**OHIO CONSTITUTIONAL MODERNIZATION COMMISSION**

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**MINUTES OF THE**
**CONSTITUTIONAL REVISION AND UPDATING COMMITTEE**

**FOR THE MEETING HELD**
**THURSDAY, OCTOBER 13, 2016**

## Call to Order:

Chair Dennis Mulvihill called the meeting of the Constitutional Revision and Updating Committee to order at 10:10 a.m.

## Members Present:

A quorum was present with Chair Mulvihill, Vice-chair Kurfess, and committee members Abaray, Beckett, Cupp, Jordan, Readler, and Sawyer in attendance.

## Approval of Minutes:

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

## Discussion:

Chair Mulvihill began the meeting by indicating that although the committee had not met over the summer, much work had been accomplished in the interim. He said he would like the committee to discuss a draft rewrite of Sections 1a through 1g of Article II.[1] He said this is a starting point based on conversations the committee had over the last couple of years. He thanked staff for preparing the draft.

Chair Mulvihill suggested that the committee engage in a general discussion about big picture ideas, inviting input from staff. He said the purpose of the rewrite is to make the sections more modern, and that this has been accomplished both by changing some small matters, such as publication requirements, and by changing big policy issues such as making the statutory initiative less cumbersome and more attractive, and making the constitutional amendment procedure just slightly more burdensome so as to encourage the statutory initiative route.

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[1] The draft is being provided as Attachment A to these minutes.

He said the statutory initiative process would be streamlined, but the constitutional amendment part of the revision process was more challenging. He said one way to change the constitutional amendment process would be to raise the threshold number of votes needed for passage, so that a simple majority would no longer be adequate. He added the committee also discussed requiring the proposed initiated amendment to be passed in consecutive general elections. He said one issue the committee could consider is whether to allow initiated amendments to appear on the ballot only in even-numbered year general elections, where the turnout is highest. He noted a significant voter drop off in odd-numbered year general elections. He said the draft presented to the committee also eliminates the requirement of a supplementary petition for the statutory initiative, as well as adding a safe harbor provision, both concepts the committee previously discussed.

Chair Mulvihill then asked for discussion of the constitutional amendment process, indicating the committee would then discuss the statutory initiative, after which Steven C. Hollon, executive director, would lead discussion on the rewrite.

Committee member Chad Readler asked committee member Roger Beckett to comment on the concept of requiring two consecutive elections to approve a constitutional amendment initiative versus requiring one even-numbered year election. Mr. Readler said that, early on, he wanted to raise the vote total to require a supermajority, but he now feels the successive election idea is a good check. He asked to hear more about Mr. Beckett's idea.

Mr. Beckett said that requiring two successive elections forces an issue to be on the ballot during either a presidential or a gubernatorial election year, where there is greater voter turnout. He cited the example of the casino issue, which appeared on the ballot and was passed as Article XV, Section 6 in November 2009. He observed that ballot measure passed with only 15 percent of Ohioans voting for it, noting if the proposal had been on the ballot the year before, it would have required 25 percent of the population to approve it. Mr. Beckett said the idea of setting up a system that encourages more citizens to weigh in on an issue is exactly the direction the state should be heading. He said he considers both the "two-consecutive" and the "even-year" plans as very good standards to use. He continued that the two-consecutive elections idea is appealing because it avoids changing the constitution for temporary or passing reasons. He said, if it is that important, the public will should be there to do it in the next election as well. He commented that "The key is we consider setting up something that allows as many Ohioans as possible to weigh in." He said he would favor both of those ideas over the supermajority idea, noting that voter turnout should be a factor.

Mr. Readler agreed, saying he was attracted to the idea of two consecutive elections because either the vote for president or governor will be on ballot. He said two elections allows a cooling off period, and raises the bar a little bit higher than just having the issue raised in one election.

Chair Mulvihill asked whether the committee would want to impose the same rule on General Assembly initiated amendments.

Committee member Janet Abaray said she agrees about two consecutive years, noting Section 21 of Article I, regarding the preservation of the freedom to choose health care, as an example. She

said if there had been two ballots for that issue, voters may have had a different perspective by the second year.

Chair Mulvihill asked the committee to comment whether allowing an issue to sit dormant for a year would create a major impediment to proponents using the constitutional initiative process.

Senator Kris Jordan said he leans toward requiring a higher vote threshold because the other ideas favor the big money interest. He said he likes the 55 or 60 percent threshold.

It was noted that, of the citizen-initiated amendments that have passed since 1950, only the minimum wage [Article II, Section 34a] and casino issues failed to beat the 60 percent threshold, with the casino issue also failing to reach the 55 percent threshold.

Representative Bob Cupp noted that the minimum wage provision was adopted in 2006, an even-numbered year, while the casino provision was adopted in 2009, an odd-numbered year.

Vice-chair Charles Kurfess noted one relevant factor if two elections were required is that the proposed amendment would get a lot more attention, discussion, and consideration after that first election. He said a hybrid might be that if it passes in the first election by a supermajority it would be adopted, but if not the proposal must stand for a second election. He said there would be a potential for the General Assembly to consider a legislatively-initiated amendment to clean up and improve language. He said that approach would make the constitutional initiative process more consistent with the approach taken with petitions for initiated statutory law. He said this would give the General Assembly a chance to consider and modify the proposal before it goes on the ballot.

Chair Mulvihill said one of the issues the committee has considered is whether to take out the supplemental petition, an approach that would step away from Mr. Kurfess's idea.

Senator Tom Sawyer suggested an alternative to two consecutive elections would be to have one election and then a period of repose in which the proposal might be considered in a subsequent election – either the next election or another later election. He said if organizers had the opportunity to have the first election in a gubernatorial year and the second two years later, then they could have an electorate of the same shape and size as the first one. He said this approach would make the timing a matter of choice for the organizers, who could wait to have the measure on the ballot until the next even-numbered year.

Ms. Abaray said that approach might be problematic because it might allow proponents to place the measure on the ballot in two odd-numbered years. Sen. Sawyer said that is possible, but the current proposal is having it in an even-numbered year and then immediately having it on the ballot in an odd-numbered year.

Mr. Hollon noted that Florida has a supermajority requirement of 60 percent, while a few states, notably Massachusetts, Mississippi, Nebraska, and Washington, require a majority vote for an initiated amendment and that the measure be supported by at least 30 to 40 percent of the total

votes cast in the election. He noted a recent suggestion by a constituent in Avon Lake, Ohio, that would require the issue to be supported by 50 percent of all registered voters.

Chair Mulvihill noted that if a certain percentage of all votes is required, those people who dropped off – meaning those who voted in the election but did not vote on that issue – are not included.

Mr. Beckett asked whether more research could be provided on the states that have a supermajority requirement, and Mr. Hollon said staff could look into the question.

Mr. Beckett noted that current Section 1a allows for a vote on a citizen-initiated constitutional amendment in a regular or general election; however, since 1912, there has never been a citizen-initiated constitutional amendment presented in a primary election. He said the new draft removes the primary as an option and instead requires the measure to be proposed in the general election. He wondered if that is a real barrier or if it is meaningless.

Senior Policy Advisor Steven H. Steinglass said the pattern in Ohio has been that constitutional amendments have gone on the ballot in primary elections, in special elections, and in general elections. He said the practice for the first 60 to 80 years after 1851 was to put the issue on the fall ballot, but once it was done in an August election. He said, at some time, someone realized it was possible to put proposed amendments on at any time, and then the pattern has been exclusively the primary or the general election. He said, regarding statutory initiative proposals, the assumption has been when the constitution says regular or general election, the fall election is meant.

Mr. Hollon added the secretary of state's counsel was asked about the meaning of the phrase "regular election," and answered that the office considers the "general election" to be the fall election in even-numbered years, with the "regular election" being the election occurring in the odd-numbered years. He said the draft is requiring the issue to be raised in a general election because changing the constitution is important enough to be addressed in a general election.

Chair Mulvihill asked, policy wise, if the committee makes amending the constitution slightly more difficult, what would be the most workable format.

Mr. Steinglass said it is hard to get real examples from other states because they have different thresholds, and most use a simple majority. He said Nevada is the only state that requires two elections. He said there are several examples in recent years where Nevada voters have approved proposed amendments at successive elections. He said he does not have data on the four states other than Florida that use a percentage of the turnout as an additional requirement for determining that an item passed. He said Ohio had a supermajority requirement in the constitution between 1851 and 1912 that was a "stealth" supermajority requirement because proponents had to get the vote of more than 50 percent of the people who voted at that election, and that for some reason the voter drop off was significant. He said there are examples of items being approved by a 10 to 1 margin on the issue, but the measure failed because it did not get a majority of those who turned out. So, he said, a 1912 accomplishment was to get rid of the supermajority requirement. He noted, considering the question of voter drop off, which is different from the total number voting, there is a relatively low drop off. He said, for example, the casino vote involved 98.2 percent of

those who voted also voted on that issue. Regarding the Affordable Care Act issue [Article I, Section 21], 95.3 of voters who cast a ballot voted on that issue. Another issue, the minimum wage amendment, had a similar high 90s percentage. He noted there is a relatively modest voter drop off when it comes to the issues as compared to votes cast for the candidates.

Mr. Beckett said Ohio is one of the few states that even allow citizen initiated amendments. Mr. Steinglass agreed, saying some states have the direct initiative. He said Ohio has a breadth of tools for amending the constitution, but Ohio has not used its tools as much as other states have used theirs.

Ms. Abaray wondered if requiring a supermajority might influence whether a person or group might go the constitutional rather than the legislative route. Chair Mulvihill suggested all the proposals the committee is considering would help accomplish that.

Mr. Kurfess asked whether there has been a situation in which there is public movement to amend the constitution and the legislature enacted a law dealing with the subject. Mr. Steinglass noted the statutory initiative regarding smoking, which was a situation in which there were competing issues on the ballot.[2]

Chair Mulvihill asked the legislative members of the committee whether people who want to get an initiative passed go to the General Assembly first to see if there is an appetite for the General Assembly to act.

Sen. Jordan answered that, regarding the issue related to having a livestock standards board, he is not sure the citizen's initiative group's efforts were "the carrot or the stick" in getting the legislature to act. He said the General Assembly agreed to propose a resolution to create a livestock standards board because it wanted to avoid a worse outcome. He said the reality of being a legislator is that "on occasion you vote on something a little less bad to avoid a horrendous outcome."

Sen. Sawyer added that proponents of an issue can use discussion in the legislature to build a constituency outside the legislature.

Rep. Cupp raised a point that the requirement of two successive elections should not be applied to legislatively-proposed constitutional amendments. He said, currently, the General Assembly already must approve a resolution by a supermajority, and, additionally requiring two consecutive elections would impede the ability of the legislature to act quickly in situations in which there may be an urgent need to act. He noted the General Assembly resolution process already requires discussion and consensus.

[2] Staff note: The Ohio Smoking Ban Initiative was approved on the November 7, 2006 ballot, and is codified at R.C. Chapter 3794. It competed with a citizen-initiated constitutional amendment that, if it had passed, would have replaced all state and local smoking bans with a single uniform ban that would have prohibited smoking restrictions for certain businesses and other public places.
https://ballotpedia.org/Ohio_Partial_Smoking_Ban,_Amendment_4_(2006) (last visited Oct. 14, 2016).

Chair Mulvihill cautioned that the committee would have to consider how that concept would be received by the people, because it could be difficult to gain popular support for the two consecutive elections idea if there are different standards for the public and for the legislature.

Mr. Beckett observed that the General Assembly may not decide to bring forth an issue for which there is a broader will of the people to move forward, and so it seems that this process is an opportunity for the people to weigh in by proposing constitutional changes that the legislature is not addressing. He said one thing he likes about the two consecutive year idea is the possibility it will have the effect that the current process for initiating statutes has, meaning it would provide a "shot across the bow" for the legislature. He said, in thinking about the language drafted by the ordinary citizen, using two consecutive elections would allow the General Assembly to propose an alternative that might accomplish what the people were trying to accomplish but taking out inappropriate language, such as the casino location descriptions in Article XV, Section 6. He said the two consecutive year requirement may have the effect of letting the General Assembly have involvement in the process.

Mr. Kurfess said he could see one result as being that the General Assembly simply puts on the ballot an alternative, so there are two issues on the ballot. He added, at that point the discussion is whether the measure put on by petition would require a larger majority than the one proposed by the legislature. He said the committee has to decide if there is a role for the General Assembly, or whether there should be different requirements to amend the constitution based on the origin of the proposal.

Ms. Abaray said it would seem if the citizen proposal is required to go through two consecutive years, and the legislative proposal is not, it might cause people to try to work through the legislature, which would be a benefit.

Chair Mulvihill asked whether the committee was reaching a consensus on the issue of whether to recommend the two consecutive elections idea.

Mr. Readler said he likes the two consecutive elections idea. He said he worries about requiring a higher number of votes out of a belief the public would be more resistant to that idea. He said a two consecutive elections requirement would take a little of the people's power away, but requiring a higher percentage would seem worse. He also noted requiring two consecutive elections would help to promote taking statutory initiative route because of the added expense and trouble. Asked whether he liked the even-numbered year concept, Mr. Readler said he would do a two-year requirement, so that at least one of those years would be a presidential or gubernatorial year.

Sen. Sawyer noted his proposal would be to try to get two even-numbered years.

Ms. Abaray said she is not in favor of two odd-numbered years. She said she likes two consecutive years, but not two consecutive even-numbered years because that would delay it too long.

Mr. Kurfess said it might be possible to require that the measure be passed in two elections with a higher majority in the primary and a lesser majority in the general. He said he is not sure he likes the idea of dragging it out for two years.

Ms. Abaray said having an opportunity for people to rethink their vote can be a good thing.

Chair Mulvihill asked whether any committee member objected to requiring that the initiative be on the ballot in two consecutive years. There were no objections.

Chair Mulvihill then turned the committee's attention to the "safe harbor" provision, which proposes to restrict the General Assembly from altering or repealing a statutory initiative law for a period of years after its enactment. He noted there are not many statutory initiatives that have passed, with the most recent one being the smoking law in 2006.

Mr. Steinglass noted there is not enough history to gauge the effectiveness of the statutory initiative provision, and no documentation of the extent to which proposed statutory initiatives have led the General Assembly to adopt legislation. He said that question is not tracked by the General Assembly, or anyone.

Sen. Jordan said, practically, a party choosing between placing a business plan into the law or into the constitution probably would not do it through changes in the law, which the General Assembly could alter later. He said maybe the reason why so few statutory initiatives have passed is that proponents were not willing to spend $35 million to get the law passed when it could be changed by the legislature. On the other hand, he said, while there have been some attempts by legislators to alter citizen initiated statutes, some legislators back off because the law was passed by the voters. He said that creates a natural hurdle, because a legislator does not want to undo something that was popular and passed.

Mr. Beckett said he does not have a strong view of whether the safe harbor period should be three versus five years, but noted if the committee truly is trying to encourage use of the statutory initiative, it should make that number as high as the legislature would tolerate. He said he would lean toward five years.

**Presentation:**

*Steven C. Hollon*
*Executive Director*
*Draft of Initiative and Referendum Sections*

Chair Mulvihill recognized Mr. Hollon for the purpose of reviewing with the committee the draft of the rewrite of the initiative and referendum provisions.

Mr. Hollon noted that the draft contains headings that are not part of the constitution but rather are included for ease of reference. He said the draft offers the option of clarifying the difference between an initiative and a referendum, as those terms are generally used in other states. He said that a "referendum" generally means simply a vote by the electorate to approve or reject an issue.

He said, in Ohio, those terms have come to mean something different, with an initiative meaning "to bring forth a law," and referendum meaning to challenge a law passed by the General Assembly. He said the committee may wish to continue to use those terms as they have been traditionally understood in Ohio, but wanted to point that out about the draft.

Section 1a [Initiative and Referendum to Amend Constitution]

Mr. Hollon described that Section 1 of the draft, concerning legislative power, provides the opportunity for the committee to decide whether it should "but the people reserve the power," or whether it should say "and" the people reserve the power. He said Section 1, paragraph B derives from language at the end of current section 1g.

Concerning Section 1a in the draft, Mr. Hollon noted the time frame for filing a petition is described as commencing the first day of January, and ending the first day of June. Chair Mulvihill explained that currently in the constitution the timing is confusing because it starts with an end date and goes backward. He said the draft proposes to set the time requirements going forward rather than going backward.

Mr. Hollon continued that Section 1a, paragraph B, is in current Section 1a, while paragraph C derives from current Section 1a, and from the middle and end of Section 1g. He said paragraph D adds the requirement that the issue be presented at a general election, as opposed to the current requirement that the issue be presented in either a regular or general election.

Mr. Kurfess asked whether one half of the ten percent required must come from at least half the counties, or whether the requirements should say that there must be five percent from each of half of the counties of the state. Mr. Beckett said the current requirement, as expressed on the secretary of state's website, is that there must be five percent from each of half of the counties in the state, with the total to be ten percent. Chair Mulvihill said the draft did not change the original language, but Mr. Hollon said adding the word "each" to the draft might clarify what is meant.

Mr. Hollon continued that paragraph F of the draft of Section 1a derives from current Section 1b, and has been moved because it belongs in 1a. He said paragraph G, relating to the publication requirements, has been added.

Mr. Kurfess asked whether there have been elections in which competing constitutional amendments were on the ballot. Mr. Steinglass answered that in 1918 there were two proposals on the ballot that were considered to be irreconcilable. He noted that, in November 2015, there were two competing measures on the ballot as Issue 2 and Issue 3, but the question of which measure succeeds did not arise because Issue 3 failed. Mr. Steinglass said that, prior to the election, the secretary of state provided an opinion about what would occur if both issues passed. Mr. Steinglass continued that the issue should be looked at, noting that courts initially would try to reconcile the two provisions before concluding they are in conflict. Chair Mulvihill suggested that some language resolving that question might be added to the draft.

Mr. Kurfess inquired whether the secretary of state determines the order in which issues are placed on the ballot, wondering if the date of the filing of the petition or joint resolution dictates the

order. Mr. Steinglass said he does not know, but said "it is murky." He added, if there is concern about the problem of what happens when there are conflicting amendments that are both approved, the phrase "regardless of the effective date of the proposed amendments," could be added to clarify that the proposal receiving the most votes prevails, rather than the proposal that is effective first. He said, under the current constitution, initiated amendments do not become effective until 30 days after approval. He said the Ohio Supreme Court has ruled that legislatively-enacted amendments take effect immediately. He concluded that, currently, legislatively-proposed amendments always trump a citizen amendment.

Ms. Abaray recalled that, at a previous meeting, a speaker wanted to put language in a proposed constitutional amendment that would expressly say the proposed amendment would take precedence over any competing proposal. She said that speaker said proponents are now putting that language in their proposed amendments as a matter of routine. She said she thinks that is something the committee should consider, noting that type of language should be prohibited in any initiative.

Mr. Steinglass said that comment had been expressed by Maurice Thompson, who had presented to the committee at a previous meeting. Mr. Steinglass said that current proposed initiated statutes, at the attorney general stage, reveal the drafting techniques being used. Mr. Steinglass continued that the question of subsequent constitutional provisions being in conflict with existing provisions is not new, and it has been up to the courts to reconcile the two provisions. He noted an example of the $750,000 debt limit in Article VIII. He said the courts can handle that type of conflict, but the harder question arises when competing proposals are on the same ballot.

Section 1b [Initiative and Referendum to Enact Laws]

Mr. Hollon described that the draft of Section 1b, relating to the statutory initiative procedure, contains new language at paragraph A, allowing initiative proponents to file their petition with the secretary of state at any time after the first of January and before the first of February.

He continued that paragraph B, requiring a title on the petition, is taken from current Section 1b. He said paragraph C, relating to the signatures on the petition, is derived from current Sections 1b and 1g. Regarding paragraph D, Mr. Hollon said the draft requires the secretary of state to immediately transmit the petition to the General Assembly. He said if the General Assembly does not pass related law by June and the petition is not withdrawn as provided by law, and if the signatures are verified, the proposed law would be presented to the electors at the next general election. Chair Mulvihill noted the committee had discussed this procedure at a previous meeting. Mr. Hollon continued that paragraph F then indicates that, if the proposed law is approved by the electors, it takes effect 30 days after the election.

Mr. Kurfess asked whether a petition for a constitutional amendment can be withdrawn if the legislature enacts a satisfactory statute. Mr. Hollon said that concept is not in the current constitutional procedure, nor in the draft. Mr. Kurfess asked whether it would be a good idea to add that idea. Mr. Beckett noted that a good place to add that concept would be in the draft at Section 1a(E). Chair Mulvihill said the committee would consider putting that language in the draft.

Section 1c [Initiative and Referendum to Challenge Laws]

Mr. Hollon described the draft at Section 1c, relating to the referendum to challenge laws. He said paragraph B, which prescribes a descriptive title to be added at the top of a referendum petition, is not in the current constitution, but has been added here to make the referendum procedure track the procedures for the constitutional and statutory initiative procedures. He said paragraph C of Section 1c of the draft allows the General Assembly to enact law relating to allowing electronic signatures, as was done with the redraft of the constitutional and statutory initiative sections.

Regarding Section 1c at paragraph D, Mr. Hollon described that the draft of the referendum procedure allows the referendum to be submitted to voters at the next primary or general election, which is different from the draft relating to the constitutional and statutory initiative procedures. He said the reason for this is that requiring petitioners to wait until the next general election may cause too long of a delay in the legislature's ability to implement the law.

Chair Mulvihill asked what the understanding is regarding the phrase "regular election" means, wondering if it means a primary election or a general election. Mr. Hollon said his understanding is that a regular election is one that occurs in an odd year, with a general election occurring in an even year.

Peg Rosenfield, elections specialist with the League of Women Voters of Ohio, speaking from the audience, said November is a regular election, and that "regular" and "general" are the same thing. Mr. Steinglass said the word "primary" is a big substantive change in the draft. Chair Mulvihill said that issue will need future discussion.

Mr. Hollon continued that paragraph G of the draft of Section 1c includes the concept in current Section 1d that laws providing for tax levies, appropriations for current expenses of the state government, and emergency laws are not subject to the referendum.

Mr. Kurfess commented that defining what constitutes an appropriation has been an issue before the Supreme Court of Ohio, wondering if language could be added to the constitution to define the term "appropriation." Rep. Cupp said that is his question as well. Mr. Hollon said staff could prepare a memorandum on that topic.

Section 1d [Petition Requirements]

Regarding Section 1d, Mr. Hollon said the draft now covers the requirements for the petition, simplifying procedures described in current Section 1g. Chair Mulvihill noted one change in the draft is that the General Assembly would now be authorized to make changes as needed to the petition signature process in order to allow the gathering of electronic signatures. Mr. Hollon added that paragraph C allows the General Assembly to provide law relating to the witnessing of electronic signatures. Mr. Hollon said paragraph D is derived from the beginning of current Section 1g.

Section 1e [Verifying and Challenging Petitions]

Mr. Hollon described that the draft of Section 1e provides a new process for the timing of filing petitions, and adds days for the Ohio Supreme Court to rule on a challenge. He noted that paragraph F of the draft was new, prohibiting further challenges to a petition after the Court rules on the sufficiency of additional signatures. Mr. Hollon further described that paragraph G, indicating that a proposed amendment or law cannot be held unconstitutional on the basis of insufficient petitions, is taken from current Section 1g.

Ms. Rosenfield asked whether the draft clarifies when petitioners can get signatures, specifically whether petitioners can continue to get signatures after filing with the secretary of state but before the secretary of state determines the sufficiency of the signatures. She also asked whether the draft clarifies how long petitioners have to get signatures from the January filing. She said the problem is that when the deadline was changed from 90 days back to 100 days, it shortened the period for getting signatures.

Mr. Hollon said he does not know of anything in the constitution that says when a petitioner can and cannot get signatures. Chair Mulvihill said he thought that was addressed by the legislature two years ago. Mr. Steinglass said there is statutory law facilitating the signature gathering process. Ms. Rosenfield noted that the legislation was the General Assembly's interpretation of the constitution, which was not very clear on the question. She wondered if the draft addresses the shortened period in which the petitioner only has two months to gather signatures. Chair Mulvihill said the committee should consider that question at a future meeting.

Mr. Hollon said there is no ambiguity about when the petition goes to the General Assembly, pointing to the draft of Section 1b at paragraph D providing that the General Assembly is noticed as soon as the petition is filed. He added that the draft of Section 1e, at paragraph A, provides that within 30 days, the secretary of state shall verify the signatures. He said the draft contemplates that the issue of the sufficiency of petitions and signatures will be resolved by the first of May, but in the meantime the General Assembly has the petition before it.

Chair Mulvihill summarized the procedure in the draft, saying the signatures are collected and the petition is then filed with the secretary of state, who then provides it to the General Assembly, which can do whatever it wants when it gets the petition. He said the secretary of state then begins analysis of the signatures. He said, while the secretary of state is checking the signatures, the General Assembly has the ability to act or not act.

Ms. Abaray requested that staff provide a flow chart to allow the committee to compare the draft to the current procedure. Mr. Hollon said staff could put that together.

Section 1f [Explanation and Publication of Ballot Issue]

Mr. Hollon described that Section 1f of the draft adopts language from current Section 1g, with the addition that the General Assembly may prescribe by law for the electronic publication of the text of the proposed amendment or law.

Sections 1g [Placing on the Ballot], 1h [Limitation of Use], and 1i [Application to Municipalities]

Mr. Hollon said the draft of Section 1g contains language in current Section 1g, while the draft of Section 1h is language from current Section 1e, and the draft of Section 1i derives from current Section 1f.

Section 15 [How Bills Shall Be Passed]

Regarding the draft of Section 15, Mr. Hollon said the procedure by which the General Assembly enacts an emergency law is currently part of Section 1e, and, in the draft, has been given its own section separate from the initiative and referendum process because current Section 1e exempts such laws from the referendum process.

Section 17 [Effective Date of Laws]

Noting that, under the current constitutional provision, finding out when a law takes effect requires one to search in the provision dealing with the referendum on challenging laws. Mr. Hollon said it makes more sense to place such an important concept in its own section, and so the draft creates a new section for that purpose.

Mr. Hollon having concluded his review of the draft, Chair Mulvihill thanked him for his presentation and announced that the committee should consider the draft carefully in preparation for its next meeting, which would occur in November.

**Adjournment:**

With no further business to come before the committee, the meeting adjourned at 12:02 p.m.

**Approval:**

The minutes of the October 13, 2016 meeting of the Constitutional Revision and Updating Committee were approved at the November 10, 2016 meeting of the committee.

*/s/ Dennis P. Mulvihill*
Dennis P. Mulvihill, Chair

*/s/ Charles F. Kurfess*
Charles F. Kurfess, Vice-chair

Draft Date: 10.13.2016

**Section 1. [Legislative Power]**

(A) The legislative power of the state shall be vested in a General Assembly, consisting of a Senate and House of Representatives, [but the people reserve to themselves the power ~~to propose to the General Assembly laws and amendments to the constitution, and to adopt or reject the same at the polls on a referendum vote as hereinafter provided. They also reserve the power to adopt or reject any law, section of any law or any item in any law appropriating money passed by the General Assembly, except as herein provided; and independent of the General Assembly to propose amendments to the constitution and to adopt or reject the same at the polls.~~ of the initiative and referendum,] *or* [and as the people reserve to themselves in the initiative and referendum,] as set forth in [this article] *or* [the constitution]. The limitations expressed in the constitution~~,~~ on the power of the General Assembly to enact laws~~,~~ shall be deemed limitations on the power of the people to enact laws.

(B) The ~~foregoing~~ provisions of ~~this section~~ [this article] *or* [the constitution] concerning the initiative and referendum shall be self-executing, except as herein otherwise provided. Laws may be passed to facilitate their operation, but in no way limiting or restricting either such provisions or the powers herein preserved.

**Section 1a. [Initiative and Referendum to Amend Constitution]**

(A) The people reserve the power to propose an amendment to the constitution, independent of the General Assembly, and may do so at any time after the first day of January and before the first day of June in the same year, by filing with the secretary of state an initiative petition proposing an amendment to the constitution.

(B) The petition shall have printed across the top: “Amendment to the Constitution Proposed by Initiative Petition to be Submitted Directly to the Electors” and shall set forth the full text of the proposed amendment.

(C) The petition shall be required to bear the signatures of ten per cent or more of the electors of the state, including five per cent or more of the electors from one-half or more of the counties, as determined by the total number of votes cast for the office of governor at the last preceding election for that office.

(D) Upon verifying the requirements of the petition and signatures on the petition as provided in this article, the secretary of state shall submit the proposed amendment for the approval or rejection of the electors, [by referendum vote], at the next general election.

(E) If the proposed amendment to the constitution is approved by a majority of the electors voting on the issue, the proposed amendment shall be placed on the ballot in the same form as passed by the electors, for approval or rejection, at the next succeeding general election. If the proposed amendment is approved by a majority of the electors voting on the issue at the next succeeding general election, it shall take effect thirty days after it was approved.

(F) If conflicting proposed amendments to the constitution are approved at the same election by a majority of the total number of votes cast for the proposed amendments, the one receiving the highest number of affirmative votes shall be the amendment to the constitution.

(G) An amendment that is approved by the electors shall be published by the secretary of state.

**Section 1b. [Initiative and Referendum to Enact Laws]**

(A) The people reserve the power to propose a law, and may do so at any time after the first day of January and before the first day of February of the same year, by filing with the secretary of state an initiative petition proposing a law to the General Assembly.

(B) The petition shall have printed across the top: "Law Proposed by Initiative Petition First to be Submitted to the General Assembly" and shall set forth the full text of the proposed law.

(C) The petition shall be required to bear the signatures of five per cent or more of the electors of the state, including two and one-half per cent or more of the electors from one-half or more of the counties, as determined by the total number of votes cast for the office of governor at the last preceding election for that office.

(D) Upon receipt of the petition, the secretary of state shall transmit a copy of the petition and full text of the proposed law to the general assembly. If the proposed law is passed by the General Assembly, either as petitioned for or in an amended form, it shall be subject to [challenge by the electors] *or* [the referendum] under Section 1c of this article.

(E) If before the first day of June immediately following the filing of the petition the General Assembly does not pass the proposed law in the form as filed with the secretary of state, and the petition is not withdrawn as provided by law, and, upon verifying the requirements of the petition and signatures on the petition as provided in this article, the secretary of state shall submit the proposed law for the approval or rejection of the electors, [by referendum vote], at the next general election.

(F) If the proposed law is approved by a majority of the electors voting on the issue, it shall take effect thirty days after the election at which it was approved in lieu of any amended form of the law that may have been passed by the General Assembly.

(G) If conflicting proposed laws are approved at the same election by a majority of the total number of votes cast for each of the proposed laws, the one receiving the highest number of affirmative votes shall be the law.

(H) A law proposed by initiative petition and approved by the electors shall not be subject to veto by the governor.

(I) A law proposed by initiative petition and approved by the electors shall be published by the secretary of state.

(J) A law proposed by initiative petition and approved by the electors shall not be subject to repeal, amendment, or revision by act of the General Assembly for [three] *or* [five] years after its effective date, unless upon the affirmative vote of two-thirds of all members elected to each house of the general assembly.

**Section 1c. [Initiative and Referendum to Challenge Laws]**

(A) The people reserve the power [through the referendum] to challenge a law, section of law, or item in a law appropriating money, and may do so at any time within ninety days after the law has been signed by the governor and filed with the secretary of state, by filing with the secretary of state [an initiative] *or* [a referendum] petition challenging the law, section of law, or item in a law appropriating money.

(B) The petition shall have printed across the top: "[Initiative] [Referendum] Petition to Challenge a Law Enacted by the General Assembly to be Submitted to the Electors" and shall set forth the full text of the law, section of law, or item in a law appropriating money being challenged.

(C) The petition shall be required to bear the signatures of six per cent or more of the electors of the state, including three per cent or more of the electors from one-half or more of the counties, as determined by the total number of votes cast for the office of governor at the last preceding election for that office.

(D) Upon verifying the requirements of the petition as provided in this article, the secretary of state shall submit the challenge for the approval or rejection of the electors, by referendum vote, at the next ~~regular~~ primary or general election occurring sixty days or more after the process for verifying and challenging the requirements of the petition and signatures on the petition is complete.

(E) If a law, section of law, or item in a law appropriating money subjected to a challenge [by referendum] is approved by a majority of the electors voting on the issue, it shall go into effect thirty days after the election at which it is approved.

(F) If [an initiative] *or* [a referendum] petition is filed challenging any section of law or item in a law appropriating money, the remainder of the law that is not being challenged shall not be prevented or delayed from going into effect.

(G) A law providing for a tax levy, a law providing appropriation for current expenses of the state government and state institutions, or an emergency law necessary for the immediate preservation of the public peace, health, or safety, as determined under Section 15(E) of this article, shall not be subject to challenge by [initiative and] referendum.

**Section 1d. [Petition Requirements]**

(A) An initiative [and referendum] petition filed under this article may be presented in separate parts, but each part shall contain a full and correct copy of the title and text of the

proposed constitutional amendment, proposed law, or the challenged law, section of law, or item in a law appropriating money, to be submitted to the electors.

(B) Each person who signs an initiative [and referendum] petition shall sign in ink and only for the person individually, and shall provide the person's residential address and the date the person signed the petition. The General Assembly may prescribe by law for the collection of electronic signatures in addition to or in lieu of petitions signed in ink.

(C) Each separate part of an initiative [and referendum] petition shall contain a statement of the person who circulated the part, as may be required by law, indicating that the circulator witnessed the affixing of every signature to the part. The General Assembly may prescribe by law for the witnessing of electronic signatures presented in addition to or in lieu of petitions signed in ink.

(D) In determining the sufficiency of the signatures required for initiative [and referendum] petitions, the secretary of state shall consider only the signatures of persons who are electors.

**Section 1e. [Verifying and Challenging Petitions]**

(A) Within thirty days following the filing of an initiative [and referendum] petition, the secretary of state shall verify the sufficiency of the petition and the signatures on the petition pursuant to the requirements of this article.

(B) The supreme court shall have original and exclusive jurisdiction over all challenges made to the secretary of state's determination as to the sufficiency of a petition and the signatures on a petition.

(C) A challenge to a petition or signatures on a petition shall be filed with the supreme court within seven days after the secretary of state's determination of the sufficiency of the petition and the signatures on the petition. The supreme court shall hear and rule on a challenge within

fourteen days after the filing of the challenge with the court. If the supreme court does not rule on the challenge within fourteen days after the filing of the challenge to the petition and the signatures, the petition and signatures shall be deemed to be sufficient in all respects.

(D) If the supreme court determines the petition or signatures are insufficient, additional signatures to the petitions may be filed with the secretary of state within ten days following the supreme court's ruling. If additional signatures are filed, the secretary of state shall determine their sufficiency within ten days following the filing of the additional signatures.

(E) A challenge to the secretary of state's determination as to the sufficiency of the additional signatures shall be filed with the supreme court within seven days of the secretary of state's determination. The supreme court shall hear and rule on any challenges to the additional signatures within fourteen days of the filing of the challenge with the court. If the supreme court does not rule on the challenge within fourteen days of the filing of the challenge, the petition and signatures shall be deemed to be sufficient in all respects.

(F) The filing of further signatures and challenges to petitions and signatures shall be not be permitted following the supreme court's determination as to the sufficiency of the additional signatures.

(G) The approval of a proposed amendment to the constitution or a proposed law, submitted by initiative petition and approved by a majority of the electors [voting on the issue] *or* [through a referendum vote], shall not be held unconstitutional on account of the insufficiency of the petitions proposing the issue. The rejection of a law, section of law, or item in a law appropriating money, challenged [by an initiative] *or* [in a referendum] petition and rejected by a [referendum vote] *or* [majority of the electors voting on the issue], shall not be held invalid on account of the insufficiency of the petitions initiating the challenge.

**Section 1f. [Explanation and Publication of Ballot Issue]**

(A) A true copy of a proposed amendment to the constitution or a proposed law, submitted by initiative petition, shall be prepared together with an argument or explanation, or both, for the proposed constitutional amendment or proposed law. The name of the person who prepares the argument or explanation, or both, for the proposed amendment to the constitution or proposed law, may be named in the petition submitted.

(B) A true copy of a law, section of law, or item in a law appropriating money, submitted by [initiative] *or* [referendum] petition, shall be prepared together with an argument or explanation, or both, against the law, section of law, or item in a law appropriating money, and an argument or explanation, or both, for the law, section of law, or item in a law appropriating money. The name of the person who prepares the argument or explanation, or both, against the law, section of law, or item appropriating money, may be named in the petition submitted. The name of the person who prepares the argument or explanation, or both, for the law, section of law, or item appropriating money, shall be named by the general assembly, if in session, and, if not in session, then by the governor.

(C) An argument or explanation, or both, as prepared under this section, shall be three hundred words or less.

(D) The full text of the proposed amendment to the constitution, proposed law, or law, section of law, or item in a law appropriating money, together with the argument and explanation for each, and the argument and explanation against each, shall be published once a week for three consecutive weeks preceding the election in at least one newspaper of general circulation in each county of the state, where a newspaper is published. The General Assembly may prescribe

by law for the electronic publication of the items required by this section in addition to or in lieu of newspaper publication.

**Section 1g. [Placing on the Ballot]**

(A) The secretary of state shall place on the ballot language for a proposed amendment to the constitution, proposed law, law, section of law, or item in a law appropriating money, presented by [initiative] *or* [referendum] petition to be submitted to the electors for a [referendum] vote.

(B) The ballot language shall be prescribed by the Ohio ballot board in the same manner and under the same terms and conditions as apply to issues submitted by the general assembly under Article XVI, Section 1 of this constitution.

(C) The secretary of state shall cause the ballots to be prepared to permit an affirmative or negative vote on each proposed amendment to the constitution, proposed law, or law, section of law, or item in a law appropriating money.

(D) The style of all constitutional amendments submitted by an initiative petition shall be: "Be it Resolved by the People of the State of Ohio." The style of all laws submitted by initiative petition shall be: "Be it Enacted by the People of the State of Ohio."

**Section 1h. [Limitation of Use]**

(A) The powers of the initiative and referendum shall not be used to pass a law authorizing any classification of property for the purpose of levying different rates of taxation on the property or of authorizing the levy of any single tax on land, land values, or land sites at a higher rate or by a different rule than is or may be applied to improvements on the land or to personal property.

(B)(1) Restraint of trade or commerce being injurious to this state and its citizens, the power of the initiative [and referendum] shall not be used to pass an amendment to this constitution that would grant or create a monopoly, oligopoly, or cartel, specify or determine a tax rate, or confer a commercial interest, commercial right, or commercial license to any person, nonpublic entity, or group of persons or nonpublic entities, or any combination thereof, however organized, that is not then available to other similarly situated persons or nonpublic entities.

(2) If a constitutional amendment proposed by initiative petition is certified to appear on the ballot and, in the opinion of the Ohio ballot board, the amendment would conflict with division (B)(l) of this section, the board shall prescribe two separate questions to appear on the ballot, as follows:

(a) The first question shall be as follows: "Shall the petitioner, in violation of division (B)(l) of Section le of Article II of the Ohio Constitution, be authorized to initiate a constitutional amendment that grants or creates a monopoly, oligopoly, or cartel, specifies or determines a tax rate, or confers a commercial interest, commercial right, or commercial license that is not available to other similarly situated persons?"

(b) The second question shall describe the proposed constitutional amendment.

(c) If both questions are approved or affirmed by a majority of the electors voting on them, then the constitutional amendment shall take effect. If only one question is approved or affirmed by a majority of the electors voting on it, then the constitutional amendment shall not take effect.

~~(3) If, at the general election held on November 3, 2015, the electors approve a proposed constitutional amendment that conflicts with division (B)(l) of this section with regard to the creation of a monopoly, oligopoly, or cartel for the sale, distribution, or other use of any federal Schedule I controlled substance, then notwithstanding any severability provision to the contrary,~~

~~that entire proposed constitutional amendment shall not take effect. If, at any subsequent election, the electors approve a proposed constitutional amendment that was proposed by an initiative petition, that conflicts with division (B)(l) of this section, and that was not subject to the procedure described in division (B)(2) of this section, then notwithstanding any severability provision to the contrary, that entire proposed constitutional amendment shall not take effect.~~

(C) The supreme court of Ohio shall have original, exclusive jurisdiction in any action that relates to this section.

**Section 1i. [Application to Municipalities]**

The powers of the initiative and referendum are reserved to the people of each municipality, as provided by law, on questions which a municipality may be authorized by law to control by legislative action.

**Section 15. [How Bills Shall Be Passed]**

(E) An emergency law, necessary for the immediate preservation of the public peace, health, or safety, shall be passed only on the affirmative vote of two-thirds of all members elected to each house of the general assembly. The reason for the emergency shall be set forth in a section of the law, which shall be passed on a separate affirmative vote of two-thirds of all members elected to each house of the general assembly.

**Section 17. [Effective Date of Laws]**

(A) Except as otherwise provided in this section, a law passed by the general assembly and signed by the governor, shall go into effect ninety days after the governor files it with the secretary of state.

(B) A law passed by the general assembly and signed by the governor providing for tax levies, appropriations for the current expenses of state government and state institutions, and emergency laws necessary for the immediate preservation of the public peace, health, or safety, shall go into effect and when filed by the governor with the secretary of state.

(V3)