



## 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 19<sup>th</sup> 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:**

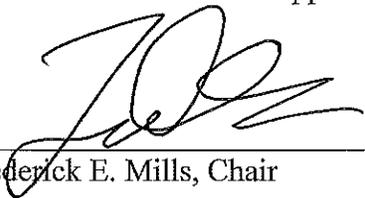
With no further business to come before the committee, the meeting adjourned at 2:15 p.m.

**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.



---

Frederick E. Mills, Chair



---

Paula Brooks, Vice-Chair