



OHIO CONSTITUTIONAL MODERNIZATION COMMISSION

MINUTES OF THE CONSTITUTIONAL REVISION AND UPDATING COMMITTEE

FOR THE MEETING HELD
THURSDAY, NOVEMBER 10, 2016

Call to Order:

Chair Dennis Mulvihill called the meeting of the Constitutional Revision and Updating Committee to order at 2:12 p.m.

Members Present:

A quorum was present with Chair Mulvihill, Vice-chair Kurfess, and committee members Abaray, Beckett, Cupp, Jordan, Readler, Sawyer, and Wagoner in attendance.

Approval of Minutes:

The minutes of the October 13, 2016 meeting of the committee were approved.

Discussion:

Chair Mulvihill began the meeting by recounting the various ideas the committee has explored over the last several meetings regarding the initiated constitutional amendment and initiated statute process. These include requiring a supermajority for the approval of a constitutional amendment, having a proposed amendment appear on the ballot in consecutive general elections, creating a safe harbor for initiated statutes, and modifying signature requirements.

Chair Mulvihill then called on committee member Chad Readler to provide his perspective on the latest draft of the sections before the committee. Mr. Readler stated that the one item that he has gone back and forth on concerns whether there should be a supermajority for the approval of a constitutional amendment, or if the proposed amendment should appear on the ballot at two consecutive elections. He indicated that, while he originally thought two consecutive elections might make sense, he has since rethought the matter and now believes that a supermajority requirement for one election, perhaps to be held in an even-numbered year might make more sense.

Committee member Roger Beckett said the committee is trying to find some scientific precision as to a revision that would be palatable to the people. He said his assessment is that the committee is making progress, and has reached bipartisan agreement that the process should be recalibrated. He said the challenge is that, when the committee's proposal goes to the legislature, it could be that no one is going to be completely happy about the proposed changes. He said the Democrats do not want to strengthen the constitutional initiative procedure and the Republicans are not interested in easing the initiated statute procedure. He said "The balance we have to find is how to make everyone equally unhappy." Mr. Beckett continued that, on the initiated statute side, the committee has gone a long way in removing the indirect and taking the percentage of signatures needed from a total of six to five percent, and adding the safe harbor. He said the committee has been talking about requiring two consecutive elections, and there has been consensus, and the committee has gotten some push back on that from the Democrats that that proposal would be too hard to sell. He said he understands that. He suggested that the goal should be to get the number of electors who participate in voting on a ballot initiative as high as possible, and said his preference would be to require a 60 percent approval rate, instead of 55. He added that the committee should recommend constitutional initiative proposals only be placed on the ballot in even-year elections, when there is larger turnout and higher percentage of voters.

Senator Tom Sawyer added that in even-numbered years there is not such disparity in voting between one community and another.

Mr. Beckett said the committee should be getting information on which of the proposals it is considering is most likely to pass, but he said "we need a sense from the legislature of the appetite for this."

Chair Mulvihill asked Senator Kris Jordan for his thoughts on how the legislature might view the proposals under consideration.

Sen. Jordan said he cannot speak for his caucus, or the leadership, but he thinks the committee needs to make the statutory initiative easier. He offered to bring the topic to the caucus to see what others might be thinking.

Vice-chair Charles Kurfess noted that what kind of supermajority or procedure is recommended might depend on how people view imposing a supermajority on the constitutional initiative process. Chair Mulvihill agreed that is an issue the committee has been worrying about.

Representative Bob Cupp observed that the initiated statute procedure was developed as a bypass to the legislature because the legislature would bottle up the process due to narrow interests. He said he hopes whatever the committee does, it does not approve a plan that makes it too easy to bypass the legislature, causing Ohio to become like some western states that overdo it with initiated statutes. He said there is a conceptual theory about requiring a higher standard for passage of citizen's initiatives, yet the legislature has to attain a 3/5 vote of support to propose an amendment. He said imposing a supermajority requirement on a citizen's initiative is the comparable version of having a supermajority for the legislature.

Mr. Kurfess said the emphasis may need to be on increasing the difficulty in getting an initiated amendment on the ballot, rather than requiring a supermajority vote. He said he is concerned about making it too easy to obtain petition signatures, and does not like the idea of paying people to gather signatures. He said if a proposal is that important, there ought to be enough people willing to volunteer to get the signatures.

Committee member Janet Abaray asked whether it might work to add a requirement that a competing ballot issue be placed on the ballot by the political party, so as to balance the ballot questions.

Chair Mulvihill said that requirement might be too cumbersome, plus it might be hard to determine what the party thinks of a particular issue.

Mr. Beckett said alternate points of view are expressed in the required language providing pros and cons regarding the ballot question.

Mr. Kurfess summed up Rep. Cupp's position as arguing for a supermajority rather than requiring the initiative to go on the ballot twice, and Chair Mulvihill agreed.

Sen. Sawyer said the idea of a supermajority requirement also has merit because of its simplicity.

Chair Mulvihill asked Mr. Hollon, under Section 1a(E), to remove the segment "elections" and put in language for the sake of discussion next month that would require a majority vote of 55 to 60 percent in favor of an initiated amendment, and would only allow it to be placed on the ballot in an even-numbered year. He said that will be the draft the committee will work from when the committee invites guests in next month to discuss these issues.

Chair Mulvihill asked if there were any other items from the draft that could be altered.

Rep. Cupp asked about the requirement of getting signatures from various counties. He said there may need to be changes in consideration of the modern age in which communication and travel is easier.

Chair Mulvihill said the committee has discussed that question previously. He said the argument went both ways, and there was a concern that proposed amendments would only come from large metropolitan areas. He said, to the extent the General Assembly wants to allow electronic signatures, that would alleviate concerns about the even distribution of persons signing the petitions.

Mr. Hollon noted that the word "each" was inserted in the current draft in response to a concern previously expressed by Mr. Kurfess. Mr. Hollon also pointed out the committee had been provided with three charts showing the proposed timeline, in response to a request from Ms. Abaray. Mr. Hollon also noted alternative language was used in Section 1f(B) in order to eliminate the unnecessary repetition of a phrase and make the section read more easily.

Chair Mulvihill asked who the committee thought should be invited to attend the next meeting to provide their views of the proposed language. He noted the League of Women Voters, the 1851 Center, and Attorney Don McTigue should be invited.

Mr. Beckett suggested the secretary of state's office might wish to provide insight.

Mr. Hollon said he would issue these invitations.

Chair Mulvihill said he would follow up with Mr. Hollon to identify anyone else and extend invitations. He said additional groups would be Common Cause Ohio, Policy Matters, Progress Ohio, and Initiative Ohio.

Sen. Sawyer suggested also contacting persons who have signaled their interest in running for secretary of state.

Adjournment:

With no further business to come before the committee, the meeting adjourned at 2:54 p.m.

Approval:

The minutes of the November 10, 2016 meeting of the Constitutional Revision and Updating Committee were approved at the January 12, 2017 meeting of the committee.

/s/ Dennis P. Mulvihill
Dennis P. Mulvihill, Chair

/s/ Charles F. Kurfess
Charles F. Kurfess, Vice-chair