



## OHIO CONSTITUTIONAL MODERNIZATION COMMISSION

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

FOR THE MEETING HELD  
THURSDAY, FEBRUARY 11, 2016

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

Chair Chad Readler called the meeting of the Education, Public Institutions, and Local Government Committee to order at 9:38 a.m.

#### **Members Present:**

A quorum was present with Chair Readler, and committee members Beckett, Brooks, Coley, Cupp, Curtin, Sawyer, Taft, and Talley in attendance.

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

The minutes of the January 14, 2016 meeting of the committee were approved.

#### **Presentation:**

*Article VI, Section 4 (State Board of Education)*

Chair Readler announced the committee would be hearing from several presenters as it continues its review of Article VI, Section 4, creating the state board of education and giving it the power to appoint a superintendent of public instruction.

*Senator Peggy Lehner  
Senate District 6  
Chair, Senate Education Committee*

Chair Readler introduced Senator Peggy Lehner, chair of the Senate Education Committee, to provide her perspective on the role of the state board of education and the state superintendent. Sen. Lehner said two experiences have shaped her observations and recommendations. First, she has chaired the Senate Education Committee for the past four years, and in that capacity has served as an *ex officio* member of the state school board. She said, by attending the board

meetings, she has received an up-close view of the board's functioning. She added her comments are strictly her own and do not represent the position of the Senate.

She noted that her views also are informed by her involvement with the National Conference of State Legislatures (NCSL) Study group on International Comparisons in Education. She said that group consists of about 26 veteran legislators and legislative staff who have been charged with identifying lessons learned from the top 10 highest performing education systems in the world. As a side note, she commented that this is a list that the United States does not come even close to making.

Sen. Lehner said when the Ohio Constitution was originally written in 1802 and revised in 1851, education played a very different role in the state, which, at that time had an agricultural-based economy. She said even after Ohio entered the industrial age, citizens could succeed in the workforce with limited education. Some occupations, like medicine and law, required substantially more training and skill, but most people could make a living and provide for their families if they could read and do basic math. She noted that before World War II, the majority of students did not even attend high school.

Sen. Lehner commented that the early governance structures for education policy were designed for a very different set of requirements than what is needed today. Further, she noted they were not designed with all Americans in mind, regardless of race, gender or economic status. By contrast, education in the 21st Century is the backbone of the economy, with good, secure jobs requiring some type of secondary education in order to gain technical skills, problem-solving abilities, and creativity. She said it is reasonable to question whether the historic educational structures will continue to work in today's far more complex world.

Sen. Lehner continued that many American schools – not just Ohio's – are struggling to compete favorably with systems in other industrialized and even many developing countries. Notably, since 2000, when the Organization for Economic Coordination and Development (OECD) first began to survey the performance of students in 32 highly-developed nations in reading, math and science, American students have fallen behind. She continued that, in 2000, the United States averaged 16th in the world; in 2012 (with 64 countries included in the survey), the United States averaged 30<sup>th</sup>, lagging behind Poland, Vietnam and Estonia. She noted that *Education Week* recently released its ranking of states' educational performance, ranking Ohio 23<sup>rd</sup>. Sen. Lehner said, "by any measure, it is evident that many of Ohio's children are not getting the world-class education they deserve – and need – to succeed." She remarked that while there are myriad reasons for the United States' low performance, the governance structure for education is a significant factor.

She said, in contrast to other countries, in the United States three levels of government share a piece of the pie. Sen. Lehner said federal efforts to direct education policy have not only created a national uproar, but also have been remarkably unsuccessful. She specifically noted that state policy-making in Ohio is "a convoluted hodge-podge of competing interests." She noted there are two legislative chambers, a state board, a state school superintendent, a Department of Education, a chancellor, and a governor, all competing to make their mark and impose their views. In addition, she recognized the involvement of others who are "on the ground" delivering

education, such as administrators, local school boards, unions, educational service centers, and others who are divided about difficult and divisive issues such as school choice and unfunded mandates. She said “given the chaos and conflict among our authorities and constituencies, it may be surprising that we are ranked as high as we are.” Advocating for change, she said “my only concern with bringing this critical issue to the [Constitutional] Modernization Commission is that change needs to happen sooner rather than later.”

Sen. Lehner then recommended that the governor appoint Ohio’s school superintendent. She said her reason for this is that, in practice, the governor has considerable influence in the selection. She said, recognizing that influence, rather than pretending it does not exist, is the honest, transparent approach and promotes accountability. She also said the state superintendent should serve the governor in a cabinet-level position. However, she added, a governor should regard the selection of the superintendent in a manner very different from that of other cabinet positions, and that stability in the role of superintendent should be emphasized. She said it is desirable for the superintendent not to change with every administration. She said a way to promote this would be to have the governor’s nomination be followed by actual legislative hearings and confirmation.

A second method identified by Sen. Lehner as a way to improve the system would be to adopt a change in the purpose and composition of the board. She said this change is needed because there currently is no entity having the legal authority or depth of knowledge to create a long-term strategic plan for improving education in Ohio. She said the result is that new programs and policies are constantly being developed, either through legislation or by administrative rule, without clear objectives and without buy-in from state educators. In addition, she said, education policy changes with every new governor, with shifts in the legislature, and with changes in superintendents. She indicated the current board is made up of people (both elected and appointed) selected because of who they know rather than their knowledge or experience, and for this reason is experiencing partisan divisions.

Sen. Lehner said the primary function of the board should be to set a clear vision for education in the state, develop a long term strategic plan to fulfill that vision, and provide the oversight required to implement that plan. She said the plan should serve as the roadmap for the department, the legislature, and the executive administration.

She said her recommendation would be for key stakeholders, such as teachers, administrators, and education thought leaders, to hold board positions, and to be selected based on their expertise and ability to engage in high-level decision making. She said one key stakeholder would be parents. Sen. Lehner said she has no recommendation for how many members should serve, but the board should be small enough to be functional but inclusive enough to allow for broad representation of both expertise and philosophy. She said a 19-member board is too large.

Sen. Lehner concluded that she offers suggestions as conversation starters, and that some may disagree with her position. She said she hopes all can agree the current structures are outdated and not designed for the complex challenges Ohio faces.

Chair Readler then invited the committee to ask questions. Representative Michael Curtin asked whether Sen. Lehner was aware of any states having the model she proposed. Sen. Lehner said there are no states that have this model, but suggested some countries might have something similar. She said she is aware that every state is suffering from the same problems as Ohio, and that she has considered states with approaches allowing for a long-term educational plan, such as Massachusetts and Tennessee.

Rep. Curtin said he agrees a gubernatorial appointment system would be desirable if various factors could be controlled. He wondered whether Sen. Lehner's model would contemplate a nomination process vetted by a broad range of experts, so as to limit the field of nominees. Sen. Lehner said that is an excellent idea. She said many people think they are education experts because they are parents, but that education, like every other discipline, requires study and training in order to become an expert. She said failing to recognize the breadth of knowledge needed in order to make education policy is short-sighted. She said, "we should not be afraid to turn to experts to try to solve these problems, rather than to try to do it by popular votes."

Senator Tom Sawyer noted that Sen. Lehner is struggling with a failure that has been endemic in the relationship between the elected state board and the staff they hire, which is the failure to make the fullest use of the staff of the board of education. He said the specialized slots on the board could be filled by a more professionally developed staff, which Sen. Sawyer said he suspects was once the case. He asked whether Sen. Lehner can comment on the relationship between the elected board and the professional staff in the Department of Education, and whether that relationship might be more adequately developed.

Sen. Lehner said a decision-making body is charged with gathering and weighing facts based on its members' experience and knowledge. She said if board members do not come with a great deal of knowledge, they do not have the tools to use the information handed to them by staff, which empowers staff. She added that board members who lack experience and knowledge may make decisions based on personalities and partisanship. So, she concluded, the staff is only as good as the level of understanding of the board that is making the decisions, adding unless there is a board that can absorb information from staff in a way it can be used, no progress is made.

Sen. Sawyer responded that this was not necessarily his experience when he was on the board, but that he understands. His second question, relating to Sen. Lehner's suggestion that the superintendent be subject to gubernatorial appointment with legislative hearings and confirmation, is whether Sen. Lehner anticipates the General Assembly's ability to reject a gubernatorial nomination.

Sen. Lehner answered that option has to be on the table or it is a rubber stamp. But, she added, although the Senate currently "rubber stamps" many appointments, this one would be so important that it should be elevated above the standard method. Sen. Sawyer asked whether Sen. Lehner would anticipate that there would be a committee to deal with this, to which Sen. Lehner agreed. She noted the education committee would make the most sense, but this concept would require a lot of thought and discussion.

Sen. Sawyer commented that, under the current arrangement, both *ex officio* members of the board, specifically, the Senate and House education committee chairs, are of the same party. He asked whether, in Sen. Lehner's experience working with Sen. Sawyer as a minority member on the Senate Education Committee, she finds this arrangement on the state board to be unbalanced.

Sen. Lehner said she is not entirely sure, but that the way the board functions she is not sure she would recommend adding other members of the legislature to the board. She said the *ex officio* members have a voice, but not a vote. She said the question goes more to the core issue, which is how policy is being made. She cited Early Childhood Education (ECE) as an example. She said a few legislators think ECE is worthwhile to pursue, and they try to put it in the budget, and try to talk the governor into it, and he does a little bit. Sen. Lehner suggested it would be more productive if interested parties could discuss a long-term educational plan, and how ECE fits into the scheme, so that all education policy makers have a unified goal. She said, currently, even if there is agreement, with a change in governor the plan changes and the money is cut. She said "we cannot operate that way with education policy; if you do not have a plan most of the laws passed are just temporary fixes and will not change the quality of education of our state." She agreed minority members need to be participating in that discussion, "because next year the minority voices might be the majority, and if they were not part of that decision suddenly we are turning around and back to square one."

Governor Bob Taft said he likes the concept of separating the administrative responsibilities from the policy-making role. He said he tried to do this as governor, and they did have legislators on the commission he formed, as well as lawyers and business leaders. He asked whether Sen. Lehner would have any objection to considering employers as stakeholders. Sen. Lehner answered that her response to Sen. Sawyer was in terms of the current board. She said, regarding the board she is envisioning, she has not thought about legislators, but she does think it would be helpful for both houses and parties to be represented. She added that one definite stakeholder on the board is the business community. She said she does not want to limit membership strictly to teachers or those in the education field, because others bring knowledge about the role of education in Ohio.

Committee member Roger Beckett wondered whether to apply any constitutional changes only to K-12 education. He said Ohio has a board to govern higher education, and there is currently a constitutionally-forced separation between the state board of education and the state board of regents. However, he said, the line between K-12 and higher education is blurring significantly. He asked Sen. Lehner whether the inclusion of this section of the constitution, just focusing on K-12, limits what the legislature can do to address education issues in Ohio. Sen. Lehner answered that the current provision is limiting. While noting there is nothing to prevent dealing with preschool from a legislative perspective, she said she thinks changing that language would be helpful to reflect the reality that education starts before kindergarten and continues on past high school. Mr. Beckett commented that the committee is considering the question at the highest level, but he is not proposing making legislation in the constitution; rather, it belongs in the legislature's hands.

Mr. Beckett continued, asking Sen. Lehner what recommendations she has for changing the constitution in such a way that it would untie the General Assembly's hands so that it could

address these issues. He said he does not think the state board should be eliminated, but wonders how, constitutionally, the committee could address that issue to better reflect this broader educational reality. Sen. Lehner said Section 4 is short, saying only that the legislature will determine the makeup of the school board. She said the General Assembly currently has the freedom to make some changes, but she would like to see more embedded in the constitution. She said she would like to give it more thought as to how to do that, so that responsibilities do not ebb and flow with the makeup of the legislature. She said “we cannot keep changing it with each new session,” adding the “lack of stability and endless churn” is “just plain killing us.”

Representative Robert Cupp commented that the authority of the governor could be expanded to allow the governor to appoint the superintendent, noting that constitutional authority is not needed to do that. He said a good example would be that of nonprofit boards, where an administrative officer and staff put together broad policy outlines, and then the administrative officer carries them out. He said another model might be a federal agency, such as the head of the Federal Reserve System, or the FBI director; those officers stay in place when the presidency changes hands, and are different from normal cabinet officers. He said the superintendent could be confirmed by one or both chambers of the General Assembly, which would limit the partisan nature of the post. He said that change would require an amendment to the constitution because Section 4 currently gives the state board sole authority to appoint the superintendent.

Sen. Lehner said she thinks there is no real barrier to the legislature creating much of what she has described. She noted the suggestion that the superintendent’s service could last beyond the appointing governor’s term could be a problem in that, as long as the direction of the board is in the hands of the governor, there will be incentive for changing the person who is superintendent. She observed that if there is a long term plan that everyone has bought into, the need to change a superintendent diminishes because everyone is following a long-term policy. She said the problem is the governor will not want to have his or her hands tied. Sen. Lehner said she is not looking at this from a political perspective, only from the perspective of how to improve the quality of education.

Rep. Cupp said part of the issue with educational policies has a lot to do with federal policy makers, such as long strings attached to federal funds. He said there may always be disruptions from this source. Sen. Lehner agreed that this is a concern.

Chair Readler said he views these as legislative issues, but said it is important that the state has the best model going forward. He asked whether the current language in Section 4 limits the legislature in its ability to address these problems. He continued, asking whether, if this provision were removed, it would enable the legislature, districts, and unions to have more freedom in crafting a new system. Sen. Lehner said the current language is limiting and if it were removed or loosened she would like to think the legislature would pick up and do the rest of the work. She expressed that, currently, the constitutional language is used as an excuse as to why the state educational system is not being improved.

*Representative Teresa Fedor  
House of Representatives District 45  
Ranking Member, House Education Committee*

Representative Teresa Fedor provided the committee with her perspective on the state school board and superintendent of public instruction. She said she has been involved in education legislation for 15 years, after being an educator for 18 years. She said, in her view, an appointee is not the voice of the people, and, instead, the appointment of board members is the equivalent of the privatization of the educational system.

With regard to Mr. Gunlock's proposal, Rep. Fedor said she opposes his recommendation for an all-appointed board. She said "appointed members aren't as accountable or accessible, as they are naturally beholden to the one person who appointed them," adding, "it's too easy for them to dismiss the needs of the people." Rep. Fedor indicated the current state board is flawed because there is no equality between the elected and appointed members. She observed that inequality leads to dysfunctional governance, and that the cure is never to remove the people's voice but to remove the people's barriers. She said it is important to have a diversity of members to engage in problem solving, and that such a group will outperform a group of experts.

Further commenting on Mr. Gunlock's proposals, Rep. Fedor indicated that Mr. Gunlock has called conflict within the board "political" because some board members disagree and their opinions tend to split on party lines. However, she said, recent controversy demonstrated that the diversity of board members was important to allowing board members to call for a politically neutral investigation of the Department of Education. She said, "without diversity, the department could continue to act with impunity in its operation outside of the law."

Rep. Fedor proposed that only elected members hold state board office, specifically advocating that the president and vice president be elected, not appointed. In addition, she proposed that the board be all-elected, rather than all-appointed or hybrid. She said education policy should not be relegated to one party or one individual, but rather all voices should be heard. She remarked, "we need to figure out how to have a model that expresses the will of the people, rather than an appointed board," adding that a person who is elected to office has a greater sense of responsibility. Noting that "our children are not ping pong balls," Rep. Fedor advocated for a system that would create more stability in education policy, citing instability as a reason why teachers are leaving the education field. Finally, Rep. Fedor advocated that the committee conduct its review of the issue in a statehouse room that could accommodate video streaming or recording, so as to allow the public to participate in the process. Rep. Fedor then addressed questions by the committee.

Senator Bill Coley referenced a point previously made by Mr. Gunlock, which was that three different bodies set education policy, the General Assembly, the governor's office, and the state board, and that two out of the three should not be involved in setting policy. Sen. Coley said he does not want to get the General Assembly out of the education business because legislators are the only education policy participants who have to respond to voters every two or four years. He asked Rep. Fedor how her plan creates stability.

Rep. Fedor said she is starting from the premise that representative governance is needed because it holds people accountable. She said the General Assembly needs to be part of the process, and so does the governor because the governor sets the budget. She said constitutional revision may be needed so that the educational policymakers do not adopt new initiatives every time there is a new governor or president of the board. She said “we do not need a whole new structure; just do a better job at what we do.” She said she does not know what could be done in the constitution, but there are children not getting a quality education.

Rep. Cupp asked whether Rep. Fedor would suggest or propose an amendment requiring the state board to be all elected. Rep. Fedor agreed there should be an elected school board, and that this requirement should be in the constitution. She said she is not sure about the superintendent. She said she likes the idea of approval of the appointment, but whether the state school board is guided and directed by the superintendent needs to be thought through. She said she believes that the constitution should provide for an all-elected board because the elected members are closest to the people. Rep. Cupp said the original system was to have board members elected according to their Congressional district. He said the public did not know who the state board was, and so there was no accountability. He asked, how, absent a larger board with smaller districts, an all-elected board would provide greater accountability. Rep. Fedor said she believes there should be more elected school board members. She said she does not have a defined number, but there should be an elected body closer to the voices in their districts.

Rep. Curtin asked whether, if an elected board is needed, the board members would have to be elected solely as state school board members, or whether the board could include other state elected officials. He said the reality is there is no accountability in the current system of electing state school board members. Rep. Fedor said she likes that idea because it supports her belief there should be diversity in the discussion. She said certain members might be right about what groups they represent, but another group might need a different solution, with more ideas to solve the same problem in a different way.

Committee member Paula Brooks asked how Rep. Fedor believes an elected board would improve learning for students. Rep. Fedor said elected officials are accountable, and that it is necessary to expand voices for state education. She said she is passionate about preschool education funding because it lays the foundation for all education. She said “when we are changing high stakes testing every four to five years, it takes millions of dollars, and teachers have to get professional development training. You cannot turn a ship on a dime, that is what we have been doing, changing every few years, when we are not even getting the basics.”

Ms. Brooks asked whether Rep. Fedor’s plan would help promote preschool education. Rep. Fedor said that issue should be a priority, and that it all comes down to money. She said “we are trying to fix something that is broken.”

Chair Readler noted that when the state board provision was put in the constitution, it was to try to get politics out of the system, but everyone says this has not happened. He asked whether it is the better approach to allow the legislature to take up all these issues, rather than putting more into the constitution. Rep. Fedor said, when thinking about how a new initiative goes to the local level, the legislature sets the policy and then is in charge of making sure it is implemented. She

said that is an additional duty for the legislature, which is currently relying on the state board to make that happen. She said the structure of having the state board is wise, but it needs to have other voices, elected officials, to make sure the policy being implemented is appropriate. She said that is too much responsibility for legislators, and it seems as though it is not cohesive now.

*Stephanie Dodd*  
*Board Member*  
*State Board of Education*

Stephanie Dodd presented to the committee on her experiences as an elected member of the state board of education, representing the board's ninth district, which includes all or part of the counties of Franklin, Licking, Pickaway, Fairfield, Perry, Hocking, Athens, Morgan, Muskingum, Guernsey, Coshocton, Tuscarawas and Holmes. She said her district contains a diverse population of constituents, schools, and students, including urban districts such as Columbus City Schools, suburban districts such as New Albany-Plain Township School District, and rural school districts such as Hiland Local School District in Holmes County and Morgan Local School District in Morgan County.

Commenting on Mr. Gunlock's presentation, Ms. Dodd indicated her perspective differs in that she does not advocate an all-appointed board, nor does she believe the board should be eliminated.

Describing her role as board member, Ms. Dodd said she is available to her district's parents, teachers, administrators, local board members, and students, fielding questions and addressing concerns they have about education. She said her role is to find answers from the Department of Education or from General Assembly members. She also noted that she spends time visiting the school districts to learn about their concerns. She said the appointed members do not do as much field work as the elected members. She said elected members' work in the field acts as a buffer between the people and the General Assembly, and that an all-appointed board would not address local concerns as well as elected board members do.

Ms. Dodd emphasized the importance of education in the lives of her constituents, noting that while all Ohioans use roads, a pothole does not compare to a failure to provide a quality education to a child. She said the elected board members know that if their constituents disapprove of their actions, the elected members will be replaced, thus making them responsive to local concerns.

Noting the opinion of some that the board has become more politicized and partisan, Ms. Dodd said she disagrees with that assessment. She said she has witnessed elected members pressing for accountability to their constituents, a positive development because "it makes those who desire to get away with something to think twice knowing that impartial eyes will be examining their actions." She added "our state benefits from this give-and-take."

Chair Readler then opened the floor for questions. Ms. Brooks asked whether Ms. Dodd believes a good balance is created by having some appointed and some elected board members. Ms. Dodd answered that she has seen most of the appointed members controlling what the board is

doing and what the superintendent and the department are allowed to do. As a result, she said she has not had the opportunity to have the voice she thought she would have. She concluded that the board should be all-elected.

Rep. Cupp noted there are more elected than appointed members, asking how appointed members are able to control the board when they are in the minority. Ms. Dodd answered that eliminating all appointed board members would create a very different board. She said if all 11 elected board members are in agreement, the appointed members would lose some of their voice. She said a 19 member board is too large, but noted during her time the board has always had at least one unfilled seat. She said it is an unfair balance to have some members with more influence than others.

Rep. Cupp wondered whether a constitutional amendment is required to change to an all-elected board, or whether the policy debate should remain with the legislature.

Sen. Sawyer noted there appears to be some blurring of the lines between the responsibility of the state board and the role of the professionals in the Department of Education. He asked how responsive the department is to the requests and needs of the elected members of the state board. Ms. Dodd said the board is a governance board, and the superintendent and the department are operational functions. She added, ultimately, the department reports to the state board. She said during her first few years on the board the staff was responsive to her questions, providing the information she needed to make an informed decision. She said that practice has changed drastically, and that she has been told recently she is not even allowed to speak with the staff of the Department of Education. She said her constituents have better access to the department than she does. She said this makes it hard for her to respond to her constituents and to make decisions, because she only gets one side of the story. She said she hopes, as the board goes through the process of selecting a new state superintendent, they can improve that situation. Sen. Sawyer asked Ms. Dodd to report back to the committee in the future on these issues, and Ms. Dodd agreed to do so.

*Representative Andrew Brenner  
House of Representatives District 67  
Chair, House Education Committee*

Representative Andrew Brenner began his presentation by noting that the legislature can adopt changes that would help the problems that have been described, but is limited by constraints arising out of the history of the educational system. He said the intersection of federal, state, and local law creates problems. He added there are a lot of well-intended people who know what they have been trained to do, but are bound by bureaucracies. He said there are ramifications that are not perceived until the policy is implemented. In regard to the performance of the state school board, Rep. Brenner said it is going the way he expected, adding, based on the way the districts are drawn, he is not surprised there would be conflicts.

Rep. Brenner continued that allowing gubernatorial appointments gives the governor more power, but the governor is still restrained by the system itself. He said there are more laws on the books since the 1930s, and the educational system is expected to comply with them. He

noted there is no single authority over schools. He suggested that the General Assembly pressure the federal government to get rid of the United States Department of Education. He said he does not know that problem will be fixed by changing the Ohio Constitution. He said he is term limited, so that, no matter what, in three years there will be another head of the House Education Committee. He suggested the committee consider the true function of the board, and consider whether the legislature should be handling it. As a legislator, he said he has the authority to set and define the roles of the state school board, but that he is not sure the answer is to get rid of the state board. He said the question should be what kind of educational system will benefit students in the modern world.

Chair Readler noted that currently the board is required to select the superintendent. He asked Rep. Brenner whether he thinks this should continue to be a duty of the board or whether it should be assigned to someone else. Rep. Brenner said, under the current system, the legislature is effectively selecting the state superintendent, saying “we have designed this so that the board picks the superintendent the legislature wants it to pick.” He said, “as legislators, we need to be having a bigger discussion of this.”

Chair Readler followed up, noting if the legislature wanted to have someone else select the superintendent, they cannot do so under the current language. Rep. Brenner said the legislature cannot write a law allowing the governor to put in the superintendent the governor wants.

Mr. Beckett said there is no question that the structure of the state board is not working. He said it is largely up to the legislature to fix that, but it is clear to him that having this provision forcing this structure ties the hands of the legislature. He asked Rep. Brenner whether he agrees with that assessment.

Rep. Brenner said Article VI, Section 4 says the legislature shall provide the law. He added, even though the board selects the superintendent, the legislature decides how the board is created. He said the board has other functions, such as dealing with personnel matters. He said the General Assembly passes laws allowing the board to enact policy. He said the state school board is a microcosm of what has been happening in education in general in all levels of government. He concluded the constitutional provision does not necessarily tie the legislature’s hands. Rather, he said, the question is whether this is working today, given all the levels of bureaucracy.

*Robin C. Hovis*  
*Former Member*  
*State Board of Education*

The committee then heard from Robin C. Hovis, who said he served as both an appointed member and, later, an elected member, of the state board for nine years, between January, 2004 and December 2012. He said he was term-limited in 2012. Mr. Hovis said during his tenure he attended some one hundred monthly, two-day meetings, and for a time was chairman of one of the two major sub-committees. He added he also was active in the National Association of State Boards of Education, serving as the national secretary-treasurer of that organization for three

years. He said he also was a high school teacher, and a staff member of the Ohio Department of Education for about five years in the 1980s.

Mr. Hovis said “there is a calamity befalling public education in Ohio.” He said “a non-partisan state governance structure for public education, which was mandated by the citizens in 1953, and which upon its implementation immediately began delivering much better state-level management of, and support for our 600 plus school districts, is now mocked and treated with contempt by partisan officials.”

Describing the history of the board, Mr. Hovis said it was established by a constitutional amendment adopted by the voters in 1953, and implemented in 1956. He said many duties have been assigned to the board by the General Assembly, but the board's most important responsibility is the only one assigned to it by the Ohio Constitution, which is the exclusive power to appoint the superintendent of public instruction to head the Ohio Department of Education.

Mr. Hovis noted that the superintendent, as chief state school officer, has always had the role of strong, stable, objective education leadership. Noting the importance of this duty, Mr. Hovis said this is why many are “deeply distressed” by the events of the past 25, and particularly the last ten, years.

Directing the committee to his chart entitled “Tenure of Ohio's Chief State School Officers,” Mr. Hovis described how the job of state superintendent has, at various times, been appointed or elected. He said from 1837 to 1953, the average tenure of the chief state school officer was about three or four years. He said, beginning in 1921, the role became subject to the governor’s appointment, and was then vulnerable to partisan considerations. Mr. Hovis said this state of affairs continued until 1953, when a broad array of organizations supported the creation of politically independent, non-partisan governing board that would have the power to appoint the superintendent. He said this concept was subject to a constitutional amendment approved by a solid majority of voters.

Mr. Hovis continued that the amendment empowered the General Assembly to fix the number of members on the new board, the length of their terms, and how they were chosen. As a result of the message sent by voters, Mr. Hovis said the legislature provided all board members to be elected by the voters on a non-partisan ballot in the general election, one from each Congressional district. Mr. Hovis said these developments had a stabilizing effect on the office of the superintendent, with the board carefully electing qualified and experienced leaders. He said the average tenure of superintendents tripled to 12 years, Department of Education positions were no longer filled by political patronage appointees, and school districts were able to have stable, consistent policy development and enforcement.

Mr. Hovis said these positive developments have been altered by events in the 1990s, when the General Assembly changed the state board's membership to include 19 members, eight of which were appointed. He said this resulted in the state superintendents’ average tenure dropping from 12 to 4.6 years. He continued that, while adding appointed members introduced the possibility

of partisanship, it did not guarantee it, and some governors did not use their appointment power in a partisan manner.

Mr. Hovis described that, beginning in 2006, state board appointments became even more partisan, and a practice arose of direct intervention by the governor in state board actions, in the appointment of the superintendent of public instruction, and in policy decisions of the department of education. He said this resulted in an even shorter average tenure for the state superintendent, with the current trend being a service of less than two years. He said this short tenure results in a lack of steady progress and improvement in education, and the state board cannot adopt broad goals for the superintendent to pursue over time, because the board no longer controls the appointment. He said “we have allowed the precedent to become established that the governor names the superintendent, sustained by the fact that he can stack the state board with partisan appointees.”

Describing recent events relating to the appointment and dismissal of superintendents, Mr. Hovis said the partisan nature of the appointments, or the perceived partisan nature of the appointments, was what the public was rejecting when it approved the creation of an independent, non-partisan board. He said “governors must not be able to reach over the state board, or to stack the state board politically and then remove the superintendent of public instruction to make way for an appointee of their own choosing.” He added that the governor should not “be able to pressure the superintendent into hiring patronage employees in the department of education, under threat of being terminated.” Citing recent “unprecedented” turnover in the department, Mr. Hovis said many experienced education experts are no longer with the department because they did not agree with the policy positions of the governing party.

Describing himself as active in a political party, Mr. Hovis said he understands partisanship, but recognizes that partisanship has its place, which is not in the education arena. He said during his time on the staff of the state department of education, there was pride in knowing his agency was different from those that were traditionally partisan and thus experienced turnover with a change in governors. He said, “as a state supervisor who had to enforce regulations on some local districts which were trying to get around them, I did not have to worry that an angry local superintendent could threaten my job by calling his state legislator. If those things were tried, and they may have been, the independence of the state board and the superintendent stopped them at a level far above me. I never heard about it.” He said he does not believe staff feels that way today, adding that he finds it frustrating that the legislature, as a separate and independent branch of government, has not asserted itself to stop executive overreach.

Pointing out the consequences of these developments, Mr. Hovis said many qualified candidates for superintendent will opt not to pursue the position. He said Ohio is unlikely to get a strong applicant for this post, “because any educator whose career has brought them to the level of being ready to be superintendent of public instruction in a large state like Ohio already *knows* that the state board of education is controlled by the administration, so the Ohio superintendent really is subject to dismissal without cause.”

Mr. Hovis predicted that department staff will be hired and fired based on the preferences of the governor's office, and that, with every change in the party holding the governor's office, there

will be a turnover in department personnel. He said having an independent board and state superintendent “will not stop the charter school wars or other similar battles over philosophy, but it will ensure that those battles are fought in the partisan arena of the General Assembly and thru the election of governors who can sign or veto legislation and influence budgets, where such issues ought to be fought, and that meanwhile, the administration of *current* law will be methodical and fair, in the hands of a non-partisan agency.”

Mr. Hovis also predicted local school district superintendents and educational service center superintendents will notice that their party affiliation and financial support will affect their requests for help or for accommodation by the department of education, positively if their party is that of the governor, and negatively if their party is not aligned with the governor’s.

Mr. Hovis further asserted that if school boards adopt resolutions protesting the governor’s priorities, that objection will become a factor in department decisions about funding, approval of requests for exceptions to various standards, and other decisions.

Emphasizing that both parties have engaged in the actions he finds troubling, Mr. Hovis said he strongly disagrees with the idea that, because the governor is popularly elected, his policies should control all state agencies. He said “no state board of education is eager to be in a dispute with the governor. All a governor has to do to influence state board policy-making is to address the board and ‘make his case.’ The board may not embrace everything requested, but will work to find areas of compromise.”

Mr. Hovis recommended several reforms:

- 1) Revise the language in the Ohio Constitution to specify that the state board shall be non-partisan, and all members shall be elected. Retain the language vesting the state board with the exclusive right to appoint the superintendent of public instruction. Further provide that the superintendent of public instruction shall be head of the agency charged with support and supervision of public schools.
- 2) Political parties should be barred from publishing endorsements in state board races, or including state board candidate names on their slate cards.
- 3) Neither the Office of Budget and Management nor the Department of Administrative Services, nor the governor’s office, nor any other part of the executive branch may be involved in hiring decisions, nor impose salary ranges, or assert any other control over the state board or its management of the department of education.

Mr. Hovis concluded there is no need to create a new system because the system of having an all-elected state board was a proven success, providing stability in the form of a longer tenure for the superintendent, and preventing partisanship from influencing the department.

Indicating that about 36 states have a state board of education, Mr. Hovis recommend that the committee invite testimony from Kris Amundsen, Executive Director of the National Association of State Boards of Education. Identifying Ms. Amundsen as a former state senator in Virginia, he said she is an expert on the various structures for state boards of education.

Mr. Hovis then addressed questions from the committee.

Noting he had asked the same question of Ms. Dodd, Sen. Sawyer asked whether Mr. Hovis had insight regarding the current relationship between the board and the department. Mr. Hovis answered that while he was a board member, prior to the trend of direct intervention by governors, the department was very responsive to state board members. He said, when partisan interference started that changed, and it became more difficult to get certain questions answered. Sen. Sawyer asked whether that situation informed Mr. Hovis' conclusions, to which Mr. Hovis answered that is one factor, but his major point is shown in his chart comparing the length of tenure of the state superintendent during various times.

Chair Readler thanked Mr. Hovis for his presentation, noting that Mr. Hovis' second recommendation, that political parties be barred from endorsing candidates in state board races, could be unconstitutional on First Amendment grounds. Chair Readler welcomed Mr. Hovis to return as the committee continues to discuss this issue.

*Jeff Krabill*  
*President, Board of Education*  
*Sandusky City Schools*

Jeff Krabill, president of the Sandusky City Schools' Board of Education, presented to the committee on the issue of the relationship between the state board and the local boards of education, as well as providing his views on whether an elected, appointed, or hybrid state board is preferred.

Mr. Krabill said he is a 14-year member of the Sandusky board, but is also a business person, a developer, a parent and a concerned citizen. He said his comments reflect the blended experience of those responsibilities.

He said, with regard to the structure of the state board, he supports an all-elected board because he believes that elections give voice to the public's collective wisdom, allowing for a more sound and balanced form of government than one that relies on the judgment of only one or a few leaders.

Noting the development of the governor's authority to appoint eight board members, Mr. Krabill said the outcome for education has not been elevated by this change. He said his personal politics are aligned with the current governor, making it hard for him to voice opposition to the current system, but that any impartial observer of the current board will note the board has been politicized. He observed that education overall has become a political game, with conflict developing between supporters and detractors of policies relating to issues such as Common Core testing, state funding, and charter schools. But, he said, "we have to ask ourselves a critical

question: is Ohio's education in a better place because the \* \* \* [b]oard, charged with oversight and administration, has been dragged into these fights?" He said the conclusion is that the influence of appointed members on the board has not improved the functioning of the board or advanced the cause of education for the children of Ohio. He said his conclusion is that Ohio needs to return to electing all of the members of the board.

Addressing the role of the state board in regulating local districts, and whether districts benefit from the current arrangement of state education regulators, Mr. Krabill said the question is complex and sensitive. He observed that the current arrangement derives from the legislature, and the legislative process. Because of this, he said, the regulations faced by local educators are never reduced and rarely streamlined. He said local educators recognize that state funding understandably brings with it expectations and standards. However, he said, the "weight of decades of legislation and the natural bureaucratic momentum of the Department of Education have now contorted local education."

As an example, he cited that teachers and local boards are concerned about the amount of time and money that must be spent on mandated testing. He said the testing often is not aligned with the curricula, local preferences on course content are ignored, test validity is not established, local citizens do not understand when a district receives a low grade, teacher evaluations are affected by test outcome, students underperform due to test anxiety inherent with high-stakes testing, and districts fear state takeover of districts deemed to be underperforming.

Mr. Krabill also noted that districts continue to experience delays in funding and enrollment alignment. He said "we are just now seeing payments in our funding formula included with the biennium budget for the current fiscal year. We're in February and well over half way through our academic year! [The Department of Education] continues to send financial adjustments throughout the year, based upon previous fiscal year data. The overall burden can be misleading for [Chief Financial Officers] to control and project cash flow, hindering financial reporting to boards of education and communities."

As another example, Mr. Krabill said the department is notoriously late in reporting out academic data. He said his district has sent the department the required data only to learn the department is unprepared to deal with the district's uploads. He continued that when delays occur due to the department's actions, the burden falls on the district to quickly adjust and resubmit data. He expressed that the department sets difficult deadlines for the districts, but fails to meet its own responsibilities.

Finally, Mr. Krabill gave as an example the issue of gifted education. He said the department is supposed to do a top-to-bottom review of the gifted system every five years and issue new guidelines. He said "we are currently three years into the review, over halfway through the five year period, and there are no new guidelines. That means that if this stagnancy lasts much longer, the state will be due for yet another five-year overview, and we still will not have had guidance from the past overview."

Mr. Krabill said local schools want a good partner in Columbus, and would "willingly and eagerly reach out to any number of resources to make our systems better." But, he said, the

direction of local schools needs to be local. He expressed the view that more of the decisions that need to be made at a local level are being dictated by administrative rule or by law, thus removing authority and control from local boards and administrators.

Mr. Krabill concluded that the state board should be all-elected. He said there is a general concurrence that the current system is broken, and is not functioning well. He attributed a disconnection between local boards and the department as deriving from the political aspects of the state board as it currently exists. He noted that, at the local level, the school board sets policy, but leaves the administration of the local district to the superintendent in charge of it. In that situation, he said, it may be easy for new school board members to come in and try to make sweeping changes, but with time they see the wisdom of separating policy from administration. He said the state board would benefit from that focus.

He also noted that an all-elected board brings a great diversity of experience because members come from all parts of the state and are elected by all types of constituencies. He said, by contrast, appointments result in commonality of thinking and experience. He added it is also important to disassociate the effects of politics from education. Finally, he noted “if members of the state board had the opportunity to sit on a local board; that is a learning experience you cannot pick up anywhere else.”

Mr. Krabill having concluded his remarks, Rep. Curtin said he agrees there are First Amendment issues with attempting to eliminate partisan politics from school board endorsements and races. He said, if the state were to return to an all-elected state board, he does not think there can be a return to the “golden era” of non-partisanship because the financial stakes and ideological differences are at razors edge in the current state of country. If there were an all-elected board, in which people do not know who their state board member is, and in an era where the U.S. Supreme Court says money is speech, Rep. Curtin asked how the buying of state board seats by special interests could be prevented.

Mr. Krabill said he does not know there is a perfect system for that. He said the electorate is becoming increasingly frustrated, particularly with the infusion of money. He said he shares that concern, but added that the public does not know who their representatives are on the state board. He said that may be because board members are not overly political, or they are not looking to have their name in the paper. He said it could just be because they show up for work, do their job, and unless there is a scandal or something that grabs the public eye they go about doing their job.

Chair Readler asked Mr. Krabill to summarize his conclusions about the relationship between the local boards and the state board. Mr. Krabill said that relationship has changed over time to where there is now an imbalance between the needs and the responsiveness.

Ms. Brooks commented that it is concerning to see this discord, which is not good for the state’s children. She wondered if there is a “gold standard,” outside of having an all-elected board. Mr. Krabill said school districts and local superintendents have to adjust with the times but are functioning under the same rules and standards they have had for decades. He said the average time needed for school districts to turn themselves around is six or eight years. He said he does

think the merits of an all-elected system are strong, so that, if an all elected board, acting strictly on behalf of education and with a goal of improving education, hires a superintendent, they do that with an eye to the future. He said the goal should be to change the systems that need to be changed, which does not come from elected board members but from leadership – meaning the superintendent, and the executive leadership and insight brought to the task.

Sen. Sawyer thanked Mr. Krabill for his service and the duration of his service, noting when he was a school board member in Akron, tenure on the board was about 25 years. He said it became a self-sustaining system, and worked very well.

Mr. Krabill concluded by stating that when his board hired its current superintendent, board members told him they wanted the district to be the best in the state. He said they acknowledged they have a long way to go, but wanted the district to be a leader to which others around the nation turn. He said, regarding his local board, “we do not set our standards low and we do not want Ohio to either.”

*Senator Tom Sawyer  
Senate District 28  
Ranking Member, Senate Education Committee*

Sen. Sawyer, a member of the committee and ranking member of the Senate Education Committee, next addressed the committee as a long-time participant in educational policymaking at every level of government, and as a former member of the state board.

Sen. Sawyer indicated that before 1993, the structure of the state board was simple, with 21 representational boundaries that corresponded to concurrent Congressional districts. He said constituents generally knew their board members, and candidates for board seats did not have difficulty campaigning, despite the districts being large.

Sen. Sawyer described how, beginning in 1993, with Senate Bill 162 of the 119<sup>th</sup> General Assembly, the legislature reduced the number of board districts from 21 to 11, making the areas of representation larger and more difficult and expensive for candidates to win. He added that, in 1995, House Bill 117 of the 121<sup>st</sup> General Assembly added eight appointed seats to the 11 elected seats. He remarked that this change represented a turning point, with the board now being a hybrid mix of elected and appointed members. He said, although 11 members are elected, the size and diversity of their districts make it difficult to conclude that elected board members are truly representative. He also noted that the eight appointed members, claimed to be “at large,” actually do not have a direct relationship with their constituencies and so the term “at large” does not accurately describe their positions.

Sen. Sawyer said the intended role of the board is to provide specific representation about Ohio’s educational system. He observed the original 21-member elected body represented the large number of diverse communities of the state. However, he noted, when the number of elected board members was reduced, and eight appointees added, the legislature took the board out of the hands of the voters and created a false sense of representation. He added, the eight

gubernatorial appointments in particular allow the current governor, of whatever political affiliation, to select the superintendent and tilt the balance of power in his or her favor.

Sen. Sawyer said this should not be the practice of the body that performs fundamental duties such as setting academic standards and definitions, establishing test benchmarks, outlining teacher evaluations, approving curriculum content, and implementing school funding calculations. He continued that much of the work of the board is inevitably controversial and political, for example relating to charter schools, Common Core curriculum, and standardized testing. He said his opinion is that adding more politics to work that might inevitably turn political has proven to be the wrong way to go.

Sen. Sawyer also noted that the tasks assigned to the board have been increasing over time. He said with every new education reform bill, the General Assembly assigned more duties to the board. He said “I urge you to flip through the K-12 sections of the most recent biennial budget and count the number of times that the language requires the [b]oard to make rules or recommendations.” He said while in concept this makes sense, given the fragmented and non-representative makeup of the board, this has become an increasingly dangerous practice.

In response to anyone considering whether Ohio needs a state board, Sen. Sawyer said it is important to take a holistic look at the structure of the board. He said he suspects it is more difficult for the board to operate in the current political environment due to the way the board is currently organized.

Sen. Sawyer concluded that the board does “extraordinarily fine work” and the board should be viewed as a necessary partner to lawmakers and the Department of Education. He urged the committee to advocate a return to an all-elected model, one in which the board reflects known political boundaries, probably Congressional districts if Congressional redistricting reform is accomplished. He said, if state board districts are drawn in ways that reflect political districts that people recognize, the state can return to the “golden age” in which people can identify their board of education member.

*Michael L. Collins*  
*Member*  
*State Board of Education*

Chair Readler recognized Michael L. Collins, a member of the state school board, to offer his perspective on the state board. Mr. Collins said he is a two-term elected member of the board and a former two-term elected local school board member of the Westerville City School District. Mr. Collins said as a state board member he has represented two state board districts and over 100 school districts. He said his service on the local board included levy failures and passages as well as teacher layoffs and hires/rehires.

Indicating his opinions are his own and not that of the state board, Mr. Collins said the state board’s delivery of quality work is hampered by political overreach by the other branches of government. He said the work of the board, the superintendent, and the Department of Education has been eroding for 20 years. He said an elected and accountable board is a proven,

workable, and appropriate method of exercising educational responsibility, and that the addition of appointed board members challenged the functionality of the board. Mr. Collins said the state board of education should reflect the organization of local boards, in the same way that representation and responsibilities of the state legislature reflect the organization of local government. He concluded that when a board has policy, rulemaking, and oversight responsibilities, its members should be hired and fired by the public they serve.

Rep. Curtin asked Mr. Collins whether, if the goal is to minimize partisanship, the state should require the members of the state board to have certain educational credentials. Mr. Collins answered that the credentials of the candidates should be brought to the fore so the public can make an informed decision.

Chair Readler asked whether Mr. Collins is in favor of the board selecting the state superintendent. Mr. Collins answered that he has participated in selecting two state superintendents. He said the board is now looking at selecting a fourth superintendent in just eight years.

Ms. Brooks wondered whether it would be helpful to begin a dialog with the party institutions, asking them to stay out of state board decisions. Mr. Collins said when he ran for membership on the board he sought the endorsement of both parties. He said he received endorsement from only one, but he believed the parties knew him and of his sincerity in promoting nonpartisanship. He added, if parties are going to be involved, a goal of seeking the best candidates would be helpful.

**Adjournment:**

With no further business to come before the committee, the meeting adjourned at 1:05 p.m.

**Approval:**

The minutes of the February 11, 2016 meeting of the Education, Public Institutions, and Local Government Committee were approved at the April 14, 2016 meeting of the committee.

*/s/ Chad A. Readler*

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Chad A. Chair Readler, Chair

*/s/ Edward L. Gilbert*

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Edward L. Gilbert, Vice-chair