

**Co-Chair**  
Charleta B. Tavares  
Assistant Minority Leader  
15<sup>th</sup> Senate District



**Co-Chair**  
Ron Amstutz  
Speaker Pro Tempore  
1<sup>st</sup> House District

## OHIO CONSTITUTIONAL MODERNIZATION COMMISSION

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### MINUTES FOR THE MEETING HELD THURSDAY, NOVEMBER 12, 2015

#### **Call to Order:**

Co-chair Charleta Tavares called the meeting of the Ohio Constitutional Modernization Commission ("Commission") to order at 1:42 p.m.

#### **Members Present:**

A quorum was present with Commission Co-chairs Tavares and Amstutz, and Commission members Abaray, Asher, Beckett, Brooks, Clyde, Coley, Curtin, Fischer, Jacobson, Kurfess, Macon, Mills, Mulvihill, Peterson, Readler, Sapphire, Skindell, Sykes, Taft, Talley, and Trafford in attendance.

Co-chair Tavares noted that on November 6, 2015, Representative Robert McColley was named to replace Representative Nathan Manning on the Commission.

#### **Approval of Minutes:**

The minutes of the October 8, 2015 meeting of the Commission were reviewed and approved.

#### **Standing Committee Reports:**

##### *Coordinating Committee*

Sen. Tavares then recognized Kathleen Trafford, chair of the Coordinating Committee. Ms. Trafford said the committee continues to meet to review reports and recommendations, and, in October, reviewed two reports and recommendations that are being presented to the Commission today. As a result of a suggestion to the Commission for interim status review of the committees' work, the Coordinating Committee will accept that task and, both this month and next month, will be hearing reports from subject matter committees as to their progress.

##### *Public Education and Information Committee* *Liaisons with Public Offices Committee*

Roger Beckett, chair of the Public Education and Information Committee reported to the Commission on behalf of his committee and the Liaisons with Public Offices Committee. Mr. Beckett acknowledged the work of staff and Communications Director Shaunte Russell to spread the news of the work of the Commission. He noted that the OCMC website will have a new

feature, which is a list of the reports and recommendations as adopted by the Commission. He also noted the website also will include the worksheets documenting the constitutional sections assigned to the various committees, as well as their progress in reviewing these provisions. In response, Sen. Tavares expressed her appreciation for the staff work on the website.

#### *Organization and Administration Committee*

Sen. Tavares noted that the Organization and Administration Committee did not meet in October and is not making a report at this time.

#### **Subject Matter Committee Reports:**

#### *Education, Public Institutions, and Local Government Committee*

Chad Readler, chair of the Education, Public Institutions, and Local Government Committee, reported that the committee continues to work through Article VI, Education, and hopefully will complete its review of that article soon. He noted that, later in the meeting, he will be presenting, for the first time, two reports and recommendations for Article VI, Section 1, relating to funds for religious and educational purposes, and Article VI, Section 2, relating to school funds.

#### *Finance, Taxation, and Economic Development Committee*

In the absence of the chair and vice-chair of the committee, Executive Director Steven C. Hollon reported that the committee met in October, at which time it heard a presentation by Tim Keen, director of the Office of Budget and Management. Mr. Keen gave his perspective on Article VIII, offering suggestions on how the committee might address sections relating to state debt. Mr. Hollon indicated that this committee has had many ideas to come before it, but now has a plan for going forward, and expects to bring forth some reports and recommendations after its meeting in December.

#### *Judicial Branch and Administration of Justice*

Janet Abaray, chair of the Judicial Branch and Administration of Justice Committee, reported that the committee will meet next month to continue its discussion of issues pertaining to grand juries. She said some guest speakers will be appearing to provide insight on the use of the grand jury in state criminal prosecutions.

#### *Bill of Rights and Voting Committee*

Richard Sapphire, chair of the Bill of Rights and Voting Committee, reported that the committee today approved two reports and recommendations that will go to the Coordinating Committee. The first is on Article I, Section 20, dealing with powers reserved to the people. The second is on Article V, Section 4, involving disqualification from voting for felons. Mr. Sapphire said the committee then again took up its discussion of Article V, Section 6, involving mental capacity to vote. He said the committee is close to a final resolution with respect to a report and recommendation on that provision.

### *Constitutional Revision and Updating Committee*

Dennis Mulvihill, chair of the Constitutional Revision and Updating Committee, reported the committee has been working for the better part of the year on what became Issue 2 on the November 3, 2015 ballot. He said the committee now is working on Article II, Section 1b, the statutory initiative process, to encourage citizens to use the statutory initiative route rather than the constitutional amendment route. He said the committee will study how to encourage that route, and will be drafting some language. He said the committee also will be looking at Article II, Section 1a, and that the committee is hoping to present recommendations to the Commission in the next several months.

### *Legislative Branch and Executive Branch Committee*

Fred Mills, chair of the Legislative Branch and Executive Branch Committee, said the committee is scheduled to meet at 2:30 on November 12, 2015, immediately after the Commission meeting. He said its agenda includes continuing the review of the one-subject rule, on which the committee will be hearing a presentation. He added the committee also will hold a discussion of possible recommendations for Congressional redistricting reform, and that the committee is continuing to deal with the heavyweight subjects that have been assigned to it.

### **Reports and Recommendations:**

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

Sen. Tavares then directed the Commission's attention to two reports and recommendations being presented by Chad Readler, chair of the Education, Public Institutions, and Local Government Committee.

Mr. Readler began by noting that the committee reviewed Article VI, Section 1 with an eye on whether it is obsolete, and found it still has relevance today. He said Article VI, Section 1 provides that the principal of all funds arising from the sale or other disposition of lands or other property that is granted or entrusted to the state for educational and religious purposes shall be used or disposed of in such manner as the General Assembly shall prescribe by law. He noted the provision originally was adopted in the 1851 constitution, specifying that the principal of all funds of this nature would forever be preserved inviolate and undiminished, and required that the income from those funds be applied to the specific objects of the original grants or appropriations.

Mr. Readler said the history of the provision dates back to the Northwest Ordinance, when school lands provided by the federal government to the Ohio territory helped establish education as a priority of the new nation. By the time Ohio achieved statehood, a specific section in each township was solely dedicated to the establishment of schools. These lands were governed by the General Assembly, which at first leased the lands and later sold them, with proceeds being used for the benefit of schools.

He said the 1851 constitution allowed the proceeds granted for educational or religious purposes to be applied to the objects of the original grants, but in 1968, the U.S. Congress limited the use of sale proceeds to educational purposes only. He noted the report and recommendation summarizes a presentation made to the committee by Robert Cupp, who was, at that time chief

legal counsel for the Ohio Auditor of State and is currently serving as a state representative and a member of the Commission. Mr. Readler finished by stating that the report and recommendation documents the conclusion of the Education, Public Institutions, and Local Government Committee that Article VI, Section 1 should be retained in its current form.

Sen. Tavares then asked if there were public comments or discussion by Commission members regarding this report and recommendation. There being none, she indicated a second presentation would be made at the next Commission meeting, and that the Commission will vote at that time.

*Article VI, Section 2 (School Funds)*

Mr. Readler then gave a presentation regarding Article VI, Section 2, which deals with school funds, indicating that the section provides that the General Assembly shall make such provisions, by taxation or otherwise as, with the income arising from the school trust fund, will secure a thorough and efficient system of common schools throughout the state. He said the section was adopted as part of the Ohio Constitution of 1851 and has never been amended, and that it includes the first use of the phrase “thorough and efficient” in the constitution of any state, a concept that was influenced by an 1837 report about education prepared by Calvin Ellis Stowe. He said some 22 states are recognized as having constitutional provisions imposing educational standards similar or identical to Ohio’s thorough and efficient clause, but that the definition of common schools as well as what constitutes a thorough and efficient system varies widely from state to state.

Mr. Readler indicated the section has been the subject of significant litigation and was the subject of much debate by the committee. He continued that the report and recommendation outlines the significance of the Ohio Supreme Court’s conclusion in the DeRolph line of cases that the state educational funding system violated the “thorough and efficient” clause. He noted the committee heard from many presenters on the topic, including Ohio Supreme Court Justice Paul E. Pfeiffer. He added that endnote 9 references scholarly work done by Senator Larry Obhof on the topic. He said the committee debated the issue quite thoroughly, but in the end decided to keep the language as is. Thus, he said, the report and recommendation indicates that the committee concludes that Article VI, Section 2 should be retained in its current form.

Sen. Tavares then asked if there were public comments or discussion by Commission members regarding this report and recommendation. There being none, she indicated a second presentation would be made at the next Commission meeting, and that the Commission will vote at that time.

**Executive Director’s Report:**

Sen. Tavares then recognized Executive Director Steven C. Hollon, who reported that he sent letter to public members relating to their interest in continuing service on the Commission. He said that the Commission co-chairs had requested the distribution of a form to allow members to indicate if they want to be reappointed. Mr. Hollon asked the public members of the Commission to respond by completing the form and returning it to him no later than November 30.

**Adjournment:**

There being no further business to come before the Commission, the meeting adjourned at 2:10 p.m.

**Approval:**

The minutes of the November 12, 2015 meeting of the Commission were approved at the December 10, 2015 meeting of the Commission.

*/s/ Charleta Tavares*

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Co-chair  
Senator Charleta B. Tavares  
Assistant Minority Leader

*/s/ Ron Amstutz*

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Representative Ron Amstutz  
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