



OHIO CONSTITUTIONAL MODERNIZATION COMMISSION

Ohio Constitutional Modernization Commission

Co-Chair

Sen. Charleta B. Tavares
Assistant Minority Leader

Co-Chair

Rep. Jonathan Dever
House District 28

Part I

Agenda

Commission and Committee Minutes

June 8, 2017

Ohio Statehouse
Room 313

Ohio Constitutional Modernization Commission

Co-chair	Sen. Charleta Tavares
Co-chair	Rep. Jonathan Dever
	Ms. Janet Abaray
	Mr. Herb Asher
	Mr. Roger Beckett
	Ms. Karla Bell
	Ms. Paula Brooks
	Rep. Kathleen Clyde
	Mr. Douglas Cole
	Sen. Bill Coley
	Rep. Hearcel Craig
	Rep. Robert Cupp
	Ms. Jo Ann Davidson
	Justice Patrick Fischer
	Mr. Edward Gilbert
	Rep. Glenn Holmes
	Mr. Jeff Jacobson
	Sen. Kris Jordan
	Mr. Charles Kurfess
	Rep. Robert McColley
	Mr. Fred Mills
	Mr. Dennis Mulvihill
	Sen. Bob Peterson
	Mr. Richard Saphire
	Sen. Michael Skindell
	Sen. Vernon Sykes
	Gov. Bob Taft
	Ms. Pierrette Talley
	Ms. Kathleen Trafford
	Mr. Mark Wagoner



OHIO CONSTITUTIONAL MODERNIZATION COMMISSION

COMMISSION MEETING

THURSDAY, JUNE 8, 2017

1:00 P.M.

OHIO STATEHOUSE ROOM 313

AGENDA

- I. Call to Order
- II. Roll Call
- III. Approval of Minutes
 - Commission Meeting of May 11, 2017
[Draft Minutes – attached]
 - Committee Meetings of May 11, 2017
[Draft Minutes – attached]
- IV. Subject Matter Committee Reports
 - Constitutional Revision and Updating Committee (Mulvihill)
 - Education, Public Institutions, and Local Government Committee (Gilbert)
 - Judicial Branch and Administration of Justice Committee (Abaray)
 - Finance, Taxation, and Economic Development Committee (Cole)
 - Legislative Branch and Executive Branch Committee (Mills)
 - Bill of Rights and Voting Committee (Sapphire)

V. Standing Committee Reports

- Organization and Administration Committee (Wagoner)
- Public Information and Liaisons with Public Offices Committee (Beckett/Asher)
- Coordinating Committee (Trafford)

VI. Reports and Recommendations

Presentation and Possible Vote

- Article VII, Section 1 (Support for Persons with Certain Disabilities) (Gilbert)
 - Review of Report and Recommendation
 - Public Comment
 - Discussion
 - **Possible Action Item: Consideration and Adoption**

[Report and Recommendation – attached]

- Article VII, Sections 2 and 3 (Directors of Public Institutions) (Gilbert)
 - Review of Report and Recommendation
 - Public Comment
 - Discussion
 - **Possible Action Item: Consideration and Adoption**

[Report and Recommendation – attached]

- Recommendation for Gender Neutral Language (Trafford)
 - Review of Report and Recommendation
 - Public Comment
 - Discussion
 - **Possible Action Item: Consideration and Adoption**

[Report and Recommendation – attached]

- Article II, Sections 1 through 1i, 15 and 17 (Constitutional Initiative, Statutory Initiative, and the Referendum) (Mulvihill)
 - Review of Report and Recommendation
 - Public Comment
 - Discussion
 - **Possible Action Item: Consideration and Adoption**

[Report and Recommendation – attached]

VII. Old Business

- Article V, Section 6 (Mental Capacity to Vote)(Jacobson/Bell)

VIII. New Business

- State Treasurer Debt Reporting Obligations (Cole)

IX. Executive Director's Report

X. Co-chairs' Report

XI. Public Comment

XII. Adjourn

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



Co-Chair
Jonathan Dever
28th House District

OHIO CONSTITUTIONAL MODERNIZATION COMMISSION

MINUTES FOR THE MEETING HELD THURSDAY, MAY 11, 2017

Call to Order:

Co-chair Charleta Tavares called the meeting of the Ohio Constitutional Modernization Commission (“Commission”) to order at 1:03 p.m.

Members Present:

A quorum was present with Commission Co-chairs Tavares and Dever, and Commission members Abaray, Asher, Beckett, Bell, Brooks, Clyde, Cole, Craig, Cupp, Davidson, Fischer, Gilbert, Holmes, Jacobson, Jordan, Kurfess, Mills, Mulvihill, Peterson, Sapphire, Skindell, Sykes, Taft, Talley, and Trafford in attendance.

Approval of Minutes:

The minutes of the April 13, 2017 meeting were approved.

Reports and Recommendations:

Co-chair Dever began the meeting by announcing that Ed Gilbert, who has served as the vice-chair of the Education, Public Institutions, and Local Government Committee, has now been appointed to chair of that committee due to the departure of Chad Readler.

Co-chair Dever then announced the Commission would be receiving presentations on several reports and recommendations, recognizing Richard Sapphire, chair of the Bill of Rights and Voting Committee, for a first presentation on a report and recommendation from that committee.

Article V, Section 2 (Election by Ballot)

Mr. Sapphire summarized the report and recommendation as providing an explanation of the general background of the section, which requires elections to be by ballot. He indicated that the committee had discussed adding the word “secret” to the requirement in order to embed in the constitution the concept of a secret ballot – a concept that is well-established in Ohio case law.

He said the committee ultimately concluded it was not necessary and could create confusion to add the word “secret,” and so the committee’s report recommends retaining the section in its current form.

There being no comment or discussion on the recommendation, Co-chair Dever noted that, because the recommendation is for no change, a vote may be taken after a first presentation. He called for a motion to adopt the report and recommendation. Representative Hearcel Craig so moved, with Commission member Jo Ann Davidson seconding the motion.

A roll call vote was taken with the following votes recorded:

Co-chair Dever – yea
Abaray – yea
Beckett – yea
Bell – yea
Brooks – yea
Clyde – yea
Cole – yea
Craig – yea
Cupp – yea
Davidson – yea
Fischer – yea
Gilbert – abstain
Holmes – yea
Jacobson – yea
Kurfess – yea
Mills – yea
Mulvihill – yea
Saphire – yea
Skindell – yea
Taft – yea
Talley – yea
Trafford – yea

The motion passed by a vote of 21 in favor, with one abstention, and eight absent.

Article VII, Section 1 (Support for Persons with Certain Disabilities)

Co-chair Dever then recognized Ed Gilbert, Chair of the Education, Public Institutions, and Local Government Committee, for the purpose of providing a first presentation of a report and recommendation for Article VII, Section 1, relating to support for persons with disabilities.

Mr. Gilbert asked Christopher Gawronski, legal intern, to summarize the report and recommendation. Mr. Gawronski described that the report recommends that Section 1 be changed to read:

Facilities for and services to persons who, by reason of disability, require care or treatment shall be fostered and supported by the state, as may be prescribed by the General Assembly.

He continued that the report describes the background of the section, and outlines the committee's discussion of the topic, including reference to the testimony heard by the committee from experts in the field of mental health and disabilities. He said report concludes that the section should be modernized by removing objectionable language and clarifying the state's responsibility with regard to people who are in need of assistance.

Co-chair Dever invited comments or discussion regarding the report. There being none, Co-chair Dever announced that the report and recommendation would be subject to a second presentation and possible vote at the Commission's next meeting. He asked that anyone who would like to hear from speakers on the topic to notify the committee chair or the co-chairs.

Article VII, Sections 2 and 3 (Directors of Public Institutions)

Co-chair Dever continued to recognize Mr. Gilbert for the purpose of providing a first presentation of a report and recommendation for Article VII, Sections 2 and 3, relating to directors of public institutions. Mr. Gilbert again asked Mr. Gawronski to assist.

Mr. Gawronski summarized the report and recommendation as concluding that Sections 2 and 3 should be repealed because they no longer have a function in how directors of state institutions are selected. He said the report describes the committee's discussion relating to the sections, and the basis for its conclusion that the sections are obsolete and appropriately would be repealed.

Co-chair Dever invited comments or discussion regarding the report. There being none, Co-chair Dever announced that the report and recommendation would be subject to a second presentation and possible vote at the Commission's next meeting. He asked that anyone who would like to hear from speakers on the topic to notify the committee chair or the co-chairs.

Recommendation for Gender Neutral Language

Co-chair Dever then recognized Kathleen Trafford, chair of the Coordinating Committee, for the purpose of providing a first presentation on a report and recommendation relating to the removal of gender-specific language from the Ohio Constitution.

Ms. Trafford summarized the report as indicating the committee's view that gender-specific pronouns and other references in the constitution should be identified and replaced with gender neutral language. She said the report describes that the Constitutional Revision Commission in the 1970s briefly considered the topic but concluded there was no demonstrated need to make a change. She said the committee received presentations from Senior Policy Advisor Steven H. Steinglass, as well as staff, on the topic, and learned that at least ten other states have taken measures to remove such language from their constitutions. She said the report describes the different approaches for modernizing constitutions in this way before concluding that the identification and removal of gender-specific references in the constitution is a task that the Legislative Service Commission could accomplish.

Co-chair Dever invited comments or discussion regarding the report. There being none, Co-chair Dever announced that the report and recommendation would be subject to a second presentation and possible vote at the Commission's next meeting. He asked that anyone who would like to hear from speakers on the topic to notify the committee chair or the co-chairs.

Article II, Sections 1 through 1i, 15 and 17 (Constitutional Initiative, Statutory Initiative, and the Referendum)

Co-chair Dever then recognized Dennis Mulvihill, chair of the Constitutional Revision and Updating Committee, to present for the first time a report and recommendation related to that committee's review of the initiative and referendum process.

Mr. Mulvihill began by thanking Shari L. O'Neill, interim executive director and counsel, and Steven H. Steinglass, senior policy advisor, for their work assisting the committee. He also thanked committee members, particularly noting the success of the committee in leaving partisan politics out of the meetings. He said the committee has made policy judgments, but that they were made in the spirit of preserving the people's right to use ballot initiatives, and did require some give and take among the members. He said, in aggregate, the committee's work reflects the collective wisdom of those judgments and those compromises.

Describing the existing sections of Article II, Mr. Mulvihill said the initiative and referendum provisions contain some of the most confusing and difficult-to-understand language in the constitution. He said the committee's work has been to modernize, streamline, and clear out the density contained in those current provisions.

He continued that the committee has reorganized and rewritten the sections to accomplish its goals. He said the recommendation is the result of four-and-a-half years, during which the committee heard dozens of presentations, received much public comment and input, and had strong bipartisan support for the changes. He said the recommendations were approved by the committee in a unanimous vote.

He said, from the outset, the committee was committed to protecting the strong history of provisions that allow Ohioans the right to initiate laws and constitutional amendments. At the same time, he said, "we have 105 years of history to see what has worked and what has not."

Summarizing the committee's work, Mr. Mulvihill said the committee had a sense the constitutional initiative has been abused over the years, while the statutory initiative has been underutilized. He observed that, since 1913, there have been 69 citizen-initiated constitutional amendments submitted to the voters, with 14 in the last 16 years. He said, of the 69, 18 were approved by the voters, or 26 percent of the time, with the General Assembly having 154 submitted to voters, with 106 approved, for a total of 68.8 percent. He noted that Ohio currently has the tenth longest state constitution in the country, in terms of the number of words.

Since 1913, he said there have only been 12 statutory initiatives submitted to the voters, with only three passing, and only one since 1949. He explained that this means that when the initiative process is used, 85 percent of the time the petitioners use the constitutional route. He said this has resulted in many concepts being implanted, or attempted to be implanted, in the constitution that would be better served being in the Ohio Revised Code.

Mr. Mulvihill said the committee concluded that the most obvious reason for the discrepancy between the over-used constitutional initiative and the under-used statutory initiative is the existence of the supplementary petitions and the lack of protection to initiated laws against interference by the General Assembly.

He said the committee's philosophy was that the state constitution exists to establish the basic framework of government; that there are three branches of government and their relationship to one another; the relationship between state and local governments; and the relationship between citizens and government, primarily through the Bill of Rights.

He continued that what have emerged lately are initiated amendments to the constitution that are inconsistent with the purpose of the constitution. He said, without commenting on the merits of any of these items, but only their placement or attempted placement in the constitution, there has been a trend of placing in the constitution topics such as casino gaming, including the specific land plots for that purpose, age limits for judicial office, smoking bans, minimum wage, treatment in lieu of incarceration for drug offenders, and marijuana legalization, including reference to specific land plots.

He said irrespective of whether someone would support or oppose any of these issues, the committee felt these kinds of initiatives do not really belong in the constitution but rather in the Revised Code. So, he said, the committee's work, in addition to modernizing and making the provisions readable and understandable, was designed to encourage petitioners to take the statutory, rather than the constitutional, route when undertaking the initiative process.

He said the committee also had a goal of reducing the influence of politics and political gamesmanship that occasionally impair the abilities of citizens to get their petitions to the ballot.

He summarized the recommendations as follows:

- Making the sections largely self-executing, consistent with explicit wishes of the 1912 commission;
- Making the statutory initiative more user-friendly by eliminating the supplementary petition and by creating a safe-harbor provision protecting those initiated statutes from amendment or repeal from the General Assembly for five years, absent a 2/3 super majority vote in each house of General Assembly;
- Decreasing the number of signatures required to initiate a statute from six percent (assuming the supplementary petition was needed) to five percent;
- Creating constitutional authority for the initial 1,000 signature petition, submitted to the attorney general, a requirement presently in the Revised Code;
- Creating constitutional authority for the determination by the attorney general that the summary of the initiative or referendum is fair and truthful;
- Requiring initiatives to use gender-neutral language, where appropriate;
- Providing that the one amendment rule applies to both initiated constitutional amendments and legislatively initiated amendments;
- Increasing the passing percentage for constitutional amendments from 50 to 55 percent;
- Permitting initiated constitutional amendments to be on the ballot in even years only, when more people actually vote;

- Providing clarity by specifying dates when proposed statutory and constitutional initiatives can be submitted, and when the attorney general, secretary of state, and ballot board must complete their work;
- Permitting the General Assembly to modernize the signature-gathering process by using electronic signatures;
- Front end loading the work on the ballot board by requiring it to draft the ballot language and title after the petitioners submit the 1,000 signatures to the attorney general, but before the petitioners gather the hundreds of thousands of signatures that are required;
- Allowing the petitioners to suggest ballot language and the title to the ballot board;
- Allowing the petitioners to appeal to the Supreme Court at any time during the process if they are dissatisfied with a ruling from the attorney general, secretary of state, or ballot board; and,
- Retaining the historic role of the attorney general, the secretary of state, and the ballot board in managing the initiative process.

Mr. Mulvihill said the committee recognizes that not all Commission members will like each of the proposed changes. However, he said, the committee strongly believes that, on balance, the suggested changes create a far superior, fairer, and more transparent process for statutory and constitutional initiatives; protect the rights of petitioners to bring their ideas to the voters and reduce the potential for political interference with that right; allow constitutional amendments to be considered by more voters, knowing the significant drop-off between even and odd year elections; and encourage petitioners to use the statutory process, rather than placing in the constitution issues that belong in statutory law.

Mr. Mulvihill said the committee considers the proposals to be in compliance with the single subject requirement because the subject would be “reforming the initiative process.” He noted that the committee approved last-minute amendments to the re-write of the initiative and referendum sections from committee member Senator Vernon Sykes, and the amendments were unanimously approved. However, he said, those amendments were not to the report and recommendation and they do not substantively change the recommendations described by Mr. Mulvihill.

Co-chair Dever invited comments or discussion regarding the report. There being none, Co-chair Dever announced that the report and recommendation would be subject to a second presentation and possible vote at the Commission’s next meeting. He asked that anyone who would like to hear from speakers on the topic to notify the committee chair or the co-chairs.

Article I, Section 10 (The Grand Jury)

Co-chair Dever recognized Janet Abaray, chair of the Judicial Branch and Administration of Justice Committee, to provide a first presentation of a report and recommendation related to the grand jury portion of Article I, Section 10.

Ms. Abaray said the committee is recommending two changes to the grand jury procedure in Ohio. She said the first change is for language indicating that whenever a grand jury is empaneled, there would be an independent counsel appointed by the court to advise the grand jury on matters before it, with independent counsel being selected from among persons admitted to the practice of law in Ohio.

Ms. Abaray said the other change would require the preparation of a record of all grand jury proceedings, and would afford the accused a right to the record of testimony of any witness who is called to testify at trial. She said the recommended language also states that provision may be made by law regulating the form of the record and the process of releasing any part of the record.

She said the changes were the result of deliberations in her committee over the course of the past two years, noting the decision to address the grand jury process originated with a letter from Senator Sandra Williams in which she raised concerns about the prosecution of cases involving officer-involved shootings. She said that letter was referred to the committee by Supreme Court Chief Justice Maureen O'Connor, upon which the committee began an investigation of the grand jury process. She said the committee considered a wide spectrum of proposals, ranging from making no changes to eliminating the grand jury entirely and going with a preliminary hearing process that is used in some other states.

She said one question they discussed was the importance of secrecy in the grand jury process, and whether there is a way to improve the process so as to increase public confidence while also protecting any benefits that are obtained by maintaining secrecy. She said committee members expressed that it was important for the accused, particularly for those wrongly accused, to retain secrecy so that their reputations would remain intact if there was no reason to prosecute. She said, at the same time, they recognized that the public has had distrust in the grand jury in some high-profile situations, and they also found there is a lot of variability in what happens during grand jury proceedings. She noted the disconnect between the secrecy of the grand jury proceeding and the requirements of transparency and accountability in a democratic system.

Describing the presentations to the committee, Ms. Abaray said the committee heard from prosecutors, public defenders, and professors on this topic. She said in the course of the committee's review, it learned about the system in Hawaii in which they have a grand jury legal advisor as mandated by their constitution. She added that one important aspect of the grand jury is that it is both a jury and an investigative body that is utilized by the prosecution in conducting an investigation. She said this hybrid nature of the grand jury requires a balance of all of the powers and rights involved. She said the committee discussed incidents in which prosecutors have abused the investigatory function of the grand jury. She said a majority of the committee concluded that it would be useful to have a grand jury legal advisor, which would be a person appointed by the court to be present during the grand jury's review of the evidence. She described that person as an arm of the court who would be present to give information on legal issues, answer questions from the jurors, and be a neutral resource. She said the committee's review focused on ways to protect the grand jury's independent function so that jurors are not overly persuaded by the prosecutor to the point that they lose their objectivity. She said they heard from a grand jury legal advisor in Hawaii who reported that it is a smooth process there that has been in place over 40 years.

Ms. Abaray commented on one proposal that suggested approaching cases involving law enforcement or public officials differently from other criminal investigations by having the attorney general prosecute those cases, for example. She said that proposal was seen as problematic because it could raise some equal protection or due process issues. Thus, she said, the conclusion was that the grand jury legal advisor idea was a more comprehensive and less intrusive approach.

As to the transcript recommendation, she said there was much discussion about the value of the transcript to the accused. She said they learned that there is no requirement that grand jury testimony be transcribed, so there is often no transcript created. As a result, she said, the accused at trial does not have the ability to see if there are inconsistencies that might be of value to the defense. The committee heard presentations suggesting that the availability of transcripts would have a chilling effect on the willingness of witnesses to come forward. She said the committee was sensitive to that issue, and therefore the committee's recommendation has limited the proposal to witnesses who also will testify at trial.

She said committee members felt the recommendations were pinpointed and precise, and represented a compromise when compared with a proposal to eliminate the grand jury altogether. She said the committee voted seven to one to recommend the changes set out in the report and recommendation.

Co-chair Dever having left the meeting, Co-chair Tavares invited comments or discussion regarding the report.

Mr. Gilbert asked whether the legal advisor would be an employee of the court. Ms. Abaray answered that the legal advisor would not be affiliated with the prosecutor but would be appointed by the court, and paid by the state as an employee or consultant.

Commission member Doug Cole asked how many grand juries are seated in an average year. Ms. Abaray answered that in the major cities grand juries sit frequently, but in the smaller counties they may only sit once a month. She said the major cities probably would have a full-time need for a grand jury legal advisor, but that other locations would not.

Co-chair Tavares announced that the report and recommendation would be subject to a second presentation and possible vote at the Commission's next meeting. She asked that anyone who would like to hear from speakers on the topic to notify the committee chair or the co-chairs.

Standing Committee Reports:

Coordinating Committee

Kathleen Trafford, chair of the Coordinating Committee, reported that the committee met earlier and had approved all of the reports being presented to the Commission.

Subject Matter Committee Reports:

Constitutional Revision and Updating Committee

Dennis Mulvihill, chair of the Constitutional Revision and Updating Committee, indicated he had nothing further to report to the Commission.

Education, Public Institutions, and Local Government Committee

Education, Public Institutions, and Local Government Committee Chair Edward Gilbert reported that he had nothing further to report to the Commission.

Judicial Branch and Administration of Justice Committee

Janet Abaray, chair of the Judicial Branch and Administration of Justice Committee, said the committee plans to discuss the topic of civil asset forfeiture at its next meeting.

Finance, Taxation, and Economic Development Committee

Doug Cole, chair of the Finance, Taxation, and Economic Development Committee, reported that the committee discussed making a recommendation about constitutionalizing the treasurer's debt reporting function. He acknowledged that no final recommendation will be possible, but a report documenting a sense of the committee will be forthcoming.

Bill of Rights and Voting Committee

Richard Sapphire, chair of the Bill of Rights and Voting Committee, reported that the committee will be providing a summary report on what has been discussed but not recommended by the committee.

Legislative Branch and Executive Branch Committee

Fred Mills, chair of the Legislative Branch and Executive Branch Committee, reported that reapportionment and redistricting was discussed again, but that the committee will not be making a recommendation on that issue.

Executive Director Report:

Co-chair Tavares recognized Ms. O'Neill for the purpose of providing an executive director's report. She indicated staff has prepared revised meeting minutes for 2013 through mid-2014, the period before staff came on board. She said the revisions are intended to standardize the format and make needed additions and corrections, and will supplement the record from that period. Ms. O'Neill said the minutes are available for signing by committee chairs and vice-chairs, and also would be available at the next meeting of the Commission.

Ms. O'Neill acknowledged the invaluable assistance of Mr. Gawronski in providing research and writing, as well as staffing committee meetings. She thanked Mr. Gawronski as well as all of the interns who have helped the Commission for their work, indicating it has been a privilege to get to know and work with them.

Finally, Ms. O'Neill announced that two staff members, communications director Shaunte Russell, and administrative assistant Jennie Long, have accepted job offers and will be departing at the end of the month. Ms. O'Neill thanked them for all they have done to make Commission meetings a success, particularly noting Ms. Long's assistance in setting up all of the meetings every month and Ms. Russell's design and maintenance work on the Commission's website. Ms.

O'Neill asked that the Commission join her in wishing them well in their next endeavors, and Commission members offered applause in appreciation for their work.

Old Business:

Co-chair Tavares commented on the departure of two staff members while noting that additional work is still needed before the Commission shuts down. She said the co-chairs will again discuss increasing Ms. O'Neill's pay to account for her new position as executive director and covering two jobs. Co-chair Tavares also mentioned the need to obtain assistance for Ms. O'Neill to make up for the loss of staff members.

Remarking on the overall organization of the Commission, Co-chair Tavares noted the difficulties resulting from having the Commission co-chaired by legislators, who often have time conflicts arising from their legislative duties. She said it would have been her recommendation to have the Commission co-chaired by public members.

Adding to Co-chair Tavares' remarks, Senator Mike Skindell recommended making Ms. O'Neill's pay raise retroactive to the time she took on the executive director role and not just going forward. Co-chair Tavares agreed and said they will consider that recommendation.

Co-chair Tavares recognized Mr. Sapphire, who announced his intention to raise the issue of Article V, Section 6 (Mental Capacity to Vote) at the June Commission meeting for additional consideration. In response, Mr. Gilbert expressed concern about how, procedurally, a report previously voted on could be brought back. He said he felt the entire issue had been fully discussed and the matter was closed. Mr. Sapphire said he recognized a potential procedural issue, and asked for the co-chairs to examine that question at the next meeting.

Co-chair Tavares called for public comment and asked if there were new business to come before the Commission and there was none.

Adjournment:

There being no further business to come before the Commission, the meeting adjourned at 1:53 p.m.

Approval:

The minutes of the May 11, 2017 meeting of the Ohio Constitutional Modernization Commission were approved at the June 8, 2017 meeting of the Commission.

Co-chair
Senator Charleta B. Tavares
Assistant Minority Leader

Co-chair
Representative Jonathan Dever



OHIO CONSTITUTIONAL MODERNIZATION COMMISSION

MINUTES OF THE BILL OF RIGHTS AND VOTING COMMITTEE

FOR THE MEETING HELD
THURSDAY, MAY 11, 2017

Call to Order:

Chair Richard Saphire called the meeting to order at 11:08 a.m.

Members Present:

A quorum was present with Chair Saphire, Vice-chair Jacobson, and committee members Bell, Clyde, Cole, Dever, Fischer, Gilbert, Peterson, and Skindell in attendance.

Approval of Minutes:

The minutes of the March 9, 2017 meeting of the committee were approved.

Reports and Recommendations:

Article V, Section 2 (Elections by Ballot)

Chair Saphire recognized Christopher Gawronski, legal intern, for the purpose of providing a second presentation of a report and recommendation for Article V, Section 2 (Election by Ballot). Mr. Gawronski described the report as indicating the committee's position that Article V, Section 2 be retained in its present form. He said the report outlines the background of the section as well as presentations and committee discussion related to the provision.

Chair Saphire asked the committee for any comments or discussion and there were none. On motion by committee member Karla Bell, seconded by Senator Bob Peterson, the committee voted unanimously to issue the report and recommendation.

Discussion:

Chair Sapphire indicated his intention to move the full Commission to reconsider the committee's report and recommendation on Article V, Section 6, relating to mental capacity to vote. He said when the matter came up before the full Commission previously, it failed to gain sufficient votes for adoption by the Commission.

Chair Sapphire then asked for discussion on remaining issues assigned to the committee. He noted the early problem the Commission faced of having no staff. He said, as a result of that situation, he said he would review his own files to determine if he has any records that show previous committee consideration of or agreement on some of the remaining issues.

Chair Sapphire reminded the committee of its prior discussion on Article V, Section 7. He said the committee had generally agreed to recommend removing the phrase referencing preferential voting for United States Senators, but the question of how to make the change was unresolved. He added there was additional discussion as to whether "federal" should be added to the list of offices for which primary elections apply. Chair Sapphire said he has discussed these issues with Shari L. O'Neill, interim executive director and counsel, suggesting the possibility of having a report and recommendation for this section. However, he acknowledged the difficulty of developing a report and recommendation due to both staffing constraints and the need to send through a formal recommendation by the end of June. Nevertheless, in order to preserve a record of the committee's sense of the issue, Sapphire said he believes the committee should consider making a formal statement on this issue.

Ms. Bell stressed the importance of documenting as much of the committee's discussions as possible. She said she has no particular preference as to what form that documentation should take.

Committee member Patrick Fischer requested corrections to page four of the status memorandum dated May 11. He asked that, in reference to the topic of privacy the request should be described as coming from more than one committee member, and that the type of privacy to be considered was to have been electronic privacy.

Committee member Ed Gilbert requested an explanation of Chair Sapphire's plan to re-raise the issue of mental capacity to vote under Article V, Section 6. Chair Sapphire said he believes that because of the significant work of the committee on this issue, the Commission should consider the recommendation again. Committee member Doug Cole requested clarification as to whether Chair Sapphire would be acting in his individual capacity as a commissioner rather than as chair of the committee. Chair Sapphire confirmed he would make the request in his individual commissioner capacity.

Chair Sapphire requested any public comment. There was a question about the appropriate procedure for reintroducing the Article V, Section 6 report for Commission consideration. Chair Sapphire indicated he is working on that issue with staff and the Commission co-chairs.

Adjournment:

With no further business to come before the committee, the meeting adjourned at 11:37 a.m.

Approval:

The minutes of the May 11, 2017 meeting of the Bill of Rights and Voting Committee were approved at the June 8, 2017 meeting of the full Commission.

Richard B. Saphire, Chair

Jeff Jacobson, Vice-chair



OHIO CONSTITUTIONAL MODERNIZATION COMMISSION

MINUTES OF THE COORDINATING COMMITTEE

FOR THE MEETING HELD
THURSDAY, MAY 11, 2017

Call to Order:

Chair Kathleen Trafford called the meeting of the Coordinating Committee to order at 12:21 p.m.

Members Present:

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

Approval of Minutes:

The minutes of the April 13, 2017 meeting of the committee were approved.

Reports and Recommendations:

Article V, Section 2 (Election by Ballot)

Chair Trafford recognized Richard Saphire, chair of the Bill of Rights and Voting Committee, to present a report and recommendation relating to Article V, Section 2. Mr. Saphire explained that his committee is recommending that the section be retained in its current form. He said this may be the shortest section in the constitution. He said the report describes its history, including a discussion of the Australian ballot, the concern for secrecy of the ballot, and ballot reform in the 19th and early 20th centuries. He said the only real issue that came up in the course of the review was whether to add the word "secret." He said the committee decided not to include it because the concept already is deeply embedded in Ohio law.

On motion by committee member Dennis Mulvihill, seconded by committee member Patrick Fischer, the committee voted unanimously to approve the report and recommendation.

Article I, Section 10 (The Grand Jury)

Chair Trafford recognized Janet Abaray, chair of the Judicial Branch and Administration of Justice Committee, to provide a summary of the report and recommendation for changes to the grand jury portion of Article I, Section 10.

Ms. Abaray described that the committee voted seven-to-one to recommend two changes to the grand jury process. She said one recommendation is to provide the accused the right to a transcript of testimony of any grand jury witness who will be called at the criminal trial. She said the second recommendation is for there to be a court-appointed grand jury legal advisor who would be present during the grand jury proceedings. She said the committee heard from multiple presenters, including professors, prosecutors, and Senator Sandra Williams. She said, although prosecutors urged that no change was necessary, a majority of the committee was concerned about the influence of prosecutors over the grand jury. She said the report is the result of a 20-month review of the grand jury process.

Ms. Abaray noted that the report was slightly amended at the committee's earlier meeting to indicate that a grand jury legal counsel should be appointed by the court rather than as provided by law.

On motion by Mr. Mulvihill, seconded by Vice-chair Davidson, the committee voted in favor of the proposed amendment, with one abstention.

Article II, Sections 1 through 1i, 15 and 17 (Constitutional Initiative, Statutory Initiative, and the Referendum)

Chair Trafford recognized Mr. Mulvihill, chair of the Constitutional Revision and Updating Committee, to provide a summary of the committee's report and recommendation relating to the initiative and referendum sections of Article II.

Mr. Mulvihill noted four amendments to the redraft of the sections that occurred at the meeting earlier that day, noting the amendments were not consequential but will go in the record. He said there were no changes to the report and recommendation being reviewed by the Coordinating Committee. Mr. Mulvihill outlined the goals of the committee, as well as the many changes recommended to the initiative and referendum process, including changes intended to streamline the process, to encourage the use of the statutory initiative, and to have proposed amendments on the ballot in even-numbered years in which voter turnout will be maximized.

On a motion to approve the report and recommendation by Ms. Abaray, seconded by Mr. Mulvihill, the committee voted unanimously in favor of the motion.

Article VII, Section 1 (Support for Persons with Certain Disabilities)

Chair Trafford recognized legal intern, Christopher Gawronski, reporting on behalf of Ed Gilbert, chair of the Education, Public Institutions, and Local Government Committee. Mr.

Gawronski summarized the committee's report and recommendation regarding Article VII, Section 1, which describes the state's responsibility to people in need of assistance.

Mr. Gawronski indicated that the report indicates the committee's recommendation that outdated and potentially offensive language in the section be changed, and that the state's responsibility to provide support has been clarified. He said the recommendation is the result of the committee's discussion and several presentations from experts in the field of mental health and disability.

On motion by Mr. Mulvihill, seconded by Justice Fischer, the committee voted unanimously to approve the report and recommendation.

Article VII, Sections 2 and 3 (Directors of Public Institutions)

Chair Trafford continued to recognize Mr. Gawronski for the purposes of summarizing the work of the Education, Public Institutions, and Local Government Committee on Article VII, Sections 2 and 3. Mr. Gawronski described that, after reviewing research and a presentation relating to the sections, the committee concluded these sections are obsolete and properly would be repealed.

Chair Trafford then entertained a motion by Mr. Mulvihill to approve the report and recommendation, and Justice Fischer seconded the motion. The committee voted unanimously in favor of the motion.

Gender-Neutral Language

Chair Trafford continued to recognize Mr. Gawronski for a summary of the committee's own report and recommendation related to removing gender specific language from the Ohio Constitution.

Mr. Gawronski described that the report indicates the committee's recommendation that gender-specific language currently in the constitution be replaced with gender-neutral language, if appropriate, as part of one comprehensive amendment. He said the report explains the general background of the consideration of gender-neutral language before describing the committee's conclusion that all instances of gender-specific language in the constitution should be replaced with gender-neutral language as part of a single, comprehensive amendment, with specific wording to be proposed by LSC.

On motion by Justice Fischer, which was seconded by Mr. Mulvihill, the committee voted unanimously to forward the report and recommendation to the full Commission.

Adjournment:

With no further business to come before the committee, the meeting adjourned at 12:47 p.m.

Approval:

The minutes of the May 11, 2017 meeting of the Coordinating Committee were approved at the June 8, 2017 meeting of the full Commission.

Kathleen M. Trafford, Chair

Jo Ann Davidson, Vice-chair



OHIO CONSTITUTIONAL MODERNIZATION COMMISSION

MINUTES OF THE CONSTITUTIONAL REVISION AND UPDATING COMMITTEE

FOR THE MEETING HELD
THURSDAY, MAY 11, 2017

Call to Order:

Chair Dennis Mulvihill called the meeting of the Constitutional Revision and Updating Committee to order at 11:07 a.m.

Members Present:

A quorum was present with Chair Mulvihill, Vice-chair Kurfess, and committee members Abaray, Beckett, Cupp, Holmes, and Sykes.

Approval of Minutes:

The minutes of the April 13, 2017 meetings of the committee were approved.

Reports and Recommendations:

*Article II, Sections 1 through 1i, 15 and 17
(Constitutional Initiative, Statutory Initiative, and the Referendum)*

Chair Mulvihill began the meeting by announcing that the committee would be hearing a second presentation on the initiative and referendum sections of Article II. He said some amendments have been introduced that the committee would be addressing. He thanked Shari L. O'Neill, interim executive director and counsel, and Steven H. Steinglass, senior policy advisor, for their work assisting the committee. He also thanked committee members, particularly noting the success of the committee in leaving partisan politics out of the meetings. He said the committee has made policy judgments, but that they were made in the spirit of preserving the people's right to use ballot initiatives, and did require some give and take among the members. He said, in aggregate, the committee's work reflects the collective wisdom of those judgments and those compromises.

Describing the existing sections of Article II, Chair Mulvihill said the initiative and referendum provisions contain some of the most confusing and difficult-to-understand language in the constitution. He said the committee's work has been to modernize, streamline, and clear out the density contained in those current provisions.

He continued that the committee has reorganized and rewritten the sections to accomplish its goals. He said the recommendation is the result of four-and-a-half years, during which the committee heard dozens of presentations, received much public comment and input, and had strong bipartisan support for the changes. He said the recommendations were approved by the committee in a unanimous vote.

He said, from the outset, the committee was committed to protecting the strong history of provisions that allow Ohioans the right to initiate laws and constitutional amendments. At the same time, he said, "we have 105 years of history to see what has worked and what has not."

Summarizing the committee's work, Chair Mulvihill said the committee had a sense the constitutional initiative has been abused over the years, while the statutory initiative has been underutilized. He observed that, since 1913, there have been 69 citizen-initiated constitutional amendments submitted to the voters, with 14 in the last 16 years. He said, of the 69, 18 were approved by the voters, or 26 percent of the time, with the General Assembly having 154 submitted to voters, with 106 approved, for a total of 68.8 percent. He noted that Ohio currently has the tenth longest state constitution in the country, in terms of the number of words.

Since 1913, he said there have only been 12 statutory initiatives submitted to the voters, with only three passing, and only one since 1949. He explained that this means that when the initiative process is used, 85 percent of the time the petitioners use the constitutional route. He said this has resulted in many concepts being implanted, or attempted to be implanted, in the constitution that would be better served being in the Ohio Revised Code.

Chair Mulvihill said the committee concluded that the most obvious reason for the discrepancy between the over-used constitutional initiative and the under-used statutory initiative is the existence of the supplementary petitions and the lack of protection to initiated laws against interference by the General Assembly.

He said the committee's philosophy was that the state constitution exists to establish the basic framework of government; that there are three branches of government and their relationship to one another; the relationship between state and local governments; and the relationship between citizens and government, primarily through the Bill of Rights.

He continued that what have emerged lately are initiated amendments to the constitution that are inconsistent with the purpose of the constitution. He said, without commenting on the merits of any of these items, but only their placement or attempted placement in the constitution, there has been a trend of placing in the constitution topics such as casino gaming, including the specific land plots for that purpose, age limits for judicial office, smoking bans, minimum wage, treatment in lieu of incarceration for drug offenders, and marijuana legalization, including reference to specific land plots.

He said irrespective of whether someone would support or oppose any of these issues, the committee felt these kinds of initiatives do not really belong in the constitution but rather in the Revised Code. So, he said, the committee's work, in addition to modernizing and making the provisions readable and understandable, was designed to encourage petitioners to take the statutory, rather than the constitutional, route when undertaking the initiative process.

He said the committee also had a goal of reducing the influence of politics and political gamesmanship that occasionally impair the abilities of citizens to get their petitions to the ballot.

He summarized the recommendations as follows:

- Making the sections largely self-executing, consistent with explicit wishes of the 1912 commission;
- Making the statutory initiative more user-friendly by eliminating the supplementary petition and by creating a safe-harbor provision protecting those initiated statutes from amendment or repeal from the General Assembly for five years, absent a 2/3 super majority vote in each house of General Assembly;
- Decreasing the number of signatures required to initiate a statute from six percent (assuming the supplementary petition was needed) to five percent;
- Creating constitutional authority for the initial 1,000 signature petition, submitted to the attorney general, a requirement presently in the Revised Code;
- Creating constitutional authority for the determination by the attorney general that the summary of the initiative or referendum is fair and truthful;
- Requiring initiatives to use gender-neutral language, where appropriate;
- Providing that the one amendment rule applies to both initiated constitutional amendments and legislatively initiated amendments;
- Increasing the passing percentage for constitutional amendments from 50 to 55 percent;
- Permitting initiated constitutional amendments to be on the ballot in even years only, when more people actually vote;
- Providing clarity by specifying dates when proposed statutory and constitutional initiatives can be submitted, and when the attorney general, secretary of state, and ballot board must complete their work;
- Permitting the General Assembly to modernize the signature-gathering process by using electronic signatures;
- Front end loading the work on the ballot board by requiring it to draft the ballot language and title after the petitioners submit the 1,000 signatures to the attorney general, but before the petitioners gather the hundreds of thousands of signatures that are required;
- Allowing the petitioners to suggest ballot language and the title to the ballot board;
- Allowing the petitioners to appeal to the Supreme Court at any time during the process if they are dissatisfied with a ruling from the attorney general, secretary of state, or ballot board; and,
- Retaining the historic role of the attorney general, the secretary of state, and the ballot board in managing the initiative process.

Chair Mulvihill said the committee strongly believes that, on balance, the suggested changes create a far superior, fairer, and more transparent process for statutory and constitutional initiatives; protect the rights of petitioners to bring their ideas to the voters and reduce the potential for political interference with that right; allow constitutional amendments to be

considered by more voters, knowing the significant drop-off between even and odd year elections; and encourage petitioners to use the statutory process, rather than placing in the constitution issues that belong in statutory law.

Chair Mulvihill said the committee considers the proposals to be in compliance with the single subject requirement because the subject would be “reforming the initiative process.” He noted that the committee received last-minute proposed amendments to the re-write of the initiative which will be considered. However, he noted those proposed amendments are not to the report and recommendation and do not substantively change the recommendations in the report. He emphasized the technical conveyance to the Commission is the report and recommendation rather than the re-write.

Chair Mulvihill recognized Senator Vernon Sykes for the purposes of describing the proposed amendments. Sen. Sykes invited George Boas, deputy chief of staff for the Senate Democratic Caucus, to review the amendments with the committee.

Mr. Boas directed the committee’s attention to the first amendment, titled “Adding Timeframe for Attorney General Action.” (Attachment A) He said the amendment establishes a time frame for the attorney general to review a submitted initiated constitutional amendment or initiated statute to determine if it is sufficient and if the summary is a fair and truthful statement. He said this proposed amendment clarifies how long the attorney general has, saying it is ten days. That requirement is currently in statutory law.

Committee member Janet Abaray asked if this amendment would cause any problem, specifically, whether the fact it was not included in the previous draft was intentional. Chair Mulvihill said it does not create an issue, and Mr. Boas said that this is the current process according to the relevant statute. Steven H. Steinglass, senior policy advisor, commented that the failure to include it was a drafting oversight, and indicated that including it is a good precaution. Ann Henkener, director and legislative director of the League of Women Voters of Ohio, noted that she had submitted comments to the chair, and that the subject of this proposed amendment was part of her comments. Mr. Boas said the next three proposed amendments also are based on Ms. Henkener’s comments.

Mr. Boas continued, describing a second proposed amendment titled “Petition Requirements Conflict Correction.” (Attachment B) He said this amendment would remove language within proposed Section 1d(A) referencing a “summary approved by the attorney general,” and substituting it with the phrase “title and ballot language prescribed by the ballot board.” He said the reason for this is that, because the ballot board review is now front loaded, the amendment places that review as part of the initial petition process. He said the reason for the change is that it makes sense to have the ballot language be part of the petition process.

Describing the third proposed amendment, titled “Annual Deadline to File a Proposed Initiated Statute,” (Attachment C) Mr. Boas indicated that this change would replace February with April, and June with July, thus delaying by two months the deadlines for an initiated statute. He said this would give petitioners more time to perform all the necessary tasks to get an initiated statute on the ballot.

The fourth proposed amendment, titled “Annual Deadline to File a Proposed Constitutional Amendment,” replaces the deadline in June with a July deadline. (Attachment D)

Ms. Henkener noted that the summary needs to be part of the original petition with 1,000 signatures, but the current provision in Section 1d is different.

Ms. Abaray asked whether Mr. Mulvihill is comfortable stating these changes do not change the report and recommendation. Mr. Mulvihill said he reviewed the proposed amendments along with committee member Roger Beckett and Mr. Steinglass, and their collective view is that these changes work.

Sen. Sykes separately moved to adopt amendments numbered 1, 2, 3, and 4, with Mr. Beckett seconding those motions. There were no objections to adopting the amendments.

Mr. Mulvihill asked for discussion on the report and recommendation.

Representative Bob Cupp observed that the re-write, at various points, alternates between the use of the word “shall” and the word “may.” He wondered whether a revision was in order to create consistency. Chair Mulvihill said the point was to give petitioners an option to submit language to the ballot board at their discretion.

Mr. Steinglass said there are areas of the re-write where drafting could be improved. He acknowledged, however, that there will be edits undertaken when the General Assembly takes up the matter and those types of issues can be corrected at that time.

Chair Mulvihill noted that the first sentence of the report and recommendation needs to match with the title of the report.

He also noted an issue with the first line of the second paragraph, wondering if it should reference “Section 17.” Mr. Steinglass said the committee had to address a couple of issues in the latter part of Article II that were buried in the initiative and referendum. He said the change does not affect the substantive policy.

Mr. Steinglass commented that the committee has not yet addressed Article XVI.

Mr. Beckett commented that the report and recommendation will be reviewed before it leaves the Commission, allowing technical issues to be corrected.

Chair Mulvihill asked for a motion to approve the report and recommendation. Ms. Abaray so moved, with Mr. Beckett seconding the motion. A voice vote was taken and the motion passed.

Complimenting Chair Mulvihill, Mr. Kurfess said the ponderous work of the committee to meet exactly what it set out to do is in large part to Chair Mulvihill’s commitment. He thanked Chair Mulvihill not just for getting everyone involved, but in giving his own personal time, study, and input. He said “I think that we can be confident in what we have done and a sense of pride. I want to personally thank you for your effort and I hope it will be received appropriately by the General Assembly.”

Chair Mulvihill thanked Mr. Kurfess for his compliment and for his help.

Mr. Kurfess also thanked staff for its assistance.

Sen. Sykes said he agrees with Mr. Kurfess that the committee has done a lot of work. He said, reviewing the current budget, he does not believe that the legislature acknowledges or appreciates the work of the committees, but that should not take away from the efforts of this committee and its leadership.

Chair Mulvihill then called for a roll call vote on the motion to approve the report and recommendation. The vote was as follows:

Mulvihill – yea
Kurfess – yea
Abaray – yea
Beckett – yea
Cupp – yea
Holmes – yea
Sykes – yea

The motion passed, with seven in favor, none opposed, and two absent.

Chair Mulvihill said it is not confirmed that the committee will meet next month. He said one of the amendments he received that was not brought forward today deals with Article XVI, which is part of the committee's charter. He said if the committee does meet in June, there will be an opportunity to give that due consideration.

Mr. Steinglass said that the General Assembly had identified review of the amendment process as one of the purposes for creating this Commission. As part of this review, the committee has been addressing the initiative process. Article XVI is the other part of the constitution that governs the amendment process, but the committee has not yet considered this article. He said he and the chair had discussed the need to address issues concerning constitutional conventions and possibly even constitutional revision commissions. He said it is also possible to look at the experiences of other states in amending their constitutions. He encouraged committee members to think about better ways to address the amendment process.

Mr. Beckett said there are two issues to focus on: one is the parity question indicating that rules that apply to the legislature should apply to the people. He said a second question relates to the requirement of a convention call every 20 years, observing that many states are replacing that requirement with commissions.

Ms. Abaray said Mr. Beckett's contributions to the report and recommendation should be acknowledged, as well as the public interest groups that have contributed.

Chair Mulvihill agreed and thanked them for their service.

Adjournment:

With no further business to come before the committee, the meeting adjourned at 11:48 a.m.

Approval:

The minutes of the May 11, 2017 meeting of the Constitutional Revision and Updating Committee were approved at the June 8, 2017 meeting of the committee.

Dennis P. Mulvihill, Chair

Charles F. Kurfess, Vice-chair

Adding timeframe for Attorney General Action

Language Change:

Within Section 1a (B)(1) on page 2 after the word "shall" insert ", within ten days,".

Within Section 1b(B)(1) on page 5 after the word "shall" insert ", within ten days,".

Effect:

Establishes a timeframe for the Attorney General to review a submitted initiated constitutional amendment or initiated statute to determine if it is sufficient and if the summary is a fair and truthful statement. The 10-days suggested in this amendment aligns with current law and the language for review of a referendum petition in 1c.

Rationale:

A time frame for review is important to protect the rights of petitioners. Under current law the requirement is 10 days and though there are reasonable scheduling rational to extend the ballot board review timeframe to 14 days, no such reason exists for Attorney General Review. This amendment creates consistency within the recommended new language and avoids unintended changes to current law.

Petition Requirements Conflict Correction

Language Change:

Within Section 1d (A) on page 11 after “a full and correct copy of the” strike the remainder of the sentence “summary approved by the attorney general.” And insert “title and ballot language prescribed by the ballot board.”

Effect:

This amendment creates consistency between 1d(A) which deals only with petition requirements and 1a(C)(2), 1b(C)(2), and 1c(E)(1) which require the ballot language to be printed as part of the petition and explicitly state no other summary is required. 1d(A) without this amendment directly conflicts with that provision.

Rationale:

Since the ballot language is what electors will be met with in the booth, it makes sense to have the ballot language be part of the petition process. Nothing in the amendment would preclude circulators from sharing the attorney general approved summary with electors.

Annual Deadline to File a Proposed Initiated Statute

Language:

Within section 1b(F) on page 6 and the top of page 7 replace each “February” with “April”.

Within section 1b(H) on page 7 replace “June” with “July”.

Effect:

Delays by two months the deadline for an initiated statute to appear at the next available election and delays by one month the deadline for the General Assembly to act or the petition to be withdrawn.

Rationale:

This amendment is supportive of the goal of making the initiated statute more attractive as compared to the constitutional amendment. The General Assembly will still have 3 months on which to work on the proposal before it is placed on the ballot. It is appropriate to avoid undue delay in when a certified question is placed before the voters. This still leaves more than 125 days for preparation for the issue to be presented to electors.

Annual Deadline to File a Proposed Constitutional Amendment

Language:

Within section 1a(F) at the top of page 4, replace “June” with “July”

Effect:

Delays by one month the deadline for an initiated constitutional amendment to appear at the next available election.

Rationale:

Under current law, initiated amendments must be filed at least 125 days before next general election. This always falls in early July. It is appropriate to avoid undue delay in when a certified question is placed before the voters. In addition, moving the title and ballot language process to the front end will simplify what needs to occur after certification and before an issue is submitted to the voters.



OHIO CONSTITUTIONAL MODERNIZATION COMMISSION

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

FOR THE MEETING HELD
THURSDAY, MAY 11, 2017

Call to Order:

Chair Ed Gilbert called the meeting of the Education, Public Institutions, and Local Government Committee to order at 9:19 a.m.

Members Present:

A quorum was present with Chair Gilbert and committee members Craig, Cupp, Sykes, Taft, and Talley in attendance.

Approval of Minutes:

The minutes of the April 13, 2017 meeting were approved.

Presentations and Discussion:

Garry Hunter

E. Rod Davisson

Ohio Municipal League and Ohio Municipal Attorneys Association

"Updating Municipal Home Rule in Article XVIII of the Ohio Constitution"

Chair Gilbert recognized Gary Hunter, general counsel for both the Ohio Municipal League and the Ohio Municipal Attorneys Association, and E. Rod Davisson, administrator for the Village of Obetz, to present a proposal for an amendment to Article XVIII, Section 3, regarding municipal powers of self-government. That section currently reads:

Municipalities shall have authority to exercise all powers of local self-government and to adopt and enforce within their limits such local police, sanitary and other similar regulations, as are not in conflict with general laws.

Mr. Hunter indicated he and Mr. Davisson were present to address the principle of home rule as it pertains to municipalities. He said, in response to a request from committee member Bob Taft,

he formed a committee consisting of members of law firms and law directors around the state. He said they had several meetings in which they reviewed in detail the history of the home rule amendment, which was adopted at the Constitutional Convention in 1912. He said they also reviewed case law in this area. He said the result of these meetings is a report that recommends that Article XVIII, Section 3 be amended to read as follows:

Municipalities shall have authority to exercise all powers of local self-government. Municipalities shall also have the authority to adopt and enforce within their territorial limits such local police, sanitary and other similar regulations as are not in direct conflict with general laws. The General Assembly cannot interfere with powers granted to municipal corporations by the Ohio Constitution unless the Constitution sanctions the interference. These exercises of municipal authority are self-executing, and no municipality shall be required to adopt a charter in accordance with Sections 7 and 8 of this Article XVIII to exercise this authority.

Presenting an overview of the committee's recommendation, he said the proposal does not enlarge the power of home rule, but rather clarifies areas the committee feels are important. He said home rule is the foundation of municipal government, and the basis for democracy in the governmental system.

Turning to Ohio history, Mr. Hunter said Ohio initially did not afford home rule but rather used the "Dillon Rule" – a system originating in Iowa in which local municipalities had only those powers granted by the legislature. He continued that the rule was a disaster in Ohio because the state legislature was enacting special legislation for municipalities and one size did not fit all. He said the 1912 Constitutional Convention decided to establish home rule for municipalities in the constitution, taking power away from the legislature as to home rule topics. He said home rule allows municipalities to decide their own fate, including what quality of life citizens want and can afford, and so allows citizens to decide what municipalities they want to live in. He said the basic difference between different cities is the quality of life, and that home rule is "the engine that drives economic development." Continuing, Mr. Hunter said Ohio has about 11 million residents, with 7.5 million living in municipalities. Because the majority of Ohioans live in municipalities, he said home rule is an important issue as to their quality of life.

Addressing the current language in Article XVIII, Section 3, Mr. Hunter said the current language grants powers of home rule to municipalities, but does not distinguish between chartered cities and statutory cities. In addition, he said the section does not distinguish between statutory home rule and procedural home rule. He said the courts generally refer to statutory home rule as opposed to procedural. In addition, he said the first sentence in Section 3 gives municipalities "all powers of local self-government." He noted that additional powers, such as pertaining to police activities, are couched as being subject to the general laws of Ohio. He said this clause is always interpreted by the courts to apply only to the police powers, with powers of local self-government not being subject to general law restrictions.

Mr. Hunter continued that the Supreme Court of Ohio has embraced the "statewide concern doctrine," which, in his opinion, was an attempt by the court to try to define what general laws have been, but now subjects local governments to statewide concern issues. He said this directive from the court has caused the General Assembly to attach to bills language indicating a

matter is of statewide concern. This approach has caused two problems, according to Mr. Hunter. First, “statewide concern” is not in the constitution. Second, he said, the General Assembly is not the entity to decide what a statewide concern is; rather, the courts are. He acknowledged it is difficult and expensive for municipalities to challenge legislation in court, so many of these laws stay on the books because no one has brought litigation.

Mr. Hunter said both the legislature and municipalities derive their power from the Ohio Constitution. He said the only way the state legislature can preempt municipal power is if there is something else in the constitution that authorizes it. He said there are some constitutional provisions allowing this, such as a section allowing one percent taxes without a vote.

Noting part of the proposal explicitly stating that home rule powers are self-executing, he said that may seem evident but needs to be said. He said adding the word “direct” emphasizes that only local regulations that are in direct conflict with state law fall outside of the home rule principle. He said they wished to emphasize that the General Assembly cannot usurp home rule without a provision in the constitution allowing it. He said, finally, they wished to clarify that home rule does apply both to statutory and chartered municipalities.

Senator Vernon Sykes asked what happens when a city ordinance conflicts with a legislative bill. Mr. Hunter said there has to be a conflict between an ordinance and a general law, and in an area of police power, which is preserved to local self-government. He said it is necessary to see if there is a conflict in accord with what the section says.

Explaining further, Mr. Davisson added there are two very distinct powers. First, he said, the power of local self-government has not been defined and is unfettered constitutional power. He said the other power is the ability to enact police and sanitary regulations; powers that are not unchecked and can conflict with the state rules. He said the 1912 framers were not trying to create islands of power, but they did so in some respects by giving the power of local self-government. He said that issue comes up in the courts, where it must be decided whether an action is local self-government or is the exercise of a police power. He said, if it is a police power, the court must decide if it conflicts with state law.

Mr. Davisson continued that the recommendation tries to clarify the distinction between those two powers. He said Ohio did not have a residential building code for years, and this has always been an issue of local government control. He said a building code was defined as a police power, so now Ohio has a residential building code with standards that must be followed throughout the state. He said the recommendation is trying to limit the number of times it is a close call and clarify the issue.

Describing his experience in Obetz, Mr. Davisson said it is a chartered community, a situation that creates some confusion although every municipality has home rule power whether it is chartered or not. He said Ohio is smart, diverse, hardworking state, and home rule allows people who live locally to be able to control what works locally for them.

Mr. Hunter noted one issue that affected the 1912 convention was the concern over liquor laws, and whether local municipalities could prohibit liquor establishments in their communities. He said, although delegates set up a broad home rule power, they were afraid a prohibition fight would leak into their rules. As a result, he said, they adopted a very broad rule. Mr. Hunter said,

as a municipal attorney, he needs the ability to be flexible with the plans of the city. Mr. Davisson added that home rule also is important to municipalities' main economic development engine.

Mr. Hunter and Mr. Davisson having concluded their presentation, Chair Gilbert asked if there were questions.

Gov. Taft asked whether, if adopted, the recommendation would allow a distinction between chartered and statutory municipalities. Mr. Hunter answered that the self-execution portion of the section means that both types of municipality have all the powers of local self-government. He said chartered cities have powers in Article XVIII, Section 7, which allows them to develop different forms of government. He said municipalities have different forms of government, such as a city manager, a weak or strong mayor, and these different forms are what distinguish a chartered city from a statutory one in terms of home rule. But, although that was what was intended, the original language just uses the word "municipalities," which does not account for the fact that court decisions have held that chartered cities are determined to have home rule.

Gov. Taft followed up, asking whether there is an example of an attempt by a statutory city to do by statute something prohibited by a court. Mr. Hunter said civil service laws are a good example. He said both statutory and chartered cities are subject to civil service laws, but chartered cities can adopt different procedures for implementing civil service laws locally, but statutory cities cannot because it is procedural and so they are subject to state law.

Mr. Davisson said an example is of an employer who wants to move to Ohio, and his two choices for a location are a chartered and a non-chartered municipality. In a chartered municipality, the employer can determine how the bidding laws work and quickly can have the municipality take local action to overcome those laws. In a non-chartered municipality, the employer would have to follow the Revised Code and it may take two or three months longer because they have to follow statutory bidding procedures. He said the problem is that, because of this distinction, some municipalities cannot compete for that employer to relocate there. He said this recommendation would place all municipalities on equal footing, whether or not they are a chartered municipality.

Chair Gilbert asked how residency would be affected. He noted the example that some municipalities have required city employees to live within city limits. Mr. Davisson said his understanding is that requirement has been overcome in Ohio, meaning a municipality cannot compel city employees to live there. He said it is a tough question whether that is an issue of statewide concern. He said the recommended amendment would not change that result. Mr. Hunter added there are good reasons why a city might want its police and fire employees to live within city limits, since, being nearby, they would be better able to respond to emergencies.

Gov. Taft asked how inserting the word "direct" would help. Mr. Hunter said they were trying to direct the conversation away from the statewide concern doctrine by indicating the law cannot just be of statewide concern but has to be in direct conflict. Gov. Taft wondered about the case that provided the statewide concern doctrine. Mr. Hunter said the Supreme Court announced that doctrine in *McElroy v. Akron*, 173 Ohio St. 189 (1962).

Chair Gilbert said legislative members often ask what litigation would result from this recommended change. Mr. Hunter said he sees less rather than more litigation would occur because the new language would allow everyone to know where the boundaries are. He said they were trying to clarify the separation between the local government power and the police power.

Referencing the 1912 convention, Gov. Taft noted the delegates decided to remove the words “affecting the welfare of the state.” Mr. Hunter said his committee thought that was going a little too far, noting that prohibition was such an issue in 1912 that the convention delegates did not want to create a firestorm by using that language. He said his committee did not want to cause the same firestorm now.

Chair Gilbert thanked the speakers for presentation, noting their testimony will be part of the record.

Chair Gilbert then turned the committee’s attention to sections remaining for review. He noted there were some sections that are controversial but, nevertheless, were deserving of attention from the General Assembly, such as Article XV, Section 11, requiring marriage to be between one man and one woman, and Article XV, Section 6, relating to casino gaming. Chair Gilbert suggested the committee could present ideas regarding remaining sections as a final report, asking input from the committee on this plan.

Gov. Taft said the committee has now heard from the Ohio Municipal League, in response to his inquiries about Article XVIII. He said the committee also could hear from the County Commissioners Association of Ohio regarding changes they might recommend. He noted that one area of concern is Article II, Section 20, relating to commissioners’ terms of office and compensation; however, that section has been assigned to the Legislative Branch and Executive Branch Committee. He said he could check with that committee to see if they would allow a transfer of that section.

Chair Gilbert asked the committee’s consensus regarding a final report. Gov. Taft suggested the committee wrap up by indicating sections that they have not been able to deal with but have heard from the public in terms of letters or communications. He said that would allow the committee to document the issue. Chair Gilbert said that could be prepared and sent out so that the committee could have it on hand for a final meeting.

Reports and Recommendations:

Article VII, Section 1 (Support for Persons with Certain Disabilities)

Chair Gilbert recognized Shari L. O’Neill, interim executive director and counsel, for the purposes of providing a second presentation of the committee’s report and recommendation for Article VII, Section 1, relating to support for persons with certain disabilities. Ms. O’Neill described that the report recommends that Section 1 be changed to read:

Facilities for and services to persons who, by reason of disability, require care or treatment shall be fostered and supported by the state, as may be prescribed by the General Assembly.

She continued that the report describes the background of the section, and discusses the committee's consideration of the topic. She added the report also documents the presentations by specialists on mental health and disabilities who assisted the committee's review. She said the report indicates the committee's decision to change the section by modernizing the language and clarifying the state's responsibility with regard to people who are in need of assistance.

Chair Gilbert asked for a motion to approve the report and recommendation, which was provided by Gov. Taft and seconded by Sen. Sykes. A roll call vote was taken, and the motion passed unanimously.

Article VII, Sections 2 and 3 (Directors of Public Institutions)

Chair Gilbert continued to recognize Ms. O'Neill for the purpose of providing a second presentation on a report and recommendation for Article VII, Sections 2 and 3, relating to directors of public institutions.

Ms. O'Neill described that the report reflects the committee's determination that these sections should be repealed for the reason that they are obsolete. Chair Gilbert asked for a motion to approve the report and recommendation, which was provided by Gov. Taft, with Representative Bob Cupp seconding the motion. A roll call vote was taken, and the motion passed unanimously.

Adjournment:

With no further business to come before the committee, the meeting adjourned at 10:20 a.m.

Approval:

The minutes of the May 11, 2017 meeting of the Education, Public Institutions, and Local Government Committee were approved at the June 8, 2017 meeting of the full Commission.

Edward Gilbert, Chair



OHIO CONSTITUTIONAL MODERNIZATION COMMISSION

MINUTES OF THE FINANCE, TAXATION, AND ECONOMIC DEVELOPMENT COMMITTEE FOR THE MEETING HELD THURSDAY, MAY 11, 2017

Call to Order:

Chair Douglas Cole called the meeting of the Finance, Taxation, and Economic Development Committee to order at 10:05 a.m.

Members Present:

A quorum was present with Chair Cole, Vice-chair Bell, and committee members Asher, Clyde, Davidson, Dever, Mills, Peterson, and Trafford in attendance.

Approval of Minutes:

The minutes of the April 13, 2017 meeting of the committee were approved.

Discussion:

A Debt Reporting Role for the State Treasurer

Chair Cole raised whether the committee would like to make any informal recommendations regarding the remaining sections of the constitution assigned to the committee.

Regarding a reporting role for the treasurer of state, Chair Cole asked whether there is a sense of the committee regarding the constitutionalizing of debt reporting functions.

Committee member Kathleen Trafford said she believes the committee should note to the Commission that the debt reporting function should be contained within the constitution.

Committee member Jo Ann Davidson noted the ambivalence of the Office of Budget and Management toward having a constitutional reporting function. Chair Cole recalled the opinion of the treasurer's office that a constitutional provision would be preferable.

Committee members generally agreed to the importance of having a debt reporting provision, but there was no strong opinion as to whether it should be a statutory or constitutional provision. Committee member Fred Mills expressed a preference for the provision to be constitutional, but said he would support the general sense of the committee.

Chair Cole proposed a committee statement that a debt reporting function should be taken up as an important topic for assignment to the treasurer with no preference as to whether it should be statutory or constitutional.

The committee supported Chair Cole's proposal, with a motion by Vice-chair Karla Bell, and a second by Ms. Trafford seconded to request Chair Cole to craft language to pass to the Commission reflecting the committee's proposal.

State Debt and Economic Development

Chair Cole asked for the committee's views on how to proceed with the constitutional sections on state debt for economic development.

Ms. Trafford expressed concern regarding the complexity of the provisions, saying she thinks it best not to make a recommendation at this time.

Committee member Herb Asher suggested creating a narrative or history of the provisions and issues discussed by the committee, so that discussions by future groups can benefit from the committee's work. However, he said, such a report should not contain a particular recommendation.

Ms. Davidson agreed that the issue is complicated, and pointed out that prior testimony is already part of the record. She said creating a new overview would perhaps be too much work for staff.

Ms. Bell suggested a simplified summary listing who testified and when, allowing future reviewers to know where to look in the committee record for more details.

Mr. Asher agreed a summary list of the resources would be a reasonable approach.

Chair Cole requested staff to prepare a more summarized version of the state debt and economic development than appears in a May 11 memorandum, including a simplified listing of who testified and when.

Tax Credit Proposal

Referencing a tax credit proposal outlined in the May 11 memorandum, Chair Cole requested the committee's views as to whether to recommend this past language recommended by a witness. The committee expressed no interest, and so passed on recommending anything on this topic.

Corporations

Similarly, the committee did not express interest in making a recommendation on this topic.

There being no further comments or discussion, Chair Cole offered thanks to the committee members for providing their time and expertise. Senator Bob Peterson also offered thanks to the public members of the committee for their service to the Commission.

Mr. Asher thanked Chair Cole for his leadership.

Adjournment:

With no further business to come before the committee, the meeting was adjourned at 10:26 a.m.

Approval:

The minutes of the May 11, 2017 meeting of the Finance, Taxation, and Economic Development Committee were approved at the June 8, 2017 meeting of the full Commission.

Douglas R. Cole, Chair

Karla L. Bell, Vice-chair



OHIO CONSTITUTIONAL MODERNIZATION COMMISSION

MINUTES OF THE JUDICIAL BRANCH AND ADMINISTRATION OF JUSTICE COMMITTEE FOR THE MEETING HELD THURSDAY, MAY 11, 2017

Call to Order:

Chair Janet Abaray called the meeting of the Judicial Branch and Administration of Justice Committee to order at 10:07 a.m.

Members Present:

A quorum was present with Chair Abaray, Vice-chair Fischer, and committee members Holmes, Jacobson, Kurfess, Mulvihill, Saphire, and Skindell in attendance.

Approval of Minutes:

The minutes of the April 13, 2017 meeting of the committee were approved.

Reports and Recommendations:

Article I, Section 10 (The Grand Jury)

Chair Abaray began the meeting by drawing the committee's attention to a report and recommendation regarding the grand jury portion of Article I, Section 10. She said the draft in front of the committee modified the description of what is being recommended by specifically indicating the reference to the grand jury is being removed from current Section 10 and placed in its own separate section, numbered "10b." In addition, she said the new draft describes that the new Section 10b would have three separate parts consisting of the original language, a requirement for a grand jury legal advisor, and a requirement that a transcript of grand jury witness testimony be provided to the accused.

She asked for a motion to proceed with regard to the committee's recommendation. Committee member Jeff Jacobson so moved, with committee member Dennis Mulvihill seconding the motion. The committee then proceeded to discuss the report and recommendation.

Committee member Charles Kurfess said he has concerns about a portion of the proposed amendment that indicates that the grand jury legal counsel will be appointed pursuant to statute. He said, considering the controversy over the issue itself, he can see that, if it were adopted, the same controversy would arise in the legislature in terms of who would appoint the legal advisor and how that would be accomplished. He said “One of the big issues is whose grand jury is it? It is the court’s grand jury so we should specifically say that.”

Mr. Jacobson, accommodating Mr. Kurfess’s concern, asked whether it would help to strike the phrase “as provided by law,” and instead “as provided by the presiding judge.” Mr. Kurfess said that would help, or perhaps “as provided by the court.”

Mr. Mulvihill raised a question of which court, noting that many counties have more than one court. Mr. Kurfess said a grand jury is the province of the common pleas court.

Mr. Mulvihill wondered whether the language should we say “by the judge overseeing the grand jury.”

Vice-chair Patrick Fischer said this is generally in the jury instructions.

Mr. Jacobson said it is probably sufficient to say “by the court,” and Mr. Kurfess agreed.

Representative Glenn Holmes asked whether, if a grand jury is convened by the court, the counsel is actually independent.

Mr. Kurfess said he does not know why the word “independent” is used.

Mr. Jacobson explained the goal is for the legal advisor to be independent of the prosecutor, and that the advisor should be available to the grand jury if it needs explanation.

Mr. Kurfess said it is the court’s appointed counsel, and for that reason is independent. He noted that courts appoint counsel for many different purposes. Mr. Jacobson wondered if the word “independent” should be removed.

Rep. Holmes said “independent” speaks to the person being outside, or separate.

Mr. Jacobson said he will second the motion made by Mr. Kurfess to amend proposed Section 10b, part (B), by striking “as provided by law” and inserting “as appointed by the court.”

Chair Abaray asked if there were objections to the motion. There being none, she announced the motion passed.

Addressing the merits of the recommendation, Justice Fischer commented that the committee has received letters from the Ohio Judicial Conference, the Ohio Prosecuting Attorneys Association, and the Buckeye Sheriffs Association. He said their objections to the proposal go back to what was in the minutes from the last meeting, but the discussion about the use of the words “independent” and “court” illustrate the problems with the proposal. He said he is concerned that it unclear who the legal advisor is meant to represent. Further, he asked who has a

constitutional right if something goes wrong, or if the legal counsel gives bad advice and the person is wrongfully indicted. He said it is also a question whether privilege attaches to the advice given by the counsel, and whether grand jurors have a right to waive the privilege. He said the proposal is “an attack on the court.” He said the current jury instructions read that, at any time a grand jury may contact the court with questions. He said he does not see a reason for putting these concepts in the constitution, and that the proposal could be made part of statute or court rule.

Mr. Jacobson said he disagrees with that view. He said, procedurally, the proposal is not amending the constitution of Ohio and not posing the question directly to the voters. Instead, he said the committee is taking the first step in what would be a long process. He said “the fact that not every detail is completely settled is a problem that inures to every proposal,” and it is impossible to know when adopting a new constitutional provision how courts will interpret it or how legislatures will do their necessary work to implement it. He continued that the proposed amendment is important because it recognizes there are problems with the current system. He said it would be great if the legislature or the Supreme Court would address the issues by statute or rule, but the nice thing about making this recommendation is that the committee is starting a long process that may allow the court to act to obviate the need for it. He said it is important to reassure those who have concerns about what happens in the grand jury room when the only legal opinion presented is one that has an outcome that the prosecutor is trying to achieve. Mr. Jacobson said the rule allowing jurors to ask the court is a good rule, but jurors do not always do that.

Chair Abaray said, for the record, she does not believe anyone on the committee is attacking the judiciary or trying to criticize prosecutors. She said “Our goal has been to have checks and balances and to have the public have more confidence in the grand jury system because there is an inherent difficulty in a transparent government with a procedure that has such secrecy.” She said the committee has put forth this proposal as a tool to help improve confidence in the grand jury system, and she believes that is everyone’s motivation.

Justice Fischer said he agrees, but his point is there are some things that are important but not necessary to enshrine in the constitution. He said, for example, the right to counsel for a defendant is in the constitution and that is important. But, he said, as a commission we are supposed to recommend ways to improve the constitution and he does not believe this proposal reaches that height. He noted a task force in the Ohio Supreme Court that reviewed the grand jury system for months, and rejected a similar proposal.

Mr. Kurfess said the grand jury instructions follow the statute and the rules, so that if the constitution is changed the instructions will change. He said his experience as a judge often gives him some degree of doubt or question about a lot of instructions. He commented that, when he became a judge he learned the grand jury instructions specifically said the grand jury shall not consider the indirect evidence, but, in reality, that is almost all of what the grand jury hears.

Mr. Kurfess continued that the existing grand jury provision is not in the constitution as a procedural matter, but rather as a protection to citizens – for individual defendants or those seeking to be charged. He said he can only recall one time as a judge when a foreman came to

him with a question. He said “We may tell them they can do it when they are sitting there but it does not have a lot of meaning to the grand jury.” He said he views the proposed amendment as a way for counsel to be present to assist rather than waiting for the judge to be asked.

Rep. Holmes said, looking at this constitutionally, the constitution was bred through ideals. He said if the General Assembly were to make a law in contrast with a constitutional provision, the Supreme Court would overturn it. He said placing this concept in the constitution is important when looking at the justice system, which requires justice for all. He said having the legal advisor does not constrain the court or the judge in any way.

Senator Mike Skindell asked whether the vote on the proposal would be divided so as to consider the grand jury legal advisor and the transcript of witness testimony issues separately.

Chair Abaray asked if members felt the need to divide the vote. There being no objections, she indicated there would be one vote on the amendment as proposed.

A roll call vote was taken, with the following result:

Abaray – yea
Fischer – nay
Holmes – yea
Mulvihill – yea
Kurfess – yea
Jacobson – yea
Skindell – yea
Saphire – yea

Chair Abaray announced that the motion to issue the report and recommendation for amendments to Article I, Section 10 passed, with seven in favor, one opposed, and three absent.

Discussion:

Chair Abaray then asked how the committee would like to proceed regarding the issue of civil asset forfeiture, noting a proposal introduced by Representative Robert McColley. She noted Rep. McColley was not available to address the committee and wondered whether the committee wished to proceed or whether it would be preferable to wait until Rep. McColley could be present. Members generally agreed that it would be acceptable to wait to discuss that issue.

Committee member Richard Saphire said the proposal is interesting but, given the current status of the Commission’s future, observed the committee would not be able to move through a report and recommendation.

Chair Abaray it would be premature to have a report and recommendation, noting the committee had heard from a speaker on the topic, but had not had any other information or an opportunity to discuss the subject.

Mr. Jacobson suggested the committee could attempt to make a record for the future, indicating the chair could ask for a report and if there is a meeting next month the committee could get to the position of having a first vote.

Mr. Saphire agreed, noting even if the committee is unable to wrap up a topic it could leave a record of topics for a future commission to consider.

Chair Abaray, explaining for the record, indicated that Rep. McColley had offered an amendment to Article I, Section 12 that would add new section that would state as follows:

No person shall have their property forfeited to the state on the basis or allegation of a crime without a criminal conviction, unless a conviction against the person is unattainable by reason of death or inability to bring the person within jurisdiction of the court.

Chair Abaray asked if committee members had other new business.

Noting the termination of the Commission, whenever it is, Mr. Kurfess said he is satisfied that the committee would conclude its business in an orderly fashion and will take the time necessary to wrap up topics, even if it requires one or two extra sessions. He said he is in favor of one or two special meetings to allow this.

Mr. Saphire said the committee spent the better part of two years on the topic of judicial selection. He said they had many meetings and presenters, and reviewed a lot of research. He recalled the committee actually voted with respect to the process that it would use, and for a variety of reasons, the issue died. He said, in the interest of preserving the record, it would be important to have a draft recommendation.

Chair Abaray said staff would be putting minutes in the form of a summary report. She said, at the next meeting the committee could give a wrap up.

Mr. Jacobson said he is still opposed to any changes to the judicial selection process in Ohio, and that, if the committee seeks to record its review of that topic, he would prepare the arguments for the other side.

Mr. Saphire said he is not suggesting a proposal to be voted on, but rather to leave a report because someone might find the information and perspectives to be useful.

Chair Abaray recalled that the committee moved on because it wanted to wait to see how the elections in the Supreme Court went to see if there were different problems. She said "We were also looking at the impact of Supreme Court decisions on the financing of judicial elections; wanted to wait but didn't pick it up again."

Mr. Saphire said he has a distinct recollection the committee voted on how to proceed, and that the consensus was that they should put describe the best possible elective system and the best possible selection system. He said they considered that the ideas might not be adopted, but should be forwarded to the Commission for consideration.

Chair Abaray agreed it would be good for the record to present those ideas to the Commission.

Mr. Jacobson disagreed, stating that, “by suggesting what changes we would make to an elected system you are starting with premise there is something wrong with current system and we would have to debate what changes there were for that.” He said he recalls the discussion to be that if they did not move to another topic he would move to postpone indefinitely. He said he understands that was a direction they voted for earlier, but he disagrees. He commented “It is elitism to take the decision of choosing judges away from the electorate.” He said he objects to a document that would outline a perfect system. He said those who believe the system works are not in favor of what the proposals could be.

Justice Fischer said the committee is supposed to prepare a list of issues that a future group might wish to look into. He said, if the Commission is done June 30, then the committee cannot do more than that.

Mr. Kurfess said the one area he would like to explore is the suggestion originating with Chief Justice O’Connor, which is to move judicial elections to odd-numbered years. He said he can think of some positives and some questions, and would like to hear the views of the secretary of state and the Ohio Judicial Conference on that. He said, based on the attention judicial candidates get, that issue deserves some exploring.

Mr. Jacobson said that system would not encourage votes from rural Ohioans because only the cities have issues on the ballot in odd-numbered years to attract voters.

Chair Abaray suggested that the committee’s next meeting would be a wrap up meeting, and would include discussion of these items.

Adjournment:

With no further business to come before the committee, the meeting adjourned at 10:49 a.m.

Approval:

The minutes of the May 11, 2017 meeting of the Judicial Branch and Administration of Justice Committee were approved at the June 8, 2017 meeting of the full Commission.

Janet Gilligan Abaray, Chair

Justice Patrick F. Fischer, Vice-chair



OHIO CONSTITUTIONAL MODERNIZATION COMMISSION

MINUTES OF THE LEGISLATIVE BRANCH AND EXECUTIVE BRANCH COMMITTEE

FOR THE MEETING HELD
THURSDAY, MAY 11, 2017

Call to Order:

Chair Fred Mills called the meeting of the Legislative Branch and Executive Branch Committee to order at 11:08 a.m.

Members Present:

A quorum was present, with Chair Mills, Vice-chair Brooks, and committee members Asher, Craig, Davidson, Taft, Talley, and Trafford in attendance.

Approval of Minutes:

The minutes of the March 9, 2017 meeting of the committee were approved.

Presentations and Discussion:

Chair Mills began the meeting by indicating this was likely to be the committee's final meeting. He said the committee will have met 33 times in the length of the Commission. He said the committee has talked about reapportionment/redistricting at 24 hearings, discussed term limits four times, addressed the single subject rule three times, considered the idea of a public official compensation commission in six meetings, and reviewed other miscellaneous subjects, such as the speech and debate privilege. He thanked staff for its work on the committee's agenda.

*Camille Wimbish, Director
Ohio Voter Rights Coalition*

Chair Mills recognized Camille Wimbish, director of the Ohio Voter Rights Coalition, to provide an update on efforts to reform the Congressional redistricting process in Ohio. Ms. Wimbish said she would be providing an update on behalf of the Fair Districts = Fair Elections Coalition, a group of organizations undertaking the redistricting reform effort.

Ms. Wimbish began by noting that in November 2015, more than 71 percent of Ohio voters supported a new system for drawing legislative district lines. She said since that election Ohio legislative leaders have not taken action on congressional redistricting reform, prompting her group to begin an initiated petition process. She said representatives of the League of Women Voters, Common Cause Ohio, and the Ohio Environmental Council, among others, have begun a ballot campaign to amend the Ohio Constitution. She said on April 24, 2017, the group began by filing the initial 1,000 signatures and ballot summary with the attorney general's office. She said that summary was rejected on May 4, 2017. Ms. Wimbish said the committee has since made changes to address the attorney general's concerns, and the summary now states the Ohio Supreme Court will have exclusive jurisdiction over challenges and that the bipartisan Ohio Redistricting Commission would be reconstituted if the court invalidates the Congressional redistricting plan or map. She said on May 10, 2017, the proponents submitted an amended summary along with more than the required 1,000 signatures to the attorney general. They will now await a determination by the attorney general before beginning the next phase, which will require collecting 305,000 signatures from 44 of Ohio's 88 counties.

Ms. Wimbish provided a copy of the text of the proposal. She said some of the highlights of the proposal include that it follows the language of the Issue 1, 2015 proposal. She said the bipartisan Ohio Redistricting Commission would draw the lines, and that political gerrymandering is prohibited, meaning there can be no drawing of lines to favor or disfavor one political party over another. She said the plan maximizes representational fairness so that the statewide proportionate districts must reflect the statewide party preferences, as determined by the statewide proportionate votes over the last ten years. She added the plan keeps communities together, protecting counties, then cities, then townships by minimizing splits. She said no county may be split more than once. Ms. Wimbish said the plan increases transparency by requiring the redistricting commission to publish a plan for consideration and to hold at least three meetings before voting. She said the redistricting commission must also provide a written explanation for how the plan maximizes compliance with the criteria. She said, finally, the plan requires bipartisan approval of maps, meaning that at least two members of the minority party must agree to the map. She said if the redistricting commission fails to get bipartisan approval, the Ohio Supreme Court will order the redistricting commission to get back to work. She said the proponents will collect signatures throughout the summer, adding that if they obtain the required number of signatures before July 5, they will submit the petition to be placed on the ballot in November 2017. If they do not get the signatures they need in time, she said they will continue to collect signatures in time for the 2018 ballot.

Ms. Wimbish then answered questions from the committee.

Chair Mills commented that the proposal does not include an impasse procedure, such as was included in the modifications to the Ohio reapportionment system. He said the proposal does not mirror Issue 1 on the November 2015 ballot in that regard. Ms. Wimbish explained that the proposal has the court step in to resolve an impasse.

Carrie Davis, executive director of the League of Women Voters of Ohio, who was seated in the audience, explained that she is one of three members of the official ballot campaign committee for Fair Districts. She said when the committee prepared their draft proposal, the dialog they had previously had with the Legislative Branch and Executive Branch Committee was helpful in shaping the final product. She thanked the committee for its assistance.

Richard Gunther, professor emeritus of the Ohio State University, speaking from the audience, explained the difference between the proposal and the language adopted by voters in Issue 1. He said, overall, the proposal is deeply rooted in Issue 1, but, unlike with Issue 1, proponents have built in a requirement that the number of splits of counties or townships should be minimized and no county split more than once. He said Issue 1 had the task of dividing 88 counties, but that is not possible to do when drawing lines for Congressional districts. He said, “If you don’t protect counties you are opening up opportunities for strange districts, and creative maps.” He added that one difference is that the committee wanted to minimize the spitting of municipal corporations, townships, and counties. He said the proposal also allows any citizen of Ohio to put forward a plan to be considered by the redistricting commission. He said everything in the proposal is either in the constitution or will be there in 2020 as a result of Issue 1. But, he added, “We are modifying by taking some of criteria from aspirational goals and moving them to becoming primary criteria.” He said the proposal prohibits plans that favor a party or candidate, in the interest of representational fairness, except insofar as the plan requires that the percentage of districts leaning to one party or another should mirror the preferences of the voters. He said there will be eight or 15 districts that will lean Republican, and seven that will lean Democratic, but that does not mean that seven versus eight will be elected because there are some districts that will flip based on other factors. He said “This is very balanced in partisan terms and should provide a level playing field.”

Chair Mills recognized Jeff Jacobson, a member of the Commission, who sought to offer an alternate view of the proposal. He said the proposed amendment is not a continuation of Issue 1, adding it is disheartening to him that this “attempt to enshrine in the constitution a partisan outcome” is being done in the name of Issue 1. He said the heart of Issue 1 was the recognition that experts can be manipulated and that rules are never perfect. He said, “We find ourselves at wit’s end because voters don’t live where you want them to in order to make the rules work perfectly.” He continued that the heart of Issue 1 is the best way to ensure a good result because it requires both parties to have to come together, and if that does not happen, Issue 1 provides an impasse resolution process. He said that process, while not perfect, causes both majority and minority to gain and lose if they do not go along with making it work. So, he continued, the impasse resolution says the majority rules but the plan only lasts four years. He said there is a problem with a plan that requires a court to resolve the impasse, and there will come a point when the court will have to order a new map on its own.

Mr. Jacobson continued, rejecting the idea that splitting counties is a bad thing for both sides equally. He said gerrymandering is taking something strong enough on its own, breaking it to pieces, and shuffling those pieces around, explaining that is an important reason to keep counties intact that are small enough that they do not need to be broken in order to be gerrymandered. He said the plan only protects county boundaries in the interest of protecting Democrats. He emphasized the goal should not be to guarantee the outcome, and that the proposed amendment only pretends to take politics out of the equation. He said the plan is “Not bipartisan and not fair, and there will be opposition to it on the ballot.”

Chair Mills thanked Mr. Jacobson, expressing appreciation for his work on the issue as well as the work of many others.

Chair Mills then turned the committee’s attention to the committee’s next steps for wrapping up its work. He asked Shari L. O’Neill, interim executive director and counsel to the Commission for suggestions of sections the committee might consider as being ripe for discussion.

Ms. O'Neill noted that Article II, Section 41, regarding prison labor, may benefit from a closer look in conjunction with an objection that has been raised in relation to Article I, Section 6, which prohibits involuntary servitude "unless for the punishment of crime." She said there had been discussion about holding a joint meeting with the Bill of Rights and Voting Committee, which was assigned Article I, Section 6, in order to review those sections in tandem.

Ms. O'Neill said an additional matter had been raised in the Education, Public Institutions, and Local Government Committee relating to Article II, Section 20, dealing with terms of office and compensation of officers in certain cases. She deferred to committee member Bob Taft, who is also on that committee, to talk more about the subject. Gov. Taft said when the Education, Public Institutions, and Local Government Committee solicited ideas from local government organizations, the County Commissioners Association raised a point about the prohibition on raising the compensation of county commissioners within their terms. He said that creates a problem because the terms are staggered, so that some commissioners are afforded a pay raise while others are not. He said the question had been raised in that committee through a letter from the organization, but there had been no testimony about it and there would not be an opportunity to make a recommendation.

Ms. O'Neill said an additional topic the committee did not have the opportunity to resolve was whether to recommend a public official pay commission that would independently review the compensation provided to members of the General Assembly and other elected officials. She said although the committee had held hearings on the topic, they had not reached a consensus, and may want to offer guidance on that topic for a future group to consider.

Chair Mills asked if committee members had suggestions for issues the committee might address. Committee member Herb Asher asked whether the committee would be providing a written work product that would discuss issues the General Assembly might consider in the future. Chair Mills said the committee's suggestions should be part of whatever information the Commission would be communicating as a final report. Ms. O'Neill agreed, saying staff had envisioned a final report that would cover every committee and incorporate the suggestions that are being made at the end of the Commission's work. She said those suggestions in the report could then be available both to the General Assembly and be preserved in the archive to be available to a future commission.

Mr. Asher said he would like to include a reference to Article XV, Section 4, which prohibits anyone from being elected or appointed to any office in the state unless that person has the qualifications of an elector. He said that prohibition may be interpreted as interfering with the ability of universities to appoint trustees if all trustees must be Ohio electors. He noted that he had heard the legislature was considering changing the terms of office for university trustees from nine years to six years, based on the concern that it is difficult to find people who are willing to make a commitment to serve for nine years. He said a change in the constitutional provision to allow persons from out of state to serve as university trustees would expand the pool of candidates for the post. Chair Mills asked whether it is a problem that the section in question was not assigned to this committee. Ms. O'Neill said there have been examples of committees transferring sections, and that this has not been a problem in the Commission's history. Mr. Asher said there had been discussion about how to approach that. Chair Mills said he has no objection to including that topic in a report on the committee's final suggestions.

Vice-chair Brooks asked whether this would be the last meeting of the committee. Chair Mills said he believes that to be the case. Ms. O'Neill agreed, saying that the plan is for the committees to wrap up their business in May and have a full Commission meeting in June. She said, with regard to a report, staff could provide additional ideas and committee members could advise about what they would like to include in a report, and drafts could be circulated. She said a reading could occur at the final Commission meeting without having the committee meet again.

Chair Mills approved this plan, indicating a report could be circulated with committee members adding items that might occur to them in the interim.

Mr. Asher said he would like to publically commend Chair Mills for his leadership.

Chair Mills said it has been an interesting committee, and he has enjoyed working with the members on the various topics under consideration. He said the committee has given the issues their best effort, and particularly noted the committee's contribution to Issue 1, as well as its influence on other tough issues that are still pending. He said it has been a pleasure and an honor to work with both old friends and new friends throughout the process.

Professor Gunther said he would like to thank the committee for its work in helping move forward consideration of the issue of redistricting.

Adjournment:

There being no further business to come before the committee, the meeting was adjourned at 11:44 a.m.

Approval:

The minutes of the May 11, 2017 meeting of the Legislative Branch and Executive Branch Committee were approved at the June 8, 2017 meeting of the full Commission.

Frederick E. Mills, Chair

Paula Brooks, Vice-chair



OHIO CONSTITUTIONAL MODERNIZATION COMMISSION

MINUTES OF THE

JOINT MEETING OF THE PUBLIC EDUCATION AND INFORMATION COMMITTEE AND LIAISONS WITH PUBLIC OFFICES COMMITTEE

FOR THE MEETING HELD
THURSDAY, MAY 14, 2015

Call to Order:

Roger Beckett, Chair of the Public Education and Information Committee, called the joint meeting of the Public Education and Information Committee and the Liaisons with Public Offices Committee to order at 12:30 p.m.

Members Present:

Chair Beckett and committee member Curtin of the Public Education and Information Committee were in attendance, and committee member Manning of the Liaisons with Public Offices Committee was in attendance.

Presentation:

"Website Update"

*Shaunte Russell
Director of Communications
Ohio Constitutional Modernization Commission*

Chair Beckett acknowledged Director of Communications Shaunte Russell, who presented to the committee on the unveiling of the redesigned Ohio Constitutional Modernization Commission website, located at ocmc.ohio.gov. Ms. Russell said the website is newly launched, and features new graphics and new photos. She said that circulating adopted reports and recommendations will be added to the site soon.

Chair Beckett asked whether the committee wants people to engage in discussion about planned actions around the time that recommendations are made. The Commission's Rules of Procedure and Conduct require a process in which reports and recommendations have multiple readings before the committees and the Commission. Chair Beckett asked whether that section of the

website could show those recommendations that are being considered by section of the constitution or by topic, in order to be sure the Commission is getting the word out. Ms. Russell answered that staff is working on this, and that she expects the website will indicate where a report and recommendation is in the process, for example whether it has had a first reading or a second reading before the committee or Commission. She indicated the information about the reports and recommendations will continue to be located within the agenda items on the committee page, as well as there being a separate location on the website.

Rep. Curtin complimented Ms. Russell, indicating the website is a major upgrade, and that the site looks good. He said the website is likely to be a work in progress for years to come, as it is updated with events that transpire in the committees and the Commission. He asked whether any thought was given to establishing a “search” function that would allow people interested in a particular subject to find everything related to that topic. Ms. Russell answered that she will bring this idea to Legislative Information Systems that has been assisting with the site design, and would ask how long it would take to include a “search” function. Ms. Russell concluded her remarks by indicating that the Commission now has color brochures that are available for Commission members to distribute.

New Business:

Chair Beckett then moved on to new business, indicating that one topic he would like the committee to engage in would be how the Commission should handle recommendations received from the public in terms of constitutional changes. Chair Beckett said the rules are silent on that question, and the Organization and Administration Committee has asked the Public Education and Information Committee and the Liaisons with Public Offices Committee to talk about what procedures and approaches could be adopted regarding these types of requests. He said it has been suggested that any recommendations received ought to be forwarded to the respective subject matter committee, and that a proposal should be given to all members of that committee, so it is not just sitting with the chair.

Chair Beckett continued saying the Commission does not want to imply that it is not interested in public input, but the Commission also wants to make sure it is not fast-tracking proposals that should first go to a subject matter committee. Chair Beckett asked if there were any thoughts by the committee members on this question.

There being no questions, Chair Beckett indicated that the chairs of the four standing committees would be getting together and talking through that issue, and that the question will go to the Organization and Administration Committee to figure this out and talk further at another meeting.

Adjournment:

With no further business to come before the committee, the meeting adjourned at 12:50 p.m.

Approval:

The minutes of the May 14, 2015 joint meeting of the Public Education and Information Committee and the Liaisons with Public Offices Committee were approved at the June 8, 2017 meeting of the full Commission.

Public Education and Information
Committee

Liaison with Public Offices Committee

Roger L. Beckett, Chair

Herb Asher, Chair

Robert A. Taft, Vice-chair

Constitutions are not ephemeral documents, designed to meet passing occasions. The future is their care, and therefore, in their application, our contemplation cannot be only of what has been but of what may be.

--Justice William J. Brennan

People ask, “Why did you pick constitutional law?” I mean, come on. Who, with a real opportunity to dig into a subject of law would not want that to be constitutional law? It has everything. It has history. It has moral philosophy. The meaning of liberty, of equality, of dignity. It has legal technicalities galore. It has precedent. It involves strategy, dealing with complicated human situations and the people who are affected by law, and the human dynamics of complicated institutions like the U.S. Supreme Court.

--Lawrence H. Tribe



OHIO CONSTITUTIONAL MODERNIZATION COMMISSION

2017 Meeting Dates

July 13

August 10

September 14

October 12

November 9

December 14