



# Members Only

AN INFORMATIONAL BRIEF PREPARED FOR MEMBERS OF THE OHIO GENERAL ASSEMBLY BY THE LEGISLATIVE SERVICE COMMISSION STAFF

Volume 124 Issue 12  
November 8, 2002

## Some Suggestions on How to Approach the Ohio Constitution

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The Ohio Constitution is a large document using over 36,000 words (compared to 9,200 in the United States Constitution) to provide the fundamental law on matters relating to the organization and operation of Ohio state government. This brief presents a quick guide to this important and complex document and offers some suggestions to help newer members of the General Assembly and legislative staff understand and use it.

### ***Fundamental law; starting point for bill drafting and research***

As the fundamental law of the state, the Ohio Constitution sets forth the framework and powers of state government and provides Ohioans with the protections of a Bill of Rights. It is especially important to refer to the Constitution for matters relating to the exercise of legislative powers, such as the powers to tax, spend, and borrow money, and to the home rule powers of municipal corporations.

While the Ohio Constitution may be an appropriate starting point for researching a wide variety of issues, it rarely will be the last stop. It likely will lead to other documents, including the United States Constitution, the Ohio Revised Code, the Ohio Administrative Code, the rules and joint rules of the House and Senate, *Mason's Manual of Legislative Procedure*, the rules of the Ohio Supreme Court, and the charters and ordinances of municipal corporations. And the Ohio Constitution usually leads to judicial decisions, as well as to opinions of the Attorney General, for interpretation of its provisions.

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*The Ohio Constitution sets forth the framework and powers of state government and provides the protections of a Bill of Rights. It is the starting point for researching a wide variety of issues, especially those that relate to the exercise of legislative powers.*



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*The Ohio Constitution has independent force, limited only by the United States Constitution.*

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*The Ohio Constitution is a source of practical information for legislators and legislative staff. It is a catalog of legislative powers, a guide to the organization of the General Assembly and parliamentary practice, and a bill-drafting manual.*

## **A document of independent force**

The Ohio Constitution, as a document, stands on its own. Even when the United States Constitution affects a proposal, the ultimate resolution may depend upon the Ohio Constitution. As the Ohio Supreme Court has explained, “The Ohio Constitution is a document of independent force. In the areas of individual rights and civil liberties, the United States Constitution, where applicable to the states, provides a floor below which state court decisions may not fall. As long as state courts provide at least as much protection as the United States Supreme Court has provided in its interpretation of the federal Bill of Rights, state courts are unrestricted in according greater civil liberties and protections to individuals and groups.” *Arnold v. Cleveland*, 67 Ohio St.3d 35 (1993).

Do not expect the Ohio Constitution to look like the United States Constitution. Addressing the Ohio Constitutional Convention of 1912, President William Howard Taft noted that “the constitution of the United States is the great model of fundamental instruments for complicated, free and popular government.” However, he continued, “It is not to be expected that a state constitution should be as short an instrument as that, because the details of state, county and municipal government are so many more than that required in defining the relations between the

state and the general government.” Accordingly, the Ohio Constitution is longer and more detailed than the United States Constitution and has its own unique structure.

## **A working document**

The Ohio Constitution is a source of information and guidance of practical importance to members and legislative staff. The Ohio Constitution is:

A **catalog** of legislative powers. It is the primary source of the substantive powers of the General Assembly and the many limitations on the exercise of these powers.

A **legislative guide**. The Ohio Constitution contains provisions on how the General Assembly organizes itself and conducts its business.

A **parliamentary guide**. The Ohio Constitution instructs the General Assembly on how to proceed in carrying out its powers. It specifically addresses items such as separate roll call votes, votes requiring special majorities, and the appropriate legislative instrument required in certain circumstances.

A **drafting manual**. The Ohio Constitution contains specific instructions for preparing a bill. For example, it declares that a bill must be styled in a certain manner; that a bill is to contain only one subject and that the subject is to be clearly expressed in the title; that when a bill amends an existing section of law, that section must be set forth in the bill in full; that



a tax measure must state distinctly its object to which only it must be applied; and that an emergency clause must, in addition to declaring an emergency, state the reasons for the emergency.

## **Organization of the Ohio Constitution**

It is helpful to understand the organization of the Ohio Constitution. The Ohio Constitution begins with a Preamble and then sets forth a Bill of Rights in Article I; provides for the framework of government in Articles II, III, and IV; and contains provisions on the operation and powers of state government in Articles V through XVIII. It ends with a Schedule containing provisions for its implementation. The organization of the Ohio Constitution, article by article, is:

- I. Bill of Rights
- II. Legislative Branch
- III. Executive Branch
- IV. Judicial Branch
- V. Elective Franchise
- VI. Education
- VII. Public Institutions
- VIII. Public Debt and Public Works
- IX. Militia
- X. County and Township Organization
- XI. Apportionment
- XII. Finance and Taxation
- XIII. Corporations
- XIV. Jurisprudence (repealed)
- XV. Miscellaneous
- XVI. Amendments
- XVII. Elections
- XVIII. Municipal Corporations.

Note that several of the articles contain related subject matter and can be grouped into the following broad categories that highlight the basic features of the Ohio Constitution: (1) Bill of Rights, (2) framework of government, (3) suffrage and the conduct of elections, (4) state functions, (5) taxing, borrowing, and spending, (6) local government, and (7) amendments.

### ***Styles***

Some provisions of the Constitution are broadly philosophical, while others are narrowly drawn. Some are short, manageable sections with the characteristics of fundamental law, while others are long and detailed with the characteristics of statutory law. Older sections may have long, unlettered paragraphs and language that reflects a long-past historical context; more recently adopted sections generally conform to LSC drafting standards and use modern terminology. Some provisions are limited to one principle or rule of law; others contain several principles or rules of law.

### ***Legislative power***

#### ***Types of legislative power***

The legislative power of the State of Ohio is vested in the General Assembly and in the people, who have reserved to themselves the right to enact laws (initiative) and the right

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*The Ohio Constitution is organized into a Preamble and 17 numbered articles. The articles may be grouped into seven broad categories: Bill of Rights; framework of government, suffrage and elections; state functions; taxing, borrowing, and spending; local government; and amendments.*



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*The legislative power may be subdivided into three broad categories: political power (enactment of laws providing for the operation of state government); police power (promotion of public peace, health, safety, and welfare); and taxing power (raising of revenue to pay for operation of state government and retirement of state debt). The Constitution imposes both procedural and substantive limitations on the legislative power.*

to approve and disapprove laws enacted by the General Assembly (referendum). The general legislative power may be subdivided into three broad categories: (1) political power, which is the power to enact laws providing for the establishment, organization, and operation of government in Ohio; (2) police power, which is the power to enact all manner of laws that promote the public peace, health, safety, and welfare; and (3) taxing power, which is the duty to levy and collect taxes that will raise revenue in an amount sufficient to defray the expenses of state government facilities and operations and pay principal and interest on the state debt.

#### **Limitations on legislative power**

The Ohio Constitution imposes many limitations on the legislative power of the General Assembly. Some are procedural in nature. Every bill must deal with only one subject, which must be clearly expressed in the bill's title (Art. II, § 15(D)). No bill may become a law unless it has been considered on three different days in each House (Art. II, § 15(C)). The reserved powers of initiative and referendum (Art. II, § 1) and other provisions providing for referendums (see Arts. II, X, XII, XVI, and XVIII) give the voters a direct role in the legislative process.

Other sections of the Ohio Constitution limit the General Assembly's ability to interfere with the other branches of government. They pro-

hibit the General Assembly from exercising executive and judicial powers (Art. III, § 5 and Art. IV, § 1); severely restrict its power to appoint state officials (Art. II, § 27); give it a distinctly secondary role in establishing rules of practice and procedure in the courts (Art. IV, § 5(B)); and protect the independence of constitutionally established entities (the Apportionment Board, Art. XI, § 1 and the Ohio Ballot Board, Art. XVI, § 1). The Ohio Constitution also protects the legislative power by prohibiting the General Assembly from delegating its authority to any other branch of state government, to the federal government, or to any other public or private individual or body (Art. II, § 26).

Many of the Ohio Constitution's limitations on legislative power are substantive in nature. The Ohio Constitution expresses a preference for laws of a general nature having uniform operation throughout the state (Art. II, § 26); prohibits retroactive laws and laws impairing contracts (Art. II, § 28); forbids special acts conferring corporate powers (Art. XIII, §§ 1, 2, and 6); and limits the taxing power (Art. XII) and the power to lend governmental credit (Art. VIII). The Bill of Rights (Art. I) protects a long list of individual rights from legislative interference.

There was a time when the General Assembly closely controlled municipal government through its power to grant and amend municipal charters. The Home Rule Amendment of 1912 (Art. XVIII) limits the General Assembly's



power by authorizing municipal corporations to exercise powers of local self-government and to adopt local police regulations not in conflict with general laws.

### **Historical development of the Ohio Constitution**

The state adopted the Ohio Constitution in 1851, and has followed the approach of amending the document periodically throughout the years. Ohio has never completely revised the Ohio Constitution of 1851. All of the adopted amendments were approved by the voters, but were proposed by different methods in different historical periods. Some resulted from initiatives of the people; some resulted from resolutions adopted by the General Assembly; and some resulted from proposals adopted by the Constitutional Convention of 1912. The age of the basic constitutional document, the diverse sources of the proposals, and the frequency of its amendment over the years are key factors in understanding its contrasts in structure and style.

This historical development also has shaped the provisions of the Ohio Constitution on legislative power. Many of the restrictions on legislative power reflect concerns in the mid-1800s resulting from the rapid growth in population and the development of agriculture, industry, and transportation following the adoption of Ohio's first constitution in 1802. According to one Ohio history, "Much of the dissatisfaction with the . . .

[first] constitution arose from the wholly inadequate judicial system, which placed upon the shoulders of four judges the task of holding court each year in all of the counties, which in 1849 numbered eighty-five. The [first] constitution . . . had concentrated authority in the hands of the legislature, which was empowered to choose all state officials of importance except the governor. This situation had led to considerable logrolling and to the control of the body by special political and economic interests. As a result, a demand had arisen for the popular election of all public officials, for a prohibition of charters that granted exclusive privileges, and for the limitation of the power of the legislature to create a state debt (which at that time, through canal appropriations, aid to railroads, and other grants, amounted to almost twenty million dollars, largely held outside the state)."

The Constitutional Convention of 1912 also had an impact on legislative power. That Convention, influenced by the ideas of the Progressive Era, proposed the reservation of legislative power to the people through the initiative and referendum and the establishment of home rule powers for municipal corporations. "The changes made in the organic law effected at that time," according to one writer, "represented new and basic concepts of government both as to the methods of democratic control over the processes of government and as to the role of government in our social and economic life."

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*The present Ohio Constitution dates from 1851 and is the second constitution in the state's history. It has been amended numerous times. Some amendments resulted from popular initiatives, while others began as resolutions of the General Assembly. Many important amendments, such as those providing for the initiative and referendum and municipal home rule, were proposed by the Constitutional Convention of 1912. The Constitutional Revision Commission of the 1970s also recommended several amendments. (Constitutional amendments must be approved by the voters.)*



*The Ohio Constitution is an educational document that provides insight into the history, politics, and values of the state.*

**PUBLISHED BY THE OHIO  
 LEGISLATIVE SERVICE  
 COMMISSION STAFF**

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Another important historical development was the creation by the 108th General Assembly (1969-1970) of the Ohio Constitutional Revision Commission “to study the Constitution and advise the General Assembly with respect to needed changes.” From 1970 to 1977, the Commission recommended several amendments to the Ohio Constitution, many of which were adopted by the General Assembly and then approved by the voters. Some of these amendments modified the organization, administration, and procedures of the General Assembly.

### ***An educational document***

The Ohio Constitution is an educational document that says a lot about the history, politics, and values of the state. It has been written that state constitutions “summarize the collected experiences of the American people and apply them to a single commonwealth’s circumstances. Most of all, they are a people’s basic notions about who they are, how they choose to rule themselves, and what values they wish to hand down to the next generation.” Theodore Roosevelt, in addressing the Constitutional Convention of 1912, noted that “[e]ach of our commonwealths has its own local needs, local customs, and habits of thought, different from those of other commonwealths; and each must therefore apply in its own fashion the great principles of our political life.”

Study of the Ohio Constitution presents an opportunity, for example, to learn about the Northwest Ordinance, which established the foundation for Ohio statehood and the Ohio Constitution of 1802. The Ordinance contained provisions that prohibited slavery, promoted education, and extended basic rights. Bruce Catton said of the Ordinance: “Once and for all, it determined what kind of country this was going to be; the concept of complete equality, so nobly voiced in the Declaration, was written into the basic document that would determine how the nation grew.” Much of the subsequent history of Ohio, and of the United States, is reflected in the text of the Ohio Constitution and its numerous amendments.

### ***Availability of research on provisions of the Ohio Constitution***

Some LSC-prepared materials can assist in understanding the Ohio Constitution. These materials include *A Guidebook for Ohio Legislators*, outlines for various LSC-sponsored continuing legal education presentations, Members Only Briefs, and the *LSC Drafting Manual*. The LSC Library has other materials, such as records of the constitutional conventions and the proceedings and reports of the Ohio Constitutional Revision Commission, that can be helpful.