



OHIO CONSTITUTIONAL MODERNIZATION COMMISSION

Coordinating Committee

**Kathleen M. Trafford, Chair
Jo Ann Davidson, Vice-chair**

October 13, 2016

**Ohio Statehouse
Room 018**

OCMC Coordinating Committee

Chair Ms. Kathleen Trafford
Vice-chair Ms. Jo Ann Davidson
Ms. Janet Abaray
Sen. Bill Coley
Judge Patrick Fischer
Sen. Kris Jordan
Mr. Dennis Mulvihill
Rep. Emilia Sykes

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OHIO CONSTITUTIONAL MODERNIZATION COMMISSION

COORDINATING COMMITTEE

THURSDAY, OCTOBER 13, 2016

12:00 P.M.

OHIO STATEHOUSE ROOM 018

AGENDA

I. Call to Order

II. Roll Call

III. Approval of Minutes

- Meeting of June 9, 2016

[Draft Minutes – attached]

IV. Reports and Recommendations

- None Scheduled

V. Presentations

- “Removing Gender-Based Pronouns from the Ohio Constitution”

Steven H. Steinglass
Senior Policy Advisor

[Memorandum by Steven H. Steinglass titled “Removing Gender-Based Pronouns from the Ohio Constitution,” dated September 26, 2016 – attached]

VI. Old Business

VII. New Business

VIII. Public Comment

IX. Adjourn



OHIO CONSTITUTIONAL MODERNIZATION COMMISSION

MINUTES OF THE COORDINATING COMMITTEE

FOR THE MEETING HELD
THURSDAY, JUNE 9, 2016

Call to Order:

Chair Kathleen Trafford called the meeting of the Coordinating Committee to order at 11:03 a.m.

Members Present:

A quorum was present with Chair Trafford, Vice-chair Davidson, and committee members Abaray, Fischer, Jordan, and Sykes in attendance.

Approval of Minutes:

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

Reports and Recommendations:

Doug Cole, chair of the Finance, Taxation, and Economic Development Committee, provided a review of three reports and recommendations issued by that committee.

Article VIII, Sections 1, 2, and 3 (State Debt)

Mr. Cole began by indicating his committee has been working on Article VIII, which deals with authorizing state debt. He said the committee determined it needed to address the debt provisions in unison because they seem to be interlocking.

With regard to Sections 1, 2, and 3, Mr. Cole said the committee concluded Sections 1 and 3 can be retained in their current form, but Section 2 requires revision in order to eliminate a reference to the sinking fund. He said the committee recommends retaining the \$750,000 debt limit in Section 1 because that figure is important to public perception and the limit has not restricted state fiscal planning or growth. He said the committee is seeking to eliminate the reference to the sinking fund in Section 2 because the sinking fund sections are being recommended for

repeal. He said the committee is recommending retaining Section 3 in its current form because it expresses a public policy discouraging debt.

Mr. Cole described that Article VIII is designed to limit indebtedness, placing a strict dollar limit on the amount the state can incur in Section 1. He said Section 2 recognizes civil unrest could necessitate debt issuance in excess of \$750,000.

Providing details about the committee's consideration of the sections, Mr. Cole said the committee heard testimony about ways to approach these sections, including information about constitutional structures in other states. He said the state treasurer and the Office of Budget and Management (OBM) also provided input.

Mr. Cole said the committee hesitated to tinker with the provisions because presenters testified that the provisions are working quite well, Ohio has good reputation in the debt markets, and interfering with the status quo could inject risk into the debt market and increase the interest rates. He said the report and recommendation concludes that the committee determined to leave the debt limit in place as it is.

Article VIII, Sections 2b, 2c, 2d, 2e, 2f, 2g, 2h, 2i, 2j, 2k, and Proposed Sections 2t and 19 (Authorization of Debt Obligations)

Mr. Cole then presented the committee's report and recommendation for sections of Article VIII dealing with authorizations for the issuance of debt obligations. He said Sections 2b through 2h, 2j, and 2k, are being recommended for repeal because they create a debt issuance authority that has been used and retired.

He said the committee is also recommending the adoption of a new Section 18 that would require any obligation entered into by the state under authority of those repealed sections to be honored, meaning outstanding bonds would be valid in the event that someone comes forward with an unpaid bond after the repeal.

He said the report and recommendation outlines the committee's recommendation for a new Section 2t to address an issue arising out of Section 2i. He said Section 2i allows lease appropriation bonds, which are less secure than general obligation bonds that are backed by the state's full faith and credit. He said a new Section 2t would change the lease appropriation indebtedness to general obligation bonds, leaving open the possibility of using lease appropriation if the General Assembly wants to, but creating a different mechanism for issuing those bonds for the purposes outlined in Section 2i.

Mr. Cole said the committee discussed an obsolescence avoidance provision that would prevent a future need to clean up the constitution when debt authorization provisions become obsolete, but this report and recommendation does not deal with that issue.

Committee member Janet Abaray expressed that the same situation could arise in the future, wondering whether a "clean up" provision should go to the voters at the same time as the repeal.

Mr. Cole said the current recommendation would not remove all of the provisions that will potentially become obsolete in the future. He said the committee felt it was ready to move on with this recommendation, preserving the ability to consider a clean up provision in the future. He said the way the state has been doing it has worked, so the committee was reluctant to make a framework change due to a concern about unintended consequences.

Article VIII, Sections 7, 8, 9, 10, and 11 (Sinking Fund and the Sinking Fund Commission)

Mr. Cole said the third report and recommendation deals with the so-called “sinking fund provisions,” sections that create a fund for paying down state debt, as well as creating a commission to oversee the fund. He said the committee is recommending the repeal of these sections out of a desire to have greater transparency and readability of the constitution. He said the sinking fund no longer exists, and the sinking fund commission no longer meets, so the committee felt repeal was in order.

Mr. Cole described that the state treasurer’s office took a different view. He said the treasurer wanted to increase the debt limit, and recommended retaining the sinking fund and commission, adopting an originalist approach. He said the committee went a different direction on that question.

Ms. Abaray asked whether the repeal would change the power of the statewide officials in relation to the Ohio Public Facilities Commission (OPFC). Mr. Cole said the makeup of the two commissions is different. He said the OPFC adds an extra member, the director of OBM, who is a gubernatorial appointee, which, in effect, gives the governor two votes on that panel. He said the OPFC is a creature of statute, so the General Assembly could change its role through statutes. He said the relative influence of the members of the OPFC could change because of this.

Mr. Cole added that the change to Section 2i was to allow for general obligation bonds rather than lease appropriation debt. He said, as a historical matter, the way debt issuance occurs is left to the General Assembly, but lease appropriation bonds have been issued through the treasurer’s office and general obligation bonds through OBM, actually through OPFC. He said the named issuer is the treasurer or OBM respectively. He said a concern that might arise is that, if the bonds issued for the purposes identified in Section 2i instead become general obligation bonds, there is a possibility that issuance authority exercised to date would be exercised by OBM. So, he said, there could be a shift.

Ms. Abaray asked whether the treasurer indicated why he supports keeping the sinking fund.

Mr. Cole said the treasurer’s view was that the structure the voters adopted in 1851 had a large chunk of general obligation debt, but left to the General Assembly to determine the purposes for which the debt was employed. He said, if one is returning to that structure, the sinking fund makes more sense.

Mr. Cole described that all three reports and recommendations passed unanimously in the Finance, Taxation, and Economic Development Committee.

Chair Trafford thanked Mr. Cole for his excellent presentation, indicating he provided assistance in explaining a complex topic.

Reminding the committee that the role of the Coordinating Committee is to review reports and recommendations as to form, rather than content, Chair Trafford asked for a motion to approve the reports and recommendations. Ms. Davidson so moved, and Ms. Abaray seconded the motion.

Upon a roll call vote, the motion passed unanimously.

Adjournment:

With no further business to come before the committee, the meeting adjourned at 11:47 a.m.

Approval:

The minutes of the June 9, 2016 meeting of the Coordinating Committee were approved at the October 13, 2016 meeting of the committee.

Kathleen M. Trafford, Chair

Jo Ann Davidson, Vice-chair



OHIO CONSTITUTIONAL MODERNIZATION COMMISSION

MEMORANDUM

TO: Chair Kathleen Trafford, Vice-chair Jo Ann Davidson, and
Members of the Coordinating Committee

CC: Steven C. Hollon, Executive Director

FROM: Steven H. Steinglass, Senior Policy Advisor

DATE: September 26, 2016

RE: Gender-Based Pronouns in the Ohio Constitution

At a number of meetings, members of the Commission have expressed the view that gender-based pronouns should be removed from the Ohio Constitution. This memorandum reviews the use of gender-based pronouns in the Ohio Constitution and identifies two comprehensive approaches for addressing this problem.

Scope of the Problem: Gender-Based Sections of the Ohio Constitution

The Ohio Constitution contains 226 sections. Nineteen (19) of these sections contain gender-based pronouns. In 14 sections, “he” is used (without a corresponding “she”); in six of these sections, “his” is used (without a corresponding “her”).¹ Only one section that uses “she” (but it contains a corresponding “he”); there is one use of “her.” In some of the sections with male pronouns, there are multiple uses of them. Specific information about these references is provided in a chart at the end of this memorandum.

The Traditional Ohio Approach to Gender-Based Provisions

Ohio has addressed the use of gender-based references in the Ohio Revised Code, but it has not undertaken a comprehensive review of the use of gender-based pronouns in the Ohio Constitution. Instead, the state has employed an ad hoc approach in which it has removed

¹ One section, Art. IV, sec. 6(A)(3) & (C) contains both a “he” and a “his.” This compilation does not include the current version of Article XI (Apportionment), which was replaced, effective January 1, 2021, by the new Article approved by the voters on November 3, 2015.

gender-based references only when provisions are being removed or amended for other reasons. *See, e.g.*, Art. XI, as adopted on November 3, 2015.²

A Comprehensive, General Assembly-Proposed Amendment

The problem of gender-based pronouns can be solved comprehensively in a single amendment proposed to the voters by the General Assembly, notwithstanding the one amendment, separate-vote requirement of the Ohio. *See* Ohio Const. Art. II, sec. 1 (“When more than one amendment shall be submitted at the same time, they shall be so submitted as to enable the electors to vote on each amendment, separately.”). The Ohio Supreme Court has only required that an amendment deal with a “single general object or purpose.” *See State ex rel. Ohio Liberty Council v. Brunner*, 125 Ohio St.3d 315, 2010-Ohio-1845, 928 N.E.2d 410 (2010) (per curiam). A gender-neutralizing proposal would deal with only a “single general object or purpose,” which is the removal of gender-specific pronouns.

The actual ballot would not have to include the full text of all affected sections, rather, a summary of the proposal with the precise sections identified would suffice.³ Under current constitutional provisions, however, the secretary of state is required to publish the full text of all provisions being amended in one general circulation newspaper in each county that has such a newspaper, and this must be done three times.⁴ The cost of this publication is not clear, but an estimate of the cost could be obtained from the secretary of state.

An Alternative Approach: The Delegation of Responsibility

An alternative would be to follow the approach taken in Vermont, which delegates responsibility for gender neutralizing to an independent body such as the state supreme court. In Vermont, under a temporary 1994 amendment to the Vermont Constitution, the state supreme court was charged with preparing a non-substantive proposal to revise the state constitution to contain gender inclusive language. The delegation to the court was as follows:

The Justices of the Supreme Court are hereby authorized and directed to revise Chapters I and II of the Constitution in gender inclusive language. This revision shall not alter the sense, meaning or effect of the sections of the Constitution. When the revision is certified by the Justices or a majority thereof to the Secretary

² The new Article XI, *see supra* note 1, repealed Ohio Const. Art. XI, sec. 12, which dealt with the terms of senators who were affected by changes in district boundaries and uses the male pronoun “he” twice.

³ *See* Art. II, sec. 1g.

⁴ *See id.* (“The . . . proposed amendment to the constitution, together with the arguments and explanations, not exceeding a total of three hundred words for each, and also the arguments and explanations, not exceeding a total of three hundred words 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.”).



of State, it shall be a substitute for existing Chapters I and II of the Constitution.

Vt. Const. ch. II, sec. 76.⁵

Next Steps

The removal of gender-based pronouns from the Ohio Constitution does not fit squarely into any of the assignments given the six subject-matter committees of the Commission, so it will be the responsibility of the Coordinating Committee to determine initially how this issue will be addressed by the Commission.

⁵ The Vermont approach was patterned after sec. 36 of the Vermont Constitution (1913) (amended and now Vt. Const. Ch. II, sec. 75), which delegated to the state supreme court the power to remove obsolete provisions. *See id.* (giving the Justices of the Vermont Supreme Court authority to review portions of the state constitution “and exclude[] * * * all sections, clauses and words not in force,” and rearranging and renumbering the constitution.



Gender-Based Pronouns in the Ohio Constitution

Art.	Sec.	Pronoun	Text
I	16	him	All courts shall be open, and every person, for an injury done him in his land, goods, person, or reputation, shall have remedy by due course of law, and shall have justice administered without denial or delay. Suits may be brought against the state, in such courts and in such manner, as may be provided by law.
II	1g	he	* * * To each part of such petition shall be attached the statement of the circulator, as may be required by law, that he witnessed the affixing of every signature. The secretary of state shall determine the sufficiency of the signatures not later than one hundred five days before the election * * *.
II	4	he	No member of the general assembly shall, during the term for which he was elected, unless during such term he resigns therefrom, hold any public office under the United States, or this state, or a political subdivision thereof; but this provision does not extend to officers of a political party, notaries public, or officers of the militia or of the United States armed forces. No member of the general assembly shall, during the term for which he was elected, or for one year thereafter, be appointed to any public office under this state, which office was created or the compensation of which was increased, during the term for which he was elected.
II	5	he	No person hereafter convicted of an embezzlement of the public funds, shall hold any office in this state; nor shall any person, holding public money for disbursement, or otherwise, have a seat in the general assembly, until he shall have accounted for, and paid such money into the treasury.
II	11	he	No person shall be elected to fill a vacancy in the Senate or House of Representatives, as the case may be, unless he meets the qualifications set forth in this Constitution and the laws of this state for the seat in which the vacancy occurs The Secretary of State shall, upon receipt of such certification, issue a certificate of election to the person so elected and upon presentation of such certificate to the Senate or the House of Representatives, as the case may be, the person so elected shall take the oath of office and become a member of the Senate or the House of Representatives, as the case may be, for the term for which he was so elected.
II	16	he and him	If the governor approves an act, he shall sign it, it becomes law and he shall file it with the secretary of state.



			<p>If he does not approve it, he shall return it with his objections in writing, to the house in which it originated, which shall enter the objections at large upon its journal, and may then reconsider the vote on its passage * * *.</p> <p>If a bill is not returned by the governor within ten days, Sundays excepted, after being presented to him, it becomes law in like manner as if he had signed it, unless the general assembly by adjournment prevents its return; in which case, it becomes law unless, within ten days after such adjournment, it is filed by him, with his objections in writing, in the office of the secretary of state * * *.</p>
III	1b	him	The lieutenant governor shall perform such duties in the executive department as are assigned to him by the governor and as are prescribed by law.
III	6	he	He may require information, in writing, from the officers in the executive department, upon any subject relating to the duties of their respective offices; and shall see that the laws are faithfully executed.
III	7	he	He shall communicate at every session, by message, to the general assembly, the condition of the state, and recommend such measures as he shall deem expedient.
III	9	he	In case of disagreement between the two houses, in respect to the time of adjournment, he shall have power to adjourn the general assembly to such time as he may think proper, but not beyond the regular meetings thereof.
III	10	he	He shall be commander-in-chief of the military and naval forces of the state, except when they shall be called into the service of the United States.
III	12	him	There shall be a seal of the state, which shall be kept by the governor, and used by him officially; and shall be called "The Great Seal of the State of Ohio."
IV	5(C)	him	(C) The chief justice of the supreme court or any judge of that court designated by him shall pass upon the disqualification of any judge of the courts of appeals or courts of common pleas or division thereof. Rules may be adopted to provide for the hearing of disqualification matters involving judges of courts established by law.
IV	6(A) (3) and (C)	he and his	(A) * * * (3) The judges of the courts of common pleas and the divisions thereof shall be elected by the electors of the counties, districts, or, as may be provided by law, other subdivisions, in which their respective courts are located, for terms of not less than six years, and each judge of a court of common pleas or division thereof shall reside during his term of office in the county, district,

			or subdivision in which his court is located * * *. (C) No person shall be elected or appointed to any judicial office if on or before the day when he shall assume the office and enter upon the discharge of its duties he shall have attained the age of seventy years. Any voluntarily retired judge, or any judge who is retired under this section, may be assigned with his consent, by the chief justice or acting chief justice of the supreme court to active duty as a judge and while so serving shall receive the established compensation for such office * * *.
IV	13	He	In case the office of any judge shall become vacant, before the expiration of the regular term for which he was elected, the vacancy shall be filled by appointment by the governor, until a successor is elected and has qualified * * *.
V	1	he	Every citizen of the United States, of the age of eighteen years, who has been a resident of the state, county, township, or ward, such time as may be provided by law, and has been registered to vote for thirty days, has the qualifications of an elector, and is entitled to vote at all elections. Any elector who fails to vote in at least one election during any period of four consecutive years shall cease to be an elector unless he again registers to vote.
V	9	he or she	* * * [A] person who is elected to an office in a regularly scheduled general election and resigns prior to the completion of the term for which he or she was elected, shall be considered to have served the full term in that office.
VIII	2b	he	* * * The treasurer of state shall set aside part of each such dollar before paying out, transferring, or disposing of in any other manner, such dollar or any part thereof for any other purpose whatsoever, and he shall make the transfer of one million dollars each month to the World War II compensation bond retirement fund * * *.
XI	12	he	Repealed eff. Jan. 1, 2021
XIII	3	him or her	Dues from private corporations shall be secured by such means as may be prescribed by law, but in no case shall any stockholder be individually liable otherwise than for the unpaid stock owned by him or her * * *.



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OHIO CONSTITUTIONAL MODERNIZATION COMMISSION

2016 Meeting Dates

November 10

December 8

2017 Meeting Dates

January 12

February 9

March 9

April 13

May 11

June 8

July 13

August 10

September 14

October 12

November 9

December 14