

Co-Chair
Charleta B. Tavares
Assistant Minority Leader
15th Senate District



Co-Chair
Ron Amstutz
Speaker Pro Tempore
1st House District

OHIO CONSTITUTIONAL MODERNIZATION COMMISSION

MINUTES FOR THE MEETING HELD THURSDAY, SEPTEMBER 8, 2016

Call to Order:

Co-chair Ron Amstutz called the meeting of the Ohio Constitutional Modernization Commission ("Commission") to order at 1:35 p.m.

Members Present:

A quorum was present with Commission Co-chairs Tavares and Amstutz, and Commission members Abaray, Asher, Beckett, Clyde, Coley, Cupp, Curtin, Davidson, Fischer, Gilbert, Jacobson, Jordan, Kurfess, Mills, Mulvihill, Readler, Sapphire, Sawyer, Skindell, Sykes, Taft, Talley, Trafford, and Wagoner in attendance.

Approval of Minutes:

The minutes of the June 9, 2016 meeting of the Commission were reviewed and approved.

Standing Committee Reports:

Organization and Administration Committee

Ed Gilbert, vice-chair of the Organization and Administration Committee, reported that the committee voted to approve a change to Rule 3.9 of the Ohio Constitutional Modernization Commission Rules of Procedure and Conduct that is intended to make it easier for the Commission to conduct business in the absence of a full complement of members. He said the change being recommended would be presented to the Commission for the first time later in the meeting.

Subject Matter Committee Reports:

Education, Public Institutions, and Local Government Committee

Chad Readler, Chair of the Education, Public Institutions, and Local Government Committee, reported that the committee heard presentations on two topics. First, the committee heard from

Senator Bill Coley on Article XV, Section 6, relating to casino gaming in Ohio. Mr. Readler said the committee also heard a presentation by Michael Kirkman, executive director of Disability Rights Ohio, on Article VII, Section 1, regarding Institutions for the Insane, Blind, and Deaf and Dumb. Mr. Readler said, at its next meeting, the committee will be entertaining additional reports and recommendations on Article VI, relating to education.

Finance, Taxation, and Economic Development Committee

Steven C. Hollon, executive director, reporting on behalf of Doug Cole for the Finance, Taxation, and Economic Development Committee, reported that the committee has issued three reports and recommendations that he will present to the Commission later in the meeting. Mr. Hollon said the committee would be meeting next month to continue its review of Article VIII sections relating to state debt.

Judicial Branch and Administration of Justice Committee

Janet Abaray, chair of the Judicial Branch and Administration of Justice Committee, reported that the committee would be meeting later in the day to continue its discussion of the grand jury procedure. She said the committee would be conducting a telephonic conference call with a grand jury legal advisor in Hawaii to learn about how that state conducts grand juries, and would also host Professor Thaddeus Hoffmeister from the University of Dayton School of Law on the topic of grand jury legal advisors. She said the committee hopes to conclude its review of the grand jury process and make a recommendation soon.

Constitutional Revision and Updating Committee

Dennis Mulvihill, chair of the Constitutional Revision and Updating Committee, said the committee had not met since the last Commission meeting, but would be meeting in October and expects to present a recommendation soon.

Bill of Rights and Voting Committee

Richard Saphire, chair of the Bill of Rights and Voting Committee, reported that, at its next meeting, the committee would continue its discussion of issues related to Article V, Section 1, regarding the qualifications of an elector.

Legislative Branch and Executive Branch Committee

Fred Mills, chair of the Legislative Branch and Executive Branch Committee, said the committee will be meeting in October. He said, in the meantime, he is hopeful that the subcommittee on Congressional redistricting will meet. He said the committee would be continuing its discussion of Article II issues relating to the legislative branch.

Reports and Recommendations:

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

Co-chair Amstutz recognized Mr. Hollon for the purpose of providing a second presentation on a report and recommendation for Article VIII, Sections 1, 2, and 3, dealing with state debt. Mr. Hollon described the committee's recommendation to retain Sections 1 and 3 in their current form and to revise Section 2 to remove reference to the Sinking Fund. Mr. Hollon noted that the report and recommendation provides the historical background of Sections 1, 2, and 3, summarizes presentations by speakers related to the topic of state debt, and describes the committee's consideration of issues relating to Sections 1, 2, and 3. Mr. Hollon concluded that the report and recommendation expresses that Sections 1 and 3 should be retained in their current form, while Section 2 should be revised to remove reference to the Sinking Fund, replacing it with a more generic reference to "the state."

Commission member Herb Asher moved to adopt the report and recommendation for Article VIII, Sections 1 through 3, and Commission member Jo Ann Davidson seconded the motion.

Co-chair Amstutz asked for a roll call vote, which was as follows:

Co-chair Tavares – yea
Co-chair Amstutz – yea
Abaray – yea
Asher – yea
Beckett – yea
Clyde – yea
Coley – yea
Cupp – yea
Curtin – yea
Davidson – yea
Fischer – yea
Gilbert – yea
Jacobson – yea
Jordan – yea
Kurfess – yea
Mills – yea
Mulvihill – yea
Readler – yea
Saphire – yea
Sawyer – yea
Skindell – yea
Sykes – yea
Taft – yea
Talley – yea
Trafford – yea

The motion passed unanimously, by a vote of 25 in favor and none opposed, with seven absent.

Article VIII, Sections 2b, 2c, 2d, 2e, 2f, 2g, 2h, 2i, 2j, 2k, and Proposed Sections 2t and 18 (Authorization of Debt Obligations)

Mr. Hollon introduced the committee's report and recommendation for Article VIII, Sections 2b, 2c, 2d, 2e, 2f, 2g, 2h, 2i, 2j, 2k, and proposed Sections 2t and 18. Mr. Hollon said the report and recommendation indicates the Commission recommends that Sections 2b, 2c, 2d, 2e, 2f, 2h, 2k, and 2j be repealed for the reason that the bonds have been fully issued and paid off or the bonding authority has lapsed. Mr. Hollon continued that the report and recommendation also recommends that a new Section 18 be adopted to protect holders of any outstanding bonds or obligations issued under the sections being recommended for repeal. Mr. Hollon noted that the report and recommendation finally recommends the adoption of a new Section 2t that would authorize the issuance of general obligation bonds that could be used to refund obligations previously issued under the authority of Section 2i, and to issue new general obligation bonds for the purposes described in Section 2i. Mr. Hollon further described the historical background of the provisions, as noted in the report and recommendation, as well as summarizing the content the sections, prior review, related litigation, and various presentations heard by the committee. Mr. Hollon emphasized that the report and recommendation noted the repeal of these obsolete sections would reduce the length of the constitution by some 20 percent, making the document more readable and transparent.

Commission member Richard Saphire asked whether, if the subject provisions are repealed, the constitution would have to be renumbered. Mr. Hollon said that would not occur as Ohio does not require renumbering if constitutional provisions are repealed.

Commission member Janet Abaray asked for clarification as to the purpose of proposed Section 2t. Mr. Hollon indicated that, because Section 2i authorizes the issuance of revenue bonds and lease appropriation bonds, the committee wanted language to authorize the General Assembly to issue general obligation bonds for the purposes as mentioned in Section 2i so that the state could get away from lease appropriation bonds. He noted this issue is described more fully at page 8 of the report and recommendation.

Ms. Abaray asked whether Section 2t would require that new bonds have to go to the voters. Mr. Hollon answered that Section 2t authorizes the General Assembly to issue the lease appropriation bonds as general obligation bonds.

Co-chair Amstutz recognized audience member Kurt Kauffman, who is state debt manager for the Office of Budget and Management, to explain the purpose of proposed Section 2t. Mr. Kauffman said Section 2t is intended to take bonds already approved but authorized as lease appropriation credit under Section 2i, and allow the state to issue those bonds instead as general obligations, increase the credit rating, lower the interest costs, and thereby have interest saving on bonds that have already been approved by the voters, and for projects that would be authorized by future capital expenditure bills.

Mr. Readler noted that the report and recommendation, on page 4, states that the Constitutional Revision Commission in 1977 similarly proposed the repeal of some of these sections but that the measure lost at the ballot by 72 percent to 22 percent. He asked whether there is information about why the recommendation did not succeed.

Senior Policy Advisor Steven H. Steinglass answered that the 1970s proposal was part of a more comprehensive proposal that would have removed the role of the voters in approving future general obligation bonds. He said the 1970s proposal went much further than the proposal before the Commission. He emphasized this proposal, unlike the 1970s proposal, does not eliminate the voters from the process.

Ms. Abaray asked, if Section 2t is not going to allow the legislature to run up debt, whether the question still has to go back to the voters. Mr. Hollon said that is his understanding. Co-chair Amstutz added that there is a five percent constitutional limitation that would impinge that.

Representative Bob Cupp asked whether swapping out revenue bonds for general obligation bonds creates a displacement within the limits of using general obligation bonds for some other purpose; wondering if, in other words, Section 2t would absorb part of the total authorization for which general obligation bonds could be used when it would otherwise be two separate things.

In answering, Mr. Hollon directed attention to proposed Section 2t at paragraph A, indicating that “the General Assembly may provide by law, subject to the limitations of and in accordance with this section, for the issuance of bonds and other obligations of the state for the purpose of paying costs for facilities for mental health and developmental disabilities, parks and recreation, and housing of branches and agencies of state government, and to refund obligations previously issued under the authority of the fifth paragraph of Section 2i of Article VIII for these purposes.” Mr. Hollon continued that the General Assembly would have to balance out the need for general obligation bonds versus revenue bonds, and said proposed Section 2t gives the authority to do that.

Co-chair Amstutz agreed, saying proposed Section 2t would simply give the General Assembly more flexibility without directing what should happen.

There being no further questions, Co-chair Amstutz called for a motion. Commission member Kathleen Trafford moved to adopt the report and recommendation, and Governor Bob Taft seconded the motion.

Co-chair Amstutz asked for a roll call vote, which was as follows:

Co-chair Tavares – yea
Co-chair Amstutz – yea
Abaray – yea
Asher – yea
Beckett – yea
Clyde – yea
Coley – yea

Cupp – yea
Curtin – yea
Davidson – yea
Fischer – yea
Gilbert – yea
Jacobson – yea
Jordan – yea
Kurfess – yea
Mills – yea
Mulvihill – yea
Readler – yea
Saphire – yea
Sawyer – yea
Skindell – yea
Sykes – yea
Taft – yea
Talley – yea
Trafford – yea
Wagoner – yea

The motion passed unanimously, by a vote of 26 in favor and none opposed, with six absent.

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

Mr. Hollon then presented to the Commission on Article VIII, Sections 7 through 11, relating to the Sinking Fund and the Sinking Fund Commission. Mr. Hollon indicated that the report and recommendation describes the history of the sections, noting that delegates to the Constitutional Convention of 1851 sought adoption of a sinking fund to ensure that state debt would be paid off responsibly. He added that the report and recommendation describes an unsuccessful recommendatiaon to repeal the sections in the 1970s, as well as presentations to the committee related to the purpose and function of the provisions. Mr. Hollon summarized the report and recommendation as concluding that Sections 7, 8, 9, 10, and 11 should be repealed for the reason that the widespread use of bonds and the transfer of the duties of the Sinking Fund Commission to other state officers and agencies have rendered the sections obsolete. He noted the report and recommendation's statement that the Sinking Fund Commission has not met since 2008.

There being no questions from the audience or Commission members, Co-chair Amstutz then entertained a motion to adopt the report and recommendation by Mr. Mulvihill, with Judge Patrick Fischer seconding the motion.

Co-chair Amstutz asked for a roll call vote, which was as follows:

Co-chair Tavares – yea
Co-chair Amstutz – yea
Abaray – yea
Asher – yea

Beckett – yea
Clyde – yea
Coley – yea
Cupp – yea
Curtin – yea
Davidson – yea
Fischer – yea
Gilbert – yea
Jacobson – yea
Jordan – yea
Kurfess – yea
Mills – yea
Mulvihill – yea
Readler – yea
Saphire – yea
Sawyer – yea
Skindell – yea
Sykes – yea
Taft – yea
Talley – yea
Trafford – yea
Wagoner – yea

The motion passed unanimously, by a vote of 26 in favor and none opposed, with six absent.

Co-chair Amstutz thanked Mr. Hollon for his presentation. Mr. Hollon acknowledged the contribution of Counsel to the Commission Shari L. O'Neill in putting together the reports and recommendations, and the work of Finance, Taxation, and Economic Development Committee Chair Doug Cole in guiding the committee through its review of the complicated subject matter.

Rules of Procedure and Conduct:

Co-chair Amstutz recognized Mark Wagoner, chair of the Organization and Administration Committee, to present a proposal to amend Section 3, Rule 3.9 of the Rules of Procedure and Conduct. Mr. Wagoner said the Commission has had a requirement that 21 members be present in order to do business, having defined 21 members as a quorum. He said there has been difficulty getting a quorum, and so the committee voted to propose amending the rule to indicate 17 members, rather than 21, are needed in order to do business. Mr. Wagoner said the idea of the revision is to allow the Commission to take official action with a simple majority, but not impact the voting requirements for adopting a report and recommendation. Lowering the quorum to 17 would allow the Commission to approve minutes and take some other official action, he said. Mr. Gilbert added that the proposal had passed unanimously in committee.

Mr. Mulvihill asked if the recommendation for change only involves Rule 3.9, relating to what constitutes a quorum. Co-chair Amstutz answered that only Rule 3.9 would change, and the current rule for taking action is located at 3.11, which indicates that the Commission must have

an affirmative vote of 17 members in order to take an action such as approving the minutes, and that this rule would remain unchanged. He clarified that the Commission still would not be able to recommend a change to the constitution without 22 votes.

Co-chair Amstutz indicated this was a first presentation on the proposed rule change, and that there would be two readings before the Commission would vote on the proposal.

Executive Director’s Report:

Mr. Hollon introduced two student interns who will assist the Commission for the fall semester. He first identified Sara Paz Leigh, a second year law student at The Ohio State University Moritz College of Law participating in the Legislative Clinic program.

Mr. Hollon also introduced Andrew Weaver, a senior at Kent State University participating in the Columbus Program for Intergovernmental Issues, an undergraduate program run by former Commission Co-chair Representative Vernon Sykes.

Co-chair Amstutz welcomed the interns and thanked them for their interest in the Commission. He then called on Senator Tom Sawyer for a motion to adjourn the meeting.

Adjournment:

There being no further business to come before the Commission, the meeting adjourned at 2:27 p.m.

Approval:

The minutes of the September 8, 2016 meeting of the Commission were approved at the October 13, 2016 meeting of the Commission.

/s/ Charleta B. Tavares
Co-chair
Senator Charleta B. Tavares
Assistant Minority Leader

/s/ Ron Amstutz
Co-chair
Representative Ron Amstutz
Speaker Pro Tempore