



OHIO CONSTITUTIONAL MODERNIZATION COMMISSION

MINUTES OF THE COORDINATING COMMITTEE

FOR THE MEETING HELD
THURSDAY, MARCH 9, 2017

Call to Order:

Chair Kathleen Trafford called the meeting of the Coordinating Committee to order at 12:33 p.m.

Members Present:

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

Approval of Minutes:

The minutes of the December 15, 2016 meeting of the committee were approved.

Reports and Recommendations:

Article II, Sections 3, 4, 5, and 11 (Member Qualifications and Vacancies in the General Assembly)

Chair Trafford recognized Shari L. O'Neill, interim executive director and Commission counsel, to provide a review of a report and recommendation for Article II, Sections 3, 4, 5, and 11, as issued by the Legislative Branch and Executive Branch Committee.

Ms. O'Neill described that these sections address the qualifications of members of the General Assembly, as well as providing for filling vacancies in legislative seats. She said the report and recommendation indicates the sections were originally adopted as part of the 1851 constitution, adding that, although they have been subject to several proposals for change since 1851, only some amendments have been approved by the electorate.

She continued that the report indicates Section 3 requires senators and representatives to have lived in their districts for one year prior to their election. She said Section 4, amended in 1973, restricts members of the General Assembly, while serving, from holding any other public office,

except as specified. She described that Section 5 prohibits persons convicted of embezzlement from serving in the General Assembly, and prevents persons holding money for public disbursement from serving until they account for and pay that money into the treasury. Finally, she said the report indicates Section 11 defines how vacancies shall be filled in the Senate and House of Representatives.

After describing the review by the Constitutional Revision Commission in the 1970s, as well as case law related to the section, Ms. O'Neill said the report indicates the committee's conclusion that the revisions in the 1970s adequately addressed any previous concerns, and that the sections continue to appropriately and effectively guide the legislature's organization and operation. Thus, she said the report and recommendation indicates the sections should be retained in their current form.

There being no questions or discussion regarding the sections, Chair Trafford asked for a motion to approve the report and recommendation. Committee member Dennis Mulvihill moved to approve, with Vice-chair Jo Ann Davidson seconding the motion. The committee voted unanimously to approve the report and recommendation for Article II, Sections 3, 4, 5, and 11.

Article II, Sections 6, 7, 8, 9, 13, and 14 (Conducting Business of the General Assembly)

Chair Trafford continued to recognize Ms. O'Neill for purposes of providing a review of a report and recommendation for Article II, Sections 6, 7, 8, 9, 13, and 14, as issued by the Legislative Branch and Executive Branch Committee.

Ms. O'Neill said the report recommends those sections be retained in their current form. She said Section 6 outlines the powers of each chamber of the General Assembly, requiring each house to be the judge of the election, returns, and qualifications of its own members, setting the number of members for a quorum, allowing each house to prescribe punishment for disorderly conduct, and to obtain information necessary for legislative action, including the power to call witnesses and obtain the production of books and papers. She continued that Section 7 provides for the organization of each house of the General Assembly, allowing the mode of organizing to be prescribed by law, and requiring each house to determine its own rules of procedure and choose its own officers.

Ms. O'Neill said the report indicates that Section 8 governs the calendar of the General Assembly, setting the first Monday of January in the odd-numbered year, or on the succeeding day if the first Monday of January is a legal holiday, and in second regular session on the same date of the following year as the starting date, further allowing for a special session to be convened by a proclamation. She continued that Section 9 requires the two chambers to keep and publish a journal of proceedings, and to record the votes. Ms. O'Neill said the report describes Section 13 as relating to the public nature of the legislative process, requiring open proceedings except where, in the opinion of 2/3s of those present, secrecy is required, while Section 14 controls the ability of either house to adjourn, providing that neither may adjourn for more than five days without the consent of the other.

After describing the review by the Constitutional Revision Commission in the 1970s, as well as case law related to the section, Ms. O'Neill said the report indicates the committee's consensus that the General Assembly have the ability to determine how often it meets, noting that there is nothing in the constitution controlling the legislative calendar. She said the report concludes that the committee saw no need to alter that arrangement, based on its conclusion that the legislature is its own best authority for determining how often and how long it should meet.

There being no questions or discussion regarding the sections, Chair Trafford asked for a motion to approve the report and recommendation. Mr. Mulvihill moved to approve, with Senator Bill Coley seconding the motion. The committee voted unanimously to approve the report and recommendation for Article II, Sections 6, 7, 8, 9, 13, and 14.

Article II, Sections 10 and 12 (Rights and Privileges of the General Assembly)

Chair Trafford continued to recognize Ms. O'Neill for purposes of providing a review of a report and recommendation for Article II, Sections 10 and 12, as issued by the Legislative Branch and Executive Branch Committee.

Ms. O'Neill indicated that the report describes that Section 10 provides a right of legislative members to protest, and to have their objections recorded in the journal. She said Section 12 incorporates the idea that legislative representatives must be able to freely engage in debate, consult with staff and constituents, and travel to and from legislative session without hindrance. Ms. O'Neill said the report and recommendation describes the history of these two provisions, which have their origins in British parliamentary procedure.

Ms. O'Neill continued that the report and recommendation describes the review of a committee of the 1970s Commission, which unsuccessfully recommended repeal of Section 10. She said the report also discusses case law related to Section 12, as well as presentations on legislative privilege by several speakers. Ms. O'Neill said the report finally indicates the committee's discussion and consideration, describing committee members' points of view regarding protecting both the right of protest and the legislative privilege. She said the report expresses the committee's conclusion that Sections 10 and 12 should be retained because they facilitate the need for members to register their dissent or protest in the journal, allow members privately to consult and obtain the advice of staff as they consider policy and prepare legislation, and protect legislators from having to answer in court for speech undertaken in their legislative capacity.

There being no questions or discussion regarding the sections, Chair Trafford asked for a motion to approve the report and recommendation. Ms. Davidson moved to approve, with Committee member Janet Abaray seconding the motion. The committee voted unanimously to approve the report and recommendation for Article II, Sections 10 and 12.

Article V, Section 2a (Names on the Ballot)

Chair Trafford recognized Christopher Gawronski, Legal Intern, for purposes of providing a review of a report and recommendation for Article V, Section 2a, as issued by the Bill of Rights and Voting Committee.

Mr. Gawronski described that the report explains the general background of Article V, Section 2a, indicating that it was proposed by initiative in 1949 and was intended to bar straight-party voting by emphasizing the candidates for office, rather than their political parties, by using an office-bloc format. He said the report indicates the provision was subsequently amended twice to clarify how rotation of names on ballots is to occur. Mr. Gawronski continued that the report describes two presentations on the section: one by Matthew Damschroder, assistant secretary of state, who described the current procedure for rotating names on Ohio ballots, and a second presentation by Professor Erik Engstrom, who discussed the history of ballots in Ohio and noted Ohio is the only state to prescribe name rotation on ballots by constitutional provision rather than statute.

Mr. Gawronski said the report indicates the committee's sense that the current section provides the necessary flexibility to the General Assembly to provide for the specifics of name rotation based on the needs of new voting methods and technologies. Thus, he said, the report indicates the committee recommends that Article V, Section 2a be retained in its present form.

There being no questions or discussion regarding the sections, Chair Trafford asked for a motion to approve the report and recommendation. Mr. Mulvihill moved to approve, with Sen. Coley seconding the motion. The committee voted unanimously to approve the report and recommendation for Article V, Section 2a.

Presentation and Discussion:

"Gender Neutral Language in State Constitutions"

Christopher Gawronski – Legal Intern

Moritz College of Law

Ohio State University

Noting the committee has taken on the task of determining how to remove gender-specific language from the constitution, Ms. Trafford continued to recognize Mr. Gawronski for the purposes of presenting on the topic of how other states have addressed a need to provide gender neutral language in their state constitutions.

Mr. Gawronski indicated that, since 1974, numerous states have attempted to adjust the language of their constitutions in order to make some or all of the constitutional provisions gender-neutral. He said 13 such attempts made it to ballot, where ten passed and three were defeated. Describing how the constitutional language was changed, Mr. Gawronski said states have approached the task in three basic ways. He said some states use a legislative proposal, by which the legislature proposes specific gender-neutral language amendments to the constitution to be approved by voters. He said other states have made the changes through the constitutional convention or commission process, in which the legislature or citizens created a body to generally revise the constitution, including gender-neutral language, for approval by voters. Finally, he said, gender neutralization has been accomplished by delegation, by which states have proposed a constitutional amendment that delegates the task of revising the constitution to be gender-neutral to an existing office or entity without additional voter approval.

Further describing the process, Mr. Gawronski said that, in states following the legislative proposal approach, the legislature proposed the specific gender-neutral language as a constitutional amendment in accordance with the amendment procedures of their constitutions. He noted in some states only the language in certain sections of the constitution was addressed in conjunction with other changes being made in those sections. In all cases, he said the proposed changes required voter approval.

Mr. Gawronski described that the states using the convention or commission approach did not accomplish the change through legislative proposal, but rather drafted new language to be gender neutral, and the substitute provisions were adopted as a part of the task of rewriting the constitution or proposing a series of specific changes.

He said two states have approached the process of updating constitutional language by proposing to delegate the responsibility to a particular state office or entity: the state supreme court (Vermont) or the secretary of state (Nebraska). He noted that, in both cases, the delegation was proposed as a constitutional amendment that needed to be approved by the voters. Once approved, the specified office or entity would be responsible for making non-substantive language changes purely for the purpose of replacing gendered language with gender-neutral language and publishing a revised constitution without further approval from the voters.

Mr. Gawronski having concluded his remarks, Chair Trafford asked committee members for their views. Mr. Mulvihill agreed the committee should do something, and said a single amendment would allow the change wherever it is needed in the constitution because it would deal with one subject. He recommended that the committee offer a list of the sections requiring attention to the General Assembly, noting two memoranda by Senior Policy Advisor Steven H. Steinglass that identified those sections.

Ms. Abaray commented that, in terms of future language, the Constitutional Revision and Updating Committee is including a requirement for gender neutral language in the initiative and referendum sections of Article II.

Ms. Davidson noted that language has to come through the Legislative Service Commission (LSC) when a joint resolution is introduced in the General Assembly.

Mr. Mulvihill said there is a distinction between a General Assembly amendment and a citizen initiative, noting that LSC is not involved in the initiated amendment process.

Mr. Mulvihill moved that the committee make a recommendation regarding gender neutral language, and that a report and recommendation include citation to all of the sections of the constitution requiring attention. The motion was seconded by Ms. Davidson.

Ms. Abaray noted that the report should reference gender-based “language,” rather than “nouns” or “pronouns.”

Chair Trafford asked staff to prepare a report and recommendation for the committee’s review at its next meeting.

Adjournment:

With no further business to come before the committee, the meeting adjourned at 1:06 p.m.

Approval:

The minutes of the March 9, 2017 meeting of the Coordinating Committee were approved at the April 13, 2017 meeting of the committee.

/s/ Kathleen M. Trafford

Kathleen M. Trafford, Chair

/s/ Jo Ann Davidson

Jo Ann Davidson, Vice-chair