at 9:40 a.m.

Members Present:

A quorum was present, with Gov. Taft and committee members Asher, Coley, Davidson, McColley, and Tavares in attendance. At the invitation of the chair, Representative Glenn Holmes participated as an ex officio non-voting member of the committee.

Approval of Minutes:

The minutes of the January 12, 2017 and February 9, 2017 meetings of the committee were approved.

The committee also approved corrected minutes from November 2015 and November 2016. In introducing the corrections, Shari L. O'Neill, interim executive director and counsel, described that both sets of minutes required correction in order to more accurately reflect statements by two guest speakers: Attorney John Kulewicz, who spoke in November 2015 on the topic of the one-subject rule in Article II, Section 15(D); and Professor Steven F. Huefner, who spoke in November 2016 on the topic of the legislative privilege. She said, in the case of Mr. Kulewicz, the minutes had incorrectly recorded that Ohio exempts appropriations bills from application of the one-subject rule, when, in fact, Ohio does not exempt appropriations bills from the rule. She described that, in the case of the comments of Prof. Huefner, the minutes had inaccurately described the relevance of *City of Dublin v. State*, 138 Ohio App.3d 753, 742 N.E.2d 232 (10th Dist. 2000), and so the revised minutes removed that reference.

Reports and Recommendations:

Article II, Sections 10 and 12 (Rights and Privileges of Members of the General Assembly)

Gov. Taft recognized Ms. O'Neill for the purpose of providing a first presentation on a report and recommendation for no change to Article II, Sections 10 and 12, which govern the rights and privileges of members of the General Assembly.

Ms. O'Neill said the report describes that Section 10 provides a right of legislative members to protest, and to have their objections recorded in the journal. Discussing the history of Section 10, the report indicates the right of protest has its origins in the House of Lords of the British Parliament, where the right of written dissent was recognized as a privilege of the upper house, and that recording the dissent in the house journal was the minority's recognized method of registering political objection. Ms. O'Neill continued that the report indicates there is no similar provision in the United States Constitution, although dissents in Congress are preserved by the publication of debates in the Congressional Record.

Discussing Section 12, Ms. O'Neill said the report and recommendation indicates that the idea that legislative representatives must be able to freely engage in debate, consult with staff and constituents, and travel to and from legislative session without hindrance, was challenged in 17th century England when the Crown and Parliament clashed over their competing roles. The report describes that the "freedom of speech and debates" for parliamentary members in England subsequently was included in the English Bill of Rights of 1689, and was accepted as a necessary democratic protection by the time the U.S. Constitution was drafted to include a speech or debate provision in Article I, Section 6, Clause 1. The report indicates nearly all states adopted constitutional provisions that protect legislative speech or debate.

Ms. O'Neill said the report describes the review of the 1970s Commission, indicating a committee of that group had concluded that because dissenting legislators now have the ability to publicize their views in the news media, the protest provision is "an anachronism and appropriate for removal." She said, nevertheless, that view was not adopted by the full Commission, and so the right of protest remains. She said the report documents that the 1970s Commission did not address Section 12, thus, it also remains in its 1851 form.

Ms. O'Neill said the report and recommendation describes litigation involving the provisions, as well as presentations by former Executive Director Steven C. Hollon, Commission Counsel Shari O'Neill, Ohio State University Moritz College of Law Professor Steve Huefner, and Assistant Attorneys General Sarah Pierce and Bridget Coontz.

She said the report and recommendation indicates the committee considered research indicating that most states protect the right to protest as well as providing a legislative privilege against having to answer in court or other places for words undertaken in the furtherance of the legislator's official duties. The report documents the committee's view that the right of protest should be retained because the section still has relevance despite the proliferation of multiple media and internet news outlets. She said the report states the committee's determination that, because the journal is the official record of the business of the General Assembly, and the member filing the protest can directly control the message being communicated, it is important to retain that right.

Ms. O'Neill said the report describes the committee's conclusion that Section 12 should be retained because legislative privilege helps to maintain the separation of powers, and acknowledges the views of some of the committee that legislators are acting on behalf of citizens and should, as much as possible; maintain transparency as they conduct their duties. Addressing the confidentiality of communications between legislators and legislative staff, she said the report indicates that the privilege allows legislators to effectively perform their role.

Thus, she said the report and recommendation indicates the Legislative Branch and Executive Branch Committee's conclusion that Article II, Sections 10 and 12 continue to serve the General Assembly and should be retained in their present form.

Gov. Taft asked if there were comments from the audience. There being none, he asked if the committee wished to discuss the report and recommendation. Senator Bill Coley said it is his preference to leave the sections in their present form, as they seem to be working well. Senator Charleta Tavares said she agrees with that conclusion. Gov. Taft added that the privilege has been upheld by the courts, and there does not appear to be a problem with the current provisions. He then asked for a motion to issue the report and recommendation.

Sen. Tavares moved to issue the report and recommendation for Article II, Sections 10 and 12, and committee member Jo Ann Davidson seconded the motion. A roll call vote was taken, and the motion passed unanimously.

Presentations and Discussion:

Gov. Taft continued to recognize Ms. O'Neill for the purpose of providing an introduction to a draft report and recommendation for Article II, Sections 15, 16, 26, and 28, relating to the manner in which the General Assembly enacts laws.

Ms. O'Neill said the report and recommendation indicates these sections provide the requirement for the governor's signature, how laws are to be applied, and restrictions for their enactment. She said the sections were subject to several proposals for change since 1851, but only a few amendments have been approved by the electorate.

She continued that the report indicates that Section 15, adopted in 1973, details how bills shall be passed in the General Assembly, including requirements relating to the style of the laws, the one subject rule, and signing by the presiding officer. She noted the report's discussion of Section 16, adopted in 1851 and amended in 1903, 1912, and 1973, which 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.

Ms. O'Neill said the report and recommendation also discusses Section 26, unchanged since 1851, which states that laws of a general nature will have uniform operation throughout the state, and prohibits laws from taking effect on approval of an authority other than the General Assembly, except as provided in the constitution.

She added the report covers Section 28, which is unchanged since 1851, and states that the General Assembly shall have no power to pass retroactive laws or laws impairing the obligation of contracts.

Ms. O'Neill said the report outlines the activities of the Constitutional Revision Commission in the 1970s in relation to these sections, indicating that Section 15 of the 1851 constitution was repealed and replaced in the 1970s to consolidate multiple sections of Article II. She said the report continues that Sections 16, 26, and 28 all date to the 1851 constitution, with Section 16 being amended in the early 1900s before undergoing revision in the 1970s as part of the effort to consolidate sections of Article II.

She said the report extensively details the recommendations and changes in the 1970s before describing the limited case law relating to Sections 16, 26, and 28, and the plethora of case law dealing with Section 15, specifically 15(D), the one-subject rule. Ms. O'Neill said the report will be completed once the committee determines what, if any, changes it would like to recommend.

Gov. Taft asked the committee if it had any comments regarding the report, and whether the committee felt that more testimony or research on any of the topics, particularly the one-subject rule, would be useful.

Ms. Davidson said she would be interested in a report on challenges to the one subject rule, specifically on topics that were the source of a challenge.

Regarding Section 26, Sen. Coley commented that litigation dealing with home rule issues, specifically the use of "red light" cameras, involves Section 26, and that he would like to see a presentation on that topic.

With regard to Section 16, which provides for a line-item veto, Gov. Taft commented that, in some states, governors have the authority not only to strike items from the budget, but to reduce some items in the budget. He said he is not proposing that change, but it was discussed in the 1970s.

Gov. Taft asked whether Section 28, relating to retroactive laws, has been subject to litigation or controversy. Sen. Coley said to his knowledge there were two occasions when that issue arose, the first involving a bill related to priest abuse, and the other was relating to the Joint Committee on Agency Rule Review (JCARR) process, in which the administration was trying to impose a rule that was seen to have a retroactive effect.

Gov. Taft wondered about the portion of Section 28 that allows the legislature to adopt laws to authorize courts to cure defects and errors in instruments that do not comply with the laws of the state. He said he would like to know if there actually have been laws passed by the General Assembly that authorize courts to cure omissions and errors. Ms. O'Neill said research could be provided on that question.

Sen. Coley commented that the issue sometimes arises under the Uniform Commercial Code, where the law fills in areas where a contract is silent.

There being no further comments, Gov. Taft indicated the committee would hear testimony and have additional research available at the next meeting.

Turning to the question of the next topics for review, Gov. Taft drew attention to a document grouping the sections of Article III, related to the executive branch. He said the three sections

relate to the office of the governor and offices of the executive branch, the privileges and duties of the office of the governor, and eligibility for office and filling vacancies.

Mr. Asher noted a concern about whether the constitution requires gubernatorial appointments to be electors of the state, wondering if the committee could address that question. Sen. Coley suggested that Section 21, allowing the requirement that appointments be subject to the advice and consent of the Senate to be altered or repealed by law, might relate to Mr. Asher's question. Mr. Asher requested that research be provided on this topic.

Gov. Taft suggested that the committee might hear a first presentation on a report and recommendation for "Group I" of the executive branch sections, specifically Article III, Sections 1, 1a, 1b, 2, 3, 18, 19, 20, and 21 (The Office of the Governor and Officers of the Executive Branch).

Ms. O'Neill noted other issues for the committee to consider, including Article V, Section 9 (Eligibility of Officeholders), and Section 8 (Term Limits for U.S. Senators and Representatives). She said the question with regard to Section 8 is whether it should be repealed because a United States Supreme Court decision had declared it unenforceable.

Ms. O'Neill indicated the committee also was assigned Article IX, relating to the militia, and Article XI, relating to apportionment and redistricting.

Ms. O'Neill asked whether the committee would be amenable to meeting in tandem with the Bill of Rights and Voting Committee to consider the issue of prison labor as it may be affected by Article I, Section 6 (Slavery and Involuntary Servitude), and Article II, Section 41 (Prison Labor). The committee agreed that meeting jointly would allow the two committees to hear the same testimony and to address the issue in a cooperative manner. Ms. O'Neill said staff would try to set up a joint meeting.

Ms. O'Neill indicated the committee received a handout consisting of a new Congressional redistricting joint resolution introduced by Senator Frank LaRose. She said because this is a topic the committee has been addressing, staff wished to provide a copy of the legislation in order to keep the committee up-to-date on that issue.

Gov. Taft announced that the committee approved reports and recommendations for several sections of Article II, and that these reports will be a topic at the full Commission meeting later in the day. Specifically, he said, the committee voted to issue a report and recommendation for no change to Article II, Sections 3, 4, 5, and 11 (Member Qualifications and Vacancies in the General Assembly), and for no change to Article II, Sections 6, 7, 8, 9, 13, and 14 (Conducting Business of the General Assembly). He said, because the committee just voted to issue the report and recommendation for Article II, Sections 10 and 12 (Rights and Privileges of Members of the General Assembly), that report also would be presented to the full Commission.

Adjournment:

There being no further business to come before the committee, the meeting was adjourned at 10:20 a.m.

Approval:

The minutes of the March 9, 2017 meeting of the Legislative Branch and Executive Branch Committee were approved at the May 11, 2017 meeting of the committee.

/s/ Frederick E. Mills

Frederick E. Mills, Chair

/s/ Paula Brooks

Paula Brooks, Vice-chair



OHIO CONSTITUTIONAL MODERNIZATION COMMISSION

MINUTES OF THE LEGISLATIVE BRANCH AND EXECUTIVE BRANCH COMMITTEE

FOR THE MEETING HELD
THURSDAY, MAY 11, 2017

Call to Order:

Chair Fred Mills called the meeting of the Legislative Branch and Executive Branch Committee to order at 11:08 a.m.

Members Present:

A quorum was present, with Chair Mills, Vice-chair Brooks, and committee members Asher, Craig, Davidson, Taft, Talley, and Trafford in attendance.

Approval of Minutes:

The minutes of the March 9, 2017 meeting of the committee were approved.

Presentations and Discussion:

Chair Mills began the meeting by indicating this was likely to be the committee's final meeting. He said the committee will have met 33 times in the length of the Commission. He said the committee has talked about reapportionment/redistricting at 24 hearings, discussed term limits four times, addressed the single subject rule three times, considered the idea of a public official compensation commission in six meetings, and reviewed other miscellaneous subjects, such as the speech and debate privilege. He thanked staff for its work on the committee's agenda.

*Camille Wimbish, Director
Ohio Voter Rights Coalition*

Chair Mills recognized Camille Wimbish, director of the Ohio Voter Rights Coalition, to provide an update on efforts to reform the Congressional redistricting process in Ohio. Ms. Wimbish said she would be providing an update on behalf of the Fair Districts = Fair Elections Coalition, a group of organizations undertaking the redistricting reform effort.

Ms. Wimbish began by noting that in November 2015, more than 71 percent of Ohio voters supported a new system for drawing legislative district lines. She said since that election Ohio legislative leaders have not taken action on congressional redistricting reform, prompting her group to begin an initiated petition process. She said representatives of the League of Women Voters, Common Cause Ohio, and the Ohio Environmental Council, among others, have begun a ballot campaign to amend the Ohio Constitution. She said on April 24, 2017, the group began by filing the initial 1,000 signatures and ballot summary with the attorney general's office. She said that summary was rejected on May 4, 2017. Ms. Wimbish said the committee has since made changes to address the attorney general's concerns, and the summary now states the Ohio Supreme Court will have exclusive jurisdiction over challenges and that the bipartisan Ohio Redistricting Commission would be reconstituted if the court invalidates the Congressional redistricting plan or map. She said on May 10, 2017, the proponents submitted an amended summary along with more than the required 1,000 signatures to the attorney general. They will now await a determination by the attorney general before beginning the next phase, which will require collecting 305,000 signatures from 44 of Ohio's 88 counties.

Ms. Wimbish provided a copy of the text of the proposal. She said some of the highlights of the proposal include that it follows the language of the Issue 1, 2015 proposal. She said the bipartisan Ohio Redistricting Commission would draw the lines, and that political gerrymandering is prohibited, meaning there can be no drawing of lines to favor or disfavor one political party over another. She said the plan maximizes representational fairness so that the statewide proportionate districts must reflect the statewide party preferences, as determined by the statewide proportionate votes over the last ten years. She added the plan keeps communities together, protecting counties, then cities, then townships by minimizing splits. She said no county may be split more than once. Ms. Wimbish said the plan increases transparency by requiring the redistricting commission to publish a plan for consideration and to hold at least three meetings before voting. She said the redistricting commission must also provide a written explanation for how the plan maximizes compliance with the criteria. She said, finally, the plan requires bipartisan approval of maps, meaning that at least two members of the minority party must agree to the map. She said if the redistricting commission fails to get bipartisan approval, the Ohio Supreme Court will order the redistricting commission to get back to work. She said the proponents will collect signatures throughout the summer, adding that if they obtain the required number of signatures before July 5, they will submit the petition to be placed on the ballot in November 2017. If they do not get the signatures they need in time, she said they will continue to collect signatures in time for the 2018 ballot.

Ms. Wimbish then answered questions from the committee.

Chair Mills commented that the proposal does not include an impasse procedure, such as was included in the modifications to the Ohio reapportionment system. He said the proposal does not mirror Issue 1 on the November 2015 ballot in that regard. Ms. Wimbish explained that the proposal has the court step in to resolve an impasse.

Carrie Davis, executive director of the League of Women Voters of Ohio, who was seated in the audience, explained that she is one of three members of the official ballot campaign committee for Fair Districts. She said when the committee prepared their draft proposal, the dialog they had previously had with the Legislative Branch and Executive Branch Committee was helpful in shaping the final product. She thanked the committee for its assistance.

Richard Gunther, professor emeritus of the Ohio State University, speaking from the audience, explained the difference between the proposal and the language adopted by voters in Issue 1. He said, overall, the proposal is deeply rooted in Issue 1, but, unlike with Issue 1, proponents have built in a requirement that the number of splits of counties or townships should be minimized and no county split more than once. He said Issue 1 had the task of dividing 88 counties, but that is not possible to do when drawing lines for Congressional districts. He said, “If you don’t protect counties you are opening up opportunities for strange districts, and creative maps.” He added that one difference is that the committee wanted to minimize the spitting of municipal corporations, townships, and counties. He said the proposal also allows any citizen of Ohio to put forward a plan to be considered by the redistricting commission. He said everything in the proposal is either in the constitution or will be there in 2020 as a result of Issue 1. But, he added, “We are modifying by taking some of criteria from aspirational goals and moving them to becoming primary criteria.” He said the proposal prohibits plans that favor a party or candidate, in the interest of representational fairness, except insofar as the plan requires that the percentage of districts leaning to one party or another should mirror the preferences of the voters. He said there will be eight or 15 districts that will lean Republican, and seven that will lean Democratic, but that does not mean that seven versus eight will be elected because there are some districts that will flip based on other factors. He said “This is very balanced in partisan terms and should provide a level playing field.”

Chair Mills recognized Jeff Jacobson, a member of the Commission, who sought to offer an alternate view of the proposal. He said the proposed amendment is not a continuation of Issue 1, adding it is disheartening to him that this “attempt to enshrine in the constitution a partisan outcome” is being done in the name of Issue 1. He said the heart of Issue 1 was the recognition that experts can be manipulated and that rules are never perfect. He said, “We find ourselves at wit’s end because voters don’t live where you want them to in order to make the rules work perfectly.” He continued that the heart of Issue 1 is the best way to ensure a good result because it requires both parties to have to come together, and if that does not happen, Issue 1 provides an impasse resolution process. He said that process, while not perfect, causes both majority and minority to gain and lose if they do not go along with making it work. So, he continued, the impasse resolution says the majority rules but the plan only lasts four years. He said there is a problem with a plan that requires a court to resolve the impasse, and there will come a point when the court will have to order a new map on its own.

Mr. Jacobson continued, rejecting the idea that splitting counties is a bad thing for both sides equally. He said gerrymandering is taking something strong enough on its own, breaking it to pieces, and shuffling those pieces around, explaining that is an important reason to keep counties intact that are small enough that they do not need to be broken in order to be gerrymandered. He said the plan only protects county boundaries in the interest of protecting Democrats. He emphasized the goal should not be to guarantee the outcome, and that the proposed amendment only pretends to take politics out of the equation. He said the plan is “Not bipartisan and not fair, and there will be opposition to it on the ballot.”

Chair Mills thanked Mr. Jacobson, expressing appreciation for his work on the issue as well as the work of many others.

Chair Mills then turned the committee’s attention to the committee’s next steps for wrapping up its work. He asked Shari L. O’Neill, interim executive director and counsel to the Commission for suggestions of sections the committee might consider as being ripe for discussion.

Ms. O'Neill noted that Article II, Section 41, regarding prison labor, may benefit from a closer look in conjunction with an objection that has been raised in relation to Article I, Section 6, which prohibits involuntary servitude "unless for the punishment of crime." She said there had been discussion about holding a joint meeting with the Bill of Rights and Voting Committee, which was assigned Article I, Section 6, in order to review those sections in tandem.

Ms. O'Neill said an additional matter had been raised in the Education, Public Institutions, and Local Government Committee relating to Article II, Section 20, dealing with terms of office and compensation of officers in certain cases. She deferred to committee member Bob Taft, who is also on that committee, to talk more about the subject. Gov. Taft said when the Education, Public Institutions, and Local Government Committee solicited ideas from local government organizations, the County Commissioners Association raised a point about the prohibition on raising the compensation of county commissioners within their terms. He said that creates a problem because the terms are staggered, so that some commissioners are afforded a pay raise while others are not. He said the question had been raised in that committee through a letter from the organization, but there had been no testimony about it and there would not be an opportunity to make a recommendation.

Ms. O'Neill said an additional topic the committee did not have the opportunity to resolve was whether to recommend a public official pay commission that would independently review the compensation provided to members of the General Assembly and other elected officials. She said although the committee had held hearings on the topic, they had not reached a consensus, and may want to offer guidance on that topic for a future group to consider.

Chair Mills asked if committee members had suggestions for issues the committee might address. Committee member Herb Asher asked whether the committee would be providing a written work product that would discuss issues the General Assembly might consider in the future. Chair Mills said the committee's suggestions should be part of whatever information the Commission would be communicating as a final report. Ms. O'Neill agreed, saying staff had envisioned a final report that would cover every committee and incorporate the suggestions that are being made at the end of the Commission's work. She said those suggestions in the report could then be available both to the General Assembly and be preserved in the archive to be available to a future commission.

Mr. Asher said he would like to include a reference to Article XV, Section 4, which prohibits anyone from being elected or appointed to any office in the state unless that person has the qualifications of an elector. He said that prohibition may be interpreted as interfering with the ability of universities to appoint trustees if all trustees must be Ohio electors. He noted that he had heard the legislature was considering changing the terms of office for university trustees from nine years to six years, based on the concern that it is difficult to find people who are willing to make a commitment to serve for nine years. He said a change in the constitutional provision to allow persons from out of state to serve as university trustees would expand the pool of candidates for the post. Chair Mills asked whether it is a problem that the section in question was not assigned to this committee. Ms. O'Neill said there have been examples of committees transferring sections, and that this has not been a problem in the Commission's history. Mr. Asher said there had been discussion about how to approach that. Chair Mills said he has no objection to including that topic in a report on the committee's final suggestions.

Vice-chair Brooks asked whether this would be the last meeting of the committee. Chair Mills said he believes that to be the case. Ms. O'Neill agreed, saying that the plan is for the committees to wrap up their business in May and have a full Commission meeting in June. She said, with regard to a report, staff could provide additional ideas and committee members could advise about what they would like to include in a report, and drafts could be circulated. She said a reading could occur at the final Commission meeting without having the committee meet again.

Chair Mills approved this plan, indicating a report could be circulated with committee members adding items that might occur to them in the interim.

Mr. Asher said he would like to publically commend Chair Mills for his leadership.

Chair Mills said it has been an interesting committee, and he has enjoyed working with the members on the various topics under consideration. He said the committee has given the issues their best effort, and particularly noted the committee's contribution to Issue 1, as well as its influence on other tough issues that are still pending. He said it has been a pleasure and an honor to work with both old friends and new friends throughout the process.

Professor Gunther said he would like to thank the committee for its work in helping move forward consideration of the issue of redistricting.

Adjournment:

There being no further business to come before the committee, the meeting was adjourned at 11:44 a.m.

Approval:

The minutes of the May 11, 2017 meeting of the Legislative Branch and Executive Branch Committee were approved at the June 8, 2017 meeting of the full Commission.

/s/ Frederick E. Mills
Frederick E. Mills, Chair

/s/ Paula Brooks
Paula Brooks, Vice-chair

Appendix 3

Legislative Branch and Executive Branch Committee

Status of Assigned Constitution Sections

Status of Assigned Constitution Sections

When Commission created its subject matter committees, it charged each committee with the responsibility for reviewing certain assigned sections of the Ohio Constitution. In turn, each committee maintained a planning worksheet to track its progress in addressing each of its assigned sections. The following document is the final planning worksheet for this committee. It indicates all of the sections for which the committee was responsible and the final status of its reports on those sections. The status is based on the approval steps required in the OCMC Rules of Procedure and Conduct.

The status categories indicated on the worksheet are as follows:

Draft Status	The current status of a draft report & recommendation
Committee 1 st Pres.	First presentation to the committee of the draft report & recommendation
Committee 2 nd Pres.	Second presentation to the committee
Committee Approval	Approval by the committee of the report & recommendation
CC Approval	Approval by the Coordinating Committee
OCMC 1 st Pres.	First presentation to the Commission
OCMC 2 nd Pres.	Second presentation to the Commission
OCMC Approved	Adopted by the Commission

Legislative Branch and Executive Branch Committee

Planning Worksheet (Through June 2017 Meetings)

Article II - Legislative

Sec. 2 – Election and term of state legislators (1967, am. 1992)							
Draft Status	Committee 1 st Pres.	Committee 2 nd Pres.	Committee Approval	CC Approval	OCMC 1 st Pres.	OCMC 2 nd Pres.	OCMC Approved
Completed	3.12.15	4.9.15	4.9.15	1.14.16			

Sec. 3 – Residence requirements for state legislators (1851, am. 1967)							
Draft Status	Committee 1 st Pres.	Committee 2 nd Pres.	Committee Approval	CC Approval	OCMC 1 st Pres.	OCMC 2 nd Pres.	OCMC Approved
Completed	12.15.16	N/A	12.15.16	3.9.17	3.9.17	N/A	4.13.17

Sec. 4 – Dual office and conflict of interest prohibited (1851, am. 1973)							
Draft Status	Committee 1 st Pres.	Committee 2 nd Pres.	Committee Approval	CC Approval	OCMC 1 st Pres.	OCMC 2 nd Pres.	OCMC Approved
Completed	12.15.16	N/A	12.15.16	3.9.17	3.9.17	N/A	4.13.17

Sec. 5 – Who shall not hold office (1851)							
Draft Status	Committee 1 st Pres.	Committee 2 nd Pres.	Committee Approval	CC Approval	OCMC 1 st Pres.	OCMC 2 nd Pres.	OCMC Approved
Completed	12.15.16	N/A	12.15.16	3.9.17	3.9.17	N/A	4.13.17

Sec. 6 – Powers of each house (1851, am. 1973)							
Draft Status	Committee 1 st Pres.	Committee 2 nd Pres.	Committee Approval	CC Approval	OCMC 1 st Pres.	OCMC 2 nd Pres.	OCMC Approved
Completed	12.15.16	N/A	12.15.16	3.9.17	3.9.17	N/A	4.13.17

Sec. 7 – Organization of each house of the General Assembly (1851, am. 1973)							
Draft Status	Committee 1 st Pres.	Committee 2 nd Pres.	Committee Approval	CC Approval	OCMC 1 st Pres.	OCMC 2 nd Pres.	OCMC Approved
Completed	12.15.16	N/A	12.15.16	3.9.17	3.9.17	N/A	4.13.17

Sec. 8 – Sessions of the General Assembly (1973)							
Draft Status	Committee 1 st Pres.	Committee 2 nd Pres.	Committee Approval	CC Approval	OCMC 1 st Pres.	OCMC 2 nd Pres.	OCMC Approved
Completed	12.15.16	N/A	12.15.16	3.9.17	3.9.17	N/A	4.13.17

Sec. 9 – House and Senate Journals (yeas and nays) (1851, am. 1973)							
Draft Status	Committee 1 st Pres.	Committee 2 nd Pres.	Committee Approval	CC Approval	OCMC 1 st Pres.	OCMC 2 nd Pres.	OCMC Approved
Completed	12.15.16	N/A	12.15.16	3.9.17	3.9.17	N/A	4.13.17

Sec. 10 – Rights of members to protest (1851)							
Draft Status	Committee 1 st Pres.	Committee 2 nd Pres.	Committee Approval	CC Approval	OCMC 1 st Pres.	OCMC 2 nd Pres.	OCMC Approved
Completed	3.9.17	N/A	3.9.17	3.9.17	3.9.17	N/A	4.13.17

Sec. 11 – Filling vacancy in House or Senate (1851, am. 1961, 1968, 1973)							
Draft Status	Committee 1 st Pres.	Committee 2 nd Pres.	Committee Approval	CC Approval	OCMC 1 st Pres.	OCMC 2 nd Pres.	OCMC Approved
Completed	12.15.16	N/A	12.15.16	3.9.17	3.9.17	N/A	4.13.17

Sec. 12 – Privilege of members from arrest, and of speech (1851)							
Draft Status	Committee 1 st Pres.	Committee 2 nd Pres.	Committee Approval	CC Approval	OCMC 1 st Pres.	OCMC 2 nd Pres.	OCMC Approved
Completed	3.9.17	N/A	3.9.17	3.9.17	3.9.17	N/A	4.13.17

Sec. 13 – Legislative sessions to be public; exceptions (1851)							
Draft Status	Committee 1 st Pres.	Committee 2 nd Pres.	Committee Approval	CC Approval	OCMC 1 st Pres.	OCMC 2 nd Pres.	OCMC Approved
Completed	12.15.16	N/A	12.15.16	3.9.17	3.9.17	N/A	4.13.17

Sec. 14 – Power of adjournment (1851, am. 1973)							
Draft Status	Committee 1 st Pres.	Committee 2 nd Pres.	Committee Approval	CC Approval	OCMC 1 st Pres.	OCMC 2 nd Pres.	OCMC Approved
Completed	12.15.16	N/A	12.15.16	3.9.17	3.9.17	N/A	4.13.17

Sec. 15 – How bill shall be passed (1973)							
Draft Status	Committee 1 st Pres.	Committee 2 nd Pres.	Committee Approval	CC Approval	OCMC 1 st Pres.	OCMC 2 nd Pres.	OCMC Approved

Sec. 16 – Bills to be signed by governor; veto (1851, am. 1903, 1912, 1973)							
Draft Status	Committee 1 st Pres.	Committee 2 nd Pres.	Committee Approval	CC Approval	OCMC 1 st Pres.	OCMC 2 nd Pres.	OCMC Approved

Sec. 20 – Term of office, and compensation of officers in certain cases (1851)							
Draft Status	Committee 1 st Pres.	Committee 2 nd Pres.	Committee Approval	CC Approval	OCMC 1 st Pres.	OCMC 2 nd Pres.	OCMC Approved

Sec. 21 – Contested elections (1851)							
Draft Status	Committee 1 st Pres.	Committee 2 nd Pres.	Committee Approval	CC Approval	OCMC 1 st Pres.	OCMC 2 nd Pres.	OCMC Approved

Sec. 22 – Appropriations (1851)							
Draft Status	Committee 1 st Pres.	Committee 2 nd Pres.	Committee Approval	CC Approval	OCMC 1 st Pres.	OCMC 2 nd Pres.	OCMC Approved

Sec. 23 – Impeachments; how instituted and conducted (1851)							
Draft Status	Committee 1 st Pres.	Committee 2 nd Pres.	Committee Approval	CC Approval	OCMC 1 st Pres.	OCMC 2 nd Pres.	OCMC Approved

Sec. 24 – Officers liable to impeachment; consequences (1851)							
Draft Status	Committee 1 st Pres.	Committee 2 nd Pres.	Committee Approval	CC Approval	OCMC 1 st Pres.	OCMC 2 nd Pres.	OCMC Approved

Sec. 26 – Laws to have a uniform operation (1851)							
Draft Status	Committee 1 st Pres.	Committee 2 nd Pres.	Committee Approval	CC Approval	OCMC 1 st Pres.	OCMC 2 nd Pres.	OCMC Approved

Sec. 27 – Election and appointment of officers; filling vacancies (1851, am. 1953)							
Draft Status	Committee 1 st Pres.	Committee 2 nd Pres.	Committee Approval	CC Approval	OCMC 1 st Pres.	OCMC 2 nd Pres.	OCMC Approved

Sec. 28 – Retroactive laws (1851)							
Draft Status	Committee 1 st Pres.	Committee 2 nd Pres.	Committee Approval	CC Approval	OCMC 1 st Pres.	OCMC 2 nd Pres.	OCMC Approved

Sec. 29 – No extra compensation; exceptions (1851)							
Draft Status	Committee 1 st Pres.	Committee 2 nd Pres.	Committee Approval	CC Approval	OCMC 1 st Pres.	OCMC 2 nd Pres.	OCMC Approved

Sec. 30 – New counties (1851)							
Draft Status	Committee 1 st Pres.	Committee 2 nd Pres.	Committee Approval	CC Approval	OCMC 1 st Pres.	OCMC 2 nd Pres.	OCMC Approved

Sec. 31 – Compensation of members and officers of the General Assembly (1851)							
Draft Status	Committee 1 st Pres.	Committee 2 nd Pres.	Committee Approval	CC Approval	OCMC 1 st Pres.	OCMC 2 nd Pres.	OCMC Approved

Sec. 32 – Divorces and judicial power (1851)							
Draft Status	Committee 1 st Pres.	Committee 2 nd Pres.	Committee Approval	CC Approval	OCMC 1 st Pres.	OCMC 2 nd Pres.	OCMC Approved

Sec. 33 – Mechanics' and contractors' liens (1912)							
Draft Status	Committee 1 st Pres.	Committee 2 nd Pres.	Committee Approval	CC Approval	OCMC 1 st Pres.	OCMC 2 nd Pres.	OCMC Approved

Sec. 34 – Welfare of employees (1912)							
Draft Status	Committee 1 st Pres.	Committee 2 nd Pres.	Committee Approval	CC Approval	OCMC 1 st Pres.	OCMC 2 nd Pres.	OCMC Approved

Sec. 34a – Minimum Wage (2006)							
Draft Status	Committee 1 st Pres.	Committee 2 nd Pres.	Committee Approval	CC Approval	OCMC 1 st Pres.	OCMC 2 nd Pres.	OCMC Approved

Sec. 35 – Workers’ compensation (1912, am. 1923)							
Draft Status	Committee 1 st Pres.	Committee 2 nd Pres.	Committee Approval	CC Approval	OCMC 1 st Pres.	OCMC 2 nd Pres.	OCMC Approved

Sec. 36 – Conservation of natural resources (1912, am. 1973)							
Draft Status	Committee 1 st Pres.	Committee 2 nd Pres.	Committee Approval	CC Approval	OCMC 1 st Pres.	OCMC 2 nd Pres.	OCMC Approved

Sec. 37 – Workday and workweek on public projects (1912)							
Draft Status	Committee 1 st Pres.	Committee 2 nd Pres.	Committee Approval	CC Approval	OCMC 1 st Pres.	OCMC 2 nd Pres.	OCMC Approved

Sec. 38 – Removal of officials for misconduct (1912)							
Draft Status	Committee 1 st Pres.	Committee 2 nd Pres.	Committee Approval	CC Approval	OCMC 1 st Pres.	OCMC 2 nd Pres.	OCMC Approved

Sec. 39 – Regulating expert testimony in criminal trials (1912)							
Draft Status	Committee 1 st Pres.	Committee 2 nd Pres.	Committee Approval	CC Approval	OCMC 1 st Pres.	OCMC 2 nd Pres.	OCMC Approved

Sec. 40 – Registering and warranting land titles (1912)							
Draft Status	Committee 1 st Pres.	Committee 2 nd Pres.	Committee Approval	CC Approval	OCMC 1 st Pres.	OCMC 2 nd Pres.	OCMC Approved

Sec. 41 – Prison labor (1912, am. 1978)							
Draft Status	Committee 1 st Pres.	Committee 2 nd Pres.	Committee Approval	CC Approval	OCMC 1 st Pres.	OCMC 2 nd Pres.	OCMC Approved

Sec. 42 – Continuity of government operations in emergencies caused by enemy attack (1961)							
Draft Status	Committee 1 st Pres.	Committee 2 nd Pres.	Committee Approval	CC Approval	OCMC 1 st Pres.	OCMC 2 nd Pres.	OCMC Approved

Article III - Executive**Sec. 1 – Executive department; key state officers (1851, am. 1885)**

Draft Status	Committee 1 st Pres.	Committee 2 nd Pres.	Committee Approval	CC Approval	OCMC 1 st Pres.	OCMC 2 nd Pres.	OCMC Approved

Sec. 1a – Joint vote cast for governor and lieutenant (1976)

Draft Status	Committee 1 st Pres.	Committee 2 nd Pres.	Committee Approval	CC Approval	OCMC 1 st Pres.	OCMC 2 nd Pres.	OCMC Approved

Sec. 1b – Lieutenant governor duties assigned by governor (1976)

Draft Status	Committee 1 st Pres.	Committee 2 nd Pres.	Committee Approval	CC Approval	OCMC 1 st Pres.	OCMC 2 nd Pres.	OCMC Approved

Sec. 2 – Term of office of key state officers (1851, am. 1954, 1992)

Draft Status	Committee 1 st Pres.	Committee 2 nd Pres.	Committee Approval	CC Approval	OCMC 1 st Pres.	OCMC 2 nd Pres.	OCMC Approved

Sec. 3 – Counting votes for key state officers (1851, am. 1976)							
Draft Status	Committee 1 st Pres.	Committee 2 nd Pres.	Committee Approval	CC Approval	OCMC 1 st Pres.	OCMC 2 nd Pres.	OCMC Approved

Sec. 5 – Executive power vested in governor (1851)							
Draft Status	Committee 1 st Pres.	Committee 2 nd Pres.	Committee Approval	CC Approval	OCMC 1 st Pres.	OCMC 2 nd Pres.	OCMC Approved

Sec. 6 – Governor to see that laws executed; may require written information (1851)							
Draft Status	Committee 1 st Pres.	Committee 2 nd Pres.	Committee Approval	CC Approval	OCMC 1 st Pres.	OCMC 2 nd Pres.	OCMC Approved

Sec. 7 – Governor’s annual message to General Assembly; recommendations for legislators (1851)							
Draft Status	Committee 1 st Pres.	Committee 2 nd Pres.	Committee Approval	CC Approval	OCMC 1 st Pres.	OCMC 2 nd Pres.	OCMC Approved

Sec. 8 – Governor may convene special session of legislature with limited purposes (1851, am. 1912)							
Draft Status	Committee 1 st Pres.	Committee 2 nd Pres.	Committee Approval	CC Approval	OCMC 1 st Pres.	OCMC 2 nd Pres.	OCMC Approved

Sec. 9 – When Governor may adjourn the legislature (1851)							
Draft Status	Committee 1 st Pres.	Committee 2 nd Pres.	Committee Approval	CC Approval	OCMC 1 st Pres.	OCMC 2 nd Pres.	OCMC Approved

Sec. 10 – Governor is commander-in-chief of militia (1851)							
Draft Status	Committee 1 st Pres.	Committee 2 nd Pres.	Committee Approval	CC Approval	OCMC 1 st Pres.	OCMC 2 nd Pres.	OCMC Approved

Sec. 11 – Governor may grant reprieves, commutations and pardons (1851, am. 1995)							
Draft Status	Committee 1 st Pres.	Committee 2 nd Pres.	Committee Approval	CC Approval	OCMC 1 st Pres.	OCMC 2 nd Pres.	OCMC Approved

Sec. 12 – Seal of the state, and by whom kept (1851)							
Draft Status	Committee 1 st Pres.	Committee 2 nd Pres.	Committee Approval	CC Approval	OCMC 1 st Pres.	OCMC 2 nd Pres.	OCMC Approved

Sec. 13 – How grants and commissions issued (1851)							
Draft Status	Committee 1 st Pres.	Committee 2 nd Pres.	Committee Approval	CC Approval	OCMC 1 st Pres.	OCMC 2 nd Pres.	OCMC Approved

Sec. 14 – Who is ineligible for governor (1851)							
Draft Status	Committee 1 st Pres.	Committee 2 nd Pres.	Committee Approval	CC Approval	OCMC 1 st Pres.	OCMC 2 nd Pres.	OCMC Approved

Sec. 15 – Succession in case of vacancy in office of governor (1976)							
Draft Status	Committee 1 st Pres.	Committee 2 nd Pres.	Committee Approval	CC Approval	OCMC 1 st Pres.	OCMC 2 nd Pres.	OCMC Approved

Sec. 17 – If a vacancy shall occur while executing the office of governor, who shall act (1976)							
Draft Status	Committee 1 st Pres.	Committee 2 nd Pres.	Committee Approval	CC Approval	OCMC 1 st Pres.	OCMC 2 nd Pres.	OCMC Approved

Sec. 17a – Filling a vacancy in the office of lieutenant governor (1989)							
Draft Status	Committee 1 st Pres.	Committee 2 nd Pres.	Committee Approval	CC Approval	OCMC 1 st Pres.	OCMC 2 nd Pres.	OCMC Approved

Sec. 18 – Governor to fill vacancies in key state offices (1851, am. 1969)							
Draft Status	Committee 1 st Pres.	Committee 2 nd Pres.	Committee Approval	CC Approval	OCMC 1 st Pres.	OCMC 2 nd Pres.	OCMC Approved

Sec. 19 – Compensation of key state officers (1851)							
Draft Status	Committee 1 st Pres.	Committee 2 nd Pres.	Committee Approval	CC Approval	OCMC 1 st Pres.	OCMC 2 nd Pres.	OCMC Approved

Sec. 20 – Annual report of executive officers (1851)							
Draft Status	Committee 1 st Pres.	Committee 2 nd Pres.	Committee Approval	CC Approval	OCMC 1 st Pres.	OCMC 2 nd Pres.	OCMC Approved

Sec. 21 – Appointments to office; advice and consent of Senate (1961)							
Draft Status	Committee 1 st Pres.	Committee 2 nd Pres.	Committee Approval	CC Approval	OCMC 1 st Pres.	OCMC 2 nd Pres.	OCMC Approved

Sec. 22 – Supreme Court to determine disability of governor or governor elect; succession (1976)							
Draft Status	Committee 1 st Pres.	Committee 2 nd Pres.	Committee Approval	CC Approval	OCMC 1 st Pres.	OCMC 2 nd Pres.	OCMC Approved

Article V – Elective Franchise (Select Provision)

Sec. 8 – Term limits for U.S. senators and representatives (1992)

Draft Status	Committee 1 st Pres.	Committee 2 nd Pres.	Committee Approval	CC Approval	OCMC 1 st Pres.	OCMC 2 nd Pres.	OCMC Approved

Sec. 9 – Eligibility of office holders (1992)

Draft Status	Committee 1 st Pres.	Committee 2 nd Pres.	Committee Approval	CC Approval	OCMC 1 st Pres.	OCMC 2 nd Pres.	OCMC Approved

Article IX - Militia

Sec. 1 – Who shall perform military duty (1851, am. 1953, 1961)

Draft Status	Committee 1 st Pres.	Committee 2 nd Pres.	Committee Approval	CC Approval	OCMC 1 st Pres.	OCMC 2 nd Pres.	OCMC Approved

Sec. 3 – Appointment of militia officers (1851, am. 1961)

Draft Status	Committee 1 st Pres.	Committee 2 nd Pres.	Committee Approval	CC Approval	OCMC 1 st Pres.	OCMC 2 nd Pres.	OCMC Approved

Sec. 4 – Power of governor to call forth militia (1851, am. 1961)							
Draft Status	Committee 1 st Pres.	Committee 2 nd Pres.	Committee Approval	CC Approval	OCMC 1 st Pres.	OCMC 2 nd Pres.	OCMC Approved

Sec. 5 – Public arms; arsenals (1851)							
Draft Status	Committee 1 st Pres.	Committee 2 nd Pres.	Committee Approval	CC Approval	OCMC 1 st Pres.	OCMC 2 nd Pres.	OCMC Approved

Article XI – Apportionment/Congressional Redistricting

Sec. 1 – Ohio Redistricting Commission (2015/2021)							
Draft Status	Committee 1 st Pres.	Committee 2 nd Pres.	Committee Approval	CC Approval	OCMC 1 st Pres.	OCMC 2 nd Pres.	OCMC Approved
Completed	1.14.16	2.4.16					

Sec. 2 – Representative for each house and senate district (2015/2021)							
Draft Status	Committee 1 st Pres.	Committee 2 nd Pres.	Committee Approval	CC Approval	OCMC 1 st Pres.	OCMC 2 nd Pres.	OCMC Approved

Sec. 3 – Ratio of representation in house and senate (2015/2021)							
Draft Status	Committee 1 st Pres.	Committee 2 nd Pres.	Committee Approval	CC Approval	OCMC 1 st Pres.	OCMC 2 nd Pres.	OCMC Approved

Sec. 4 – Formation of senate districts (2015/2021)							
Draft Status	Committee 1 st Pres.	Committee 2 nd Pres.	Committee Approval	CC Approval	OCMC 1 st Pres.	OCMC 2 nd Pres.	OCMC Approved

Sec. 5 – Term of senators on change of senate district boundaries (2015/2021)							
Draft Status	Committee 1 st Pres.	Committee 2 nd Pres.	Committee Approval	CC Approval	OCMC 1 st Pres.	OCMC 2 nd Pres.	OCMC Approved

Sec. 6 – General assembly districts; standards for drawing (2015/2021)							
Draft Status	Committee 1 st Pres.	Committee 2 nd Pres.	Committee Approval	CC Approval	OCMC 1 st Pres.	OCMC 2 nd Pres.	OCMC Approved

Sec. 7 – General assembly districts; change at end of decennial period (2015/2021)							
Draft Status	Committee 1 st Pres.	Committee 2 nd Pres.	Committee Approval	CC Approval	OCMC 1 st Pres.	OCMC 2 nd Pres.	OCMC Approved

Sec. 8 – Adoption of final plan; failure to adopt (2015/2021)							
Draft Status	Committee 1 st Pres.	Committee 2 nd Pres.	Committee Approval	CC Approval	OCMC 1 st Pres.	OCMC 2 nd Pres.	OCMC Approved

Sec. 9 – Supreme Court jurisdiction (2015/2021)							
Draft Status	Committee 1 st Pres.	Committee 2 nd Pres.	Committee Approval	CC Approval	OCMC 1 st Pres.	OCMC 2 nd Pres.	OCMC Approved

Sec. 10 – Severability of provisions (2015/2021)							
Draft Status	Committee 1 st Pres.	Committee 2 nd Pres.	Committee Approval	CC Approval	OCMC 1 st Pres.	OCMC 2 nd Pres.	OCMC Approved

Article XIV - Ohio Livestock Care Standards Board (2009)

Sec. 1 – Ohio Livestock Care Standards Board (2009)							
Draft Status	Committee 1 st Pres.	Committee 2 nd Pres.	Committee Approval	CC Approval	OCMC 1 st Pres.	OCMC 2 nd Pres.	OCMC Approved