**OHIO CONSTITUTIONAL MODERNIZATION COMMISSION**

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**MINUTES OF THE**
**CONSTITUTIONAL REVISION AND UPDATING COMMITTEE**

**FOR THE MEETING HELD**
**THURSDAY, JUNE 8, 2017**

## Call to Order:

Chair Dennis Mulvihill called the meeting of the Constitutional Revision and Updating Committee to order at 11:37 a.m.

## Members Present:

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

## Approval of Minutes:

The minutes of the May 11, 2017 meeting of the committee were approved.

## Discussion:

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

Chair Mulvihill began the meeting by describing what is likely to be happening on this proposal at the Commission meeting this afternoon. He expressed his belief that Senator Vernon Sykes would be introducing an amendment to apply the same even-year 55 percent threshold applies to both citizen-initiated amendments and legislatively-initiated amendments.

He noted that this is an issue that almost all the comments have addressed. He further stated that the committee unanimously approved the report and recommendation last month without that parity or equalization. He indicated that the committee had discussed the parity issue several times and decided that it did not want to go that route, noting a built-in bipartisan nature to the General Assembly proceeding, with the requirement of a 60 percent vote in each house. He said no such requirement applies to citizen-initiated amendments, which do not go through the same bipartisan process incorporating the give-and-take that General Assembly amendments go

through. He said there has been no suggestion from any of the presenters that there has been any abuse of the process of amendments proposed by the General Assembly. He also said there has been no suggestion that the General Assembly is somehow over-using the constitutional amendment process. He said nearly 70 percent of all amendments proposed by the General Assembly are approved by the voters, but only about a quarter of citizen-initiated amendments are approved. Still, he said he understands that the Committee will have a full discussion on that at the meeting. He said he understands the attraction to symmetry and synchronization but that the committee's proposal is subject to the argument that the recommendation treats treating the public differently than politicians.

Chair Mulvihill mentioned the good work that has been done to develop this proposal. He said many of the groups he has heard from like much of what the committee has done but have problems with part of it. He said the committee has been able to offend every imaginable constituency but that everybody likes most of what the committee is doing. For example, he said the Chamber of Commerce likes what the committee is proposing on the constitutional initiative, but not on the statutory initiative. He noted the League of Women Voters likes the proposal on the statutory initiative, but not some aspects of the proposal on the constitutional initiative. He observed that it is not possible to please everyone all of the time, and that, in the aggregate, the recommendation is a good proposal; it protects the ability of citizens to use the initiative and protects the process from political interference to the extent possible.

Chair Mulvihill then opened the issue to discussion by the members of the committee before the committee discusses Article XVI.

Representative Bob Cupp asked Steven H. Steinglass, senior policy advisor, how often the voters approved initiated amendments with less than 55 percent of the vote. Mr. Steinglass pointed out that in the last 70 or 80 years, only one of the 12 initiated amendments that the voters approved received less than 55 percent of the vote; that was the casino gambling initiative in 2009, which received a 53 percent positive vote. He said the others introduced during this period generally received more than 60 percent of the vote. He noted the votes were closer in the early part of the 20th century in the years after the 1912 approval of the initiative. With respect to the number of General Assembly proposed amendments that received less than 55 percent, Mr. Steinglass said he has not compiled that data.

Chair Mulvihill pointed out that a few years ago the committee reviewed the experience with amendments proposed by the General Assembly. He noted that in 2015, the anti-monopoly amendment proposed by the General Assembly did not receive more than 55 percent of the vote. Mr. Steinglass agreed that in 2015 the anti-monopoly amendment proposed by the General Assembly was approved by approximately 52 percent of the voters.

Chair Mulvihill recognized committee member Roger Beckett, who introduced his daughter, Laura Beckett, who was accompanying her father.

Rep. Cupp said that he is not one who wishes to change the percentage for amendments proposed by the General Assembly. He said, if one wants to look for symmetry, it is there because it takes a 60 percent vote in the General Assembly to propose an amendment and then there is a majority vote of the people. He said, for initiated amendments, it is the opposite. In these cases, the supermajority requirement is on the approval end, not at the beginning of the process. Rep.

Cupp observed that one could say the proposal is not symmetrical and that we could raise the voting percentage for initiated amendments to 60 percent to make it symmetrical with the voting requirement in the General Assembly. Additionally, he said, limiting when the General Assembly may put a proposed amendment on the ballot to every fall election in even years could be a problem when there is an emergency and a need to put an amendment on the ballot without waiting as long as two years. He said that is another reason the committee should not tinker with the framework of amendments proposed by the General Assembly.

Mr. Beckett stated that one reality is that the committee is at the last-minute stage. He said the Commission is advisory to the legislature, which will have to sort out the details of the recommendation. He said the committee has worked through these questions for years and has come up with an impressive proposal to fix something that everyone knows is broken. But, he said, the committee does not have the time to weigh new language and to change how legislatively-proposed amendments go to the people. Generally, he said, people want the same rules to apply to amendments proposed by initiative and those by the legislature. But, he asked whether the amendment should also apply to limit the people to put proposals on the ballot through constitutional conventions.

Mr. Beckett added his belief that this is a serious issue. He said he believes that the report should be revised to identify what the committee has heard about equalization and these other issues, and leave the rest to the legislature.

Chair Mulvihill raised the question of whether a parity amendment would be a deal-breaker.

Committee member Mark Wagoner pointed out the committee spent a lot of time coming up with a grand bargain. He noted that everyone may not be happy with all of it, but by and large there is support for what the committee is trying to do. But, he said, there are problems if the committee starts pecking away at it.

Vice-chair Charles Kurfess raised a question about the voting turnout on issues that are on the ballot and expressed interest in hearing more about this.

Chair Mulvihill responded by pointing out that there is little drop-off in turnout on proposed initiated amendments, pointing out that 96 percent of those voting in 2015 also voted on the marijuana proposal. He further noted that, on the last four initiated amendments that the voters approved, the turnout on the issue as a percentage of the total of those voting was: health care 95.3 percent; casino gambling 98.2 percent; minimum wage 93.5 percent; and same-sex marriage 94.3 percent. So, he said, it seems that the voters are paying attention and that there is not much drop-off.

Chair Mulvihill summed up the discussion concerning what may be happening at the full Commission meeting. He again expressed interest in the committee's proposal on the initiative moving forward. He noted that there is not enough time to make the changes suggested at this meeting, but said, if the Commission continues, he hopes that the report could reflect the concerns that have been raised.

Sen. Sykes recognized the work that the committee had done over the years, expressing interest in future efforts to address these issues.

*Article XVI (Amendments)*

Chair Mulvihill then recognized Mr. Steinglass for the purpose of reviewing the memorandum that had been circulated to the committee on developments and issues related to Article XVI, which deals with the methods of amending the constitution other than by initiative.

Mr. Steinglass stated that it had been the plan to get to Article XVI after the committee wrapped up its work on Article II on the initiative. He reminded the committee that when the General Assembly created the Commission, one of the four purposes was to look at the way the constitution is amended. He said this committee is the only one to have an explicit portion of its charge included in the enabling legislation. He said time has not been a friend to the committee, and it has taken a long time to work through the proposals on the statutory and constitutional initiative. He said the committee never got to matters like the local initiative other than changing its section number.

Mr. Steinglass stated that he had prepared for the committee and the record a memorandum that reviews Article XVI and raises discussion questions.

Mr. Steinglass then summarized the key points from the memorandum, noting that since 1802 there has been a pattern, a trajectory, of liberalizing the ways in which the constitution is amended. This is reflected not only in Article II, which the committee has reviewed, but also in Article XVI.

He continued that, in 1802, the constitutional convention approved the original Ohio Constitution and did not send it to the voters for approval. The 1851 constitution created additional methods for amending the constitution, including the mandatory 20-year vote on whether to have a convention. The 1851 Constitution also gave the General Assembly the power to propose amendments by a three-fifths vote.

Mr. Steinglass indicated that, in 1912, the constitutional convention proposed and the voters approved the initiative. The 1912 convention also proposed that the ballot for the election of delegates to a convention be a non-partisan ballot and that proposed amendments be on the ballot as a separate issue without party designations. He said the 1912 delegates had been elected on a non-partisan ballot as a result of legislation, but the constitution was amended to require a non-partisan ballot. He said the most significant change beside the initiative in 1912 was the elimination of the supermajority requirement for amendments proposed by the General Assembly. He continued that, under the supermajority requirement, proposed amendments must receive a majority of those voting at the election. That requirement ended up dooming many amendments between 1851 to 1911. According to Mr. Steinglass, during this period, the voters approved 11 of 37 amendments, and, of the 26 amendments that the voters rejected, 19 received more positive than negative votes. He said, after 1912, all that was required to approve an amendment proposed by the General Assembly was a majority of those voting on the issue. He said this change accounts for the very high level of success that amendments proposed by the General Assembly have had since 1913, when the voters approved 68 percent of the legislatively-proposed amendments.

Mr. Steinglass continued, saying there has not been much discussion in Ohio as to whether changes should be made in Article XVI concerning the methods of amending the constitution.

He said the memorandum to the committee includes some history and raises some questions, for example, questions about what a convention might look like.

Mr. Steinglass noted that constitutional conventions, once the primary method for amending constitutions, have been in decline for the last 60 or 70 years. The last state constitutional convention that produced a constitution that was approved by the voters was the 1986 convention in Rhode Island, which presented multiple proposals to the voters, some being approved but others rejected.

He said state constitutional revision commissions have become more popular, but they too have had a mixed record. He said, if the committee had more time, it could fully examine the experience of state constitutional revision commissions and try to identify what circumstances led to successful experiences. He summarized that the success of commissions appears to depend on timing, leadership, bipartisanship, and a healthy dose of serendipity.

Finally, Mr. Steinglass pointed to two interesting proposals made in 1912.

First, he said there was a proposal that would have permitted the people to initiate a constitutional convention. Now a convention may be proposed to the voters by a two-thirds vote in the General Assembly or by the voters at the 20-year mandatory convention call. In 1912, however, he said a delegate submitted a proposal to permit the initiative to be used to call conventions. He said a handful of states currently permit conventions to be initiated, noting this has been an issue in California (which does not permit the initiation of conventions) where the state has been caught in a huge constitutional gridlock.

Second, he said there was a proposal in 1912 that recognized that conventions were expensive and proposed that conventions be abolished entirely and that there be a mandatory 20-year vote on creating a commission. Neither the proposal for initiating conventions nor the proposal for a mandatory vote on a commission gained any traction, and the delegates rejected both of them by significant votes.

Mr. Steinglass pointed out that the 1912 amendment to Art. XVI included details about the non-partisan nature of the ballot and required that persons running for delegate be nominated by petition.

In response to a question, Mr. Steinglass stated that the states with the initiative require the same percentage for approval of initiatives as they require for approval of amendments proposed by the legislature. He noted that, on page 11 of the report and recommendation approved by the committee, it is stated that Colorado in 2016 increased the required voter approval level for initiated amendments from 50 percent to 55 percent, but that the 50 percent requirement remained for amendments proposed by the legislature. He said this statement is inaccurate, as the Colorado amendment applied the 55 percent requirement to initiated amendments and to legislatively-proposed amendments. Generally speaking, he noted, most states use a simple majority with the major exceptions being Florida, New Hampshire, and Colorado, which have higher thresholds.

A member of the committee noted that in Nevada constitutional amendments must be approved by voters in two elections. There was also a question raised as to whether Florida required a 60

percent vote on all amendments, or only on initiated amendments. Mr. Steinglass said he would follow up on this, noting that Florida, which also uses constitutional revision commissions, permits its commissions to put matters directly on the ballot.

**Adjournment:**

With no further business to come before the committee, the meeting adjourned at 12:23 p.m.

**Approval:**

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

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Dennis P. Mulvihill, Chair

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Charles F. Kurfess, Vice-chair