



OHIO CONSTITUTIONAL MODERNIZATION COMMISSION

Education, Public Institutions,
and Local Government Committee

Chad A. Readler, Chair
Edward L. Gilbert, Vice-chair

October 8, 2015

Ohio Statehouse
Room 017

OCMC Education, Public Institutions, and Local Government Committee

Chair Mr. Chad Readler
Vice-chair Mr. Edward Gilbert
 Mr. Roger Beckett
 Ms. Paula Brooks
 Sen. Bill Coley
 Rep. Bob Cupp
 Rep. Michael Curtin
 Mr. Larry Macon
 Sen. Tom Sawyer
 Governor Bob Taft
 Ms. Pierrette Talley

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OHIO CONSTITUTIONAL MODERNIZATION COMMISSION
EDUCATION, PUBLIC INSTITUTIONS, AND LOCAL GOVERNMENT COMMITTEE

THURSDAY, OCTOBER 8, 2015
9:30 A.M.
OHIO STATEHOUSE ROOM 017

AGENDA

- I. Call to Order
- II. Roll Call
- III. Approval of Minutes
 - Meeting of March 12, 2015
[Draft Minutes – attached]
 - Meeting of May 14, 2015
[Draft Minutes – attached]
 - Meeting of July 9, 2015
[Draft Minutes – attached]
- IV. Reports and Recommendations
 - Article VI, Section 1 (Funds for Religious and Educational Purposes)
 - Second Presentation
 - Public Comment
 - Discussion
 - **Action Item: Consideration and Adoption**

[Report and Recommendation – attached]

- Article VI, Section 2 (School Funds)
 - Second Presentation
 - Public Comment
 - Discussion
 - **Action Item: Consideration and Adoption**

[Report and Recommendation – attached]

- Article VI, Section 3 (Public School System, Boards of Education)
 - First Presentation
 - Public Comment
 - Discussion
 - **Possible Action Item: Consideration and Adoption**

[Report and Recommendation – attached]

V. Presentations

- “Evolution of the State Board of Education”

William Phillis
Executive Director
Ohio Coalition for Equity and Adequacy of School Funding

VI. Committee Discussion

- Article VI, Section 4 – State Board of Education

The chair will lead discussion regarding the presentation by Mr. Phillis to assess the sense of the committee relating to the recommendations it wishes to make regarding the state board of education.

[Copy of State Education Governance Matrix from the National Association of State Boards of Education – attached]

VII. Next Steps

- Committee discussion regarding the next steps it wishes to take in preparing for upcoming meetings.

[Planning Worksheet – attached]

VIII. Old Business

IX. New Business

X. Public Comment

XI. Adjourn



OHIO CONSTITUTIONAL MODERNIZATION COMMISSION

**MINUTES OF THE
EDUCATION, PUBLIC INSTITUTIONS, AND LOCAL GOVERNMENT COMMITTEE**

**FOR THE MEETING HELD
THURSDAY, MARCH 12, 2015**

Call to Order:

Chairman Chad Readler called the meeting of the Education, Public Institutions, and Local Government Committee to order at 9:30 a.m.

Members Present:

A quorum was present with committee members Readler, Gilbert, Coley, Cupp, Curtin, Macon, Sawyer, Taft, and Talley in attendance.

Approval of Minutes:

The minutes of the January 15, 2015 meeting of the committee were approved.

Presentations:

“Article VI, Section 2 (School Funds)”

*Darold Johnson
Legislative Director
Ohio Federation of Teachers*

The committee welcomed Darold Johnson, legislative director for the Ohio Federation of Teachers. Mr. Johnson provided written comments indicating the preference of his organization that the current language in Article VI, Section 2 of the Ohio Constitution, be retained. He said the Ohio Supreme Court in the *DeRolph* cases defined what thorough and efficient means, noting an article from Rutgers University outlining a similar experience in New Jersey.

Mr. Johnson entertained questions from the committee at the conclusion of his remarks.

Vice-chair Edward Gilbert asked whether New Jersey had expanded “thorough and efficient” to define anything else or to include early childhood education. Mr. Johnson said that he was not

aware that had happened. He said that his group's parent organization, the American Federation of Teachers, does support early childhood education.

Committee member Dr. Larry Macon asked how much discussion has occurred in Mr. Johnson's organization regarding the "thorough and efficient" clause. Mr. Johnson said that there was a lot of discussion when they thought changes in the provision were being contemplated. He said the organization developed its rationale based upon those conversations.

Dr. Macon asked whether the organization had come up with any alternatives to "thorough and efficient," to which Mr. Johnson answered that because civil rights already exist in federal law, and in federal constitutional amendments, and because case law in this area is settled, the feeling is that the Ohio Constitution should only be changed in order to reflect changes that would be for the purpose of correcting problems for which there are no other options.

Dr. Macon wondered whether it would suffice for the committee to change the language to include "equitable" or "equal." Mr. Johnson said that "through and efficient" is better than "equitable" or "equal" because *DeRolph* has defined the phrase and is a benchmark. Removing "thorough and efficient" would cause a bigger loss than would be gained from including the word "equitable."

Committee Member Sen. Bill Coley asked whether keeping the current constitutional language would permit a system whereby people could select their own educational resources, in the same way the state allows welfare recipients to make their own nutritional selections. Mr. Johnson said that the constitution allows a lot of flexibility right now.

Chair Readler summed up some of the history of the section, indicating that "thorough and efficient" has been open to conflicting meanings and has been used by courts to impose their own views, which, in his opinion, upsets the balance of power. He also noted that the concerns in 1851, when this provision was adopted, were not the same as they are now. He asked why the American Federation of Teachers prefers court involvement.

Mr. Johnson answered that the three branches of government are equal and do have the ability to affect policy. He said sometimes the courts will move the boundaries beyond where people want them to go, but courts are consistent and willing to do the hard work to move past partisanship in many instances. He said that the four *DeRolph* decisions occurred because the legislature wasn't doing what the court had ordered it to do, and courts have a function of ensuring that schools are thorough and efficient.

Mr. Readler noted that the New Jersey litigation went on for 25 years, and the court there even ordered the legislature to raise taxes to fund public schools. Mr. Readler asked whether Mr. Johnson believes that was a good development. Mr. Johnson said that his comments are on the process. He said Ohio's justices are elected, and the public has a way to seek redress if it doesn't like a judicial decision.

Mr. Gilbert asked whether Mr. Johnson's view is that the clause should not be removed, and Mr. Johnson agreed this was what he is advocating. Mr. Gilbert commented that making a change to

“thorough and efficient” would involve more court activity and litigation, rather than less, so the better course would be to leave it alone because the meaning is settled at this point. Mr. Johnson agreed with Mr. Gilbert’s assessment.

Committee member Rep. Mike Curtin said the U.S. Constitution and the state constitution are full of aspirational language, and that “thorough and efficient” is one example of this. He said there was a high level debate in 1851 before this language was adopted, and the drafters knew that every generation would work through what the expectations would be. Rep. Curtin said “thorough and efficient” is not an invitation for courts to meddle. The fact that Ohio had one episode of litigation [*DeRolph*] that lasted 10 years is not enough to say that the language is not acceptable. Like the concept of due process in the U.S. Constitution, “thorough and efficient” is a concept that evolves with the law. He said that the job of legislators is to reinterpret what expectations are and what means the state has to achieve them. He said no sum of money was set for a reason. Rep. Curtin said the committee should keep the language because it has served the state very well. He applauded *DeRolph* as having set the standard.

Mr. Johnson then concluded his remarks.

“Summary of Presentations on School Funds”

Steven H. Steinglass
Senior Policy Advisor

Steven H. Steinglass, Senior Policy Advisor, briefly summarized the prior presentations and discussion that occurred with regard to Article VI, Section 2 (School Funds). He indicated that the committee could take one of several options: repeal the section, keep it without change, or adopt one of the proposals that were presented. Additional questions include whether early childhood education should be included, and whether education should be defined as a fundamental right.

Mr. Steinglass said changing the language would result in litigation, which would result in a lot of effort and expense in order to re-define the new language. He said if there is a change, it could be given a later effective date so as to allow school districts to prepare. He also said “thorough and efficient” is an elastic clause that each generation can examine and define for itself.

Committee Discussion:

Chair Readler then invited the committee members to discuss their views on Article VI, Section 2, and wondered what the committee’s consensus was about whether to change it.

Committee member Mr. Bob Taft said that *DeRolph* had an impact on his term as governor. He said they increased spending and improved facilities at that time, and other governors continued that work. Governor Kasich is now considering “thorough and efficient” and the *DeRolph* definitions as he works on his education budget. Mr. Taft said the language is hard to understand, but each new generation can read-in its own understanding of what it means. He said

it is hard to imagine changing it without there being a lot of resulting litigation. He said creating education as a “fundamental right” could crowd out other priorities of society, including healthcare, daycare, or other needs. He continued, saying the question of determining the quality of education has been a big debate over time, but it is best processed through the legislature rather than through the courts. He said the concept of “fundamental right” invites court involvement. Mr. Taft said “thorough and efficient” has taken on sacrosanct status, and his inclination is to leave it alone as it gets interpreted and reinterpreted through the generations.

Sen. Coley said that he seconds Mr. Taft’s comments. He added that “we must be pragmatists,” as our society has become more partisan and ideological. He said “thorough and efficient” has true meaning for most people, with certain gradations of interpretations, but that everyone collectively decided to bring schools up to a certain standard. Sen. Coley said that a compelling reason is needed to change along with consensus to change. He feels the committee does not have a compelling reason or consensus, so his vote is to leave the provision alone.

Vice-chair Gilbert said he agrees with the comments of Mr. Taft and Sen. Coley, particularly Sen. Taft, but his question for Mr. Steinglass is whether early childhood education must be in the constitution in order to be effectuated, rather, couldn’t the legislature just handle that. Mr. Steinglass said that the constitution does not need a reference to early childhood education in order for the General Assembly to fund it, and that the same is true for higher education.

Vice-chair Gilbert asked Director Hollon what is the next course of action for the committee if it wants to vote on retaining Article VI, Section 2. Director Hollon said that once the committee decides on a course of action, the staff will draft a report and recommendation, and that, in this instance, the committee should decide whether it wants a report and recommendation on this section alone, on Section 1 and 2, or on the entire article.

Dr. Macon asked if there are problematic aspects of the various proposals.

Mr. Steinglass then described alternatives 1 and 2.

Dr. Macon said he agrees with his colleagues on maintaining the “thorough and efficient” clause, but he also would like to expand and clarify what that is. He wondered if Mr. Steinglass could help him understand, at a later time, what has been defined in the cases. Mr. Steinglass said he would talk to Professor Charlie Wilson and get some research on this for Dr. Macon.

Sen. Coley commented that it would be good to be able to allow a marketplace for educational alternatives under the Constitution.

Mr. Steinglass said that the phrase “common schools” is understood to mean “public schools” and that a 100 percent voucher system might be taking things too far under Article VI, Section 2. He said within a narrow area the state has some discretion, and how that is exercised is up to the General Assembly.

Sen. Coley said additional items might crowd out other items and interfere with having a balanced budget. He said there are already issues with limited resources. Sen. Coley concluded that he is in favor of leaving the provision as is.

Vice-chair Gilbert said that while he believes it would be good to have more language to explain the meaning of “thorough and efficient,” the reality is the only ones who would win from trying to do this would be lawyers.

Vice-chair Gilbert then moved to retain Article VI, Section 1 and Section 2 as they are. Motion was seconded, and a roll call vote was taken.

The motion unanimously passed.

Director Hollon asked whether the committee wanted a report and recommendation on both sections together, and Chair Readler agreed that one report and recommendation for those two provisions would be acceptable.

Mr. Taft said he would like the committee to have a discussion about Article VI, Section 3, relating to boards of education, specifically whether there should be a change in the way individuals obtain seats on the boards. Director Hollon suggested that Sections 3 and 4 seem to go together and could form the basis of one report and recommendation.

Sen. Coley said he would like to review Sections 5 and 6, commenting that they are phrased more like legislation and they may need some revision.

Chair Readler said that after the committee concludes its review of Article VI, it might then review Article VII, Public Institutions.

Rep. Curtin said that he would like to add a topic if the committee agrees, and that is the earmarking of revenues for K-12 education. While he recognizes a provision regarding the net proceeds from the lottery is in the constitution, he wonders what other states do in regard to earmarking revenues for education. He said the highest constitutional obligation is education, and that he has introduced legislation on this topic.

Sen. Coley said the legislature has many priorities and all of them are important. He said casino revenues currently go to education.

Mr. Steinglass pointed out that Article XV, Section 6a, concerning the state lottery, has been assigned to this committee for review.

Vice-chair Gilbert said he would like further information from Mr. Steinglass about having education consist of “0 to 12” as opposed to “K to 12”.

Mr. Steinglass pointed out that the earmarking provision only says “K to 12.”

Adjournment:

With no further business to come before the committee, the meeting adjourned at 11:10 a.m.

Approval:

The minutes of the March 12, 2015 meeting of the Education, Public Institutions, and Local Government Committee were approved at the October 8, 2015 meeting of the committee.

Chad A. Readler, Chair

Edward L. Gilbert, Vice-chair



OHIO CONSTITUTIONAL MODERNIZATION COMMISSION

MINUTES OF THE EDUCATION, PUBLIC INSTITUTIONS, AND LOCAL GOVERNMENT COMMITTEE

FOR THE MEETING HELD
THURSDAY, MAY 14, 2015

Call to Order:

Chair Chad Readler called the meeting of the Education, Public Institutions, and Local Government Committee to order at 9:45 a.m.

Members Present:

Chair Readler and committee members Beckett, Brooks, Curtin, and Taft were in attendance.

Reports and Recommendations

Article VI, Section 1 (Funds for Religious and Educational Purposes)

Counsel to the Commission, Shari L. O'Neill, presented for the first time, the report and recommendation on Article VI, Section 1 (Funds for Religious and Educational Purposes) to which the committee recommended no changes.

Article VI, Section 1 provides that the principal of all funds arising from the sale or other disposition of lands or other property that is granted or entrusted to the state for educational and religious purposes, shall be used or disposed of in such manner as the General Assembly shall prescribe by law. Originally adopted in the 1851 constitution, the provision specified that the principal of all funds of this nature would forever be preserved inviolate and undiminished, and that the income from those funds must be applied to the specific objects of the original grants or appropriations.

Ms. O'Neill summarized the history of the provision, which dates back to the Northwest Ordinance, when school lands provided by the federal government to the Ohio territory helped establish education as a priority of the new nation. The 1802 Enabling Act, by which Congress provided Ohio a path to statehood, furthered this educational goal by containing an unusual provision that offered Ohio one section, number 16, in every township or other equivalent lands, that would solely be dedicated to the establishment of schools. The 1802 Ohio Constitution

further reinforced the importance of education by providing in Article VIII, Section 3, that “religion, morality, and knowledge, being essentially necessary to good government and the happiness of mankind, schools and the means of instruction shall forever be encouraged by legislative provision, not inconsistent with the rights of conscience.”

Ms. O’Neill further indicated that these lands were leased by the General Assembly, with many leases being as long as 99 years and renewable forever, but after Congress permitted land sales with the consent of township residents, the state allowed that the proceeds from the sale of school lands would be deposited in the Common School Fund, to benefit schools within the townships. The report and recommendation further indicates that, over time, the state changed the entity responsible for the supervision of such lands, with responsibility now being entrusted to the board of education in each school district that was allotted these lands.

Describing ministerial lands, Ms. O’Neill noted that the designation of land for religious purposes stems from English and European traditions that established a state church and then allocated public resources for the support of that religious organization. Thus, the report and recommendation describes how Ohio’s ministerial lands were identified as section 29 in a number of counties that can be traced to the original “purchases,” two purchases by the Ohio Company, and one purchase by John Cleves Symmes, and that these “ministerial lands” are found nowhere in the United States but in these three parts of the state of Ohio. However, in 1968, after Congress acted to limit the use of sale proceeds from the sale of ministerial lands to educational purposes only, Ohio voters approved an amendment to Article VI, Section 1 that expressly allowed the General Assembly discretion to disperse money set aside in the trust fund.

Executive Director Steven C. Hollon said these reports and recommendations will be brought back to the committee, at its next meeting, for a vote. Once approved by the committee, they will go to the full Commission for its review.

Article VI, Section 2 (School Funds)

Ms. O’Neill then presented, for the first time, the report and recommendation on Article VI, Section 2 (School Funds) to which the committee recommended no changes.

Ms. O’Neill gave a description of the report and recommendation for Article VI, Section 2, relating to school funds, indicating that the provision requires the General Assembly to make such provisions, by taxation or otherwise as, with the income arising from the school trust fund, will secure a thorough and efficient system of common schools throughout the state, stipulating that no religious or other sect or sects shall ever have any exclusive right to or control of any part of the school funds of this State.

Ms. O’Neill stated that the section was adopted as part of the Ohio Constitution of 1851 and has never been amended, and that it includes the first use of the phrase “thorough and efficient” in the constitution of any state. She said 22 states are recognized as having constitutional provisions imposing educational standards similar or identical to Ohio’s thorough and efficient clause, but the definition of common schools as well as what constitutes a thorough and efficient system varies widely from state to state.

Ms. O'Neill concluded by stating that the report and recommendation indicates that the committee concludes that Article VI, Section 2 should be retained in its current form. She then invited questions and comments from committee members.

Committee member Paula Brooks asked why the report and recommendation for Article VI, Section 2 was simply to retain the provision as it is, rather than that it include a requirement of early childhood education as the committee had discussed. Ms. O'Neill answered that the report and recommendation had been drafted based upon the vote taken at the last Education, Public Institutions, and Local Government Committee meeting on March 12, 2015, and that the instruction from the committee had been for staff to draft a report and recommendation that simply retained Article VI, Section 2 in its present form.

Chair Readler confirmed that this had been the vote and the instruction to staff. Ms. Brooks stated that she would like the committee to reconsider that issue prior to approving the report and recommendation, because many speakers, experts in education, and other members of the committee all support the concept that access to early childhood education makes a positive impact on the ability of children to succeed in school.

Chair Readler then recognized Representative Michael Curtin, who complimented staff on the reports and recommendations.

Committee member Governor Bob Taft asked whether Ms. Brooks is contemplating a possible amendment to this language. She answered affirmatively and said she would be willing to work with Gov. Taft on this. He said he is sympathetic with the issue and agrees that early childhood education is important, but that the challenge is in trying to draft an amendment that would not be incredibly expensive to carry out. Ms. Brooks said there is plenty of data showing that early intervention is effective, and that investing in it pays off. She also said she accepts that the General Assembly could move forward on this issue, and that she hopes leadership understands that it is "pay me now or pay me later." She said early learning in the state is important, especially for children in an urban environment.

Chair Readler thanked Ms. O'Neill for her work on the reports and recommendations, and Ms. O'Neill acknowledged the assistance and contribution of Senior Policy Advisor Steven H. Steinglass in preparing the reports and recommendations.

Presentations:

The committee received presentations from two speakers representing local boards of education.

"Local Boards of Education"

Gary L. Baker, II

President, Columbus Board of Education

Columbus, Ohio

Columbus Board of Education president, Gary Baker, II gave a presentation on the importance of the local board of education for urban school districts. In his remarks Mr. Baker provided

demographic data which demonstrates how diverse the student population is, the challenges this diversity brings, and the role the school board has in providing leadership to staff, to help each child reach maximum potential.

He said Columbus City Schools is the largest school district in the state of Ohio, encompassing approximately 127 square miles, and employing 8,000 staff members. The student population, of slightly more than 51,000 children in K–12, is comprised of seven nationalities including 58.09% African America, 27.28% Caucasian, 6.79% Hispanic, 5.35% Multi-racial, 2.15% Asian, 0.20% American Indian/Alaskan Native, and 0.04% Pacific Islander. The first language for 12% of the student population is something other than English. There are more than 90 different languages spoken across the school district. More than 83% of the students are considered economically disadvantaged. Approximately 14% of the students have been identified as having a disability, and only one fifth of the students are at the same school for an entire school year.

Mr. Baker stated with the challenges of so many different languages, socio-economic concerns, disabilities, and the mobility of a significant portion of the schools' population, the board has had to adapt and make accommodations in order to determine the best way to allocate and provide the resources needed for each child.

Ms. Brooks thanked Mr. Baker for coming. She acknowledged that school attendance is a huge factor in making sure children are able to succeed, asking whether there is anything the committee ought to be considering along those lines, such as mobility and housing issues.

Mr. Baker answered that everyone wants a safe community, good jobs, and wants to be able to put down roots and stay. He said neighborhoods have to be safe and secure, and people have to find employment. He said his district has many single parent families, parents with two or three jobs, and children who are homeless. He said anything that will help stabilize neighborhoods will help. He agreed that early childhood education is an important component for child success.

Governor Bob Taft thanked Mr. Baker for his willingness to serve in a leadership role, saying he is interested in Mr. Baker's decision to run, and asking whether it was expensive or difficult to campaign. Mr. Baker said he feels he has a calling to public service, so that running was a natural progression from that. He said serving on the board takes a lot of time, but board members are glad to do it because they have a commitment to the students. He said he is proud of the great strides the district has made.

Gov. Taft asked Mr. Baker whether he could address the issue of whether there are qualified persons in the community who are discouraged from running because of the rigors of campaigning. Mr. Baker said money and time are a factor, and that when he first ran he did not expect to be elected because there were no open seats, but that he beat a long-term incumbent. He said campaigning is about recruiting volunteers, being passionate, and fundraising. He said he made many appearances to let people know about his passion for the job. He said serving on a school board is a great opportunity to be a leader, and that the future of our country is the future of children.

Chair Readler asked whether the constitutional language in place is serving our community well, wondering, from Mr. Baker's perspective, what is the balance of power between the legislature and the districts. Chair Readler asked whether the constitution should be changed to alter that balance. Mr. Baker said the control of local districts should reside at the school board table, and that things as they work now do work relatively well. He said the General Assembly has provided local boards the opportunity to participate in the process. He said the current system has served us well, and that he is a firm believer that school boards should be elected by those individuals who reside in the district. Mr. Baker added that those who are elected must share a passion for education, must want to improve teaching and learning, and to focus on student achievement.

Ms. Brooks said she met with Mayor Frank G. Jackson in Cleveland, and complimented him on a board member, Stephanie Morales, who had presented to the committee about her experiences on the Cleveland Municipal School District board. Ms. Brooks repeated Ms. Morales' opinion that the appointment method for serving on a school board was preferred over the elective method. Ms. Brooks asked whether Mr. Baker sees a possibility for both systems to be used and to let the local people determine the best approach.

Chair Readler explained to Mr. Baker that the function of this committee is to see if Ohio's constitutional language is adequately addressing the needs of schools. Chair Readler asked Mr. Baker how he viewed the balance of power between the legislature and local school boards. Mr. Baker said control of local districts should reside at the school board level. The current system has served well. He continued, saying as much local power as possible should be retained and school board members should be elected.

Ms. Brooks said Cleveland has been served well by an appointed board. She asked Mr. Baker if he could say that both approaches should work and that there should be some flexibility to determine the best way.

Mr. Baker answered that he prefers local control, meaning that if people in a district want a hybrid board or one that is appointed they should have that option. He said he believes the best school board is one that is elected by residents of the district, but flexibility can be important as well.

Chair Readler excused himself from the meeting and Gov. Taft served as chair for the remainder of the meeting.

Eric Germann
Member, Board of Education
Lincolnview Local Schools

Lincolnview Local Schools' board member, Eric Germann gave a presentation regarding the importance of the local board of education for small and rural school districts. In his remarks Mr. Germann described local boards of education as the epitome of the concept of representative government.

He said the local board plays a vital role in shaping, adopting, and enforcing policy. The board levies, collects, and operates on tax revenue, maintains a balanced budget, and engages the community in developing both budget and tax policies. The board also works with economic development groups and business developers to encourage economic development and growth of the wage and tax base.

The board also serves as an arbiter for student and employee discipline, and provides the forum for those who wish to petition the governing body for change.

Rep. Curtin asked if Mr. Germann had any thoughts about what the state's policy ought to be in terms of the financial support for charter schools. Mr. Germann answered that the question ties back to accountability, indicating there are some effective charter schools and some that, if they were public, would be judged inadequate in their performance. He said that while his board is not necessarily opposed to charter schools, it has seen students transition out to charter schools and then, when the charter school doesn't work, the students come back, and by the time they come back all the funding has gone to the charter school. He said that online schools have a place, and work for some students. He said his board sees this as an accountability issue and an equity issue. He said, as a public school district, his district is judged on performance, and would be challenged if the numbers were bad, indicating this should also be the case for charter schools.

Rep. Curtin asked whether Mr. Germann and his colleagues feel comfortable being assertive with their state representatives, explaining that often board members are reticent in engaging state legislators. Rep. Curtin said he shares the view that charter schools are fine, if they are excellent, and that 75 percent are doing the job, but he said state legislators don't hear a lot from boards and superintendents of school districts. Mr. Germann said he is his board's legislative liaison, and that he enjoys meeting with legislators. He acknowledged that new board members sometimes have a reluctance to engage with legislators, worrying that if they push too hard they might make it worse for their districts, and also not knowing how lobby to or engage legislators. He said that is a barrier each individual has to break down.

Ms. Brooks asked Mr. Germann whether he feels early learning is well supported in his community, and whether students are getting adequate resources and if parents are able to afford it. She also asked whether there is flexibility to deal with transportation issues, and whether the current model of the elected school board is adequate to allow his board to tackle those issues. Mr. Germann said there is a county-wide Headstart program at the Thomas Edison Learning Center, and that they have worked out a cooperative transportation program. He said they are looking at various ways to move that program in-house or expand it. He said getting to students early and preparing them for school is important, and that it is possible to recognize the children who did not have preschool. Describing his district's transportation issues, he said their busses travel 144,000 miles per year, that they have 16 busses, and that hour-long bus rides are common. He said he prefers a locally elected board, and that election is best because board members are accountable at the ballot box.

“Article VI, Section 3 (Public School System, Boards of Education)”

*Steven H. Steinglass
Senior Policy Advisor*

Senior Policy Advisor, Steven H. Steinglass made a brief presentation to the committee on the topic of Article VI, Section 3 (Public School System, Boards of Education) before the time allotted for the meeting came to a close.

Ms. Brooks asked whether the committee could return to Mr. Steinglass’s presentation at the next meeting, and Gov. Taft agreed that a more extensive presentation and discussion could occur at the next meeting, noting that before the committee can consider whether to retain Article VI, Section 3, the committee needs more information.

Mr. Steinglass offered to explore the policy discussion surrounding Article VI, which is that, while education is an important local issue, there isn’t a constitutional provision that requires that there be local school boards. He said he can’t figure out why the rural districts are excluded from the referendum. Gov. Taft agreed that the referendum applies to all cities, not just home rule cities. He said the issue should be discussed at a future meeting.

Adjournment:

With no further business to come before the committee, the meeting adjourned at 11:00 a.m.

Approval:

The minutes of the May 14, 2015 meeting of the Education, Public Institutions, and Local Government Committee were approved at the October 8, 2015 meeting of the committee.

Chad A. Readler, Chair

Edward L. Gilbert, Vice-chair

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OHIO CONSTITUTIONAL MODERNIZATION COMMISSION

MINUTES OF THE
EDUCATION, PUBLIC INSTITUTIONS, AND LOCAL GOVERNMENT COMMITTEE

FOR THE MEETING HELD
THURSDAY, JULY 9, 2015

Call to Order:

Governor Bob Taft called the meeting of the Education, Public Institutions, and Local Government Committee to order at 10:11 a.m. Gov. Taft explained that he was chairing the committee meeting today as both Chair Chad Readler and Vice-chair Edward Gilbert were unable to attend.

Members Present:

Committee members Cupp, Curtin, Macon, and Taft were in attendance.

Presentations:

“Joint Vocational Schools”

Sue Steele

Board Member

Great Oaks Institute of Technology and Career Development

Sue Steele, board member of the Great Oaks Institute of Technology and Career Development (Great Oaks) gave a presentation on the value of joint vocational schools. Providing statistics for Great Oaks, Ms. Steele state that Great Oaks has educates approximately three thousand high school students per year plus thousands of other students through other programs. She said more than twenty-four thousand adults have been served in the adult education programs. Approximately ten thousand students have earned their GED, and nearly 46 percent of those students have gone on to college. Great Oaks operates on money received from state and local resources. A 2.7 mill property tax levy provides 61 percent of needed funding, along with 36 percent from state funds, and grants and miscellaneous making up 3 percent.

Ms. Steele has been involved with Great Oaks for seventeen years, 13 of which she has served as chair or vice-chair. She explained some of the duties of the board which include, among other

items, hiring and budgeting, identifying possible ballot issues, determining policy, and setting and monitoring goals for the district. She further explained that some rule changes last year have created some concerns for the board. Specifically that future board members could be appointed instead of elected, and they can be term-limited. The concern being that this approach threatens the loss of institutional knowledge.

Gov. Taft asked Ms. Steele if she was speaking on behalf of all career centers to which Ms. Steele responded that she is speaking first on behalf of Great Oaks, but a workgroup has been established to ensure their voices are heard.

Gov. Taft asked, regarding current legislation on board composition, if the association is suggesting this be addressed through the constitution. Ms. Steele replied no, because they think they can address it through legislation. If necessary, they would work to go through the constitution but would prefer to work with the legislature. She further explained the concern with the changes is that local boards can now appoint business people, but what happens if the appointee does not live in the district and is not involved in the community. They might very well be an outstanding person, but without the local connection, they may be more focused on money than with seeing students succeed. Elected board members are held accountable by the public, but an appointee is not.

Representative Bob Cupp asked how many people serve on the board of Great Oaks. Ms. Steele replied that there are thirty-five board members. Rep. Cupp asked how the board functions with so many members. Ms. Steele explained there are five committees, with seven members each, which meet prior to the board meetings. The chairs of the five committees attend a second meeting where they describe what the committees have been working on. If an item needs to be approved, one of the chairs will make a motion; another chair will second the motion, then five chairs vote. She further explained with the diversity of the members of the board, they are able to accomplish a great deal. Ms. Steele said “We network a lot, using emails and phone calls.” She said everyone is there for the same purpose which is for the benefit of all the students which includes adults, juniors, and seniors. Ms. Steele then described the newest opportunity they’ve been able to bring into the middle schools, which is a pre-engineering program.

Ms. Steele further explained the board is very diversified, with every member recognizing they are all there for the same purpose – the students. Utilization of emails and phone calls help them maintain momentum in their work, rather than only conducting business at the monthly meetings. Ms. Steele said the newest initiative is to bring pre-engineering into the middle schools. In addition, the modern career center is a new environment in which students earn dual credits for college. Some students will have completed nearly enough credits for an associate degree when they graduate high school.

Rep. Cupp asked whether any school district has selected non-board members to be part of the larger board. Ms. Steele said she is aware of only three that have done so, with two of those selected being former board members. A third such member is a business person who knows a lot about career tech but has not been involved in the educational system. She said her board is concerned this type of appointment will become unmanageable as it is still a gray area with how the law is worded. The primary concern is that that CEOs and CFOs from private businesses will

take over the board. Ms. Steele said it is possible that the thirty-five people currently on the board could be gone by 2020, being replaced with a whole new board. She stated the Great Oaks program is tops in the nation and the board should maintain the status quo.

Rep. Cupp said complimented Ms. Steele and the other board members for the great work they are doing for Great Oaks.

Gov. Taft asked how many of the thirteen thousand students who take classes in their homes are enrolled in full time career tech at their home school. Ms. Steele responded none. She said they do have satellite programs, and students are there for part of the day.

Gov. Taft then thanked Ms. Steele for her presentation and for her years of service.

“Educational Service Centers”

*Al Haberstroh
Board Member
Trumbull County Educational Service Center*

Albert Haberstroh, board member of the Trumbull County Educational Service Center, presented on the value of educational service centers. Mr. Haberstroh said he was serving his eighth year on the Trumbull county school board as an elected board member, and he was here on behalf of the students.

Mr. Haberstroh explained what he does as a school board member, and the special interest he has in children with developmental problems. Speaking from personal experience, he talked about the role the educational service center played for his grandson, who as a young student was diagnosed as autistic and could not hear. He was placed in a special education program and corrective action was taken so he could hear. Today he is a happy, straight-A third grader.

Mr. Haberstroh said he believes as a board member he has a mission. He makes himself available to parents who have a child with developmental issues. He wants to do whatever he can to help the child attain success. He said one way he does this is to talk with students and ask them what they plan to do after graduation. If a student has not taken the ACT, for example, he will help them prepare for the test.

Mr. Haberstroh said the board is also a resource for adults who want to be teachers. The board provides professional development for 500 to 600 teachers so they can expand their capabilities, such as training them on how to explain the Common Core curriculum.

Another example Mr. Haberstroh provided of a board action related to bussing for special education students. They were able to partner with a local transit service for the elderly and save the county between \$3,000 and \$6,000.

Mr. Haberstroh closed by stating these are just a few of the things he and other board members do in their role.

Gov. Taft thanked Mr. Haberstroh for his service, and for sharing his very compelling, personal story.

Gov. Taft then asked for questions from the committee. Rep. Cupp asked if the constitution is set up properly for the legislature to make the laws or whether changes should go into the constitution. Mr. Haberstroh replied that he has asked for change, stating that districts are required to belong to an educational service center but they have no representation on the board. Because of funding issues, districts have had to combine, and there is a concern about how many districts will be represented on the board of the educational service center.

Mr. Haberstroh said he would rather have an elected board than an appointed board. Someone who campaigns for a seat on the board has a strong interest in the purpose of the board. If a board member is appointed, rather than elected, that person might not be as passionate.

Mr. Haberstroh gave an example of someone he served with who would never have been appointed. To her every student was special, and she wanted to make sure everyone had opportunities. She served on the board for twelve years, was a second grade teacher for 40 years, and, to this day, she sends every student she ever had a birthday card.

Rep. Cupp then stated that school district boards are elected, educational service center boards are elected, but joint vocational school boards are appointed. In the past, people have asked him why there is a difference. Rep. Cupp asked if it would be better to follow the joint vocational model and use the appointment process, wondering whether, for these elections, people really know who they are voting for. Rep. Cupp then asked Mr. Haberstroh for his thoughts on appointment versus election for these board positions.

Mr. Haberstroh stated that the people who are elected are similar to him. He belongs to political organizations, is active in his community, and donates to most neighborhood organizations in his county that are interested in education. He asked, "Do I care if any of them know who I am or that I support them? I would say someone who is running has a vested interest, but someone who is appointed may not be as enthusiastic."

Rep. Cupp asked Mr. Haberstroh if he felt, as a member of the local school board, that being appointed to the educational service center by the local board would make it better. Mr. Haberstroh said most local board members use the services of the educational service center, yet they have no clue that there are students for whom someday the highlight of their life would be being able to perform everyday activities like walking or using the bathroom without assistance. He said if there is too much division between the boards, it takes away the concentration on local districts, and might dilute both of the boards. He said the people on the educational service center board do not bring certain elements such as business acumen.

Mr. Haberstroh addressed the issue of a levy. He said "they do not have the means so they cannot put on a levy." He said it would be difficult for them to have a levy because it would be difficult to convey to the voters everything the board does. For example, the board has a program where they take children who would normally be in the juvenile system, and working with the police chief, let them stay in their homes and provide schooling. Mr. Haberstroh said that in relation to

his own school district, as a board member there he represents only 700 students, but in the educational service center he represents 30,000.

Additional Testimony

Gov. Taft then asked if anyone else at the meeting would like to testify. Executive Director Steven C. Hollon introduced Damon Asbury, Director of Legislative Services for the Ohio School Boards Association.

Mr. Asbury spoke briefly to note items that were circulated to the committee. Describing his organization, he said it represents 191 city school districts, 49 joint vocational school districts, and 52 career centers, with the remaining 300 plus districts being local school districts.

After describing the materials he circulated, he encouraged committee members to visit a career center in their communities, saying they would be impressed with the opportunities available. He said the schools were originally set up for students who were “not college material” but now they “try to create pathways for students.” He said Ohio has been a leader in the field of creating career education opportunities, and other states continue to look to our model.

Senior Policy Advisor Steven H. Steinglass asked if this should be covered in the constitution, or handled via legislation. Mr. Asbury replied that the legislative process would be the best; the constitution may be too general. He noted that it will be hard to create continuity if major joint vocational school board changes happen.

Rep. Cupp asked how the change to the joint vocational school boards should occur. Mr. Asbury said that change was attached to the budget, and that there was a stand-alone bill that never got a hearing but was just attached to the budget at the last minute.

Gov. Taft posed a question for Mr. Asbury to ponder, which was what percentage of students in 11th and 12th grade should be in full-time career tech programs and how that would be determined. Mr. Asbury said, unfortunately, the Ohio Department of Education does not have that information. Gov. Taft responded that he knows three years ago the number was about twenty percent. To Gov. Taft, that seems extremely low. Mr. Asbury said he will talk to colleagues about that and try to get up-to-date information.

“Article VI, Section 3 (Public School System, Boards of Education)”

*Steven H. Steinglass
Senior Policy Advisor*

Senior Policy Advisor Steven H. Steinglass continued his review of Article VI, Section 3, public school system boards of education.

Mr. Steinglass reviewed his memorandum on Article VI, Section 3 that was distributed to the committee prior to the meeting. He pointed out that the first clause of Article VI, Section 3, “... supported by public funds,” is intended to ensure public funds do not apply to private and

parochial schools. He further explained that he is not talking about Article VI Section 4 (State Board of Education). He stated that he has not heard a great deal of clamoring for changes here.

Mr. Steinglass also remarked, regarding the first part of the second clause, there is a sense from reviewing the history that the size of some school boards had gotten a bit out of control. He still has not answered to his satisfaction why there is a limit to this clause applying only to urban schools and not to rural districts. He commented that the only answer so far seems to be that the rural school districts wanted it this way forty years ago, and referred to Delegate Knight's quote, contained in Mr. Steinglass' memorandum: "I have no desire to force a referendum on any people who do not want it." Dean Steinglass stated that he has not discovered any strong advocacy for changing these provisions.

Mr. Steinglass explained that the last part of the second clause has to do with elected versus appointed school board members. Referring to the Cleveland Municipal School District, Mr. Steinglass explained there is a state statute that gives the mayor of a city under federal desegregation orders (of which Cleveland is the only city) the authority to appoint members of the school board. The Cleveland mayor appointed school board members and the voters approved the appointment via a referendum. Mr. Steinglass also explained that the referendum was challenged in the courts, and the courts decided that while there has to be a referendum at some time, it does not have to come before the appointment. Four years after the appointment is not too long to wait.

Mr. Steinglass concluded his remarks by stating "We have a relatively bare bones provision, with questions that are not answered. The policy issue becomes whether this relatively-limited provision is the right way to go, or whether there are specifics that need to be changed."

Gov. Taft thanked Mr. Steinglass and asked for questions from the committee. There were none.

Gov. Taft stated that he wonders what would happen if the Cleveland approach proves successful. He asked whether this would prompt the legislature to allow other districts to have appointed boards. He said, as the constitution has been interpreted, apparently they could, so long as they include a provision allowing for a referendum within a certain number of years following the appointments. He asked Mr. Steinglass if this is correct, and Mr. Steinglass answered that is how he interprets the cases and the constitutional provision. He said there are two ways this could be done: from the bottom up using the petition process, or the General Assembly could impose it.

Gov. Taft then asked a question regarding religious liberty. He explained that the Colorado Supreme Court struck down a school voucher program under which a local board created the first district-level voucher program in the country. This particular proposal was declared unconstitutional by the Colorado Supreme Court based on the Colorado version of the Blaine Amendment, prohibiting public funds for private schools. In Ohio, programs have been upheld, so based on this broad grant of authority in Article VI, Section 3, does that mean there probably would be nothing precluding the legislature from authorizing local school districts to initiate district level voucher programs? Mr. Steinglass replied he has not read the case, or thought about

it, but tends to agree, although there may be something else there. His first reaction is to agree that there would not be a problem with that delegation under the Ohio Constitution.

Gov. Taft asked if there were any other questions for Mr. Steinglass, and being none, he thanked him for his presentation.

Committee Discussion:

Gov. Taft then asked Mr. Hollon where the committee currently stands, noting that the committee needs to discuss Article VI, Section 3. He asked whether the committee should request a draft of a report and recommendation on Article VI, Section 3.

Mr. Hollon replied that there are currently two draft proposals to come before the committee – Article VI, Section 1 (Funds for Religious and Educational Purposes) and on Article VI, Section 2 (School Funds) – however, no action can be taken on these today due to lack of a quorum.

Mr. Hollon then commented that what the staff would like to see is a preliminary sense of the committee in order to have an idea of what they want with a particular provision. He said he does not perceive there to be a suggestion that the committee would seek a change to Article VI, Section 3 (Public School System, Board of Education). He offered that staff could start drafting a report and recommendation suggesting that Article VI, Section 3 be kept as it is, and could bring a draft forward at the next meeting just to expedite it, without necessarily taking a vote. Gov. Taft asked whether the committee thinks a change is desirable. Mr. Hollon said the staff is working to have Richard Ross come to the next meeting in relation to Article VI, Section 4 concerning state boards of education.

Gov. Taft then asked about the current status of the life of the Commission, and Mr. Hollon stated that under current legislation it will terminate January 1, 2018. Rep. Cupp asked, regarding the planning worksheet, where the committee is at the current time. Mr. Hollon said the committee has been dealing with Article VI, Sections 1 and 2, for which reports and recommendations have been drafted. He said Article VI, Sections 3 and 4, will be next, with the goal set by Chair Readler to complete the rest of Article VI before taking on some of the other issues. Mr. Hollon said that as the committee goes through the meetings, the staff will update the list so the committee can have a visual representation of where it stands.

Mr. Steinglass commented that early on in the life of the Commission, the committee had presentations on other articles, including Article XVIII. He said staff may want to recirculate the material to members who were not on the committee at the time. Gov. Taft said this is a good suggestion.

Committee member Representative Michael Curtin brought up an exchange between Gov. Taft and committee member Paula Brooks, on early childhood education, which is referenced in the minutes for the May 14, 2015 meeting on page five. He wondered where this issue stands. Gov. Taft said they left it where Ms. Brooks might consider possible changes or amendments and that they would consider proposed language. He said she has not yet submitted any language, and he does not know whether she intends to. Mr. Hollon confirmed that we were going to discuss the

issue again today with a quorum, to see if the committee had reconsidered from their previous vote to keep Article VI, Section 2 as it is. Gov. Taft said he himself strongly supports early childhood education, but that the General Assembly has the ability to pass laws providing for that. He said it is not a question about whether the state has the authority to do so. He said he is not sure what amendment might be appropriate from that standpoint.

Adjournment:

With no further business to come before the committee, the meeting adjourned at 11:35 a.m.

Approval:

The minutes of the July 9, 2015 meeting of the Education, Public Institutions, and Local Government Committee were approved at the October 8, 2015 meeting of the committee.

Chad A. Readler, Chair

Edward L. Gilbert, Vice-chair



OHIO CONSTITUTIONAL MODERNIZATION COMMISSION

**REPORT AND RECOMMENDATION OF THE
EDUCATION, PUBLIC INSTITUTIONS, AND LOCAL GOVERNMENT COMMITTEE**

**OHIO CONSTITUTION
ARTICLE VI, SECTION 1**

FUNDS FOR RELIGIOUS AND EDUCATIONAL PURPOSES

The Education, Public Institutions, and Local Government Committee of the Ohio Constitutional Modernization Commission issues this report and recommendation regarding Article VI, Section 1 of the Ohio Constitution concerning funds for religious and educational purposes. It is issued pursuant to Rule 8.2 of the Ohio Constitutional Modernization Commission's Rules of Procedure and Conduct.

Recommendation

The committee recommends that no change be made to Article VI, Section 1 of the Ohio Constitution and that the provision be retained in its current form.

Background

Article VI, Section 1 reads as follows:

The principal of all funds, arising from the sale, or other disposition of lands, or other property, granted or entrusted to this state for educational and religious purposes, shall be used or disposed of in such manner as the General Assembly shall prescribe by law.

Article VI of the Ohio Constitution concerns education, and Section 1 deals more specifically with lands provided to the state for educational and religious purposes.

As originally adopted in the 1851 constitution, Article VI, Section 1 provides:

The principal of all funds arising from the sale or other disposition of lands or other property granted or entrusted to this state for educational or religious purposes, shall forever be preserved inviolate and undiminished; and the income arising therefrom shall be faithfully applied to the specific objects of the original grants or appropriations.

School Lands

School lands provided by the federal government to Ohio and other states played an important role in the development of public education in this country, and school lands supported education in virtually all the new states beginning with Ohio in 1803.¹

The history of school lands dates to the days before statehood, when the Confederation Congress, through the Land Ordinance of 1785,² reserved in every township in the survey of the land tract in the eastern portion of the state (which was known as the Seven Ranges) a one-mile square section for the maintenance of public schools.³ The Northwest Ordinance,⁴ enacted in 1787 by the Confederation Congress and reaffirmed by the first United States Congress in 1789,⁵ established a path to statehood for Ohio and the other states that were carved from the Northwest Territory. It also continued the commitment to public education by providing, in part, that “[r]eligion, morality, and knowledge, being necessary to good government and the happiness of mankind, schools and the means of education shall forever be encouraged.”⁶ The founders’ emphasis on the value of education, and particularly on its relationship to religion and morality, is recognized as stemming from the view that the establishment of a new nation required “an educated, moral, sober citizenry in the new states that would have the stability and civil responsibility of a republican society.”⁷

In the 1802 Enabling Act, Congress moved Ohio along the path to statehood by enacting legislation to “enable the people of the eastern division of the territory northwest of the river Ohio to form a constitution and State government and for the admission of such State into the Union * * *.”⁸ It also contains an unusual provision offering the new state one “section, number 16, in every township” or other equivalent lands.⁹ The 1802 Constitutional Convention made a counteroffer¹⁰ that, in turn, was accepted by the federal government. This resulted in Ohio ultimately gaining control of 704,204 acres (or 2.77 percent of its land area) of federally-donated land to support public schools.¹¹

The importance of education to the new state was reflected in the 1802 constitution, which followed the Northwest Ordinance in providing, in Article VIII, Section 3, that “religion, morality and knowledge, being essentially necessary to good government and the happiness of mankind, schools and the means of instruction shall forever be encouraged by legislative provision, not inconsistent with the rights of conscience.”

After statehood, the General Assembly leased much of this land, with some leases being as long as 99 years and renewable forever. In 1826, however, Congress permitted land sales with the consent of township residents.¹² And in 1827, the General Assembly adopted legislation providing that proceeds from the sale of school lands were to be deposited in the Common School Fund and earmarked for the benefit of schools within the townships.¹³

Because of concerns about the local stewardship of the school lands, the General Assembly in 1914 and 1917 transferred supervision of the school (and ministerial) lands to the Auditor of State. In 1985, the General Assembly transferred supervision to the Director of Administrative Services, and in 1988, the General Assembly transferred supervision of all remaining monies to

the Board of Education in each school district that had been allotted these lands, with title held in trust by the State of Ohio.¹⁴

Ministerial Lands

In addition to allocating land to support education, the federal government allocated land in Ohio to support religion by providing that section 29 of certain land purchases be used to support religion.¹⁵ The granting of real property for religious purposes has been identified as a “holdover from English and other European traditions where one denomination constituted a state church and received its support and other perquisites from the state.”¹⁶ Ohio’s “ministerial lands,” which totaled 43,525 acres, represented only a small part of the total land originally granted to Ohio by Congress.¹⁷

The Confederation Congress (in the Ohio Company’s First Purchase in 1787) and the United States Congress (in the Symmes Purchase in 1794) reserved section 29 for the purpose of religion in what are today Washington, Meigs, Gallia, Lawrence, and Athens counties (from the Ohio Company’s First Purchase), and in Butler, Hamilton, and Warren Counties (from the Symmes Purchase). In addition, the Ohio Company on its own reserved section 29 from its Second Purchase in what are now Hocking and Vinton Counties.¹⁸ “ ‘Ministerial land,’ as these lands have since been termed, are found nowhere in the United States, except within these three parts of the state of Ohio.”¹⁹

In 1833, Congress allowed the sale of lands that had been granted to the state for the support of churches and religious societies, with the proceeds to be placed in a trust fund and interest thereon paid to local schools and religious societies.²⁰

The 1851 constitution addressed these issues by adopting a provision, Article VI, Section 1, which addressed both educational and ministerial lands and provided that the proceeds from the sale of lands granted for educational or religious purposes must be applied to the objects of the original grants.

Amendments, Proposed Amendments, and Other Review

By 1968, the practice of state payments to religious organizations was recognized as problematic under the Establishment Clause of the First Amendment to the United States Constitution, and Congress acted to limit the use of sale proceeds to educational purposes only, subject to the discretion of the General Assembly.²¹ Ohio voters subsequently approved an amendment to Article VI, Section 1 that expressly allowed the General Assembly discretion to disperse money set aside in the trust fund.²² Thus, Article VI, Section 1 was altered to provide that funds arising from these lands would not be restricted to school or religious purposes, but “shall be used or disposed of in such manner as the General Assembly shall prescribe by law.” In the May 7, 1968, election, the voters approved an amendment proposed by the General Assembly to this section by a vote of 847,861 to 695,368, or 55 percent to 45 percent.²³

In 1977, the Ohio Constitutional Revision Commission (“1970s Commission”) recommended no change to this section.²⁴

Litigation Involving the Provision

There has been no significant litigation involving Article VI, Section 1.

Presentations and Resources Considered

On November 13, 2014, the committee heard a presentation by former Ohio Supreme Court Justice Robert R. Cupp, who was at that time chief legal counsel for the Ohio Auditor of State.²⁵ Mr. Cupp explained that while some may consider Article VI, Section 1 as an obsolete provision, the section remains necessary as the state still possesses some “school lands” as referenced in the provision.

Mr. Cupp provided a brief history of the provision, indicating that these lands first had been managed and supervised by township trustees, then by the auditor of state, and later by the director of the Department of Administrative Services. However, in 1988, legislation went into effect that transferred supervision, management, and all remaining monies of school lands to the board of education in each school district that had been allotted these lands. He said it is unclear how much real estate of this nature remains under state title, but the most recent transfer by the state took place in 2009 to the Upper Scioto School District in Hardin County. He said the Hardin County property has a current market value of \$2.5 million and is leased by the school district for farming. The school district derives \$247,000.00 in annual revenue from this lease.

Conclusion

The Education, Public Institutions, and Local Government Committee concludes that Article VI, Section 1 should be retained in its current form.

Date Adopted

After formal consideration by the Education, Public Institutions, and Local Government Committee on May 14, 2015, and October 8, 2015, the committee voted to adopt this report and recommendation on _____.

Endnotes

¹ See generally Souder, Jon A. and Sally K. Fairfax, *State Trust Lands: History, Management, and Sustainable Use*. Lawrence: UP of Kansas 1996. Print.; O’Day, Sean E. *School Trust Lands: The Land Manager’s Dilemma Between Educational Funding and Environmental Conservation, A Hobson’s Choice?*, 8 N.Y.U. Env’tl. L.J. 163 (1999). For a compendium of the various legislative enactments relating to the creation and preservation of Ohio school lands in the early 1800s, see *A Compilation of Laws, Treaties, Resolutions, and Ordinances, of the General and State Governments, which Relate to Lands in the State of Ohio; including The Laws Adopted by the Governor and Judges; The Laws of the Territorial Legislature; and the Laws of this State, to the Years 1815-16*. Published in Pursuance of Resolutions of the General Assembly, passed January 22, 1825. Columbus: Geo. Nashee, State Printer, 1825. Print.

² General Land Ordinance of 1785, reprinted in 28 Journals of the Continental Congress 1774-1789, at 375.

³ See generally Steinglass, Steven H. and Gino J. Scarselli. *The Ohio State Constitution*. New York: Oxford UP (2nd printing), 2011. 220. Print.

⁴ Journals of the Continental Congress, 1774-1789, ed. Worthington C. Ford et al. Washington, D.C. 1904-37, 32:334; Ordinance of 1787: The Northwest Territorial Government, Act of July 13, 1787. Available at <http://uscode.house.gov/browse/frontmatter/organiclaws&edition=prelim> (Office of the Law Revision Counsel of the House of Representatives ed.) (Accessed May 6, 2015).

See also http://avalon.law.yale.edu/18th_century/nworder.asp (accessed April 27, 2015).

⁵ Northwest Ordinance, Act of Aug. 7, 1789, ch. 8, 1 Stat. 50, 51.

⁶ Ordinance of 1787, *supra*, at Section 14 (Compact), Article III.

⁷ Festa, Matthew J. *Property and Republicanism in the Northwest Ordinance*, 45 Ariz. St. L.J. 409, 460 (2013). See also Usher, Alexandra. “Public Schools in the Original Federal Land Grant Program.” The Center on Education Policy; April 2011. Web. 5. Available at:

http://www.eric.ed.gov/ERICWebPortal/search/detailmini.jsp?_nfpb=true&_ERICExtSearch_SearchValue_0=ED518388&ERICExtSearch_SearchType_0=no&accno=ED518388 (Accessed April 27, 2015), citing Culp, P.W., D.B. Conradi, D.B., and C.C. Tuell, (2005). *Trust land in the American west: A legal overview and policy assessment*. Cambridge, MA: Lincoln Institute of Land Policy. Web. 4-8. Available at: <https://www.lincolninst.edu/subcenters/managing-state-trust-lands/publications/trustlands-report.pdf> (accessed April 27, 2015).

⁸ Ohio Enabling Act, ch. 40, § 7, 2 Stat. 173, 175 (1802). Available at: http://www.ohiohistorycentral.org/w/Enabling_Act_of_1802?rec=1490 (accessed April 27, 2015) <http://research.archives.gov/description/299949> (accessed April 27, 2015).

⁹ *Id.* at Sec. 7.

¹⁰ *Propositions From the Ohio Constitutional Convention to the Congress of the United States, Relating to the Admission of Ohio, Ordinance and Resolution Passed in Convention, Nov. 29, 1802*, as reprinted in Ryan, Daniel J. *From Charter to Constitution, Ohio Archaeological and Historical Publications*, Volume 5. Columbus: Ohio State Archaeological and Historical Society, 1897. Print. 78 *et seq.* Available at: [http://publications.ohiohistory.org/ohj/browse/displaypages.php?display\[\]=0005&display\[\]=1&display\[\]=164](http://publications.ohiohistory.org/ohj/browse/displaypages.php?display[]=0005&display[]=1&display[]=164) (Accessed May 5, 2015).

¹¹ Knepper, George W. *The Official Ohio Lands Book*. Columbus: The Auditor of the State of Ohio. 2002. 57. Print. See also Steinglass & Scarselli, *supra*.

¹² Knepper, *supra*.

¹³ *Id.* at 58.

¹⁴ *Id.* at 58-59.

¹⁵ See generally Peters, William E. *Ohio Lands and Their Subdivision*. Athens: W.E. Peters (2nd Ed.), 1918. 340-357. Print.

¹⁶ Knepper, *supra*, at 59.

¹⁷ *Id.* at 60.

¹⁸ Peters, *supra*, at 362-364.

¹⁹ *Id.* at 364.

²⁰ Steinglass & Scarselli, *supra*.

²¹ *Id.* at 220-21, citing Public Law 90-304 (May 13, 1968).

²² *Id.* at 221.

²³ Source: Secretary of State's website; May 7, 1968 Primary (Official Results). Web. Available at: <http://www.sos.state.oh.us/sos/elections/Research/electResultsMain/1960-1969Results/68priconst.aspx> (accessed May 5, 2015).

²⁴ Ohio Constitutional Revision Commission, Recommendations for Amendments to the Ohio Constitution, Final Report, June 30, 1977, at 53.

²⁵ On November 4, 2014, Mr. Cupp was elected state representative for the Fourth District (Allen County) for a term beginning January 6, 2015. Upon being sworn as state representative, Rep. Cupp was selected to serve as a legislative member of the Ohio Constitutional Modernization Commission.



OHIO CONSTITUTIONAL MODERNIZATION COMMISSION

REPORT AND RECOMMENDATION OF THE EDUCATION, PUBLIC INSTITUTIONS, AND LOCAL GOVERNMENT COMMITTEE

OHIO CONSTITUTION ARTICLE VI, SECTION 2

SCHOOL FUNDS

The Education, Public Institutions, and Local Government Committee of the Ohio Constitutional Modernization Commission issues this report and recommendation regarding Article VI, Section 2 of the Ohio Constitution concerning school funding. It is issued pursuant to Rule 8.2 of the Ohio Constitutional Modernization Commission's Rules of Procedure and Conduct.

Recommendation

The committee recommends that no change be made to Article VI, Section 2 of the Ohio Constitution and that the provision be retained in its current form.

Background

Article VI, Section 2 reads as follows:

The General Assembly shall make such provisions, by taxation, or otherwise, as, with the income arising from the school trust fund, will secure a thorough and efficient system of common schools throughout the state; but no religious or other sect, or sects, shall ever have any exclusive right to, or control of, any part of the school funds of this State.

Article VI of the Ohio Constitution concerns education.

Section 2, adopted as part of the Ohio Constitution of 1851 and never amended, includes the first use of the phrase "thorough and efficient" in the constitution of any state.¹ The provision was influenced by an 1837 report about education in England and Europe commissioned by the Ohio legislature and prepared by Calvin Ellis Stowe, a professor of biblical literature at Lane Theological Seminary in Cincinnati.² Stowe, the husband of Harriet Beecher Stowe, was a strong supporter of universal public education, and urged Ohio to follow the Prussian example of state-supported education.³ Stowe's report was republished by the legislatures of Michigan, Massachusetts, Pennsylvania, North Carolina, and Virginia.⁴ In fact, some 22 states are

recognized as having constitutional provisions imposing educational standards similar or identical to Ohio's "thorough and efficient" clause.⁵ Despite these similarities, the definition of "common schools," as well as what constitutes a "thorough and efficient" system for providing education, varies widely from state to state due to differences in history, demographics, geography, and other factors.⁶

Amendments, Proposed Amendments, and Other Review

In 1977, the Ohio Constitutional Revision Commission ("1970s Commission") recommended no change to this section, concluding that adding specific language that dealt with school finance would undermine the view that a constitution should only state general principles and guidelines.

The 1970s Commission succinctly summarized its position on retaining current language by stating:

A system of school finance poses unique problems because so many factors are involved, many of which are legislative, economic and geographical considerations, and being subject to change, are not likely to be more adequately provided for in the [c]onstitution than by the language presently contained in that document.⁷

Litigation Involving the Provision

The most recent, and notable, litigation involving school funding is the *DeRolph* line of cases,⁸ in which a coalition of individuals and five Ohio school districts sued the state in 1991, alleging that the state educational funding system violated the "thorough and efficient" clause found in Article VI, Section 2.⁹ Specifically, the *DeRolph* plaintiffs argued that the school funding scheme in place at the time relied too heavily on local property taxes, resulting in disparities in the quality of educational facilities and resources in different communities across the state. Concluding that the school funding system was "wholly inadequate" to meet the constitutional mandate, the Ohio Supreme Court directed in 1997 that the General Assembly "create an entirely new school financing system" that was not overly dependent on local property taxes. *DeRolph v. State*, 78 Ohio St.3d 193, 239, 213, 1997-Ohio-84, 677 N.E.2d 733, 765, 747 (*DeRolph I*).¹⁰

The *DeRolph* litigation brought to light evidence that a lack of funding in many districts had resulted in deteriorating school facilities, outdated textbooks, insufficient school supplies, overcrowded classrooms, and other conditions that were seen to impede learning. In *DeRolph I*, a majority of the court concluded that "state funding of school districts cannot be considered adequate if the districts lack sufficient funds to provide their students a safe and healthy learning environment." *Id.*, 78 Ohio St.3d at 208, 677 N.E.2d at 744. The court ordered the General Assembly to "first determine the cost of a basic quality education in both primary and secondary schools in Ohio, and then ensure sufficient funds to provide each student with that education, realizing that local property taxes can no longer be the primary means of providing the finances for a thorough and efficient system of schools." *Id.*, 78 Ohio St.3d at 261-262, 677 N.E.2d at 780.

In 2000, after the state undertook measures to institute reforms, the case again came before the court on the same question of whether the constitutional requirement that the state provide a “thorough and efficient system of common schools” had been met. Noting the complexity of the state’s educational system, a majority of the court observed that setting a per-pupil funding amount, or otherwise providing some specific funding scheme, would violate the separation of powers doctrine; thus, the court left the specific remedy to the General Assembly. *DeRolph v. State*, 89 Ohio St.3d 1, 6, 11-12, 2000-Ohio-437, 728 N.E.2d 993, 998, 1002-03 (*DeRolph II*). While recognizing that the General Assembly’s creation of the Ohio School Facilities Commission, as well as its enactment of other remedial legislation, had constituted a “good faith attempt to comply with the constitutional requirements” and had improved conditions around the state, the court nevertheless concluded that the state defendants needed more time to institute reforms before the court could declare the state had met its obligation to provide a “thorough and efficient system of common schools.”¹¹ *Id.*, 78 Ohio St.3d at 35-36, 728 N.E.2d at 1020.

In 2001, the court continued its review of the reforms adopted by the General Assembly, finding further measures were needed to conform with Article VI, Section 2. Specifically, the court ordered the state to modify its base cost formula, by which the state calculated the per-pupil cost of providing an adequate education; to accelerate the phase-in of a parity aid program that was designed to provide additional funding to poorer districts; and to consider alternative means of funding school buildings and facilities. *DeRolph v. State*, 93 Ohio St.3d 309, 324-25, 2001-Ohio-1343, 754 N.E.2d 1184, 1200-01 (*DeRolph III*).

In 2002, upon reconsideration of its decision in *DeRolph III*, a divided court agreed to vacate the judgment. However, despite this action, a majority of the court maintained that Ohio’s school funding system continued to be unconstitutional because the General Assembly, despite enacting reforms, had not performed “ ‘a complete systematic overhaul’ of the school-funding system.” *DeRolph v. State*, 97 Ohio St.3d 434, 435, 2002-Ohio-6750, 780 N.E.2d 529, 530 (*DeRolph IV*), quoting from *DeRolph I*. Commenting during a presentation before the committee about the impact of *DeRolph*, Justice Paul E. Pfeifer indicated that the consensus of the court in *DeRolph IV* was to release jurisdiction because litigation was not proving to be the answer to the problem, and because, by that time, reforms had resulted in school facility improvement.¹²

In May 2003, the Ohio Supreme Court granted a peremptory writ of prohibition, preventing the trial court from exercising further jurisdiction over *DeRolph*. *State ex rel. State v. Lewis*, 99 Ohio St.3d 97, 2003-Ohio-2476, 789 N.E.2d 195. In so deciding, the court clarified that its mandate in *DeRolph IV* was not for the trial court to conduct further proceedings, and determined that allowing the trial court to take further action would be an improper attempt to require judicial approval for proposed remedies. *Id.*, 99 Ohio St.3d at 103, 789 N.E.2d at 202. Thus, the court ended further litigation in *DeRolph*. *Id.*, 99 Ohio St.3d at 104, 789 N.E.2d at 202.¹³

Although the *DeRolph* litigation ended without there being a judicial determination that the state had complied with the constitutional mandate, *DeRolph* did bring to light school funding insufficiencies, and resulted in the adoption of changes that were intended to improve school facilities and other educational resources.¹⁴

Presentations and Resources Considered

DeMaria Presentation

Paolo DeMaria of Education First presented to the committee on August 8, 2013. His presentation focused on the importance of education to the public good, the role of government, the elements of an excellent education, the governance of education at the state and local level, the variety of local educational structures, and funding. He also identified emerging issues, including: standards, assessments, educating all students, early childhood education, accountability, teacher/leader quality, technology, data, school operational improvement, competency-based education, finances, and the relationship between education policy and tax policy. Finally, he concluded with a brief review of state and local support for K-12 education, observing that more spending does not result in better student outcomes.

Lewis Presentation

Richard C. Lewis, Executive Director of the Ohio School Boards Association, also appeared before the committee on August 8, 2013, focusing on the constitutional structure of education in Ohio; the importance of local control; the importance of reliable and equitable funding; the spectrum of urban, suburban, and rural districts; the impact of privatization; the importance of balancing the traditional and the innovative; and accountability. He also provided the committee with some detailed materials on the elements of a model school funding formula.

Wilson Presentation

Charles Wilson, professor emeritus of the Ohio State University Moritz College of Law, provided a broad overview of Article VI at his November 14, 2013, presentation to the committee. Subsequently, he submitted two alternative proposals. Both alternatives retain the “thorough and efficient” language and expressly characterize education as a “fundamental right.” One proposal requires the General Assembly to provide for and fund an “efficient, safe, secure, thorough, equitable, and high quality education.” Another alternative requires the General Assembly to fund and provide a “uniformly high quality educational system designed to prepare Ohio’s people to function effectively as citizens,” as well as an early childhood educational system.

Phillis Presentation

William L. Phillis, Executive Director of the Ohio Coalition for Equity & Adequacy of School Funding, presented to the committee on December 12, 2013, and on March 13, 2014. Mr. Phillis provided the committee with information on public education, relevant methodologies for determining the cost of public education, and information on the impact of charter schools. He also provided drafts of specific amendments for the committee’s consideration.

Mr. Phillis recommended that the “thorough and efficient” clause be maintained. He also provided the committee with the text of three proposed amendments to Article VI. Under his proposal, a new Section 2a would provide state officials with direction in determining what

constitutes a “thorough and efficient” education. Mr. Phillis proposed a second provision that would require the institution of early childhood educational programs to all children beginning at three years of age. Mr. Phillis’ third proposed amendment concerns the state board of education and provides that “[s]tate board of education members shall be elected, one from each congressional district.”

Pittner Presentation

Nicholas A. Pittner, the lead attorney in the *DeRolph* litigation, appeared with William L. Phillis on December 12, 2013, and summarized the history of the *DeRolph* cases. Mr. Pittner opined that Ohio’s educational funding system remains inadequate because the current system is still over-reliant on local property taxes. According to Mr. Pittner, “Section 2, Article VI of the Ohio Constitution is clear and needs no revision. What is needed are specific standards by which compliance with the mandates of Section 2, Article VI can be measured and enforced.” Mr. Pittner expressed his support for a proposed amendment, submitted by Mr. Phillis, that would provide additional constitutional direction.

Dyer Presentation

On June 12, 2014, Stephen Dyer, the Education Policy Fellow at Innovation, Ohio, presented to the committee on the financing of education in Ohio, specifically, his concerns about the level of state support and the disparity in the ability of districts to support education. With respect to the “thorough and efficient” requirement, he urged that if the requirement is to be replaced it should be replaced with language that is even stronger. He pointed to provisions in the Florida and Montana Constitutions, and he provided the committee with proposed changes to Article VI, Section 2 that included a requirement that Ohio residents receive a “world-class education,” which the legislature would be responsible for funding.

Reedy Presentation

Maureen Reedy, co-founder of Ohio Friends of Public Education and a former grade school and special education teacher, presented to the committee on June 12, 2014. Her remarks emphasized the importance of public schools and expressed alarm at the possible removal of the “thorough and efficient” requirement from the constitution.

Alt Presentation

Robert Alt, President and CEO of the Buckeye Institute for Public Policy, appeared before the committee on September 11, 2014. In his comments, Mr. Alt gave an overview of the history of educational policy issues in Ohio, emphasizing that it is the role of the legislature, not the courts, to define the contours of education. Mr. Alt was critical of judicial intervention in education, and expressed concern that broad or generalized language in the constitution could invite improper judicial intervention. Criticizing some of the proposals being considered by the committee as being vague and too aspirational, Mr. Alt said he did not like the “thorough and efficient” phrase, but did not believe it should be repealed. Mr. Alt declined to suggest new

language because of his position that the General Assembly should have primary responsibility for education issues.

Pfeifer Presentation

Hon. Paul E. Pfeifer, Justice of the Ohio Supreme Court, presented to the committee on November 13, 2014. His talk focused upon the *DeRolph* decisions, specifically referencing his concurring opinions in two of the four *DeRolph* decisions. Justice Pfeifer, who is the only current justice to have participated in all four *DeRolph* decisions, provided background on the litigation. He expressed the view that not all decisions regarding education should be left to the legislature, but he observed that the court in *DeRolph* did not intend to tell the legislature what to do. Justice Pfeifer expressed the view that “thorough and efficient” served a worthy purpose, and he did not advocate removing it from the constitution. He did comment that he would not be opposed to more modern language to replace “thorough and efficient.”

Morales Presentation

Stephanie Morales, a member of the Board of the Cleveland Municipal School District, a graduate of the Cleveland public schools, and the parent of three children currently in the Cleveland public schools, made a presentation on January 15, 2015. Ms. Morales described the challenges faced by the school district, the efforts made by the district to support its mission, and the importance of state funds to the district. She acknowledged the substantial support provided to the district through the Ohio Facilities Construction Commission. With respect to the “thorough and efficient” requirement, she urged the committee to not take any action that might be interpreted as weakening the state’s duty to provide a quality education for all of Ohio’s children.

Middleton Presentation

Dr. Renee A. Middleton, Dean of the Patton College of Education at Ohio University, appeared before the committee on January 15, 2015. Dr. Middleton stressed the history of public education in Ohio and its importance in ensuring an educated citizenry and in safeguarding democracy. She urged that public education be fair and equitable, she expressed support for maintaining judicial oversight, and she advised the committee not to turn its back on “thorough and efficient.” She emphasized the importance of determining and funding a high-quality education without an overreliance on property taxes, as well as the importance of adequate funding to promote essential educational opportunities for all.

Johnson Presentation

On March 12, 2015, Darold Johnson, Director of Legislative and Political Action for the Ohio Federation of Teachers, appeared before the committee to express his organization’s position that the current language in Article VI, Section 2, be retained. He said that the Ohio Supreme Court in the *DeRolph* cases defined “thorough and efficient,” and that changing the provision would result in more litigation in order to provide clarity about whatever replacement language might signify. Mr. Johnson indicated that because civil rights already exist in federal law, and in

federal constitutional amendments, and because case law in this area is settled, the Ohio Constitution should only be changed in order to correct problems for which there are no other options. Mr. Johnson said that “thorough and efficient” is better than “equitable” or “equal” because *DeRolph* has defined the phrase and is a benchmark. He stressed that removing “thorough and efficient” would cause a bigger loss than would be gained from including the word “equitable.”

Conclusion

The Education, Public Institutions, and Local Government Committee concludes that Article VI, Section 2 should be retained in its current form.

Date Adopted

After formal consideration by the Education, Public Institutions, and Local Government Committee on May 14, 2015, and October 8, 2015, the committee voted to adopt this report and recommendation on _____.

Endnotes

¹ See, e.g., Neff, Jeremy J. *A Thorough and Efficient Definition of “Thorough and Efficient”: The Starting Point for Meaningful School Funding Reform*, 33:1 J. of Educ. Finance 69 (2007).

² Stowe, C.E. *Report on Elementary Public Instruction in Europe, Made to the Thirty-Sixth General Assembly of the State of Ohio*, Columbus: Medary, 1837. Print.

³ A history of the concept and implementation of a “system of common schools” in Ohio may be found in O’Brien, Molly and Amanda Woodrum. *The Constitutional Common School*, 51 Clev.St.L.Rev. 581 (2004).

⁴ See, e.g., Bunker, Frank Forest. *Reorganization of the Public School System*, Department of the Interior, Bureau of Education Bulletin No. 8. Washington, D.C.: Government Printing Office. 1916. 24. Print.

⁵ Thro, William E. *The Role of Language of the State Education Clauses in School Finance Litigation*, 79 Educ. L. Rep. 19, note 10 at 23-24, as cited in O’Brien & Woodrum, *supra*, at 584, note 14.

⁶ Tractenberg, Paul L. “Education,” in *State Constitutions for the Twenty-First Century*. Eds. Tarr, G. Alan and Robert F. Williams. Albany: SUNY Press, 2006. 241-42. Print.

⁷ Ohio Constitutional Revision Commission, *Recommendations for Amendments to the Ohio Constitution*, Final Report, June 30, 1977, 65-66.

⁸ See *DeRolph v. State*, 78 Ohio St.3d 193, 1997-Ohio-84, 677 N.E.2d 733 (*DeRolph I*); *DeRolph v. State*, 89 Ohio St.3d 1, 2000-Ohio-437, 728 N.E.2d 993 (*DeRolph II*); *DeRolph v. State*, 93 Ohio St.3d 309, 2001-Ohio-1343, 754 N.E.2d 1184 (*DeRolph III*); and *DeRolph v. State*, 97 Ohio St.3d 434, 2002-Ohio-6750, 780 N.E.2d 529 (*DeRolph IV*).

⁹ A comprehensive overview of the *DeRolph* litigation may be found in Obhof, Larry J. *DeRolph v. State and Ohio’s Long Road to an Adequate Education*, 2005 B.Y.U. Educ. & L.J. 83 (2005).

¹⁰ Summarizing the comments of delegates to the Constitutional Convention of 1850-51 in the fourth, and final, *DeRolph* decision, Justice Paul Pfeifer emphasized that the purpose of the provision is to express the state's commitment to education for all:

“James Taylor, a delegate from Erie County, stated, ‘I think it must be clear to every reflecting mind that the true policy of the statesman is to provide the means of education, and consequent moral improvement, to every child in the State, the offspring of the black man equally with that of the white man, the children of the poor equally with the rich.’ [citation omitted.] Samuel Quigley, a delegate from Columbiana County, stated, ‘The report directs the Legislature to make full and ample provision for securing a thorough and efficient system of common school education, free to all the children in the State. The language of this section is expressive of the liberality worthy a great State, and a great people. There is no stopping place here short of a common school education to all children in the State.’ [citation omitted.] The delegates knew what they wanted, what the people wanted, and that it was necessary to use the Constitution to achieve what they wanted.”

DeRolph IV, *supra*, 97 Ohio St.3d at 436, 2002-Ohio-6750, 780 N.E.2d at 531.

¹² Ohio Constitutional Modernization Commission, November 13, 2015, Meeting Minutes of the Education, Public Institutions, and Local Government Committee. Available at http://ocmc.ohio.gov/ocmc/committees/educ_pubinst_misc_localgovt;jsessionid=b957049e1ac01b4e1baacea4fc97 (accessed April 30, 2015).

¹³ In October 2003, the United States Supreme Court denied a petition for a writ of certiorari. *DeRolph v. Ohio*, 540 U.S. 966 (2003).

¹⁴ See *Obhof*, *supra*, at 145-149.



OHIO CONSTITUTIONAL MODERNIZATION COMMISSION

**REPORT AND RECOMMENDATION OF THE
EDUCATION, PUBLIC INSTITUTIONS, AND LOCAL GOVERNMENT COMMITTEE**

**OHIO CONSTITUTION
ARTICLE VI, SECTION 3**

PUBLIC SCHOOL SYSTEM, BOARDS OF EDUCATION

The Education, Public Institutions, and Local Government Committee of the Ohio Constitutional Modernization Commission issues this report and recommendation regarding Article VI, Section 3 of the Ohio Constitution concerning the public school system and boards of education. It is issued pursuant to Rule 8.2 of the Ohio Constitutional Modernization Commission's Rules of Procedure and Conduct.

Recommendation

The committee recommends that no change be made to Article VI, Section 3 of the Ohio Constitution and that the provision be retained in its current form.

Background

Article VI, Section 3 reads as follows:

Provision shall be made by law for the organization, administration and control of the public school system of the state supported by public funds: provided, that each school district embraced wholly or in part within any city shall have the power by referendum vote to determine for itself the number of members and the organization of the district board of education, and provision shall be made by law for the exercise of this power by such school districts.

Article VI of the Ohio Constitution concerns education.

Article VI, Section 3 was one of the constitutional amendments adopted during the Progressive Era, a time of social and political change that reformed multiple institutions, including the public education system.¹ One of 42 amendments proposed by delegates to the 1912 Ohio Constitutional Convention, Article VI, Section 3 created, for the first time, a constitutional, statewide framework for school governance by mandating law that would organize, administer, and control a statewide public school system while allowing city school districts the power by

referendum to organize their own school boards. In a special election held September 3, 1912, Article VI, Section 3 was one of 34 successful proposals to come out of the convention, and was approved by a voting margin of 298,460 to 213,337.²

This section contains two discrete provisions. The first clause deals with state control of the public school system. The second clause gives the voters in city school districts power over the size and organization of local boards of education.

The first clause in the section provides for state supervision of the public schools by stating that “[p]rovision shall be made by law for the organization, administration and control of the public school system * * * .” The culmination of many years of work by supporters of state control of education, the provision also was intended to assure that the power of home rule would be extended to cities (in proposed Article XVIII) and would not be used to undercut state control of education.³ Columbus delegate to the convention, George W. Knight, a professor from Ohio State University and a strong supporter of both the education provision and home rule, in arguing for Section 3, made clear his position that the state, not local government, should control education:

[This provision] must be adopted in order to establish definitely that the state shall for all time, until the constitution is further amended, have complete control over the educational system, and that no city, village or part of territory of the state can withdraw itself, under the guise of a charter, from the public educational system of the state.⁴

At one point during the convention, an earlier version of this provision extended state control to the “public school and educational system of the state[,]” but the reference to “and educational” was dropped to assuage concerns that the provision could give the state too much control over higher education, which at the time consisted of Ohio University, Miami University, and Ohio State University.⁵ In addition, the modification of “public school system of the state,” with the addition of the phrase “supported by public funds,” made clear that the provision did not extend state control to parochial schools.⁶

The work of the convention in centralizing control over education was summarized as follows:

The delegates did not “contemplate taking out of the hands of the local authorities the control and administration of their local schools, but gave to the state beyond any question, the right to fix the standard and the right to organize an entire system, leaving to each local community the determination of the schools in the system.” The vision was “one complete educational system for the schools and all educational institutions supported by public taxation.”⁷

Seeking to emphasize state control over education, convention delegates adopted language that explicitly empowered the General Assembly to make laws governing the public school system. Delegates also sought to eliminate the possibility that cities acting under an expanded home rule power could interfere with the role of the state in controlling education.⁸

Section 3 also gives voters in some, but not all, school districts the power to determine by referendum the number of members and the organization of the district board of education. Voter control of local school districts, however, applies only to school districts “embraced wholly or in part within any city” and thus does not extend to “non-city” school districts. Although the section provides each city school district with the ability to set the number of board members, and to determine the board’s organization, it has not been interpreted as giving the district power to appoint the actual members of the board. *See E. Liverpool Edn. Assn. v. E. Liverpool City School Dist. Bd. of Edn.*, 177 Ohio App.3d 87, 893 N.E.2d 916 (2008).

In an essay written for the Ohio Centennial Anniversary Celebration in Chillicothe on May 20-21, 1903, Lewis Bonebrake identified four categories of school districts: city, township, village, and special. He then described the proliferation of school districts in Ohio, observing that there were 2,437 different districts, of which 66 were city districts, 1,036 were village and special districts, and 1,035 were township districts. The boards of education in city districts ranged from three members in Wooster and Delaware, to 31 in Cincinnati. In some city districts, the boards were elected at large, in some by wards, and in some by both wards and at large. The boards in the township, village, and special districts ranged from three to six members.⁹ As reported by the Ohio School Boards Association, Ohio currently has 613 traditional public school districts, 55 educational service centers, and 49 joint vocational school districts.¹⁰

Delegates to the 1912 Convention were concerned about the size of local school boards, and the inability or unwillingness of school boards to use their power under existing law to address issues concerning their size and their organization. For example, according to George W. Harris, a Cincinnati delegate to the convention, cities of over 50,000 had authority to change (*i.e.*, reduce) the size of school boards only if the local board agreed, but “[t]he larger boards *** refuse to vote themselves out of office * * * .”¹¹ Delegates addressed this issue by requiring that the number of members and the organization of the district board of education could be determined by the voters by referendum. Thus, voters were given an explicit constitutional role in the organization of school boards.

The power of local school districts to determine their size and organization did not, however, extend to all school districts. Earlier versions of the section applied the referendum requirement to all school districts, but some representatives of rural districts objected to the application of the provision to them.¹² To accommodate the rural districts, the second clause was phrased so as to apply only to those districts “embraced wholly or in part within any city.” Thus, the voters in rural school districts that served villages and townships were not given a constitutionally-mandated role in the size and organization of their school boards.¹³

Amendments, Proposed Amendments, and Other Review

In 1977, the Ohio Constitutional Revision Commission (“1970s Commission”) recommended no change to Article VI.¹⁴ Although the 1970s Commission generally reviewed the topic of “Educational Governance,” the substance of the analysis related to Article VI, Section 4, dealing with the state board of education, rather than local boards of education. While the record of the 1970s Commission does not reveal a rationale for maintaining this section in its present form, the 1970s Commission did base at least part of its recommendation for no change on the view that

revision, if needed, could be accomplished through legislative measures rather than by constitutional amendment.¹⁵

Litigation Involving the Provision

Ohio courts have determined that Article VI, Section 3 allows the General Assembly to enact legislation authorizing county boards of education to arrange districts and change boundary lines as long as the county boards do not “act unreasonably or in bad faith in effecting the creation of a new district.” *See Smith v. Bd. of Edn.*, 97 Ohio App. 507, 519-20, 127 N.E.2d 623, 630 (1954). Section 3 has been found to support legislation that would reorganize a school district by requiring an affirmative vote of 55 percent of the vote in the new district unless 75 percent of the voters in any district oppose the reorganization. *See State ex rel. Groh v. Bd. of Edn. of W. Clermont Local Sch. Dist.*, 169 Ohio St. 54, 54, 157 N.E.2d 325, 326 (1959) (syllabus at number 1). Section 3 also has been interpreted to allow the state to create charter schools as part of the state’s program of education. *State ex rel. Ohio Congress of Parents & Teachers v. State Bd. of Edn.*, 111 Ohio St.3d 568, 581, 857 N.W.2d 1148, 1162 (2006) (“By choosing to create community schools as part of the state’s program of education, but independent of school districts, the General Assembly has not intruded on the powers of city school boards.”).

The power of the General Assembly over school districts was summarized by the Ohio Supreme Court in *State ex rel. Core v. Green*, 160 Ohio St. 175, 180, 115 N.E.2d 157, 160 (1953):

[T]he General Assembly has the power to provide for the creation of school districts, for changes and modifications thereof, and for the methods by which changes and modifications may be accomplished, and, where it has provided methods by which changes in school districts may be made, no citizen has a vested or contractual right to the continuation of such methods, and if a particular method is abolished or changed by legislative enactment there can be no basis for a claim that a contractual or vested right is impaired.

Because Article VI, Section 3 does not address when voters may conduct referenda, some litigation has focused on the timing of the referenda guaranteed by the section. The issue of timing came up in 1914, after the General Assembly adopted the Jung Small School-Board Act (hereafter “Jung Act”). The Jung Act classified and organized city school districts and their respective school board members by using three general categories based on population, and by creating a schedule of activities that could delay for two years the referendum on the size and organization of school boards.

In *State ex rel. Ach v. Evans*, 90 Ohio St. 243, 107 N.E. 537 (1914), the Ohio Supreme Court rejected an argument that the time for a vote specified in the Jung Act was unconstitutional. In *Evans*, it was asserted the General Assembly had violated Article VI, Section 3 by permitting as long as a two-year delay before the required referendum vote. Resting on the premise that a statute cannot be held unconstitutional simply because it imposes an objectionable time frame, the court emphasized that the legislature is presumed to have acted in good faith, and that “[t]he mere suggestion by counsel that this necessarily carries a referendum election beyond the time of the first regular November election for members of the school board cannot be used as the basis

of a claim of unconstitutionality. Statutes cannot be held unconstitutional upon the ground that somebody disagrees with the Legislature as to the time at which an act should take effect.” *Id.*, 90 Ohio St. at 247-48, 107 N.E. at 538.

The timing issue arose again in the 1990s in litigation challenging a state statute that organized the Cleveland Municipal School District Board of Education to give the mayor authority to appoint a nine-member board. Previously, the district was governed by a seven-member elected board, but a statute adopted in the wake of desegregation litigation provided for a referendum in the first even-numbered year occurring at least four years after the board appointed by the mayor assumed control of the district. The statute did not refer to the Cleveland district by name, but rather referred to districts under federal desegregation orders (which only included Cleveland).¹⁶

Challenged in both state and federal courts, the statute first was reviewed on the merits by the federal courts. Upholding the statute, the United States Court of Appeals for the Sixth Circuit in *Mixon v. State of Ohio*, 193 F.3d 389 (6th Cir. 1999), focused on the argument that there was a two-year time limit for holding a referendum. Relying on the 1914 Ohio Supreme Court decision in *Evans, supra*, the court held that “the referendum provision did not require that voters approve any legislative change to the organization of the boards of education in Ohio cities before the legislature can enact and implement such changes.” *Id.* at 400-01.

In so ruling, the court interpreted *Evans* as follows:

Evans held that the legislature may make such changes without voter pre-approval so long as it provides the voters with an opportunity at a later date to vote on the changes. *Id.* (“It is obvious that this provision of the Constitution does not require that, before any change shall be made in the old board, a referendum shall be provided determining what change shall be made.”); *see also State ex rel. Core v. Green*, [*supra*] (holding that the legislature may change the organization and control of the public schools without holding an immediate public referendum). Absent a showing of bad faith on the part of the legislature, the court determined that the Jung Bill did not conflict with the referendum provision of the Ohio Constitution because the Jung Bill provided for a referendum within a reasonable time. *See Evans*, 107 N.E. at 538 (“Statutes cannot be held unconstitutional upon the ground that somebody disagrees with the Legislature as to the time at which an act should take effect. The Legislature is presumed to have acted in good faith, and there is nothing in the record to overcome that presumption.”). *Evans* thus implied that the legislature could wait two years before submitting the school district changes to a referendum.

Mixon, supra, at 401.

Finally, the Sixth Circuit noted that Article XVIII, Section 5, another referendum provision that dated back to the 1912 Constitutional Convention, explicitly required a referendum before a challenged ordinance involving public utilities would take effect. The court then concluded as follows:

Had the drafters of the Ohio Constitution wanted a similar express limitation in Article VI, Section 3, it is likely they would have included similar language in that provision. The fact that they did not evinces their intent that discretion regarding the timing of referenda under Article VI, Section 3, should rest with the legislature, which has determined that four years between referenda is acceptable.”

Id.

Similar litigation took place in the Ohio courts, with the Court of Appeals for the Eighth District in *Malcolm-Smith v. Goff*, 8th Dist. Cuyahoga App. No.1999 WL 961495, 1999 Ohio App. LEXIS 4915 (Oct. 21, 1999), rejecting the conclusion and analysis in *Mixon* and instead holding that the four-year delay violated the Ohio Constitution. In so ruling, the court treated the two-year time limit in *Evans* as an outside limit for holding a referendum. The Ohio Supreme Court, however, reversed that decision on the basis of claim preclusion, and did not discuss the merits of the state constitutional issue. See *Malcolm-Smith v. Goff*, 90 Ohio St.3d 316, 738 N.E.2d 793 (2000).¹⁷

Neither the decision of the Sixth Circuit in *Mixon*, nor the reversed decision of the Eighth District Court of Appeals in *Malcolm-Smith*, is binding on Ohio courts; thus *Evans*, though more than a century old, remains the last word from the Ohio Supreme Court on the proper interpretation of the issue of the timing of the referendum under Article VI, Section 3.

Presentations and Resources Considered

Morales Presentation

On January 15, 2015, Stephanie Morales, a member of the Board of Education of the Cleveland Municipal School District, presented to the committee regarding her experiences as a school board member of a large urban school district. According to Ms. Morales, Cleveland’s unique organizational structure, in which board members are appointed by the mayor rather than being elected, has worked well in Cleveland for 17 years because the local community is involved in determining the structure of the board of education. Ms. Morales stated that there is a synergy between the mayor, the superintendent, and the board, which works well. She commented, “Our governing structure creates that synergy. This is why we were able to pass the Cleveland plan. It was unprecedented, and all feel they have a vested interest in what is happening.”

Baker Presentation

On May 14, 2015, Columbus Board of Education president, Gary Baker, II spoke to the committee on the importance of the local board of education for urban school districts. In his remarks, Mr. Baker provided demographic data demonstrating the diversity of his district’s student population, the challenges this diversity brings, and the role the school board has in providing leadership. Mr. Baker noted that Columbus City Schools is the largest school district in the state of Ohio, encompassing approximately 127 square miles, and employing 8,000 staff members. Mr. Baker described the student population, consisting of about 51,000 children, as

being comprised of seven different ethnic groups and nationalities, with the first language for twelve percent of the student population being a language other than English. He said over 83 percent of the district's students are considered economically disadvantaged, while about 14 percent have a disability. Commenting on the transience of the population, Mr. Baker said only one fifth of the students are at the same school for an entire school year. Mr. Baker said the different languages, socio-economic concerns, disabilities, and the mobility of a significant portion of the schools' population, all create challenges the board has had to try to address in order to determine the best way to allocate and provide the resources needed for each child.

Opining on whether the constitutional language is adequately addressing the needs of schools, Mr. Baker said the current system has served well, and that school boards should be elected by those individuals who reside in the district. Mr. Baker added that those who are elected must share a passion for education, must want to improve teaching and learning, and to focus on student achievement. Mr. Baker said control of local districts should reside at the school board level, and that local power should be retained, indicating if people in a district want a hybrid board or one that is appointed, they should have that option. He said he believes the best school board is one that is elected by residents of the district, but flexibility can be important as well.

Germann Presentation

Eric Germann, board member for Lincolnview Local Schools in Van Wert County, presented to the committee on May 14, 2015 regarding the importance of the local board of education for small and rural school districts. He said the local board plays a vital role in shaping, adopting, and enforcing policy. According to Mr. Germann, in his rural district the board levies, collects, and operates on tax revenue, maintains a balanced budget, and engages the community in developing both budget and tax policies. The board also works with economic development groups and business developers to encourage economic development and growth of the wage and tax base. He added that the board also serves as an arbiter for student and employee discipline, and provides a forum for those who wish to petition the governing body for change.

Steele Presentation

On July 9, 2015, Sue Steele, board member of the Great Oaks Institute of Technology and Career Development (Great Oaks), presented on the value of joint vocational schools. Providing statistics for Great Oaks, Ms. Steele stated that Great Oaks educates approximately three thousand high school students per year, plus thousands of other students through adult education programs.

Ms. Steele explained some of the duties of her board, including hiring and budgeting, identifying possible ballot issues, determining policy, and setting and monitoring goals for the district. She further explained that recent statutory changes could result in future board members being appointed rather than elected, and that board members can be term-limited, both changes that could cause a loss of institutional knowledge. She further explained her concern that, if an appointed board member does not live in the district and is not involved in the community, he or she may not be as focused on seeing students succeed. She emphasized that elected board members are held accountable by the public, but an appointee is not.

Haberstroh Presentation

On July 9, 2015, Albert Haberstroh, board member of the Trumbull County Educational Service Center, presented on the value of educational service centers. As provided in Ohio Revised Code Chapter 3312, and according to the Ohio Educational Service Center Association, these centers support efforts to improve school effectiveness and student achievement by assisting districts and families in obtaining educational and other support services. Mr. Haberstroh said his board provides a variety of different types of assistance to the schools and students it serves. For example, board members assist families supporting students with developmental issues, help students locate resources to prepare for college, provide professional development services for teachers, accommodate transportation needs for special education students, and provide support services in a variety of other ways.

Mr. Haberstroh said he prefers an elected board because having to campaign helps ensure that only those with a strong interest will commit themselves to running. As an example, he noted that an elected board member he knows probably would not have been chosen under an appointive system, but she has been a great asset, providing exemplary, personal service to her constituents. He continued that elected board members belong to political organizations, are active in their communities, and donate to neighborhood organizations that are interested in education. Thus, he emphasized, they are vested in their communities and care about outcomes.

Conclusion

Upon review, the committee recognizes that the current state of the law as it has developed around Article VI, Section 3 lends a meaning that could be lost if the section were changed. In addition, the committee finds there is no consensus for changing the section, and no consensus that alternate language could improve it.

Thus, the Education, Public Institutions, and Local Government Committee concludes that Article VI, Section 3 should be retained in its current form.

Date Adopted

After formal consideration by the Education, Public Institutions, and Local Government Committee on October 8, 2015, and _____, 2015, the committee voted to adopt this report and recommendation on _____.

Endnotes

¹ See, e.g., Warner, Hoyt Landon. *Progressivism in Ohio 1897-1917*. Columbus: Ohio State UP, 1964. Print.

² Steinglass, Steven H. and Gino J. Scarselli. *The Ohio State Constitution*. New York: Oxford UP (2nd printing), 2011. Appendix B. Print.

³ See generally O'Brien, Molly and Amanda Woodrum. *The Constitutional Common School*, 51 *Cleve.St.L.Rev.* 581, 634-36 (2004).

⁴ *Proceedings and Debates of the Constitutional Convention of the State of Ohio*. Vol. 2. Columbus: F.J. Heer, 1913. 1500. Print. (hereafter, "*Debates*.")

⁵ *Id.* at 1915-1916.

⁶ *Id.* at 1916.

⁷ O'Brien and Woodrum, *supra*, at 635 (quoting Delegate Knight) (footnotes omitted).

⁸ See *Debates*, at 1929 (Delegate Knight: "Because the municipal home rule proposal which we have passed is so broad that there is a possibility that unless this is adopted the city of Columbus might have power to do a good deal more in the way of control of its educational system than is desirable [that] it should have. It would be inconsistent with the unified public school system of the state.")

⁹ See Bonebrake, Lewis. "The Public Schools of Ohio." *Complete Proceedings, Ohio Centennial Anniversary Celebration at Chillicothe*. Ed. E.O. Randall. Columbus: F.J. Heer, 1903. 389, 399-400. Print.

¹⁰ "Today in Ohio, there are 613 traditional public school districts, 55 educational services centers, and 49 joint vocational school districts providing educational services to students." Remarks to the Ohio Constitutional Modernization Commission by Richard C. Lewis, Executive Director, Ohio School Boards Association (August 8, 2013).

¹¹ *Debates, supra*, at 1500.

¹² "[It] seems that in some portions of the state * * * there is objection to its application to rural school districts." See *Debates* (Delegate Knight), *supra*, at 1915. Delegate Knight then stated that "[a]s a member of the Convention, I have no desire to force a referendum on any people who do not want it. The cities do want it, and I offer an amendment * * *." *Id.*

¹³ See generally *Debates, supra*, at 1914-1915.

¹⁴ Ohio Constitutional Revision Commission, Recommendations for Amendments to the Ohio Constitution, Final Report, June 30, 1977, p.53.

¹⁵ *Id.* at 61.

¹⁶ See R.C. 3311.73.

¹⁷ The required referendum was held on November 5, 2002, and more than 70 percent of Cleveland voters supported a plan that permitted the mayor to make appointments to the Cleveland Municipal School District. The Cleveland Teachers Union and the Cleveland branch of the NAACP supported mayoral control of the board of education. See Cleveland Plain Dealer, Mayoral control of the Cleveland city schools has brought stability but other improvements hard to measure (August 20, 2011). Available at: http://blog.cleveland.com/metro/2011/08/mayoral_control_of_the_clevela.html (accessed May 7, 2015).

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STATE EDUCATION GOVERNANCE MATRIX

Compiled by the National Association of State Boards of Education
(Updated January 2015)

STATE	METHOD OF SELECTION OF STATE BOARD MEMBERS	NUMBER OF VOTING MEMBERS	LENGTH OF TERM	STATE BOARD ESTABLISHED IN STATUTE OR CONSTITUTION	SELECTION OF CHIEF STATE SCHOOL OFFICER	SELECTION OF STATE BOARD CHAIR/ PRESIDENT	AUTHORITY FOR TEACHER LICENSURE	AUTHORITY FOR STANDARDS ADOPTION	SPECIAL NOTES
Alabama	Partisan Ballot	8 plus Gov.	4	Constitution	Appt. by SBE	Governor is President of Board	SBE	SBE	SBE oversees community colleges
Alaska	Appt. by Gov., confirmed by legislature	7	5	Statute	Appt. by SBE, with approval by Gov.	Elected by SBE members	SBE	SBE	: Board appoints one student advisor, and one military advisor is appt. by Alaska Adj. Gen. of the Army; these members vote, but their votes are advisory; : CSSO must have 5 yrs. experience in education, 3 in administration
Arizona	Appt. by Gov., confirmed by Senate	11, including CSSO	4	Constitution	Partisan Ballot	Elected by SBE members	SBE	SBE	: Sits as Vo-Tech board : Requires four lay members : Two members added in 2005: one lay member, one charter school administrator
Arkansas	Appt. by Gov.	9	7	Statute	Appt. by SBE	Elected by SBE members	SBE	SBE	: CSSO serves at the pleasure of the Governor : CSSO must have 10 yrs. teaching experience, including 5 in administration or supervision, and hold state teacher=s certificate
California	Appt. by Gov.	11, including student	4	Constitution	Nonpartisan Ballot	Elected by SBE members	Independent board	SBE	Voting student member (with 1-year term) who has full participation rights
Colorado	Partisan Ballot	7	6 (limited to 2 terms)	Constitution	Appt. by SBE	Elected by SBE members	SBE	SBE	When a vacancy occurs, a new SBE member is appointed by a partisan vacancy committee to fill the remainder of the term.

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Connecticut	Appt. by Gov., confirmed by House and Senate	11	4 (2 non-voting students serve 1-year terms)	Statute	Recommendation by SBE to Gov.	Appt. by Gov.	SBE	SBE	<ul style="list-style-type: none"> : The Commissioner of Higher Education serves as an ex officio, nonvoting member of the board; : Two members must have vo-tech or manufacturing experience
Delaware	Appt. by Gov., confirmed by Senate	7	6	Statute	Appt. by Gov.	Appt. by and serves at the pleasure of the Gov.	Independent board, but its regulatory actions require approval by SBE	SBE	<ul style="list-style-type: none"> : 2 SBE members must have local board experience; : Must be a resident for 5 years in order to sit on board
Florida	Appt. by Gov.	7	4	Constitution	Appt. by SBE	Elected by SBE members	SBE	SBE	<ul style="list-style-type: none"> : Commissioner of Ed. serves on Board of Governors for the state university system; : SBE oversees community colleges
Georgia	Appt. by Gov.	13	7	Constitution	Partisan Ballot	Elected by SBE members	Independent board	SBE	SBE members must be
Hawaii	Appt. by Gov., confirmed by Senate	9	7	Constitution	Appt. by SBE	Elected by SBE members	Independent board	SBE	<ul style="list-style-type: none"> : Board changed from elected to appointed in 2011; : Nonvoting student and military rep.
Idaho	7 Appt. by Gov.; CSSO also serves on SBE	8	5	Constitution	Partisan Ballot	Appt. by and serves at the pleasure of the SBE	SBE	SBE	<ul style="list-style-type: none"> : SBE is also Board of Regents for Univ. of Idaho and governs all state higher ed. institutions : SBE oversees community colleges

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Illinois	Appt. by Gov.	9	4 (limited to 2 terms)	Constitution	Appt. by SBE	Appt. by Gov.	SBE	SBE	Requirements for regional and political balance on board
Indiana	10 members appt. by Gov., plus elected State Superintendent	11	4	Statute	Partisan Ballot	State Supt. serves as chair	Licensing authority is now with Dept. of Ed., with advisory licensing board	SBE	: 4 members must be educators : Political balance is required : \$2,000 per year for state board members
Iowa	Appt. by Gov.	9	6	Statute	Appt. by Gov.	Elected by SBE members (2-year term)	Independent board	SBE	: One nonvoting student member, : SBE oversees community colleges
Kansas	Partisan Ballot	10	4	Constitution	Appt. by SBE	Elected by SBE members (2-year term)	SBE	SBE	
Kentucky	Appt. by Gov., confirmed by Senate	11	4	Statute	Appt. by SBE	Elected by SBE members	Independent board	SBE	: President of Council on Postsecondary Ed. is nonvoting ex officio member; : Board members must be resident for 3 years, at least 30 years old, and hold a 2-year Associate degree; : Governor appoints Secretary of Education
Louisiana	8 elected by nonpartisan ballot; 3 appt. by Gov.	11	4	Constitution	Appt. by SBE	Elected by SBE members	SBE	SBE	
Maine	Appt. by Gov.	9	5	Statute	Appt. by Gov.	Elected by SBE members	SBE	CSSO & SBE	Two non-voting student members added in 2008

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Maryland	Appt. by Gov.	12 incl. student member	4 (term limit of 2 4-year terms)	Statute	Appt. by SBE	Elected by SBE members	Shared responsibility between SBE and separate licensure board	SBE	<ul style="list-style-type: none"> : Voting student member, which is a one-year appointment by the Gov. : CSSO must have 7 yrs. teaching experience and administration experience
Massachusetts	6 appt. by Gov.; 4 voting ex officio members, 1 student	11 incl. student member	5	Statute	Appt. by SBE	Appt. by Gov.	SBE	SBE	<ul style="list-style-type: none"> : Legislation in 2008 created a Secretary of Education to coordinate the work of the K-12, early childhood, and higher education boards; : The legislation also added two members to the K-12 board, as well as the Secretary of Education
Michigan	Partisan ballot	8	8	Constitution	Appt. by SBE	Elected by SBE members	SBE	SBE	<ul style="list-style-type: none"> : Gov. is ex officio member of the board; : State teacher of the year is a nonvoting advisor to the board; : SBE oversees community colleges
Minnesota	None			None	Appt. by Gov.		Independent board	CSSO	State Board existed by statute, but was abolished by legislature as of Dec. 31, 1999
Mississippi	5 appt. by Gov. 4 appt. by Leg.	9	9	Constitution	Appt. by SBE	Elected by SBE members	SBE	SBE	<ul style="list-style-type: none"> : Lt. Gov. and speaker of the house each appoint 2 members; : CSSO must have 5 yrs. administrative experience
Missouri	Appt. by Gov. with consent of Senate	8	8	Constitution	Appt. by SBE	Elected by SBE members	SBE	SBE	Authority over university and other community college system teacher education programs

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Montana	Appt. by Gov.	7	7	Constitution	Partisan ballot	Elected by SBE members	SBE	SBE	<ul style="list-style-type: none"> : Nonvoting student member has 2-year term; : Gov., commissioner of higher ed., and state supt. are nonvoting ex officio members of SBE; : K-12 Board of Public Ed. and Board of Regents meet together as "State Board of Education"
Nebraska	Nonpartisan Ballot	8	4	Constitution	Appt. by SBE	Elected by SBE members	SBE	SBE	Teachers, state officials or candidates, and nonresidents are not eligible for board membership
Nevada	4 elected 3 appointed by Gov.	7	4	Statute	Appt. by Gov. from 3 nominees provided by SBE	Elected by SBE members	Independent board	SBE	<ul style="list-style-type: none"> : Nonvoting student member : 2011 law reconstituted SBE into mix of elected and appointed members
New Hampshire	Appt. by Gov., confirmed by Executive Council	7	4	Statute	Appt. by Gov. after consulting SBE, confirmed by Council	Named by Gov. for 1-year term	SBE	SBE	Gov. and Executive Council appoint SBE
New Jersey	Appt. by Gov.	13	6	Statute	Appt. by Gov.	Elected by SBE members	SBE	SBE	<ul style="list-style-type: none"> : 3 members of SBE must be women : Resident for 5 yrs. to sit on board
New Mexico	None			None	Appt. by Gov		Independent board	Department of Education	2003 Constitutional amendment reconstituted SBE as the Public Education Commission (PEC), which is advisory to the Secretary of Ed. The PEC is the authorizer of all charter schools in the state.

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New York	Appt. by Legislature	16	5	Constitution and Statute	Appt. by SBE	Elected by SBE members	SBE	SBE	Responsible for higher education, cultural institutions, special education./vocational rehabilitation, and licensed professions
North Carolina	11 appt. by Gov., approved by joint session of House and Senate; 2 voting ex officio members: State Treasurer and Lt. Gov.	13	8	Constitution	Partisan Ballot	Elected by SBE members	SBE	SBE	7 nonvoting advisors: <ul style="list-style-type: none"> • 2 students • 2 Teachers of the Year • 1 Principal of the Year • 1 local superintendent • 1 local board member
North Dakota	6 Appt. by Gov. plus CSSO.	7	6	Statute	Nonpartisan Ballot	Elected by SBE	Independent board	CSSO	
Ohio	11 elected by Nonpartisan Ballot; 8 appt. by Gov	19	4	Constitution	Appt. by SBE	Elected by SBE members (2-year term)	SBE	SBE	Separate board for higher education; 2 ex officio members (nonvoting)
Oklahoma	Appt. by Gov.	7	4, serve at pleasure of gov.	Constitution	Partisan Ballot	State Supt. serves as chair	SBE	SBE	2 SBE members are ex officio voting members of the State Board of Career and Technology Education
Oregon	Appt. by Gov.	7	4 (2 term limit)	Statute	Appt. by Education Investment Board	Elected by SBE members	Independent board	SBE	2011 law created the Oregon Education Investment Board, a P-20 coordinating body with gov. serving as chair; currently 1 SBE member also serves on the Education Investment Board
Pennsylvania	Appt. by Gov., confirmed by Senate	21	6	Statute	Appt. by Gov.	Appt. by Gov.	SBE	SBE	: Statutory responsibility for post-secondary education; : In 2008, four nonvoting students were added (2 for K-12, 2 for higher ed), who serve first year as member-elect, second year as member
Rhode Island	Appt. by Gov., confirmed by	11	3 (limited)	Statute	Appt. by SBE	Appt. by Gov. (Gov. also	SBE	SBE	New for 2013: A state law combined the boards for K-12 and higher education

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	Senate		to two 3-year terms)			appoints vice-chair)			into one board appointed by the governor
South Carolina	Appt. by Legislature	17	4	Constitution	Partisan Ballot	Elected by SBE members	SBE	SBE	Legislative delegations elect 16 SBE members, Gov. appoints 1 SBE member
South Dakota	Appt. by Gov.	9	4	Statute	Appt. by Gov.	Elected by SBE members	SBE	SBE	SBE has jurisdiction over state's four technical institutes
Tennessee	Appt. by Gov., confirmed by General Assembly	10, incl. student member	5	Statute	Appt. by Gov.	Elected by SBE members (4-year term)	SBE	SBE	: Voting student member (1-yr. term); : Board selects Executive Director; : Serves as State Board for Vocational Education
Texas	Partisan Ballot	15	4	Constitution	Appt. by Gov.	Appt. by Gov. (2-year term)	Independent board	SBE	
Utah	Nonpartisan Ballot	15	4	Constitution	Appt. by SBE	Elected by SBE members	SBE	SBE	SBE has six nonvoting members: two representing the State Board of Regents and one each representing the Coalition of Minorities Advisory Committee, the Utah School Boards Association, the state Charter School Board, and Utah College of Applied Technology
Vermont	Appt by Gov. and approved by the Senate	9, incl. student member	6 (limited to 1 term)	Statute	Appt. by Gov. from 3 nominees provided by SBE (as of January 2013)	Elected by SBE members (2-year term)	Independent board	SBE	2nd student member is nonvoting, a junior who moves to the voting position the next year.
Virginia	Appt. by Gov.	9	4	Constitution	Appt. by Gov.	Elected by SBE members	SBE	SBE	
Washington	5 elected by local school board members; 7 appt. by Gov. and confirmed by Senate; 1 elected by private schools; State Supt.	14 limited to 2 terms (CSSO excepted); 2 nonvoting students	4 (students serve 2 years, starting as junior)	Statute	Nonpartisan Ballot	Elected by SBE members	Independent board	CSSO	: Legislation passed in 2005 reconstituted board for 2006; : Private school rep. and CSSO have full voting rights; : For school board representatives, 3 are from western part of state, and 2 from eastern part

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West Virginia	Appt. by Gov. and approved by Senate	9	9	Constitution	Appt. by SBE	Elected by SBE members	SBE	SBE	: Three nonvoting ex officio members: CSSO, chancellor of higher education, and chancellor of community and technical college education; : No more than 5 SBE members can be from same political party
Wisconsin	None			None	Nonpartisan Ballot		CSSO, advised by a Professional Standards Council	CSSO	
Wyoming	Appt. by Gov.	11	6 (limited to 1 term)	Statute	Partisan Ballot	Elected by SBE members	Independent board	SBE	: Meets quarterly; : Reviews all school accreditation compliance for approval or disapproval
District of Columbia	Nonpartisan ballot	9	4	Statute	Chancellor and CSSO are appt. by mayor	Elected by voters at-large		SBE	: Board, previously both state and local, reconfigured solely as state board of education in 2007; : 2 nonvoting student members
Guam	6 elected at-large; 3 appointed by Gov., 1 voting student	10 (including student)	3 years for appointed, 2 for elected	Statute	Appt by SBE	Elected by SBE members			One each of the 3 appointed members must represent business, parents of students, and retired teachers or school administrators
Northern Marianas	Elected	5	4	Constitution	Appt. by SBE	Elected by SBE members			3 nonvoting members (including 1 student, 1 teacher, and 1 private school representative) are appointed by the Governor

Compiled by the National Association of State Boards of Education, updated January 2015 by Jared Costanzo.

We are aware that there are often changes to state governance structures. Please help keep policymakers and the education community informed: when changes occur in your state, contact Francis Eberle at FrancisE@NASBE.org

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OHIO CONSTITUTIONAL MODERNIZATION COMMISSION

Remaining 2015 Meeting Dates

November 12

December 10

2016 Meeting Dates (Tentative)

January 14

February 11

March 10

April 14

May 12

June 9

July 14

August 11

September 8

October 13

November 10

December 8