



OHIO CONSTITUTIONAL MODERNIZATION COMMISSION

MINUTES OF THE CONSTITUTIONAL REVISION AND UPDATING COMMITTEE

FOR THE MEETING HELD
THURSDAY, MAY 11, 2017

Call to Order:

Chair Dennis Mulvihill called the meeting of the Constitutional Revision and Updating Committee to order at 11:07 a.m.

Members Present:

A quorum was present with Chair Mulvihill, Vice-chair Kurfess, and committee members Abaray, Beckett, Cupp, Holmes, and Sykes.

Approval of Minutes:

The minutes of the April 13, 2017 meeting of the committee were approved.

Reports and Recommendations:

*Article II, Sections 1 through 1i, 15 and 17
(Constitutional Initiative, Statutory Initiative, and the Referendum)*

Chair Mulvihill began the meeting by announcing that the committee would be hearing a second presentation on the initiative and referendum sections of Article II. He said some amendments have been introduced that the committee would be addressing. He thanked Shari L. O'Neill, interim executive director and counsel, and Steven H. Steinglass, senior policy advisor, for their work assisting the committee. He also thanked committee members, particularly noting the success of the committee in leaving partisan politics out of the meetings. He said the committee has made policy judgments, but that they were made in the spirit of preserving the people's right to use ballot initiatives, and did require some give and take among the members. He said, in aggregate, the committee's work reflects the collective wisdom of those judgments and those compromises.

Describing the existing sections of Article II, Chair Mulvihill said the initiative and referendum provisions contain some of the most confusing and difficult-to-understand language in the constitution. He said the committee's work has been to modernize, streamline, and clear out the density contained in those current provisions.

He continued that the committee has reorganized and rewritten the sections to accomplish its goals. He said the recommendation is the result of four-and-a-half years, during which the committee heard dozens of presentations, received much public comment and input, and had strong bipartisan support for the changes. He said the recommendations were approved by the committee in a unanimous vote.

He said, from the outset, the committee was committed to protecting the strong history of provisions that allow Ohioans the right to initiate laws and constitutional amendments. At the same time, he said, "we have 105 years of history to see what has worked and what has not."

Summarizing the committee's work, Chair Mulvihill said the committee had a sense the constitutional initiative has been abused over the years, while the statutory initiative has been underutilized. He observed that, since 1913, there have been 69 citizen-initiated constitutional amendments submitted to the voters, with 14 in the last 16 years. He said, of the 69, 18 were approved by the voters, or 26 percent of the time, with the General Assembly having 154 submitted to voters, with 106 approved, for a total of 68.8 percent. He noted that Ohio currently has the tenth longest state constitution in the country, in terms of the number of words.

Since 1913, he said there have only been 12 statutory initiatives submitted to the voters, with only three passing, and only one since 1949. He explained that this means that when the initiative process is used, 85 percent of the time the petitioners use the constitutional route. He said this has resulted in many concepts being implanted, or attempted to be implanted, in the constitution that would be better served being in the Ohio Revised Code.

Chair Mulvihill said the committee concluded that the most obvious reason for the discrepancy between the over-used constitutional initiative and the under-used statutory initiative is the existence of the supplementary petitions and the lack of protection to initiated laws against interference by the General Assembly.

He said the committee's philosophy was that the state constitution exists to establish the basic framework of government; that there are three branches of government and their relationship to one another; the relationship between state and local governments; and the relationship between citizens and government, primarily through the Bill of Rights.

He continued that what have emerged lately are initiated amendments to the constitution that are inconsistent with the purpose of the constitution. He said, without commenting on the merits of any of these items, but only their placement or attempted placement in the constitution, there has been a trend of placing in the constitution topics such as casino gaming, including the specific land plots for that purpose, age limits for judicial office, smoking bans, minimum wage, treatment in lieu of incarceration for drug offenders, and marijuana legalization, including reference to specific land plots.

He said irrespective of whether someone would support or oppose any of these issues, the committee felt these kinds of initiatives do not really belong in the constitution but rather in the Revised Code. So, he said, the committee's work, in addition to modernizing and making the provisions readable and understandable, was designed to encourage petitioners to take the statutory, rather than the constitutional, route when undertaking the initiative process.

He said the committee also had a goal of reducing the influence of politics and political gamesmanship that occasionally impair the abilities of citizens to get their petitions to the ballot.

He summarized the recommendations as follows:

- Making the sections largely self-executing, consistent with explicit wishes of the 1912 commission;
- Making the statutory initiative more user-friendly by eliminating the supplementary petition and by creating a safe-harbor provision protecting those initiated statutes from amendment or repeal from the General Assembly for five years, absent a 2/3 super majority vote in each house of General Assembly;
- Decreasing the number of signatures required to initiate a statute from six percent (assuming the supplementary petition was needed) to five percent;
- Creating constitutional authority for the initial 1,000 signature petition, submitted to the attorney general, a requirement presently in the Revised Code;
- Creating constitutional authority for the determination by the attorney general that the summary of the initiative or referendum is fair and truthful;
- Requiring initiatives to use gender-neutral language, where appropriate;
- Providing that the one amendment rule applies to both initiated constitutional amendments and legislatively initiated amendments;
- Increasing the passing percentage for constitutional amendments from 50 to 55 percent;
- Permitting initiated constitutional amendments to be on the ballot in even years only, when more people actually vote;
- Providing clarity by specifying dates when proposed statutory and constitutional initiatives can be submitted, and when the attorney general, secretary of state, and ballot board must complete their work;
- Permitting the General Assembly to modernize the signature-gathering process by using electronic signatures;
- Front end loading the work on the ballot board by requiring it to draft the ballot language and title after the petitioners submit the 1,000 signatures to the attorney general, but before the petitioners gather the hundreds of thousands of signatures that are required;
- Allowing the petitioners to suggest ballot language and the title to the ballot board;
- Allowing the petitioners to appeal to the Supreme Court at any time during the process if they are dissatisfied with a ruling from the attorney general, secretary of state, or ballot board; and,
- Retaining the historic role of the attorney general, the secretary of state, and the ballot board in managing the initiative process.

Chair Mulvihill said the committee strongly believes that, on balance, the suggested changes create a far superior, fairer, and more transparent process for statutory and constitutional initiatives; protect the rights of petitioners to bring their ideas to the voters and reduce the potential for political interference with that right; allow constitutional amendments to be

considered by more voters, knowing the significant drop-off between even and odd year elections; and encourage petitioners to use the statutory process, rather than placing in the constitution issues that belong in statutory law.

Chair Mulvihill said the committee considers the proposals to be in compliance with the single subject requirement because the subject would be “reforming the initiative process.” He noted that the committee received last-minute proposed amendments to the re-write of the initiative which will be considered. However, he noted those proposed amendments are not to the report and recommendation and do not substantively change the recommendations in the report. He emphasized the technical conveyance to the Commission is the report and recommendation rather than the re-write.

Chair Mulvihill recognized Senator Vernon Sykes for the purposes of describing the proposed amendments. Sen. Sykes invited George Boas, deputy chief of staff for the Senate Democratic Caucus, to review the amendments with the committee.

Mr. Boas directed the committee’s attention to the first amendment, titled “Adding Timeframe for Attorney General Action.” (Attachment A) He said the amendment establishes a time frame for the attorney general to review a submitted initiated constitutional amendment or initiated statute to determine if it is sufficient and if the summary is a fair and truthful statement. He said this proposed amendment clarifies how long the attorney general has, saying it is ten days. That requirement is currently in statutory law.

Committee member Janet Abaray asked if this amendment would cause any problem, specifically, whether the fact it was not included in the previous draft was intentional. Chair Mulvihill said it does not create an issue, and Mr. Boas said that this is the current process according to the relevant statute. Steven H. Steinglass, senior policy advisor, commented that the failure to include it was a drafting oversight, and indicated that including it is a good precaution. Ann Henkener, director and legislative director of the League of Women Voters of Ohio, noted that she had submitted comments to the chair, and that the subject of this proposed amendment was part of her comments. Mr. Boas said the next three proposed amendments also are based on Ms. Henkener’s comments.

Mr. Boas continued, describing a second proposed amendment titled “Petition Requirements Conflict Correction.” (Attachment B) He said this amendment would remove language within proposed Section 1d(A) referencing a “summary approved by the attorney general,” and substituting it with the phrase “title and ballot language prescribed by the ballot board.” He said the reason for this is that, because the ballot board review is now front loaded, the amendment places that review as part of the initial petition process. He said the reason for the change is that it makes sense to have the ballot language be part of the petition process.

Describing the third proposed amendment, titled “Annual Deadline to File a Proposed Initiated Statute,” (Attachment C) Mr. Boas indicated that this change would replace February with April, and June with July, thus delaying by two months the deadlines for an initiated statute. He said this would give petitioners more time to perform all the necessary tasks to get an initiated statute on the ballot.

The fourth proposed amendment, titled “Annual Deadline to File a Proposed Constitutional Amendment,” replaces the deadline in June with a July deadline. (Attachment D)

Ms. Henkener noted that the summary needs to be part of the original petition with 1,000 signatures, but the current provision in Section 1d is different.

Ms. Abaray asked whether Mr. Mulvihill is comfortable stating these changes do not change the report and recommendation. Mr. Mulvihill said he reviewed the proposed amendments along with committee member Roger Beckett and Mr. Steinglass, and their collective view is that these changes work.

Sen. Sykes separately moved to adopt amendments numbered 1, 2, 3, and 4, with Mr. Beckett seconding those motions. There were no objections to adopting the amendments.

Mr. Mulvihill asked for discussion on the report and recommendation.

Representative Bob Cupp observed that the re-write, at various points, alternates between the use of the word “shall” and the word “may.” He wondered whether a revision was in order to create consistency. Chair Mulvihill said the point was to give petitioners an option to submit language to the ballot board at their discretion.

Mr. Steinglass said there are areas of the re-write where drafting could be improved. He acknowledged, however, that there will be edits undertaken when the General Assembly takes up the matter and those types of issues can be corrected at that time.

Chair Mulvihill noted that the first sentence of the report and recommendation needs to match with the title of the report.

He also noted an issue with the first line of the second paragraph, wondering if it should reference “Section 17.” Mr. Steinglass said the committee had to address a couple of issues in the latter part of Article II that were buried in the initiative and referendum. He said the change does not affect the substantive policy.

Mr. Steinglass commented that the committee has not yet addressed Article XVI.

Mr. Beckett commented that the report and recommendation will be reviewed before it leaves the Commission, allowing technical issues to be corrected.

Chair Mulvihill asked for a motion to approve the report and recommendation. Ms. Abaray so moved, with Mr. Beckett seconding the motion. A voice vote was taken and the motion passed.

Complimenting Chair Mulvihill, Mr. Kurfess said the ponderous work of the committee to meet exactly what it set out to do is in large part to Chair Mulvihill’s commitment. He thanked Chair Mulvihill not just for getting everyone involved, but in giving his own personal time, study, and input. He said “I think that we can be confident in what we have done and a sense of pride. I want to personally thank you for your effort and I hope it will be received appropriately by the General Assembly.”

Chair Mulvihill thanked Mr. Kurfess for his compliment and for his help.

Mr. Kurfess also thanked staff for its assistance.

Sen. Sykes said he agrees with Mr. Kurfess that the committee has done a lot of work. He said, reviewing the current budget, he does not believe that the legislature acknowledges or appreciates the work of the committees, but that should not take away from the efforts of this committee and its leadership.

Chair Mulvihill then called for a roll call vote on the motion to approve the report and recommendation. The vote was as follows:

Mulvihill – yea

Kurfess – yea

Abaray – yea

Beckett – yea

Cupp – yea

Holmes – yea

Sykes – yea

The motion passed, with seven in favor, none opposed, and two absent.

Chair Mulvihill said it is not confirmed that the committee will meet next month. He said one of the amendments he received that was not brought forward today deals with Article XVI, which is part of the committee's charter. He said if the committee does meet in June, there will be an opportunity to give that due consideration.

Mr. Steinglass said that the General Assembly had identified review of the amendment process as one of the purposes for creating this Commission. As part of this review, the committee has been addressing the initiative process. Article XVI is the other part of the constitution that governs the amendment process, but the committee has not yet considered this article. He said he and the chair had discussed the need to address issues concerning constitutional conventions and possibly even constitutional revision commissions. He said it is also possible to look at the experiences of other states in amending their constitutions. He encouraged committee members to think about better ways to address the amendment process.

Mr. Beckett said there are two issues to focus on: one is the parity question indicating that rules that apply to the legislature should apply to the people. He said a second question relates to the requirement of a convention call every 20 years, observing that many states are replacing that requirement with commissions.

Ms. Abaray said Mr. Beckett's contributions to the report and recommendation should be acknowledged, as well as the public interest groups that have contributed.

Chair Mulvihill agreed and thanked them for their service.

Adjournment:

With no further business to come before the committee, the meeting adjourned at 11:48 a.m.

Approval:

The minutes of the May 11, 2017 meeting of the Constitutional Revision and Updating Committee were approved at the June 8, 2017 meeting of the committee.

/s/ Dennis P. Mulvihill

Dennis P. Mulvihill, Chair

/s/ Charles F. Kurfess

Charles F. Kurfess, Vice-chair

Adding timeframe for Attorney General Action

Language Change:

Within Section 1a (B)(1) on page 2 after the word "shall" insert ", within ten days, "

Within Section 1b(B)(1) on page 5 after the word "shall" insert ", within ten days, "

Effect:

Establishes a timeframe for the Attorney General to review a submitted initiated constitutional amendment or initiated statute to determine if it is sufficient and if the summary is a fair and truthful statement. The 10-days suggested in this amendment aligns with current law and the language for review of a referendum petition in 1c.

Rationale:

A time frame for review is important to protect the rights of petitioners. Under current law the requirement is 10 days and though there are reasonable scheduling rational to extend the ballot board review timeframe to 14 days, no such reason exists for Attorney General Review. This amendment creates consistency within the recommended new language and avoids unintended changes to current law.

Petition Requirements Conflict Correction

Language Change:

Within Section 1d (A) on page 11 after “a full and correct copy of the” strike the remainder of the sentence “summary approved by the attorney general.” And insert “title and ballot language prescribed by the ballot board.”

Effect:

This amendment creates consistency between 1d(A) which deals only with petition requirements and 1a(C)(2), 1b(C)(2), and 1c(E)(1) which require the ballot language to be printed as part of the petition and explicitly state no other summary is required. 1d(A) without this amendment directly conflicts with that provision.

Rationale:

Since the ballot language is what electors will be met with in the booth, it makes sense to have the ballot language be part of the petition process. Nothing in the amendment would preclude circulators from sharing the attorney general approved summary with electors.

Annual Deadline to File a Proposed Initiated Statute

Language:

Within section 1b(F) on page 6 and the top of page 7 replace each "February" with "April".

Within section 1b(H) on page 7 replace "June" with "July".

Effect:

Delays by two months the deadline for an initiated statute to appear at the next available election and delays by one month the deadline for the General Assembly to act or the petition to be withdrawn.

Rationale:

This amendment is supportive of the goal of making the initiated statute more attractive as compared to the constitutional amendment. The General Assembly will still have 3 months on which to work on the proposal before it is placed on the ballot. It is appropriate to avoid undue delay in when a certified question is placed before the voters. This still leaves more than 125 days for preparation for the issue to be presented to electors.

Annual Deadline to File a Proposed Constitutional Amendment

Language:

Within section 1a(F) at the top of page 4, replace "June" with "July"

Effect:

Delays by one month the deadline for an initiated constitutional amendment to appear at the next available election.

Rationale:

Under current law, initiated amendments must be filed at least 125 days before next general election. This always falls in early July. It is appropriate to avoid undue delay in when a certified question is placed before the voters. In addition, moving the title and ballot language process to the front end will simplify what needs to occur after certification and before an issue is submitted to the voters.