



OHIO CONSTITUTIONAL MODERNIZATION COMMISSION

Education, Public Institutions, and Local Government Committee Report



Issued July 1, 2017

Cover photo courtesy of Columbus City Schools.

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Letter from the Chair



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June 23, 2017

Senator Charleta B. Tavares, Co-chair
Senate Building
1 Capitol Square, 2nd Floor
Columbus, Ohio 43215

Representative Jonathan Dever, Co-chair
Riffe Center for Government and the Arts
77 South High Street
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Columbus, Ohio 43215

Dear Co-chairs Tavares and Dever,

On behalf of the Education, Public Institutions, and Local Government Committee, I present the committee's final report. It documents the review and conclusions of the group in relation to the constitutional articles in its charge: Article VI (Education), Article VII (Public Institutions), Article X (County and Township Organization), Article XV (Miscellaneous), and Article XVIII (Municipal Corporations).

The committee focused much of its time on Article VI, in particular considering whether to recommend a revision to Article VI, Section 2's requirement that that state provide a "thorough and efficient system of common schools." Ultimately, the committee decided to retain Article VI, Section 2 in its present form. The committee considered the remaining sections in Article VI, issuing reports and recommendations for no change to Sections 1, 5, and 6. The committee was reluctant to make recommendations about Section 3, dealing with local boards of education, and Section 4, addressing the state board of education, out of a concern that ongoing efforts by the General Assembly in the education area, as well as pending litigation relating to the Youngstown School District, could be affected by any decision to recommend a change to those sections.

In 2017, the committee took up the review of Article VII, relating to public institutions. With the help of interested parties, the committee agreed on language to replace offensive references to persons with disabilities in Section 1, modernizing the section to reflect that institutionalization is no longer the preferred mode of treatment. Regarding Sections 2 and 3, which governed

practices for appointing heads of state institutions, the committee determined both sections were obsolete and so recommended their repeal. The reports and recommendations for these three sections were adopted by the Commission at its last meeting on June 8, 2017.

The committee was poised to next consider the local government sections in its purview, as well as to review Article XV, Section 6 in relation to casinos and gaming, but the shortened life of the Commission prevented the committee from moving forward on specific plans to take up those topics in the remainder of 2017.

In January 2017, Chad Readler, the committee's original chair, announced his departure from the Commission, and, as vice-chair, I took over the chairmanship. I found the group to be engaged and knowledgeable about the subject matters we tackled, and our discussions were always interesting and productive. I would like to thank all the members of the committee for the diligence with which they approached the difficult topics we considered. It was a pleasure for me to work with them and to help guide this committee in its assigned tasks.

I thank you for the opportunity to present this final report of the Education, Public Institutions, and Local Government Committee.

Very truly yours,



Edward Gilbert, Chair
Education, Public Institutions, and Local Government Committee

Enclosure

I. Introduction

This Report of the Education, Institutions, and Local Government Committee (“EPILG Committee”) is issued pursuant to the conclusion of the work of the Ohio Constitutional Modernization Commission (“Commission”). It contains a summary of the committee’s organization and work products, including topics discussed and all recommendations made to the Commission.

The Commission was established in 2011 by enactment of Am. House Bill 188 by the 129th Ohio General Assembly. The Commission was charged with:

- Studying the Ohio Constitution;
- Promoting an exchange of experiences and suggestions respecting desired changes in the constitution;
- Considering the problems pertaining to the amendment of the constitution;
- Making recommendations from time to time to the General Assembly for the amendment of the constitution.

The Commission used six subject matter committees for the purpose of reviewing constitutional provisions: Education, Public Institutions, and Local Government Committee; Finance, Taxation, and Economic Development Committee; Judicial Branch and Administration of Justice Committee; Bill of Rights and Voting Committee; Constitutional Revision and Updating Committee; and Legislative Branch and Executive Branch Committee. There is a separate report for each committee providing a summary of its work and recommendations to the Commission.

The EPILG Committee was assigned the responsibility of reviewing the following sections of the Ohio Constitution:

- Article VI (Education)
- Article VII (Public Institutions)
- Article X (County and Township Organizations)
- Article XV (Miscellaneous)
- Article XVIII (Municipal Corporations)

In addition, all committees could be assigned to review other issues or proposed constitutional amendments as needed by the Coordinating Committee or the Commission.

II. Membership of the Committee

Under Rule 6.2, each member of the Commission was assigned to serve on two subject matter committees. In total, ten members were appointed to the Education, Public Institutions, and Local Government Committee.

The following individuals were serving on the EPILG Committee in June 2017:

- Edward L. Gilbert Chair
- Vacant Vice-chair
- Roger L. Beckett
- Paula Brooks
- Sen. Bill Coley
- Rep. Hearcel F. Craig
- Rep. Robert R. Cupp
- Sen. Vernon Sykes
- Gov. Robert A. Taft
- Pierrette Talley

Education, Public Institutions, and Local Government Committee Meeting



III. Summary of Recommendations

In total, the EPILG Committee made six recommendations to the Commission. Table 1 summarizes the recommendations including when they were made and the Commission's action.

Under Rules 8.3 and 9.4 of the Commission Rules of Procedure and Conduct, a committee recommendation for no change to the Constitution required consideration at one scheduled meeting and a majority vote in favor, while a recommendation for change required consideration at two meetings and a vote in favor by a majority of the committee members. Following a favorable vote, a recommendation was forwarded to the Coordinating Committee to review the recommendation as to form. After Coordinating Committee approval, the recommendation was then sent to the Commission co-chairs to place on the Commission agenda.

Each recommendation was the subject of a separate report containing the background and discussion regarding the affected constitutional provisions. The separate report for each recommendation is available in Appendix 1.

In some cases, constitutional sections were the subject of discussion by the committee but no recommendation was made. In other cases, there were constitutional sections assigned to the committee that were not able to be discussed before the closure of the Commission. Appendix 3 contains a status summary of all sections assigned to the committee, including those which did not progress to the Commission.

Table 1: Education, Public Institutions, and Local Government Committee Recommendations

| Constitutional provision | Topic | Recommendation | Committee approval | Commission action | Vote |
|--------------------------|---|----------------|--------------------|---------------------------|--------|
| Art. VI, § 1 | Funds for Religious and Educational Purposes | Retain | Oct. 8, 2015 | Adoption Dec. 10, 2015 | 23-0 |
| Art. VI, § 2 | School Funds | Retain | Oct. 8, 2015 | Adoption Dec. 10, 2015 | 22-1 |
| Art. VI, § 5 | Loans for Higher Education | Retain | Nov. 10, 2016 | Adoption Mar. 9, 2017 | 21-0-1 |
| Art. VI, § 6 | Tuition Credits Program | Retain | Nov. 10, 2016 | Adoption Mar. 9, 2017 | 21-0-1 |
| Art. VII, § 1 | Support for Persons with Certain Disabilities | Revise | May 11, 2017 | Adoption June 8, 2017 | 24-0 |
| Art. VII, §§ 2, 3 | Directors of Public Institutions | Repeal | May 11, 2017 | Adoption June 8, 2017 | 23-0 |

IV. Summary Proceedings of the Education, Public Institutions, and Local Government Committee

(NOTE: The full record of committee minutes is presented in Appendix 2.)

2013-2014

The committee began its work by considering topics of special concern to local governments, such as the potential impact of sharing governmental functions between state and local entities, and the challenges created by population changes and by conflict between state and local law. The committee then moved on to consider Article VI, Section 2, specifically focusing on the background and implication of the section's directive that the General Assembly "secure a thorough and efficient system of common schools throughout the state."

Speakers who appeared before the committee included John Barron, Deputy Executive Director and General Counsel of the Ohio Casino Control Commission ("CCC"), who provided an overview of the CCC; Gregory Trout, Chief Counsel for the Bureau of Criminal Identifications and Investigations, who provided an overview of the Department of Rehabilitations and Correction; Stephen Wilson, Legislative Liaison to the Ohio Rehabilitation Services Commission ("RSC"), who provided an overview of the RSC; Lavea Brachman, Executive Director of the Greater Ohio Policy Center on Local Government Structure, Cost and Opportunities for Collaboration, who provided an overview of local government in Ohio; Attorney Eugene Kramer, Advisor to Summit and Cuyahoga counties on the creation of county charters, who presented on country and township organization and government; Professor Harold Babbit, Adjunct Professor of Local Government at Cleveland-Marshall College of Law, who discussed municipal corporations; Assistant Attorney General Kevin McIver, who presented on the interpretation of the local government sections of the Ohio Constitution; Paolo DeMaria, Principal at Education First, who presented information about fundamental concepts in education; Assistant Attorney General Reid T. Caryer, who provided the committee with an overview of the function of the Attorney General's education section; Richard C. Lewis, Executive Director of the Ohio School Boards Association, who spoke regarding challenges and opportunities facing public education in Ohio; Professor Charlie Wilson, Professor Emeritus at The Ohio State University Moritz College of Law, who presented multiple times regarding public education in Ohio; Malcolm Costa, President and CEO of Akron Summit Community Action, Inc., who provided information to the committee about Head Start programs; Allyson Lee, Head Start Director for Akron Summit Community Action, Inc., who described the purpose and function of Head Start programs; William J. Sims, President and CEO of Ohio Alliance for Public Charter Schools, who discussed special education and Individualized Education Plans (IEP's); William J. Phillis, Executive Director of Ohio Coalition for Equity and Adequacy of School Funding, who presented background information on common schools and funding; Attorney Nicholas Pittner of the law firm of Bricker & Eckler, who presented information about the DeRolph cases, as well as information about common schools and funding; Robert Alt, President and CEO of The Buckeye Institute for Public Policy Solutions, who spoke regarding policy and issues related to education in Ohio; Justice Paul E. Pfeifer of the Ohio Supreme Court, who provided an overview of the thorough and efficient clause in Article VI, Section 2 of the Ohio Constitution; and Robert R. Cupp, Chief Legal Counsel for the Ohio Auditor of State, who

provided background information and an overview of Article VI, Section 1, relating to school and ministerial lands.

Reports and Recommendations

By December 2014, the Education, Public Institutions, and Local Government Committee was reaching a conclusion of its discussion of the “thorough and efficient” clause, with a goal of preparing a Report and Recommendation on Article VI, Section 2.

2015-2016

In 2015, the committee concluded its consideration of Article VI, Section 2, relating to the requirement that the General Assembly “secure a thorough and efficient system of common schools throughout the state.” Two speakers appeared before the committee to describe their experiences and views relating to the maintenance of a thorough and efficient public school system: Stephanie Morales, a member of the Cleveland Municipal School District, and Dr. Renee Middleton, dean of the Patton College of Education and Human Services at Ohio University. The committee also heard from Darold Johnson, legislative director for the Ohio Federation of Teachers, who discussed with the committee his view that Article VI, Section 2 should be retained in its current form because a body of law has been build up around the provision such that the public has an understanding of the meaning of the words “thorough and efficient.”

After considering the views of these speakers, as well as the opinions expressed by the other speakers who had appeared before the committee prior to 2015, the committee voted to retain Article VI, Section 2 in its current form.

After a presentation in 2014 by Robert R. Cupp, in his prior position as chief legal counsel for the Ohio Auditor of State, on the topic of Article VI, Section 1, dealing with funds for religious and educational purposes, the committee determined in 2015 that the provision still served a useful purpose and should be retained in its current form.

In May 2015, the committee began a review of Article VI, Section 3, relating to local boards of education. Wishing to consider the experiences of board members from both a large city school district and a smaller rural district, the committee heard presentations by Gary L. Baker, II, president of the Columbus Board of Education, as well as Eric Germann, member of the board of education of Lincolnview Local Schools. The committee also heard presentations by vocational school board member Sue Steele of the Great Oaks Institute of Technology and Career Development, and by Al Haberstroh, a board member from the Trumbull County Educational Service Center. Although the committee reached a preliminary consensus that Article VI, Section 3 should be retained in its current form, upon further reflection, the committee determined that additional information would assist the committee’s deliberation of the issue, and so, in September 2016, the committee postponed proceeding with a report and recommendation on Article VI, Section 3.

In October 2015, the committee began a review of Article VI, Section 4, providing for a state board of education as well as a superintendent of public instruction. William Phillis, executive director of the Ohio Coalition for Equity and Adequacy of School Funding, presented to the committee on the “Evolution of the State Board of Education,” advocating that the state board

return to an all-elected membership instead of the current format in which some board members are elected and some are appointed by the governor. The committee also heard from Tom Gunlock, president of the State Board of Education, on his views regarding the governance structure of the board as it relates to other state entities involved in education policy. The committee received additional presentations relating to Section 4 from Senator Peggy Lehner, Representative Teresa Fedor, Representative Andrew Brenner, and Senator Tom Sawyer. The committee also heard from school board members Stephanie Dodd and Michael L. Collins, former board member Robin C. Hovis, and Jeff Krabill, who is president of the board of education for Sandusky City Schools. Also providing insight was Russell Harris, education research development consultant for the Ohio Education Association, who said his organization supports the creation of an all-appointed state board of education. Considering the constitutional provision in the context of larger issues involving state educational policy, the committee concluded that further consideration of the topic would be needed before it would be prepared to issue a report and recommendation on Section 4, and so postponed issuing a report and recommendation on Article VI, Section 4.

In April 2016, the committee turned to a review of Article VI, Section 6, providing for the Ohio Tuition Trust Authority. The committee heard a presentation by Timothy Gorrell, executive director of the trust authority, who described the history of the federal tax-advantaged college savings plan. In discussing the provision, the committee concluded that Section 6 should be retained in its current form, and planned to review a report and recommendation reflecting that determination.

In June 2016, the committee heard from David H. Harmon, former executive director of the Ohio Student Loan Commission, and from Rae Ann Estep, former executive director of the Ohio Student Aid Commission, who presented on Article VI, Section 5, relating to loans for higher education. The committee considered whether the provision is still necessary, given that both Mr. Harmon and Ms. Estep confirmed that the state no longer directly administers student loans and that their agencies are no longer in existence. However, it was the consensus of the committee that the policy underpinnings of the section could be important to future efforts to encourage the state's support of funding for higher education, and so concluded the provision should be retained.

In September 2016, the committee heard a presentation by Sen. Bill Coley, who advocated revising Article XV, Section 6 relating to lotteries, charitable bingo, and casino gaming. The committee also began its review of public institutions as provided for in Article VII. In relation to Article VII, Section 1, governing state institutions for the "insane, blind, deaf and dumb," the committee heard from Michael Kirkman, executive director of Disability Rights Ohio, who provided background on the history of state public institutions for the mentally ill as well as for the blind and deaf, and advocated for repeal or modification of the language in Article VII, Section 1.

Reports and Recommendations

By December 2015, the Education, Public Institutions, and Local Government Committee had issued reports and recommendations for no change to Article VI, Section 1 (Funds for Religious and Educational Purposes), and Section 2 (School Funds). These two reports and recommendations were adopted by the full Commission at its December 10, 2015 meeting.

In November 2016, the committee issued reports and recommendations to retain Article VI, Section 5 (Loans for Higher Education), and Section 6 (Tuition Credits Program).

2017

In January 2017, the committee began to home in on language to replace the offensive terms and outdated treatment modes in Article VII, Section 1, which articulates a state responsibility to foster and support “institutions for the benefit of the insane, blind, and deaf and dumb.” The committee heard from several disability experts on this question, including Professor Ruth Colker at the Ohio State University’s Moritz College of Law; Marjory Pizzuti, president and chief executive officer of Goodwill Columbus; and Sue Hetrick, executive director of the Center for Disability Empowerment; and Michael Kirkman, executive director of Disability Rights Ohio.

With these individuals’ assistance, the committee formulated replacement language that maintained the state’s obligation while modernizing the language and recognizing that institutionalization is no longer the preferred method of providing assistance to individuals with disabilities.

The committee also considered whether Article VII, Sections 2 and 3, which describe specific guidelines for selecting heads of state penitentiaries and other benevolent institutions, are obsolete and should be repealed.

As a result of this review, the committee issued two reports and recommendations, one for the amendment of Article VII, Section 1, and one for the repeal of Article VII, Sections 2 and 3.

In April, the committee turned to the part of its charge relating to local governments, beginning a discussion of municipal home rule as found in Article XVIII, Section 3, discussing a concern regarding the salaries of county commissioners, and hearing about the problems raised by the casino gaming provisions in Article XV, Section 6.

With regard to the county commissioner pay issue, the committee learned that, due to the staggered terms of county commissioners, application of Article II, Section 20 results in different commissioners receiving different salaries at the same time when a pay change is enacted by the General Assembly. Based on correspondence received by committee member Robert Taft, the committee considered a proposal that that compensation for county officials should be addressed in the same manner as judges in Article IV, Section 6(B). However, the committee recognized that Article II, Section 20 had been assigned to the Legislative Branch and Executive Branch Committee, and so the committee was uncertain whether that issue was properly before it.

The committee also heard from committee member Senator Bill Coley regarding casino gaming. Sen. Coley expressed that the constitution should not contain specific business plans or create private monopolies like the provisions related to casino gaming, and suggested that the casino gaming provisions in Article XV should be removed from the constitution and placed in state statute. The committee discussed, but did not resolve, how that goal might be accomplished, and requested additional research on the matter before agreeing to take up the question in July 2017. However, due to the sunset of the Commission, the committee did not have the opportunity to do further work on the issue.

In May 2017, the committee heard a presentation by Gary Hunter, general counsel for both the Ohio Municipal League and the Ohio Municipal Attorneys Association, and E. Rod Davisson, administrator for the Village of Obetz. Mr. Hunter and Mr. Davisson presented a proposal for an amendment to Article XVIII, Section 3, regarding municipal powers of self-government. The amendment would change the current section to instead permit municipalities to have authority to exercise all powers of local self-government and to adopt and enforce within their territorial limits such local police, sanitary and other similar regulations as are not in direct conflict with general laws. The proposal additionally would prohibit the General Assembly from interfering with powers granted to municipal corporations by the Ohio Constitution unless the constitution sanctions the interference.

The committee asked questions regarding the proposal, engaging in a brief discussion. However, as this was the committee's last meeting, there was no opportunity to explore the issue further.

Additionally at the May meeting, Ed Gilbert, committee chair, outlined the remaining sections assigned to the committee, noting some sections were deserving of attention despite their controversial nature, particularly Article XV, Section 11, requiring marriage to be between one man and one woman, and Article XV, Section 6, relating to casino gaming. The committee also recognized a need to explore the county and township government sections of Article X. The committee laid out a detailed plan for addressing those topics in the coming months but, unfortunately were not afforded the time to carry out that plan.

Appendix 1

Education, Public Institutions,
and Local Government Committee

Reports & Recommendations
of the Committee

Reports & Recommendations of the Committee

| Constitutional provision | Topic |
|--------------------------|---|
| Art. VI, § 1 | Funds for Religious and Educational Purposes |
| Art. VI, § 2 | School Funds |
| Art. VI, § 5 | Loans for Higher Education |
| Art. VI, § 6 | Tuition Credits Program |
| Art. VII, § 1 | Support for Persons with Certain Disabilities |
| Art. VII, §§ 2, 3 | Directors of Public Institutions |



OHIO CONSTITUTIONAL MODERNIZATION COMMISSION

REPORT AND RECOMMENDATION OF THE EDUCATION, PUBLIC INSTITUTIONS, AND LOCAL GOVERNMENT COMMITTEE

OHIO CONSTITUTION ARTICLE VI, SECTION 1

FUNDS FOR RELIGIOUS AND EDUCATIONAL PURPOSES

The Education, Public Institutions, and Local Government Committee of the Ohio Constitutional Modernization Commission issues this report and recommendation regarding Article VI, Section 1 of the Ohio Constitution concerning funds for religious and educational purposes. It is issued pursuant to Rule 8.2 of the Ohio Constitutional Modernization Commission's Rules of Procedure and Conduct.

Recommendation

The committee recommends that no change be made to Article VI, Section 1 of the Ohio Constitution and that the provision be retained in its current form.

Background

Article VI, Section 1 reads as follows:

The principal of all funds, arising from the sale, or other disposition of lands, or other property, granted or entrusted to this state for educational and religious purposes, shall be used or disposed of in such manner as the General Assembly shall prescribe by law.

Article VI of the Ohio Constitution concerns education, and Section 1 deals more specifically with lands provided to the state for educational and religious purposes.

As originally adopted in the 1851 constitution, Article VI, Section 1 provides:

The principal of all funds arising from the sale or other disposition of lands or other property granted or entrusted to this state for educational or religious purposes, shall forever be preserved inviolate and undiminished; and the income arising therefrom shall be faithfully applied to the specific objects of the original grants or appropriations.

School Lands

School lands provided by the federal government to Ohio and other states played an important role in the development of public education in this country, and school lands supported education in virtually all the new states beginning with Ohio in 1803.¹

The history of school lands dates to the days before statehood, when the Confederation Congress, through the Land Ordinance of 1785,² reserved in every township in the survey of the land tract in the eastern portion of the state (which was known as the Seven Ranges) a one-mile square section for the maintenance of public schools.³ The Northwest Ordinance,⁴ enacted in 1787 by the Confederation Congress and reaffirmed by the first United States Congress in 1789,⁵ established a path to statehood for Ohio and the other states that were carved from the Northwest Territory. It also continued the commitment to public education by providing, in part, that “[r]eligion, morality, and knowledge, being necessary to good government and the happiness of mankind, schools and the means of education shall forever be encouraged.”⁶ The founders’ emphasis on the value of education, and particularly on its relationship to religion and morality, is recognized as stemming from the view that the establishment of a new nation required “an educated, moral, sober citizenry in the new states that would have the stability and civil responsibility of a republican society.”⁷

In the 1802 Enabling Act, Congress moved Ohio along the path to statehood by enacting legislation to “enable the people of the eastern division of the territory northwest of the river Ohio to form a constitution and State government and for the admission of such State into the Union * * *.”⁸ It also contains an unusual provision offering the new state one “section, number 16, in every township” or other equivalent lands.⁹ The 1802 Constitutional Convention made a counteroffer¹⁰ that, in turn, was accepted by the federal government. This resulted in Ohio ultimately gaining control of 704,204 acres (or 2.77 percent of its land area) of federally-donated land to support public schools.¹¹

The importance of education to the new state was reflected in the 1802 constitution, which followed the Northwest Ordinance in providing, in Article VIII, Section 3, that “religion, morality and knowledge, being essentially necessary to good government and the happiness of mankind, schools and the means of instruction shall forever be encouraged by legislative provision, not inconsistent with the rights of conscience.”

After statehood, the General Assembly leased much of this land, with some leases being as long as 99 years and renewable forever. In 1826, however, Congress permitted land sales with the consent of township residents.¹² And in 1827, the General Assembly adopted legislation providing that proceeds from the sale of school lands were to be deposited in the Common School Fund and earmarked for the benefit of schools within the townships.¹³

Because of concerns about the local stewardship of the school lands, the General Assembly in 1914 and 1917 transferred supervision of the school (and ministerial) lands to the Auditor of State. In 1985, the General Assembly transferred supervision to the Director of Administrative Services, and in 1988, the General Assembly transferred supervision of all remaining monies to

the Board of Education in each school district that had been allotted these lands, with title held in trust by the State of Ohio.¹⁴

Ministerial Lands

In addition to allocating land to support education, the federal government allocated land in Ohio to support religion by providing that section 29 of certain land purchases be used to support religion.¹⁵ The granting of real property for religious purposes has been identified as a “holdover from English and other European traditions where one denomination constituted a state church and received its support and other perquisites from the state.”¹⁶ Ohio’s “ministerial lands,” which totaled 43,525 acres, represented only a small part of the total land originally granted to Ohio by Congress.¹⁷

The Confederation Congress (in the Ohio Company’s First Purchase in 1787) and the United States Congress (in the Symmes Purchase in 1794) reserved section 29 for the purpose of religion in what are today Washington, Meigs, Gallia, Lawrence, and Athens counties (from the Ohio Company’s First Purchase), and in Butler, Hamilton, and Warren Counties (from the Symmes Purchase). In addition, the Ohio Company on its own reserved section 29 from its Second Purchase in what are now Hocking and Vinton Counties.¹⁸ “ ‘Ministerial land,’ as these lands have since been termed, are found nowhere in the United States, except within these three parts of the state of Ohio.”¹⁹

In 1833, Congress allowed the sale of lands that had been granted to the state for the support of churches and religious societies, with the proceeds to be placed in a trust fund and interest thereon paid to local schools and religious societies.²⁰

The 1851 constitution addressed these issues by adopting a provision, Article VI, Section 1, which addressed both educational and ministerial lands and provided that the proceeds from the sale of lands granted for educational or religious purposes must be applied to the objects of the original grants.

Amendments, Proposed Amendments, and Other Review

By 1968, the practice of state payments to religious organizations was recognized as problematic under the Establishment Clause of the First Amendment to the United States Constitution, and Congress acted to limit the use of sale proceeds to educational purposes only, subject to the discretion of the General Assembly.²¹ Ohio voters subsequently approved an amendment to Article VI, Section 1 that expressly allowed the General Assembly discretion to disperse money set aside in the trust fund.²² Thus, Article VI, Section 1 was altered to provide that funds arising from these lands would not be restricted to school or religious purposes, but “shall be used or disposed of in such manner as the General Assembly shall prescribe by law.” In the May 7, 1968, election, the voters approved an amendment proposed by the General Assembly to this section by a vote of 847,861 to 695,368, or 55 percent to 45 percent.²³

In 1977, the Ohio Constitutional Revision Commission (“1970s Commission”) recommended no change to this section.²⁴

Litigation Involving the Provision

There has been no significant litigation involving Article VI, Section 1.

Presentations and Resources Considered

On November 13, 2014, the committee heard a presentation by former Ohio Supreme Court Justice Robert R. Cupp, who was at that time chief legal counsel for the Ohio Auditor of State.²⁵ Mr. Cupp explained that while some may consider Article VI, Section 1 as an obsolete provision, the section remains necessary as the state still possesses some “school lands” as referenced in the provision.

Mr. Cupp provided a brief history of the provision, indicating that these lands first had been managed and supervised by township trustees, then by the auditor of state, and later by the director of the Department of Administrative Services. However, in 1988, legislation went into effect that transferred supervision, management, and all remaining monies of school lands to the board of education in each school district that had been allotted these lands. He said it is unclear how much real estate of this nature remains under state title, but the most recent transfer by the state took place in 2009 to the Upper Scioto School District in Hardin County. He said the Hardin County property has a current market value of \$2.5 million and is leased by the school district for farming. The school district derives \$247,000.00 in annual revenue from this lease.

Conclusion

The Education, Public Institutions, and Local Government Committee concludes that Article VI, Section 1 should be retained in its current form.

Date Adopted

After formal consideration by the Education, Public Institutions, and Local Government Committee on May 14, 2015, and October 8, 2015, the committee voted to issue this report and recommendation on October 8, 2015.

Endnotes

¹ See generally Jon A. Souder & Sally K. Fairfax, *State Trust Lands: History, Management, and Sustainable Use* (1996); Sean E. O’Day, *School Trust Lands: The Land Manager’s Dilemma Between Educational Funding and Environmental Conservation, A Hobson’s Choice?*, 8 N.Y.U. Envtl. L.J. 163 (1999). For a compendium of the various legislative enactments relating to the creation and preservation of Ohio school lands in the early 1800s, see *A Compilation of Laws, Treaties, Resolutions, and Ordinances, of the General and State Governments, which Relate to Lands in the State of Ohio; including The Laws Adopted by the Governor and Judges; The Laws of the Territorial Legislature; and the Laws of this State, to the Years 1815-16*, Published in Pursuance of Resolutions of the General Assembly, passed January 22, 1825. (1825).

² General Land Ordinance of 1785, reprinted in 28 Journals of the Continental Congress 1774-1789, at 375.

³ See generally Steven H. Steinglass & Gino J. Scarselli, *The Ohio State Constitution* 220 (2nd prtg. 2011).

⁴ Northwest Ordinance of 1787, as reprinted in Act of Aug. 7, 1789, ch. 8, 1 Stat. 50 et seq. It may be found online at: Journals of the Continental Congress, 1774-1789, 32:334 (Worthington C. Ford, et al., eds., 1904-37); Ordinance of 1787: The Northwest Territorial Government, Act of July 13, 1787, <http://uscode.house.gov/browse/frontmatter/organiclaws&edition=prelim> (last visited May 12, 2015), and additionally is available at: The Avalon Project, *Northwest Ordinance; July 13, 1787*, Lillian Goldman Law Library, Yale Law School (2008), http://avalon.law.yale.edu/18th_century/nworder.asp (last visited Aug. 31, 2015).

⁵ Northwest Ordinance, Act of Aug. 7, 1789, ch. 8, 1 Stat. 50, 51.

⁶ Ordinance of 1787, *supra*, at Section 14 (Compact), Article III.

⁷ Matthew J. Festa, *Property and Republicanism in the Northwest Ordinance*, 45 Ariz. St. L.J. 409, 460 (2013). See also Alexandra Usher, “Public Schools in the Original Federal Land Grant Program” 5 *The Center on Education Policy* (Apr. 2011), http://www.eric.ed.gov/ERICWebPortal/search/detailmini.jsp?_nfpb=true&_ERICExtSearch_SearchValue_0=ED518388&ERICExtSearch_SearchType_0=no&accno=ED518388 (last visited Apr. 27, 2015), citing P.W. Culp, D.B. Conradi, and C.C. Tuell, *Trust land in the American west: A legal overview and policy assessment* 4-8 (Cambridge MA: Lincoln Institute of Land Policy 2005).

⁸ Ohio Enabling Act, ch. 40, Sec. 7, 2 Stat. 173, 175 (1802), http://www.ohiohistorycentral.org/w/Enabling_Act_of_1802?rec=1490 (last visited Apr. 27, 2015) <http://research.archives.gov/description/299949> (last visited Apr. 27, 2015).

⁹ *Id.*

¹⁰ *Propositions From the Ohio Constitutional Convention to the Congress of the United States, Relating to the Admission of Ohio, Ordinance and Resolution Passed in Convention, Nov. 29, 1802*, as reprinted in Daniel J. Ryan, *From Charter to Constitution, Ohio Archaeological and Historical Publications*, Volume 5, Ohio St. Archaeological and Hist. Soc. 78 et seq. (1897), [http://publications.ohiohistory.org/ohj/browse/displaypages.php?display\[\]=0005&display\[\]=1&display\[\]=164](http://publications.ohiohistory.org/ohj/browse/displaypages.php?display[]=0005&display[]=1&display[]=164) (last visited May 5, 2015).

¹¹ George W. Knepper, *The Official Ohio Lands Book* (2002). See also Steinglass & Scarselli, *supra*.

¹² Knepper, *supra*.

¹³ *Id.* at 58.

¹⁴ *Id.* at 58-59.

¹⁵ See generally William E. Peters, *Ohio Lands and Their Subdivision* 340-357 (2nd ed. 1918).

¹⁶ Knepper, *supra*, at 59.

¹⁷ *Id.* at 60.

¹⁸ Peters, *supra*, at 362-364.

¹⁹ *Id.* at 364.

²⁰ Steinglass & Scarselli, *supra*.

²¹ *Id.* at 220-21, citing Public Law 90-304 (May 13, 1968).

²² *Id.* at 221.

²³ Source: Ohio Secretary of State's website; May 7, 1968 Primary (Official Results), <http://www.sos.state.oh.us/sos/elections/Research/electResultsMain/1960-1969Results/68priconst.aspx> (last visited May 5, 2015).

²⁴ Ohio Constitutional Revision Commission (1970-77), Recommendations for Amendments to the Ohio Constitution, Final Report, Index to Proceedings and Research, 53 (June 30, 1977), <http://www.lsc.ohio.gov/ocrc/final%20report%20index%20to%20proceedings%20and%20research.pdf> (last visited Oct. 5, 2015).

²⁵ On November 4, 2014, Mr. Cupp was elected state representative for the Fourth District (Allen County) for a term beginning January 6, 2015. Upon being sworn as state representative, Rep. Cupp was selected to serve as a legislative member of the Ohio Constitutional Modernization Commission.



OHIO CONSTITUTIONAL MODERNIZATION COMMISSION

REPORT AND RECOMMENDATION OF THE EDUCATION, PUBLIC INSTITUTIONS, AND LOCAL GOVERNMENT COMMITTEE

OHIO CONSTITUTION ARTICLE VI, SECTION 2

SCHOOL FUNDS

The Education, Public Institutions, and Local Government Committee of the Ohio Constitutional Modernization Commission issues this report and recommendation regarding Article VI, Section 2 of the Ohio Constitution concerning school funding. It is issued pursuant to Rule 8.2 of the Ohio Constitutional Modernization Commission's Rules of Procedure and Conduct.

Recommendation

The committee recommends that no change be made to Article VI, Section 2 of the Ohio Constitution and that the provision be retained in its current form.

Background

Article VI, Section 2 reads as follows:

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; but no religious or other sect, or sects, shall ever have any exclusive right to, or control of, any part of the school funds of this State.

Article VI of the Ohio Constitution concerns education.

Section 2, adopted as part of the Ohio Constitution of 1851 and never amended, includes the first use of the phrase "thorough and efficient" in the constitution of any state.¹ The provision was influenced by an 1837 report about education in England and Europe commissioned by the Ohio legislature and prepared by Calvin Ellis Stowe, a professor of biblical literature at Lane Theological Seminary in Cincinnati.² Stowe, the husband of Harriet Beecher Stowe, was a strong supporter of universal public education, and urged Ohio to follow the Prussian example of state-supported education.³ Stowe's report was republished by the legislatures of Michigan, Massachusetts, Pennsylvania, North Carolina, and Virginia.⁴ In fact, some 22 states are

recognized as having constitutional provisions imposing educational standards similar or identical to Ohio’s “thorough and efficient” clause.⁵ Despite these similarities, the definition of “common schools,” as well as what constitutes a “thorough and efficient” system for providing education, varies widely from state to state due to differences in history, demographics, geography, and other factors.⁶

Amendments, Proposed Amendments, and Other Review

In 1977, the Ohio Constitutional Revision Commission (“1970s Commission”) recommended no change to this section, concluding that adding specific language that dealt with school finance would undermine the view that a constitution should only state general principles and guidelines.

The 1970s Commission succinctly summarized its position on retaining current language by stating:

A system of school finance poses unique problems because so many factors are involved, many of which are legislative, economic and geographical considerations, and being subject to change, are not likely to be more adequately provided for in the [c]onstitution than by the language presently contained in that document.⁷

Litigation Involving the Provision

The most recent, and notable, litigation involving school funding is the *DeRolph* line of cases,⁸ in which a coalition of individuals and five Ohio school districts sued the state in 1991, alleging that the state educational funding system violated the “thorough and efficient” clause found in Article VI, Section 2.⁹ Specifically, the *DeRolph* plaintiffs argued that the school funding scheme in place at the time relied too heavily on local property taxes, resulting in disparities in the quality of educational facilities and resources in different communities across the state. Concluding that the school funding system was “wholly inadequate” to meet the constitutional mandate, the Ohio Supreme Court directed in 1997 that the General Assembly “create an entirely new school financing system” that was not overly dependent on local property taxes. *DeRolph v. State*, 78 Ohio St.3d 193, 239, 213, 1997-Ohio-84, 677 N.E.2d 733, 765, 747 (*DeRolph I*).¹⁰

The *DeRolph* litigation brought to light evidence that a lack of funding in many districts had resulted in deteriorating school facilities, outdated textbooks, insufficient school supplies, overcrowded classrooms, and other conditions that were seen to impede learning. In *DeRolph I*, a majority of the court concluded that “state funding of school districts cannot be considered adequate if the districts lack sufficient funds to provide their students a safe and healthy learning environment.” *Id.*, 78 Ohio St.3d at 208, 677 N.E.2d at 744. The court ordered the General Assembly to “first determine the cost of a basic quality education in both primary and secondary schools in Ohio, and then ensure sufficient funds to provide each student with that education, realizing that local property taxes can no longer be the primary means of providing the finances for a thorough and efficient system of schools.” *Id.*, 78 Ohio St.3d at 261-262, 677 N.E.2d at 780.

In 2000, after the state undertook measures to institute reforms, the case again came before the court on the same question of whether the constitutional requirement that the state provide a “thorough and efficient system of common schools” had been met. Noting the complexity of the state’s educational system, a majority of the court observed that setting a per-pupil funding amount, or otherwise providing some specific funding scheme, would violate the separation of powers doctrine; thus, the court left the specific remedy to the General Assembly. *DeRolph v. State*, 89 Ohio St.3d 1, 6, 11-12, 2000-Ohio-437, 728 N.E.2d 993, 998, 1002-03 (*DeRolph II*). While recognizing that the General Assembly’s creation of the Ohio School Facilities Commission, as well as its enactment of other remedial legislation, had constituted a “good faith attempt to comply with the constitutional requirements” and had improved conditions around the state, the court nevertheless concluded that the state defendants needed more time to institute reforms before the court could declare the state had met its obligation to provide a “thorough and efficient system of common schools.”¹¹ *Id.*, 78 Ohio St.3d at 35-36, 728 N.E.2d at 1020.

In 2001, the court continued its review of the reforms adopted by the General Assembly, finding further measures were needed to conform with Article VI, Section 2. Specifically, the court ordered the state to modify its base cost formula, by which the state calculated the per-pupil cost of providing an adequate education; to accelerate the phase-in of a parity aid program that was designed to provide additional funding to poorer districts; and to consider alternative means of funding school buildings and facilities. *DeRolph v. State*, 93 Ohio St.3d 309, 324-25, 2001-Ohio-1343, 754 N.E.2d 1184, 1200-01 (*DeRolph III*).

In 2002, upon reconsideration of its decision in *DeRolph III*, a divided court agreed to vacate the judgment. However, despite this action, a majority of the court maintained that Ohio’s school funding system continued to be unconstitutional because the General Assembly, despite enacting reforms, had not performed “ ‘a complete systematic overhaul’ of the school-funding system.” *DeRolph v. State*, 97 Ohio St.3d 434, 435, 2002-Ohio-6750, 780 N.E.2d 529, 530 (*DeRolph IV*), quoting from *DeRolph I*. Commenting during a presentation before the committee about the impact of *DeRolph*, Justice Paul E. Pfeifer indicated that the consensus of the court in *DeRolph IV* was to release jurisdiction because litigation was not proving to be the answer to the problem, and because, by that time, reforms had resulted in school facility improvement.¹²

In May 2003, the Ohio Supreme Court granted a peremptory writ of prohibition, preventing the trial court from exercising further jurisdiction over *DeRolph*. *State ex rel. State v. Lewis*, 99 Ohio St.3d 97, 2003-Ohio-2476, 789 N.E.2d 195. In so deciding, the court clarified that its mandate in *DeRolph IV* was not for the trial court to conduct further proceedings, and determined that allowing the trial court to take further action would be an improper attempt to require judicial approval for proposed remedies. *Id.*, 99 Ohio St.3d at 103, 789 N.E.2d at 202. Thus, the court ended further litigation in *DeRolph*. *Id.*, 99 Ohio St.3d at 104, 789 N.E.2d at 202.¹³

Although the *DeRolph* litigation ended without there being a judicial determination that the state had complied with the constitutional mandate, *DeRolph* did bring to light school funding insufficiencies, and resulted in the adoption of changes that were intended to improve school facilities and other educational resources.¹⁴

Presentations and Resources Considered

DeMaria Presentation

Paolo DeMaria of Education First presented to the committee on August 8, 2013. His presentation focused on the importance of education to the public good, the role of government, the elements of an excellent education, the governance of education at the state and local level, the variety of local educational structures, and funding. He also identified emerging issues, including: standards, assessments, educating all students, early childhood education, accountability, teacher/leader quality, technology, data, school operational improvement, competency-based education, finances, and the relationship between education policy and tax policy. Finally, he concluded with a brief review of state and local support for K-12 education, observing that more spending does not result in better student outcomes.

Lewis Presentation

Richard C. Lewis, Executive Director of the Ohio School Boards Association, also appeared before the committee on August 8, 2013, focusing on the constitutional structure of education in Ohio; the importance of local control; the importance of reliable and equitable funding; the spectrum of urban, suburban, and rural districts; the impact of privatization; the importance of balancing the traditional and the innovative; and accountability. He also provided the committee with some detailed materials on the elements of a model school funding formula.

Wilson Presentation

Charles Wilson, professor emeritus of the Ohio State University Moritz College of Law, provided a broad overview of Article VI at his November 14, 2013, presentation to the committee. Subsequently, he submitted two alternative proposals. Both alternatives retain the “thorough and efficient” language and expressly characterize education as a “fundamental right.” One proposal requires the General Assembly to provide for and fund an “efficient, safe, secure, thorough, equitable, and high quality education.” Another alternative requires the General Assembly to fund and provide a “uniformly high quality educational system designed to prepare Ohio’s people to function effectively as citizens,” as well as an early childhood educational system.

Phillis Presentation

William L. Phillis, Executive Director of the Ohio Coalition for Equity & Adequacy of School Funding, presented to the committee on December 12, 2013, and on March 13, 2014. Mr. Phillis provided the committee with information on public education, relevant methodologies for determining the cost of public education, and information on the impact of charter schools. He also provided drafts of specific amendments for the committee’s consideration.

Mr. Phillis recommended that the “thorough and efficient” clause be maintained. He also provided the committee with the text of three proposed amendments to Article VI. Under his proposal, a new Section 2a would provide state officials with direction in determining what

constitutes a “thorough and efficient” education. Mr. Phillis proposed a second provision that would require the institution of early childhood educational programs to all children beginning at three years of age. Mr. Phillis’ third proposed amendment concerns the state board of education and provides that “[s]tate board of education members shall be elected, one from each congressional district.”

Pittner Presentation

Nicholas A. Pittner, the lead attorney in the *DeRolph* litigation, appeared with William L. Phillis on December 12, 2013, and summarized the history of the *DeRolph* cases. Mr. Pittner opined that Ohio’s educational funding system remains inadequate because the current system is still over-reliant on local property taxes. According to Mr. Pittner, “Section 2, Article VI of the Ohio Constitution is clear and needs no revision. What is needed are specific standards by which compliance with the mandates of Section 2, Article VI can be measured and enforced.” Mr. Pittner expressed his support for a proposed amendment, submitted by Mr. Phillis, that would provide additional constitutional direction.

Dyer Presentation

On June 12, 2014, Stephen Dyer, the Education Policy Fellow at Innovation, Ohio, presented to the committee on the financing of education in Ohio, specifically, his concerns about the level of state support and the disparity in the ability of districts to support education. With respect to the “thorough and efficient” requirement, he urged that if the requirement is to be replaced it should be replaced with language that is even stronger. He pointed to provisions in the Florida and Montana Constitutions, and he provided the committee with proposed changes to Article VI, Section 2 that included a requirement that Ohio residents receive a “world-class education,” which the legislature would be responsible for funding.

Reedy Presentation

Maureen Reedy, co-founder of Ohio Friends of Public Education and a former grade school and special education teacher, presented to the committee on June 12, 2014. Her remarks emphasized the importance of public schools and expressed alarm at the possible removal of the “thorough and efficient” requirement from the constitution.

Alt Presentation

Robert Alt, President and CEO of the Buckeye Institute for Public Policy, appeared before the committee on September 11, 2014. In his comments, Mr. Alt gave an overview of the history of educational policy issues in Ohio, emphasizing that it is the role of the legislature, not the courts, to define the contours of education. Mr. Alt was critical of judicial intervention in education, and expressed concern that broad or generalized language in the constitution could invite improper judicial intervention. Criticizing some of the proposals being considered by the committee as being vague and too aspirational, Mr. Alt said he did not like the “thorough and efficient” phrase, but did not believe it should be repealed. Mr. Alt declined to suggest new

language because of his position that the General Assembly should have primary responsibility for education issues.

Pfeifer Presentation

Hon. Paul E. Pfeifer, Justice of the Ohio Supreme Court, presented to the committee on November 13, 2014. His talk focused upon the *DeRolph* decisions, specifically referencing his concurring opinions in two of the four *DeRolph* decisions. Justice Pfeifer, who is the only current justice to have participated in all four *DeRolph* decisions, provided background on the litigation. He expressed the view that not all decisions regarding education should be left to the legislature, but he observed that the court in *DeRolph* did not intend to tell the legislature what to do. Justice Pfeifer expressed the view that “thorough and efficient” served a worthy purpose, and he did not advocate removing it from the constitution. He did comment that he would not be opposed to more modern language to replace “thorough and efficient.”

Morales Presentation

Stephanie Morales, a member of the Board of the Cleveland Municipal School District, a graduate of the Cleveland public schools, and the parent of three children currently in the Cleveland public schools, made a presentation on January 15, 2015. Ms. Morales described the challenges faced by the school district, the efforts made by the district to support its mission, and the importance of state funds to the district. She acknowledged the substantial support provided to the district through the Ohio Facilities Construction Commission. With respect to the “thorough and efficient” requirement, she urged the committee to not take any action that might be interpreted as weakening the state’s duty to provide a quality education for all of Ohio’s children.

Middleton Presentation

Dr. Renee A. Middleton, Dean of the Patton College of Education at Ohio University, appeared before the committee on January 15, 2015. Dr. Middleton stressed the history of public education in Ohio and its importance in ensuring an educated citizenry and in safeguarding democracy. She urged that public education be fair and equitable, she expressed support for maintaining judicial oversight, and she advised the committee not to turn its back on “thorough and efficient.” She emphasized the importance of determining and funding a high-quality education without an overreliance on property taxes, as well as the importance of adequate funding to promote essential educational opportunities for all.

Johnson Presentation

On March 12, 2015, Darold Johnson, Director of Legislative and Political Action for the Ohio Federation of Teachers, appeared before the committee to express his organization’s position that the current language in Article VI, Section 2, be retained. He said that the Ohio Supreme Court in the *DeRolph* cases defined “thorough and efficient,” and that changing the provision would result in more litigation in order to provide clarity about whatever replacement language might signify. Mr. Johnson indicated that because civil rights already exist in federal law, and in

federal constitutional amendments, and because case law in this area is settled, the Ohio Constitution should only be changed in order to correct problems for which there are no other options. Mr. Johnson said that “thorough and efficient” is better than “equitable” or “equal” because *DeRolph* has defined the phrase and is a benchmark. He stressed that removing “thorough and efficient” would cause a bigger loss than would be gained from including the word “equitable.”

Conclusion

The Education, Public Institutions, and Local Government Committee concludes that Article VI, Section 2 should be retained in its current form.

Date Adopted

After formal consideration by the Education, Public Institutions, and Local Government Committee on May 14, 2015, and October 8, 2015, the committee voted to issue this report and recommendation on October 8, 2015.

Endnotes

¹ See, e.g., Jeremy J. Neff, *A Thorough and Efficient Definition of “Thorough and Efficient”: The Starting Point for Meaningful School Funding Reform*, 33:1 J. of Educ. Fin. 69 (2007).

² C.E. Stowe, *Report on Elementary Public Instruction in Europe, Made to the Thirty-Sixth General Assembly of the State of Ohio* (1837).

³ A history of the concept and implementation of a “system of common schools” in Ohio may be found in Molly O’Brien & Amanda Woodrum, *The Constitutional Common School*, 51 Clev.St.L.Rev. 581 (2004).

⁴ See, e.g., Frank Forest Bunker, *Reorganization of the Public School System*, Department of the Interior, Bureau of Education Bulletin No. 8, 24 (1916).

⁵ William E. Thro, *The Role of Language of the State Education Clauses in School Finance Litigation*, 79 Educ. L. Rep. 19, note 10 at 23-24, as cited in O’Brien & Woodrum, *supra*, at 584, note 14.

⁶ Paul L. Tractenberg, Paul L. “Education,” in *State Constitutions for the Twenty-First Century*, 241-42 (Alan G. Tarr & Robert F. Williams, eds., 2006).

⁷ Ohio Constitutional Revision Commission (1970-77), *Recommendations for Amendments to the Ohio Constitution, Final Report, Index to Proceedings and Research*, 65-66 (June 30, 1977), <http://www.lsc.ohio.gov/ocrc/final%20report%20index%20to%20proceedings%20and%20research.pdf> (last visited Oct. 5, 2015).

⁸ See *DeRolph v. State*, 78 Ohio St.3d 193, 1997-Ohio-84, 677 N.E.2d 733 (*DeRolph I*); *DeRolph v. State*, 89 Ohio St.3d 1, 2000-Ohio-437, 728 N.E.2d 993 (*DeRolph II*); *DeRolph v. State*, 93 Ohio St.3d 309, 2001-Ohio-1343, 754 N.E.2d 1184 (*DeRolph III*); and *DeRolph v. State*, 97 Ohio St.3d 434, 2002-Ohio-6750, 780 N.E.2d 529 (*DeRolph IV*).

⁹ A comprehensive overview of the *DeRolph* litigation may be found in Larry J. Obhof, *DeRolph v. State and Ohio's Long Road to an Adequate Education*, 2005 B.Y.U. Educ. & L.J. 83 (2005).

¹⁰ Summarizing the comments of delegates to the Constitutional Convention of 1850-51 in the fourth, and final, *DeRolph* decision, Justice Paul Pfeifer emphasized that the purpose of the provision is to express the state's commitment to education for all:

James Taylor, a delegate from Erie County, stated, "I think it must be clear to every reflecting mind that the true policy of the statesman is to provide the means of education, and consequent moral improvement, to every child in the State, the offspring of the black man equally with that of the white man, the children of the poor equally with the rich." [citation omitted.] Samuel Quigley, a delegate from Columbiana County, stated, "The report directs the Legislature to make full and ample provision for securing a thorough and efficient system of common school education, free to all the children in the State. The language of this section is expressive of the liberality worthy a great State, and a great people. There is no stopping place here short of a common school education to all children in the State." [citation omitted.] The delegates knew what they wanted, what the people wanted, and that it was necessary to use the Constitution to achieve what they wanted.

DeRolph IV, *supra*, 97 Ohio St.3d at 436, 2002-Ohio-6750, 780 N.E.2d at 531.

¹² Ohio Constitutional Modernization Commission, November 13, 2014, Meeting Minutes of the Education, Public Institutions, and Local Government Committee, http://ocmc.ohio.gov/ocmc/committees/educ_pubinst_misc_localgovt;jsessionid=b957049e1ac01b4e1baacea4fc97 (last visited Apr. 30, 2015).

¹³ In October 2003, the United States Supreme Court denied a petition for a writ of certiorari. *DeRolph v. Ohio*, 540 U.S. 966 (2003).

¹⁴ See Obhof, *supra*, at 145-49.



OHIO CONSTITUTIONAL MODERNIZATION COMMISSION

REPORT AND RECOMMENDATION OF THE EDUCATION, PUBLIC INSTITUTIONS, AND LOCAL GOVERNMENT COMMITTEE

OHIO CONSTITUTION ARTICLE VI, SECTION 5

LOANS FOR HIGHER EDUCATION

The Education, Public Institutions, and Local Government Committee of the Ohio Constitutional Modernization Commission issues this report and recommendation regarding Article VI, Section 5 of the Ohio Constitution concerning loans for higher education. It is issued pursuant to Rule 8.2 of the Ohio Constitutional Modernization Commission's Rules of Procedure and Conduct.

Recommendation

The committee recommends that no change be made to Article VI, Section 5 of the Ohio Constitution and that the provision be retained in its current form.

Background

Article VI, Section 5 reads as follows:

To increase opportunities to the residents of this state for higher education, it is hereby determined to be in the public interest and a proper public purpose for the state to guarantee the repayment of loans made to residents of this state to assist them in meeting the expenses of attending an institution of higher education. Laws may be passed to carry into effect such purpose including the payment, when required, of any such guarantee from moneys available for such payment after first providing the moneys necessary to meet the requirements of any bonds or other obligations heretofore or hereafter authorized by any section of the Constitution. Such laws and guarantees shall not be subject to the limitations or requirements of Article VIII or of Section 11 of Article XII of the Constitution. Amended Substitute House Bill No.618 enacted by the General Assembly on July 11, 1961, and Amended Senate Bill No.284 enacted by the General Assembly on May 23, 1963, and all appropriations of moneys made for the purpose of such enactments, are hereby validated, ratified, confirmed, and approved in all

respects, and they shall be in full force and effect from and after the effective date of this section, as laws of this state until amended or repealed by law.

Article VI of the Ohio Constitution concerns education, and Section 5 provides for a program to guarantee the repayment of student loans for state residents as a way of promoting the pursuit of higher education.

Adopted by voters upon being presented as Issue 1 on the May 1965 ballot, the provision expresses a public policy of increasing opportunities for state residents to pursue higher education by guaranteeing higher education loans and allowing laws to be passed to effectuate that purpose. The section also exempts state expenditures for student loan guarantees from the limitations on state spending contained in Article VIII (relating to state debt), and Article XII, Section 11 (preventing the state from issuing debt unless corresponding provision is made for levying and collecting taxes to pay the interest on the debt).

The provision was effectuated by statutes that first created the Ohio Student Loan Commission (OSLC), and, later, in 1993, by statutory revisions that created the Ohio Student Aid Commission (OSAC). The name change was prompted by the addition of state grant and scholarship programs to the administrative duties of OSLC, programs that previously had been under the auspices of the Ohio Board of Regents (now the Ohio Board of Higher Education).

As outlined in a 1993 Attorney General Opinion, the OSAC consisted of nine members appointed by the governor with the advice and consent of the Senate, with powers and duties that included the authority:

“ * * * [T]o guarantee the loan of money for educational purposes; to acquire property or money for its purposes by the acceptance of gifts, grants, bequests, devises, or loans; to contract with approved eligible educational institutions for the administration of any loan or loan plan guaranteed by the OSAC; to contract with “approved lenders,” as defined in R.C. 3351.07(C), for the administration of a loan or loan plan guaranteed by the OSAC and “to establish the conditions for payment by the commission to the approved lender of the guarantee on any loan,” R.C. 3351.07(A)(4); to sue and be sued; to collect loans guaranteed by the OSAC on which the commission has met its guarantee obligations; and to “[p]erform such other acts as may be necessary or appropriate to carry out effectively the objects and purposes of the commission,” R.C. 3351.07(A)(10). Further, pursuant to R.C. 3351.13, the Ohio Student Aid Commission “is the state agency authorized to enter into contracts concerning the programs established” by those federal educational loan programs specified in that statute. The OSAC also has authority to “accept any contributions, grants, advances, or subsidies made to it from state or federal funds and shall use the funds to meet administrative expenses and provide a reserve fund to guarantee loans made pursuant to [R.C. 3351.05-.14].” R.C. 3351.13.¹

In relation to its duties, the OSAC was empowered to collect loan insurance premiums, depositing them into a fund in the custody of the state treasurer to be used solely to guarantee

loans and to make payments into the OSAC operating fund. Such moneys were reserved solely to pay expenses of the OSAC. Asked whether language in Article VI, Section 5 indicating the state would guarantee the repayment of educational loans meant that the full faith and credit of the state had been pledged to cover that debt, the attorney general opined that the obligations incurred by OSAC are not backed by the full faith and credit of the state and, therefore, that the obligee would not have recourse to other funds of the state.

By 1995, the changing landscape of the student loan market rendered the utility of OSAC obsolete, partly due to the success of a federal direct-lending program, and partly because private companies were offering the same service.² Thus, OSAC commissioners voted to dissolve the agency at the conclusion of the biennial budget cycle in June 1997.³ OSAC was eliminated by the 121st General Assembly with the passage of Am. Sub. H.B. 627, effective January 3, 1997, and any remaining functions and duties of OSAC were transferred to the Ohio Board of Regents. Finally, with the passage of H.B. 562 in the 122nd General Assembly, all references to the duties and authority of OSAC were eliminated from the Revised Code.⁴

Amendments, Proposed Amendments, and Other Review

Section 5 has not been amended or reviewed since its adoption in 1965.

Litigation Involving the Provision

Although the Ohio Supreme Court has not reviewed Section 5, a federal court case addressed whether federal law changes requiring states to return excess funds in their student loan guarantee accounts to the federal government violated the United States Constitution.

In *Ohio Student Loan Comm. v. Cavazos*, 709 F.Supp. 1411 (S.D. Ohio 1988), the court described the history of the hybrid federal-state arrangement regarding student loan guarantees:

The Ohio Higher Education Assistance Commission (“OHEAC”) was created by the Ohio General Assembly in 1961 and began operations in 1962. The OHEAC was originally funded solely with state appropriations and was designed to administer state programs to assist Ohio residents attending institutions of post-secondary education. In particular, the OHEAC guaranteed loans made by private lenders to certain eligible students.

Three years later, the United States Congress created the Guaranteed Student Loan Program pursuant to the Higher Education Act of 1965, as amended, 20 U.S.C. 1071 et seq. The purpose of this program was to encourage states and nonprofit organizations and institutions to establish student loan guaranty programs, to provide a federal guaranty program for those students not having reasonable access to state or private guaranty programs, to subsidize interest payments on student loans, and to reinsure state and private guaranty programs. 20 U.S.C. 1071(a). In response to this federal program, the Ohio General Assembly created the OSLC, pursuant to Chapter 3351 of the Ohio Revised Code,

as a successor to the OHEAC. The creation of such a commission was authorized by Article VI, Section 5 of the Constitution of the State of Ohio.

The OSLC is a state agency created for the administration of Ohio's student loan guaranty program. The OSLC is authorized to enter into contracts and to sue and be sued in its own name. R.C. 3351.07. In addition, R.C. 3351.07(A)(2) expressly states “that no obligation of the commission shall be a debt of the state, and the commission shall have no power to make its debts payable out of moneys except those of the commission.” The OSLC is also expressly authorized to accept federal funds and to enter into contracts pursuant to the Higher Education Act of 1965, as amended, 20 U.S.C. 1071 et seq. R.C. 3351.13.

As described in the facts of the case, OSLC’s funding sources derived partially from federal government reimbursements for losses sustained due to student loan defaults, and federal payment of administrative cost allowances, but OSLC also received money from non-federal sources in the form of private lender fees, and interest and investment income from moneys held in a reserve fund. The program was subject to a federal-state reinsurance agreement providing that OSLC would administer the guaranteed student loan program in Ohio in exchange for which the secretary of the U.S. Department of Education would reinsure the state’s guarantees.

In 1987, the relevant law was amended to limit the amount of state cash reserves, requiring any excess to be transferred to the secretary. A dispute arose when OSLC refused to transfer its excess reserves, which amounted to over \$26 million, on the grounds that the transfer would violate the terms of the contractual agreement between the secretary and OSLC. In response, the secretary withheld the reinsurance funds, and OSLC sued, and won, in federal district court.

However, the United States Court of Appeals for the Sixth Circuit reversed, concluding the secretary was transferring the funds from a federal program with a state administrator, rather than appropriating funds from a state program, and that none of the facts supported a conclusion that the federal government had breached a contract, misappropriated funds, or violated due process or other constitutional rights. *Ohio Student Loan Comm. v. Cavazos*, 900 F.2d 894 (6th Cir. 1990).

Presentations and Resources Considered

Harmon Presentation

On June 9, 2016, David H. Harmon, former executive director of OSLC, presented to the committee. Mr. Harmon was employed with OSLC from 1977 to 1988, and was executive director from 1984-88. According to Mr. Harmon, Ohio was one of the earliest states to recognize a need for the support and encouragement of the provision of credit for the financing of higher education. He noted the General Assembly acted in July of 1961 to create the Ohio Higher Education Commission, whose purpose was to guarantee repayment of student loans made by banks, savings and loan companies, and credit unions. The Higher Education Commission collected an insurance premium on each loan as it was made, covering

administrative expenses and creating an insurance fund from which lender guaranty payments could be made.

Following the model established in Ohio and several other states, Mr. Harmon said the federal government moved in 1965 to create a federal program operating on the same principles. Mr. Harmon said the point of the constitutional section in 1965 was to allow OSLC to become the guaranteed agency under the federal loan program. He said the federal Guaranteed Student Loan Program was a part of the Higher Education Act of 1965. In response, in 1967, Ohio designated the Ohio Higher Education Commission as the state's guaranty agency, renaming it OSLC.

Mr. Harmon said the federal program provided for the "re-insurance" of all loans – meaning whenever the states paid off an insured loan, the federal government would reimburse the agency for each payment. He said OSLC continued collecting insurance premiums as loans were approved, providing the necessary revenue for agency operations.

During his time with the agency, Mr. Harmon said the annual loan volume grew from \$21.1 million in 1970 to \$120.3 million in 1978 – a 570 percent increase. He said the volume of loans guaranteed in 1979 was nearly double the 1978 loan volume. Mr. Harmon said OSLC began with only three employees in 1962, but grew to over 50 in 1970, and reached nearly 250 by the early 1990s.

Mr. Harmon said the 1980s saw the beginning of competition for loan volume, as several multi-state guaranty agencies began offering services to Ohio students, schools, and lenders. He said, although these competitors were non-profits, as required by federal law, increased loan volume brought increased revenue – thereby enhancing the ability of these agencies to offer enhanced support and automation.

Mr. Harmon said OSLC lacked the resources and spending authority to match these competitors on a feature-by-feature basis, but did respond to competitive developments. He said in 1992, the General Assembly authorized a move of the Ohio Instructional Grant Program from the Ohio Board of Regents to OSLC, resulting in the agency being renamed the Ohio Student Aid Commission (OSAC).

He noted that, despite the fact that the agency provided schools and students with enhanced service levels and streamlined processes, schools, lenders and student borrowers all found the competitive offerings from the out-of-state guarantors to be compelling, and the OSAC's market share, expressed as loan volume, plummeted.

Mr. Harmon said the creation of the Federal Direct Loan Program in the early 1990s resulted in a vote by the OSAC in 1995 to abolish the agency. He said, by that time, the OSAC's share of Ohio's loan volume had fallen to below 50 percent and revenues declined along with the loan volume. Thus, the OSAC ended its 36-year run at the end of the state's biennial budget cycle in 1997. As a result, the state's guaranty agency designation was awarded by the U.S. Department of Education to an out-of-state competitor, and the grant and scholarship programs were transferred to another state agency.

Asked whether there is any need to retain Article VI, Section 5, Mr. Harmon said, with the move to the federal direct loan program, no states have a guaranteed program any longer. Thus, he said, the section is no longer necessary. Mr. Harmon said unless new legislation is a precise mirror of previous legislation, it is unlikely that Section 5 could be repurposed for the new legislation. He said he is not sure a change in the constitution was ever necessary to allow OSLC, but any need for new law could be done by statute rather than by constitutional amendment.

Mr. Harmon was asked whether eliminating Section 5 could prevent the state from promulgating programs that would forgive loan indebtedness for graduates who accept certain types of employment, such as teaching or medical jobs in underserved communities. Mr. Harmon said those types of programs are unrelated to the constitutional provision, were never part of OSLC, and could be created legislatively.

Estep Presentation

Rae Ann Estep, currently deputy director of operations at the Office of Budget and Management (OBM), testified before the committee on June 9, 2016 to provide her perspective as a former executive director of OSAC from 1995-1997. Ms. Estep said the mission of the OSAC was to administer the federal-guaranteed student loan program, and to provide loan information to students and their families. She said the OSAC also administered a state grant and scholarship program. According to Ms. Estep, the OSAC consisted of nine persons serving three-year terms, with two members representing higher education institutions, one representing secondary schools, and the three remaining members representing approved lenders. Ms. Estep said, during her tenure, the OSAC staff consisted of an executive director and 225 employees.

Ms. Estep continued that, in the summer of 1995, the OSAC began proceedings to dissolve itself due to changes in financial aid policy on the federal and state levels in the 1990s. She said a primary factor was competition from private companies and the OSAC's subsequent declining market share of student loans. She noted that, in 1989, the OSAC guaranteed 99 percent of the state's higher education loans, but that number fell below 50 percent in 1995. She commented that the OSAC administered a federal program with federal money, and was in direct competition with private companies offering the same service. In addition, the OSAC faced the threat of federal funding cuts due to the federal government's rapidly-changing financial aid policy. According to Ms. Estep, when the new federal direct lending program was established, it took away the OSAC's market share, ultimately leading to the vote to dissolve the agency.

Ms. Estep concluded by saying because the OSAC was financed by the federal government, its closing did not have a direct cost-saving measure for Ohioans. She said the grant and scholarship program, which was the only part of the OSAC's operations financed by the state, was transferred to the Ohio Board of Regents. She said the OSAC's final closure occurred on June 30, 1997. Ms. Estep noted that her tenure at the agency was focused on closing the OSAC and assisting its employees in transitioning to new positions.

Discussion and Consideration

In considering whether to recommend a change to Article VI, Section 5, the committee acknowledged that, as matters currently stand, Article VI, Section 5 would appear to be non-functional because it is not necessary to facilitate activities of the Ohio Department of Higher Education in relation to student loans, grants, and scholarships, to accommodate the federal student loan program, or to support private lender activity related to student loans.

Nevertheless, the committee was concerned that future changes to the federal government's student loan programs and policies could result in Ohio and other states taking on additional responsibilities related to student loan guarantees. Further, although the committee was uncertain whether the provision is necessary to support programs that forgive student loan debt in order to foster the provision of needed services in underserved areas of the state, the committee was reluctant to recommend its elimination in case it could be implemented in that manner. The consensus of the committee was that, in any event, the section expresses an important state public policy of encouraging higher education and helping students afford it.

For these reasons, the committee determined Article VI, Section 5 may continue to play a useful role in encouraging the state's support of funding for higher education, and so concluded the provision should be retained.

Conclusion

The Education, Public Institutions, and Local Government Committee concludes that Article VI, Section 5 should be retained in its current form.

Date Issued

After formal consideration by the Education, Public Institutions, and Local Government Committee on November 10, 2016, the committee unanimously voted to issue this report and recommendation on November 10, 2016.

Endnotes

¹ Ohio Atty. Gen. Opinion No. 93-058 (Dec. 20, 1993). Available at: <http://www.ohioattorneygeneral.gov/getattachment/110d0ab1-1ac3-46c3-9d07-838260f371f2/1993-058.aspx> (last visited June 3, 2016).

² Jeanne Ponessa, "Ohio Student-Aid Agency to Dissolve Itself," Education Week (Nov. 8, 1995) <http://www.edweek.org/ew/articles/1995/11/08/10oh.h15.html> (last visited June 3, 2016).

³ *Id.*

⁴ See, http://archives.legislature.state.oh.us/bills.cfm?ID=122_HB_562 (last visited June 3, 2016).



OHIO CONSTITUTIONAL MODERNIZATION COMMISSION

REPORT AND RECOMMENDATION OF THE EDUCATION, PUBLIC INSTITUTIONS, AND LOCAL GOVERNMENT COMMITTEE

OHIO CONSTITUTION ARTICLE VI, SECTION 6

TUITION CREDITS PROGRAM

The Education, Public Institutions, and Local Government Committee of the Ohio Constitutional Modernization Commission issues this report and recommendation regarding Article VI, Section 6 of the Ohio Constitution concerning the tuition credits program. It is issued pursuant to Rule 8.2 of the Ohio Constitutional Modernization Commission's Rules of Procedure and Conduct.

Recommendation

The committee recommends that no change be made to Article VI, Section 6 of the Ohio Constitution and that the provision be retained in its current form.

Background

Article VI, Section 6 reads as follows:

(A) To increase opportunities to the residents of this state for higher education, it is hereby determined to be in the public interest and a proper public purpose for the state to maintain a program for the sale of tuition credits such that the proceeds of such credits purchased for the benefit of a person then a resident of this state shall be guaranteed to cover a specified amount when applied to the cost of tuition at any state institution of higher education, and the same or a different amount when applied to the cost of tuition at any other institution of higher education, as may be provided by law.

(B) The tuition credits program and the Ohio tuition trust fund previously created by law, which terms include any successor to that program or fund, shall be continued subject to the same laws, except as may hereafter be amended. To secure the guarantees required by division (A) of this section, the general assembly shall appropriate money sufficient to offset any deficiency that occurs in the Ohio tuition trust fund, at any time necessary to make payment of the full

amount of any tuition payment or refund that would have been required by a tuition payment contract, except for the contract's limit of payment to money available in the trust fund. Notwithstanding Section 29 of Article II of this Constitution, or the limitation of a tuition payment contract executed before the effective date of this section, such appropriations may be made by a majority of the members elected to each house of the general assembly, and the full amount of any such enhanced tuition payment or refund may be disbursed to and accepted by the beneficiary or purchaser. To these ends there is hereby pledged the full faith and credit and taxing power of the state.

All assets that are maintained in the Ohio tuition trust fund shall be used solely for the purposes of that fund. However, if the program is terminated or the fund is liquidated, the remaining assets after the obligations of the fund have been satisfied in accordance with law shall be transferred to the general revenue fund of the state.

Laws shall be passed, which may precede and be made contingent upon the adoption of this amendment by the electors, to provide that future conduct of the tuition credits program shall be consistent with this amendment. Nothing in this amendment shall be construed to prohibit or restrict any amendments to the laws governing the tuition credits program or the Ohio tuition trust fund that are not inconsistent with this amendment.

Article VI of the Ohio Constitution concerns education, and Section 6 is designed to promote the pursuit of higher education by establishing in the constitution a government-sponsored program to encourage saving for post-secondary education.

Beginning in 1989, the General Assembly enacted Revised Code Chapter 3334, establishing a college savings program and creating the Ohio Tuition Trust Authority (OTTA), an office within the Ohio Board of Regents (now the Department of Higher Education). The OTTA was designed to operate as a qualified state tuition program within the meaning of section 529 of the federal Internal Revenue Code. *See*, R.C. 3334.02, 3334.03.

Additional statutes authorize the OTTA to develop a plan for the sale of tuition units through tuition payment contracts that specify the beneficiary of the tuition units, as well as creating a tuition trust fund that is to be expended to pay beneficiaries, or to pay higher education institutions on behalf of beneficiaries, for certain higher education-related expenses. R.C. 3334.09, 3334.11. Those expenses include tuition, room and board, and books, supplies, equipment, and other expenses that meet the definition of "qualified higher education expenses" under section 529 of the Internal Revenue Code. R.C. 3334.01(H) and (P).

Both Section 6 and the related Revised Code sections work in conjunction with the so-called "529 plans," named for the Internal Revenue Code section providing tax benefits for college savings plans. As described by an analyst for the Congressional Research Service:

529 plans, named for the section of the tax code which dictates their tax treatment, are tax advantaged investment trusts used to pay for higher-education expenses. The specific tax advantage of a 529 plan is that distributions (i.e., withdrawals) from this savings plan are tax-free if they are used to pay for qualified higher education expenses. If some or all of the distribution is used to pay for nonqualified expenses, then a portion of the distribution is taxable, and may also be subject to a 10 percent penalty tax.

Generally, a contributor, often a parent, establishes an account in a 529 plan for a designated beneficiary, often their child. Upon establishment of a 529 account, an account owner, who maintains ownership and control of the account, must also be designated. In many cases the parent who establishes the account for their child also names [him or herself] as the account owner.

According to federal law, payments to 529 accounts must be made in cash using after-tax dollars. Hence, contributions to 529 plans are not tax-deductible to the contributor. The contributor and designated beneficiary cannot direct the investments of the account, and the assets in the account cannot be used as a security for a loan. A contributor can establish multiple accounts in different states for the same beneficiary. Contributors are not limited to how much they can contribute based on their income. Similarly, beneficiaries are not limited to how much they can receive based on their income. However, each 529 plan has established an overall lifetime limit on the amount that can be contributed to an account, with contribution limits ranging from \$250,000 to nearly \$400,000 per beneficiary. [Citations omitted.]¹

Since their implementation in the early 1990s, 529 plans have grown to represent \$253.2 billion in investments nationwide, with the average account size now hovering at \$20,000.² Ohio plan data indicate that, as of December 2015, over a half million accounts are open, with over \$9 billion in assets:³

| Plan | Assets Under Management | Open Accounts |
|---|-------------------------|---------------|
| CollegeAdvantage 529 Savings Plan (guaranteed) ⁴ | \$340,966,665 | 34,275 |
| CollegeAdvantage 529 Savings Plan (direct) ⁵ | \$4,318,805,309 | 266,370 |
| CollegeAdvantage 529 (advisor) ⁶ | \$4,631,704,946 | 339,962 |
| Total | \$9,291,476,920 | 640,607 |

Section 6 was successfully proposed to voters as Issue 3 on the November 1994 ballot. Its purpose, as described on the ballot, was to “increase opportunities to the residents of the State of Ohio for higher education and to encourage Ohio families to save ahead to better afford higher education.” The proposed amendment was projected to:

1. Allow the state to maintain a program for the sale of tuition credits whereby the proceeds of such credits purchased for the benefit of state residents are guaranteed by the state to cover a specified amount when applied to the cost of tuition at any state institution of higher education and the same or a different amount when applied to the cost of tuition at any other higher education institution as may be provided by law.
2. * * * [R]equire that tuition credits paid from the tuition credits program and the Ohio tuition trust fund be supported by the full faith and credit of the state of Ohio and require the passage of laws for the conduct of the tuition credits program consistent with this amendment.
3. Require the General Assembly to appropriate money to offset any deficiency in the Ohio tuition trust fund to guarantee the payment of the full amount of any tuition payment or refund required by a tuition payment contract, and allow a majority of the members of each house of the General Assembly to appropriate funds for the payment of any tuition payment contract previously entered into.
4. Require that all Ohio tuition trust fund assets be used for the purpose of the fund, and if the fund is liquidated, require that any remaining assets be transferred to the general revenue fund of the state.⁷

Amendments, Proposed Amendments, and Other Review

Section 6 has not been amended or reviewed since its adoption in 1994.

Litigation Involving the Provision

There has been no litigation concerning Article VI, Section 6.

Presentations and Resources Considered

Gorrell Presentation

On April 14, 2016, Timothy Gorrell, executive director of the Ohio Tuition Trust Authority (OTTA), presented to the committee on Ohio's tuition savings program. Mr. Gorrell said his agency is part of the Department of Higher Education and is charged with responsibility for administering the tuition credits program set forth in Article VI, Section 6.

According to Mr. Gorrell, the OTTA originally was created in 1989 under R.C. Chapter 3334, with the purpose of helping families save for higher education expenses. He described that, in November 1994, Ohio voters approved State Issue 3, a constitutional amendment that provided the state's full faith and credit backing for the Ohio Prepaid Tuition Program (now known as the Guaranteed Savings Plan), and to clarify the federal tax treatment of that plan.

Mr. Gorrell said in 1996, section 529 was added to the Federal Internal Revenue Code to provide a federal tax-advantaged way to save for college education expenses. Then, in 2000, the Ohio General Assembly authorized Ohio to offer variable savings plans, as well as allowing a state tax benefit by which Ohio residents can deduct up to \$2,000 a year, per beneficiary, from their Ohio taxable income.

In December 2003 the Guaranteed Savings Plan was closed to contributions and new enrollments in response to rapidly rising tuition costs and investment pressures due to the market environment, said Mr. Gorrell.⁸ Then, in 2009, existing legislation was changed to place OTTA under the Department of Higher Education, with the role of OTTA's 11-member board being limited to a fiduciary duty over the investments in OTTA's college savings plans.

Mr. Gorrell described OTTA as a "non-General Revenue Fund, self-funded agency," with all of its operating expenses being funded through account fees paid by CollegeAdvantage Program account owners.

Mr. Gorrell said OTTA currently sponsors three plans under the CollegeAdvantage 529 College Savings Program: the CollegeAdvantage Direct 529 Savings Plan, the CollegeAdvantage Advisor 529 Savings Plan offered through BlackRock, and the CollegeAdvantage Guaranteed 529 Savings Plan, which is closed to new investments. He said funds invested in these plans may be used at any accredited college or university in the country, as well as at trade schools and for other education programs that are eligible to participate in federal financial aid programs. According to Mr. Gorrell, across the three plans, OTTA directly manages or oversees over 641,000 accounts and \$9.4 billion in assets as of March 31, 2016.

Mr. Gorrell further explained that, in November 1994, by adopting Article VI, Section 6, Ohio voters approved providing the Guaranteed Savings Plan with the full faith and credit backing of the state, meaning that, if assets are not sufficient to cover Guaranteed Savings Plan liabilities, the Ohio General Assembly will appropriate money to offset the deficiency.

Mr. Gorrell also indicated that OTTA has the responsibility to generate investment returns on assets to match any growth in tuition obligations, noting that, currently, OTTA has sufficient assets on a cash basis to meet the payout obligations of the existing tuition units and credits held by account owners.

Mr. Gorrell said OTTA does not recommend any changes to Article VI, Section 6. He noted that a federal tax goal of the section was intended to address a period of unsettled case law that created uncertainty as to whether similar prepaid tuition programs were exempt from federal taxation. He said that uncertainty has been resolved by the codification of Internal Revenue Code section 529, rendering the constitutional provision unnecessary to clarify the federal tax treatment of such plans.

Discussion and Consideration

In considering whether to recommend a change to Article VI, Section 6, the committee was persuaded by Mr. Gorrell's testimony indicating that, while one goal of the provision was to

clarify federal tax treatment of the Guaranteed Savings Plan, a purpose that became obsolete with the federal enactment of Internal Revenue Code section 529, the constitutional provision's other purpose, to establish the full faith and credit backing of the state for the Guaranteed Savings Plan, remains viable. The committee agreed with Mr. Gorrell that, although no new Guaranteed Savings Plan account holders have been added since 2003, the fact that some accounts are still active may require the constitutional provision to be retained in its current form.

Thus, the committee was reluctant to alter or repeal Article VI, Section 6, although a future constitutional review panel may conclude there is no justification for retaining the section because all accounts have been paid out.

Conclusion

The Education, Public Institutions, and Local Government Committee concludes that Article VI, Section 6 should be retained in its current form.

Date Issued

After formal consideration by the Education, Public Institutions, and Local Government Committee on November 10, 2016, the committee unanimously voted to issue this report and recommendation on November 10, 2016.

Endnotes

¹ Margot L. Crandall-Hollick, *Tax-Preferred College Savings Plans: An Introduction to 529 Plans*, (Washington, D.C.: Congressional Research Serv. 2015), <http://fas.org/sgp/crs/misc/R42807.pdf> (last visited June 14, 2016).

² "529 Plan Data," College Savings Plans Network, available at: <http://www.collegesavings.org/529-plan-data/> (last visited June 15, 2016).

³ 529 Plan Data, Reporting Date Dec. 31, 2015, College Savings Plans Network. Available at: <http://www.collegesavings.org/wp-content/uploads/2015/09/Dec-2015.pdf> (last visited June 15, 2016).

⁴ A "guaranteed savings fund" is defined in the Ohio Administrative Code as: "those accounts in the Ohio college savings program, whether containing tuition credits and/or tuition units, which have the financial backing through the full faith and credit of the state of Ohio as more specifically set forth in Section 6 of Article VI, Ohio Constitution." Ohio Admin.Code 3334-1-01(G).

⁵ A direct plan is defined as one in which the investor directly contracts with the company managing the plan. *See*, [https://www.collegeadvantage.com/docs/default-source/stand-alone-documents/otta_decisiontree_02_cr\(1\).pdf?sfvrsn=4](https://www.collegeadvantage.com/docs/default-source/stand-alone-documents/otta_decisiontree_02_cr(1).pdf?sfvrsn=4) (last visited June 24, 2016).

⁶ An "advisor" plan is one in which the investor has purchased the plan through a financial advisor or broker-dealer who, in turn, facilitates the investment with the company managing the plan. *See, id.*

⁷ Toledo *Blade*, Oct. 25, 1994, at p. 7, <https://news.google.com/newspapers?id=qUYxAAAABAJ&sjid=fQMEAAAABAJ&pg=6086.7819623&hl=en> (last visited June 14, 2016).

⁸ According to the Legislative Service Commission, the suspension of the Guaranteed Savings Plan resulted from an actuarial deficit that was “initially caused largely by the combination of the downturn in the economy and the stock market, and the large increases in tuitions at Ohio’s public colleges and universities after the removal of the tuition caps in FY 2002 and FY 2003.” LSC Greenbook, Analysis of the Enacted Budget, Department of Higher Education (August 2015), p. 42. Available at: <http://www.lsc.ohio.gov/fiscal/greenbooks131/bor.pdf> (last visited June 24, 2016).



OHIO CONSTITUTIONAL MODERNIZATION COMMISSION

REPORT AND RECOMMENDATION OF THE EDUCATION, PUBLIC INSTITUTIONS, AND LOCAL GOVERNMENT COMMITTEE

OHIO CONSTITUTION ARTICLE VII, SECTION 1

SUPPORT FOR PERSONS WITH CERTAIN DISABILITIES

The Education, Public Institutions, and Local Government Committee of the Ohio Constitutional Modernization Commission issues this report and recommendation regarding Article VII, Section 1 concerning public institutions for persons with certain disabilities, specifically, the “insane, blind, and deaf and dumb.” It is issued pursuant to Rule 8.2 of the Ohio Constitutional Modernization Commission’s Rules of Procedure and Conduct.

Recommendation

The committee recommends that Article VII, Section 1 be changed to modernize outdated language and clarify the state’s commitment to assisting persons with disabilities.

The committee proposes that the current provision be revised to state the following:

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

Background

Section 1 of Article VII reads as follows:

Institutions for the benefit of the insane, blind, and deaf and dumb, shall always be fostered and supported by the state; and be subject to such regulations as may be prescribed by the General Assembly.

In addressing the topic of public institutions, the delegates to the 1850-51 Constitutional Convention devoted the greater portion of their discussion to the governance of the state correctional system, the purposes of incarceration, and the operation of prison facilities and prison labor programs.¹ Nevertheless, the consensus was that the state should play a role in

assisting persons with disabilities, specifically, those who were “insane,” “blind,” and “deaf and dumb.”

The General Assembly has broad power to create institutions for the benefit of persons with mental or physical disabilities even without the authority in Section 1. Indeed, Ohio had been providing for the care and treatment of the “insane” since the early 1800s.² The new provision, however, created a constitutional mandate that the state address this issue by providing that the institutions in question “shall always be fostered and supported by the state.”

The initial version of Section 1 had respectfully referred to the intended beneficiaries of the institutions being created as “inhabitants of the State who are deprived of reason, or any of the senses * * *.”³ The use of the word “senses,” however, was felt to be too broad and was replaced with language referring to the insane, blind, and deaf and dumb.

Amendments, Proposed Amendments, and Other Review

In the 1970s, the Ohio Constitutional Revision Commission (1970s Commission), recommended that Section 1 be retained without change.

The 1970s Commission engaged in extensive discussion, both at the committee and the Commission level, about how to describe the position of the state relative to the needs of persons with disabilities. Acknowledging the evolving state of “legal, and perhaps social, obligations to persons needing care,” the 1970s Commission struggled with how to recognize the state’s commitment as well as how to describe exactly which persons in need of care would be covered by the provision. The 1970s Commission recognized that the original language addressed only “the insane, blind, and deaf and dumb,” while some of the revisions they considered expanded the subject population to others in need of assistance, such as the aged, and the developmentally and mentally disabled. The 1970s Commission additionally wondered whether the word “institutions” should be clarified so as to create an obligation to help in settings outside of a physical facility, or whether the original concept of the state’s creating or funding schools, asylums, or other types of residential facilities should be maintained. The 1970s Commission also was concerned about using language that might suggest the state has an unlimited financial responsibility for the care of such persons. The committee of the 1970s Commission recommended the following language:

Facilities and treatment for persons who, by reason of disability or handicap, require care, treatment, or habilitation shall be fostered by the State. Such persons shall not be civilly confined unless, nor to a greater extent than, necessary to protect themselves or other persons from harm. Such persons, if civilly confined, have a right to appropriate habilitation, treatment, or care.

Although a majority of the 1970s Commission approved this proposal, it failed to achieve the necessary two-thirds support, and therefore did not become a recommendation. As reported by the 1970s Commission, the major objections “appeared to be grounded in the uncertainty of the state’s obligation as a result of the language,” with the result that the inclusion of the phrase

“right to treatment” suggested to some members that the state would be taking on a greater burden than it could assume.

The failure of the recommendation to obtain the supermajority necessary for adoption prompted a minority report that was supported by 17 members of the 1970s Commission. As described by those signing the report, the first sentence of the recommended change states the same principle as the present constitution, allowing for more modern, less stigmatizing language. The minority report further suggested that removing the word “support” from the original provision would indicate that the state was not extending a right to specific services or facilities. The minority report asserted that the second part of its recommendation was a statement of the state’s obligations under federal constitutional, statutory, and case law to provide due process as well as a right to appropriate care, treatment, or habilitation.

Litigation Involving the Provision

In re Hamil, 69 Ohio St.2d 97, 437 N.E.2d 317 (1982), invited the Supreme Court of Ohio to consider whether a state agency serving the mentally ill was required to cover the cost of care of a juvenile at a private psychiatric facility. In that case, the juvenile court found a 13-year-old charged with delinquency to be a mentally ill person in need of hospitalization at a state facility. When the superintendent at the state facility determined a more appropriate placement was at a private facility, the court ordered the juvenile’s private placement and further ordered that the state would be responsible for the full expense of his care, with reimbursement by his parents to the extent of their insurance coverage and ability to pay. On appeal, the Court held the juvenile court had acted beyond the scope of its jurisdiction in ordering the state to pay the cost of care of a juvenile in a private psychiatric hospital.

Acknowledging Article VII, Section 1’s requirement that state institutions of this kind “shall always be fostered and supported,” the Court interpreted this mandate as indicating the state’s “strong responsibility to care for citizens placed in its public institutions.” *Id.*, 69 Ohio St.2d at 99, 431 N.E.2d at 318. However, the Court found, “no justification exists * * * for imposing a similar duty upon the state to care for persons confined to privately operated facilities over which the state has no control.” *Id.* The Court additionally observed that, historically, the phrase “benevolent institution” has been used to refer to state-owned and operated institutions, not private institutions. *Id.*, 69 Ohio St.2d at 100, 431 N.E.2d at 318.

The Court rejected the parents’ argument that a substantial portion of the expenses would be paid by insurance, so that the state’s burden would be light. Instead, the Court reasoned that a decision solely based on the cost to the state would have negative repercussions, since in other cases the state would be called upon to “absorb the entire cost of treatment at an expensive private institution.” *Id.*, 69 Ohio St.3d at 104, 437 N.E.2d at 321.

Presentations and Resources Considered

Kirkman Presentation

On September 8, 2016, the committee heard a presentation by Michael Kirkman, who is executive director of Disability Rights Ohio, on the history of Article VII, Section 1, relating to “Institutions for the Insane, Blind, and Deaf and Dumb.”

Mr. Kirkman noted the word “institution” is ambiguous because an institution can be a physical place or a service, among other things. He added that the language of the section is not self-executing, requiring action by the General Assembly.

Describing the history of the state’s involvement in the care of the mentally disabled, Mr. Kirkman said the earliest attempts to provide care reflected a lack of understanding. He noted that, in the 1800s, reformers Benjamin Rush and Dorothea Dix led campaigns to provide more humane treatment to mentally ill persons. He said during that period, twenty states expanded the number of mental hospitals. He noted that, prior to the passage of Section 1 in 1851, Ohio had provided for the care and treatment of the insane, although most responsibility fell to charities, counties, and churches. After 1851, the state population grew, and there came a need for the state to sponsor asylums to provide more humane treatment to the mentally ill. He said there was no scientific evidence that Dix’s asylum model actually had a therapeutic value, but many believed asylums helped.

Mr. Kirkman commented that, as time went on, these institutions changed for the worse. Further problems were related to the philosophy behind the Eugenics Movement in the early 20th century, which regarded “feble-mindedness” as being genetic, and which was viewed as justification for mandatory sterilization. Mr. Kirkman noted examples of persons or groups who were institutionalized or sterilized solely because of race or economic status rather than due to actual mental incapacity.

Mr. Kirkman remarked that, in the 1960s, attitudes changed, and the field of psychiatry adopted new views on treating and institutionalizing the mentally ill. He said during that period the mental hospital was replaced with community care and neighborhood clinics. In the 1980s, he said, law evolved to the point where the state is now required to provide training to people in commitment, and the mentally ill are afforded equal protection and due process rights under the Fourteenth Amendment to the United States Constitution.

He commented there has been a significant depopulation of state hospitals since the 1980s, with the unfortunate result that many mentally disabled persons became homeless or were imprisoned. He further noted that assistance to that population is now governed by the Americans with Disabilities Act (ADA), which focuses on services in the community rather than institutionalization.

He said Ohio currently has six psychiatric hospitals with a total of 1,067 beds. He said as many as 70 percent of this population has been committed as a result of a criminal proceeding.

Mr. Kirkman emphasized that the language used to describe those with psychiatric disabilities is a “major focus in the mental health world.” He said the word “insane” is offensive and discriminatory, with the current trend in the Ohio Revised Code being to identify people first and the disability second.

Mr. Kirkman suggested that, because Ohio does not operate any institution for the “blind” or the “deaf and dumb,” and because the trend is away from institutionalizing the mentally incapacitated, Article VII, Section 1 could be eliminated. As further support, he noted that funding state institutions takes away from community-based services. He said eliminating the section would not affect treatment of persons in the criminal justice system because treatment for those persons is required by the U.S. Constitution and derives from the inherent authority of the state to prescribe criminal laws.

Addressing the phrase “deaf and dumb” in Section 1, Mr. Kirkman said that the deaf community does not like the word “dumb,” and that many do not consider themselves as having a disability but rather that they simply have a different language. He said the main point is the deaf and blind are integrated into society now and are not institutionalized.

Mr. Kirkman described that the inherent authority to use public funds to assist the disabled lies with the general authority to provide for the general welfare of people in the state. But, he acknowledged, taking this language out could be viewed by some as eliminating a backstop.

Colker Presentation

On January 12, 2017, Ruth Colker, professor of law at the Ohio State University Moritz College of Law, presented to the committee in relation to the committee’s review of Article VII, Section 1. Prof. Colker indicated her first recommendation would be to repeal Section 1 as unnecessary. Failing that, she said, her second recommendation would be to recommend new language that would meet the underlying purpose of the original section, but would be more respectful and consistent with other provisions. She said, in this regard, she would recommend changing the language to state:

The state shall always foster and sustain services and supports for people with disabilities who need assistance to live independently; these services and supports will, to the maximum extent possible, be provided in the community, rather than in institutions.

Prof. Colker said, in formulating this language, she consulted with members of the disability rights community. She said the revision is more respectful, and offers a more functional definition of disability. She said another goal was to have the section be more consistent with modern notions under federal law and the United States Constitution.

Addressing the terms used in the current section to describe persons with disabilities, Prof. Colker said the disability rights community prefers “person first” language, thus persons with psychiatric impairment would not be described as “the insane.” She said the thinking behind this word choice is that disability status is only one aspect of personhood. She added that descriptors

such as “insane” or “deaf or dumb” are not used. Instead, such persons would be described as being individuals with psychiatric, speech, sensory, visual, or intellectual impairments. Describing definitions that have been used at the federal level, she said no one definition would serve the purpose, and that the federal government has chosen different functional definitions depending on the context.

Prof. Colker emphasized considering the kind of assistance the state is saying it wants to provide. Noting federal case precedent, she said the United States Supreme Court and Congress have adopted the concept that people with disabilities should be integrated into communities as much as possible. She cited an example as being that the Individuals with Disabilities Education Act (IDEA) provides that states must have procedures assuring, to the maximum extent appropriate, that children with disabilities are educated with children who are not disabled, and that special or separate placement occurs only when the nature or severity of the disability is such that education in regular classes with the use of supplementary assistance cannot be achieved satisfactorily. She said this has been the preference since 1975, and suggests a default principle that persons with disabilities be placed in an integrated environment.

Noting Section 1’s use of the word “institutions,” Prof. Colker said this word choice suggests a preference for an institutional setting, a concept that is no longer the prevailing view. She said she tried to craft language that would indicate an understanding that, aspirationally, the state would try to place people in a community setting, rather than have the default be placing them in institutions.

She said this approach is also reflected in the Americans with Disabilities Act, which was passed in 1990. Citing the case of *Olmstead v. L.C. ex rel. Zimring*, 527 U.S. 581 (1999), she said the ADA is violated when people who are able to live in the community are placed in institutions because, as the U.S. Supreme Court concluded, unjustified isolation is discrimination based on disability. She noted that principle is stated in the Court’s finding that there is a presumption of deinstitutionalization, and that states are required to provide community-based treatment for persons with mental disabilities when it is determined “that such placement is appropriate, the affected persons do not oppose such treatment, and the placement can be reasonably accommodated, taking into account the resources available to the State and the needs of others with mental disabilities.” *Olmstead* at 607.

Addressing whether her suggested language could be interpreted as creating a fundamental right, Prof. Colker said that would depend on what doctrine or rule of law applies. She said she relied on the language in the *Olmstead* decision indicating the resources of the state are a consideration. She said, as a result, her recommendation would be to describe the state’s obligation as being “to the maximum extent possible.” She said the definition of a fundamental right does not mean limitless support, but rather means a court would develop a pragmatic rule that is flexible. She said one goal in changing Section 1 would be to maintain the principle articulated in the current provision that the state should be doing something for people who cannot live without assistance.

Prof. Colker said the current language indicates the state only has an obligation to support people who are in an institutional setting. She said from a policy perspective that is wrong, and is also unconstitutional and illegal.

Asked whether, if Ohio did not have Section 1, the standard would be found in state law, Prof. Colker said eliminating Section 1 would not have a significant impact because *Olmstead* already requires the state to provide for the disabled. She said a constitution is aspirational, and that keeping and refining the obligation set out in Section 1 would continue that aspirational goal using language that is respectful and modern.

Discussing her recommendation that the provision be changed to include the phrase “assistance to live independently,” Prof. Colker said it is important to recognize that each individual might need a different level of assistance. As to whether the proposed language would create an obligation the state could not fulfill in a budget crisis, Prof. Colker said the current provision mandates state support that would be important to maintain in any revision. She said, if rewriting the provision is not an option, her preference would be to delete it.

Pizzuti Presentation

Also on January 12, 2017, Marjory Pizzuti, who is president and chief executive officer of Goodwill Columbus, appeared before the committee to provide her organization’s perspective on the state’s support of people with disabilities. She said her organization serves more than 77,000 individuals, with 85 percent of those persons having a disadvantaging condition such as long-term unemployment, incarceration, low educational attainment, and physical or intellectual disabilities. She said Goodwill chapters throughout Ohio are partners and providers of services through many state agencies, including Opportunities for Ohioans with Disabilities, and the Ohio Departments of Aging, Jobs and Family Services, Developmental Disabilities, Rehabilitation and Corrections, and Mental Health and Addiction Services. She said her organization seeks to provide support to individuals with disabilities, and to assure that all citizens can be full and active participants in the community.

Addressing current Section 1, Ms. Pizzuti said the commitment to community-based integration may be fundamentally at odds with the intent of Section 1, which specifically references “institutions.” She said Section 1 raises three issues: the wording used, the appropriateness of continuing to include a provision that focuses on institutionalizing people with disabilities, and the fundamental question of whether any reference to a specific population should be included anywhere in the Ohio Constitution.

With regard to the terminology used to describe persons with disabilities, Ms. Pizzuti said the current section is not only offensive but inappropriate based on the current understanding of illness and disabilities. She said, while this language was relevant at the time of adoption, it has no place in current or future revisions of the Ohio Constitution. However, she recognized that an attempt to revise the terminology is difficult and ultimately would not resolve the problem because society’s perception of individuals with disabilities continues to evolve.

Ms. Pizzuti continued that the movement toward community integration has been reflected in the downsizing of the state’s institutional facilities, the increase in competitive integrated employment, and the transition into community-based settings. She said this is an intentional

and widely-acknowledged paradigm shift for the full integration of individuals with physical and intellectual disabilities into communities.

Acknowledging the good intentions of the drafters of Section 1 to protect and serve individuals with disabilities, she said the previous practice of institutionalizing people with disabilities has given way to policies that favor community-based support.

Ms. Pizzuti said there is a more fundamental question of whether a need to foster and support individuals with disabilities has a place in the constitution, and, if so, where it should be placed. She said it is possible such a “general welfare” statement could be incorporated in the Bill of Rights or the Preamble. She said Article VII, Section 1 provides an important voice for individuals with disabilities, although the notion of institutionalization and the language used is obsolete. She encouraged the committee to work toward balancing the need to modernize the language with the need to reaffirm the spirit of the intent of the provision, which is to provide assistance that “fosters and supports” opportunities for individuals with disabilities.

Hetrick Presentation

Finally, on January 12, 2017, the committee heard a presentation by Sue Hetrick, executive director of the Center for Disability Empowerment, to provide her agency’s perspective on potential changes to Section 1. Ms. Hetrick described that her agency operates a center for independent living, and that such facilities have been around since the 1970s. She said the concept that persons with disabilities, with assistance, could be integrated into the community corresponded with the civil rights movement. She said her organization emphasizes consumer control, and that 51 percent of the board of directors is comprised of persons who are disabled.

Ms. Hetrick said disability is regarded as a neutral difference, meaning that it results from the interaction of the individual with his or her environment, rather than from other causes. She said, despite the emphasis on integrating persons into the community, Ohio continues to have a culture of institutions, maintaining schools for the deaf and for the blind, as well as nursing facilities sometimes being mental health institutions. She said any congregate setting can be an institution. However, she said, under *Olmstead*, if the appropriate supports and services are in place segregation is not necessary.

Asked whether, if Section 1 is not revised, it should be removed or kept as is, Ms. Hetrick remarked that, if the constitution is to provide sections protecting gender and religion, there should be a section acknowledging and protecting persons with disabilities. Thus, she said, if revision is not an option she would prefer that the section be left as is.

Discussion and Consideration

While all committee members agreed that the current references to “the insane” and the “deaf and dumb,” are outdated and disrespectful, there was concern that alternate language may overly broaden the scope of the state’s responsibility by expanding the population to be served.

In considering how to phrase the state’s involvement in fostering and supporting care, committee members indicated a concern that state resources could be stretched beyond capacity if the constitutional provision were written or interpreted as requiring limitless support. Committee members also expressed concern that use of the term “disability” may be vague, preferring language to allow the General Assembly to determine which conditions will be subject to the provision.

The committee discussed whether the reference to “institutions” indicates that the state has an obligation to provide physical facilities, or whether, more broadly, it suggests a state obligation to accommodate the needs of persons with disabilities, whatever those needs may require. Committee members observed that the current trend is away from institutionalizing persons in need of care. Instead, for example, mentally ill persons often benefit from community-based treatment. In addition, children with vision or hearing impairments, with appropriate assistance, can attend public schools. Some members expressed support for a change that would indicate the state would provide support “to the maximum extent appropriate,” which would allow the creation of facilities for persons requiring an institutional setting.

Some committee members expressed that Section 1 could be removed without eliminating the General Assembly’s authority to enact laws assisting the subject populations. However, members acknowledged that a recommendation to repeal Section 1 should not be interpreted as suggesting that the state should no longer foster programs that support the disabled. In the end, the committee decided against recommending repeal of the section.

Conclusion

The Education, Public Institutions, and Local Government Committee concludes that Article VII, Section 1 should be replaced with the following language:

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

Date Issued

After formal consideration by the Education, Public Institutions, and Local Government Committee on April 13, 2017, and May 11, 2017, the committee voted to issue this report and recommendation on May 11, 2017.

Endnotes

¹ An analysis of this debate, including a table of the participating delegates and an excerpt of the proceedings, is contained in a memorandum provided to the Committee. *See* O’Neill, Article VII (Public Institutions) at the 1851 Constitutional Convention (August 23, 2016). The discussion, in full, may be found in Ohio Convention Debates, pages 539-49, available at <http://quod.lib.umich.edu/m/moa/aey0639.0002.001?view=toc> (last visited Aug. 23, 2016).

² See Eagle and Kirkman, Ohio Mental Health Law, Section 1.11 (2nd Ed. Banks-Baldwin). *See generally* Kirkman, “Fostering” Institutions and People with Disabilities (Sept. 8, 2016) (presentation to the Ohio Constitutional Modernization Commission).

³ As originally introduced, Section 1 provided as follows:

The Institutions for the benefit of these classes of the inhabitants of the State who are deprived of reason, or any of the senses, shall always be fostered and supported by the State, and be regulated by law so as to be open to all classes alike, subject only to reasonable restrictions.



OHIO CONSTITUTIONAL MODERNIZATION COMMISSION

REPORT AND RECOMMENDATION OF THE EDUCATION, PUBLIC INSTITUTIONS, AND LOCAL GOVERNMENT COMMITTEE

OHIO CONSTITUTION ARTICLE VII, SECTIONS 2 AND 3

DIRECTORS OF PUBLIC INSTITUTIONS

The Education, Public Institutions, and Local Government Committee of the Ohio Constitutional Modernization Commission issues this report and recommendation regarding Article VII, Sections 2 and 3 concerning directors of public institutions. It is issued pursuant to Rule 8.2 of the Ohio Constitutional Modernization Commission's Rules of Procedure and Conduct.

Recommendation

The committee recommends that Article VII, Sections 2 and 3 be repealed as obsolete.

Background

Sections 2 and 3 of Article VII read as follows:

Section 2

The directors of the penitentiary shall be appointed or elected in such manner as the General Assembly may direct; and the trustees of the benevolent, and other state institutions, now elected by the General Assembly, and of such other state institutions, as may be hereafter created, shall be appointed by the governor, by and with the advice and consent of the Senate; and upon all nominations made by the governor, the question shall be taken by yeas and nays, and entered upon the journals of the Senate.

Section 3

The governor shall have power to fill all vacancies that may occur in the offices aforesaid, until the next session of the General Assembly, and, until a successor to his appointee shall be confirmed and qualified.

Origin of Sections 2 and 3

In creating provisions about public institutions, the delegates to the 1850-51 Constitutional Convention were plowing new ground; no similar article or provisions were a part of the 1802 Constitution. While one apparent goal was to express support and provide for “benevolent institutions,” understood as facilities for persons with diminished mental capacity as well as for the blind and deaf, the greater portion of the discussion centered on the governance of the state correctional system, the purposes of incarceration, and the operation of prison facilities and prison labor programs.¹

Addressing proposals for Section 2, delegates immediately focused on whether directors of the penitentiary should be selected by the General Assembly, appointed by the governor, or directly elected by voters.² Some delegates supported allowing the General Assembly to make this determination. Others expressed that the rationale given for involving the governor – that the General Assembly had become unpopular – was not supported by fact, and, in any event, was not sufficient justification to have voters approve “every small office in the state.”

Other delegates expressed that the importance of the role of directors of the penitentiary meant they should be elected, with one delegate, Daniel A. Robertson of Fairfield County, having previously supported that position in his previous role as a member of the New York Constitutional Convention in 1837, where he advocated the popular election of all public officers.³ In fact, requiring all state offices to be elective had been a key plank in the platform of reforms advocated by Samuel Medary and others as justification for voting to hold the 1850-51 convention.⁴

Some delegates supported allowing the governor to appoint, with a requirement for obtaining the advice and consent of the Senate as a compromise measure.

Delegates then returned to the issue of how directors should be selected. G.J. Smith, a Warren County attorney, offered an amendment that would add at the close of Section 2 the words “and the question upon all nominations made by the Governor shall be taken by yeas[] and nays and entered upon the journal of the senate,” which delegates approved.

D.P. Leadbetter, a Holmes County farmer, then proposed Section 3 to address how vacancies would be filled, as follows:

The governor shall have power to fill all vacancies that may occur in the offices created by this article of the Constitution, until their successor in office shall be elected and qualified, or until the meeting of the ensuing legislature, and the successor confirmed and qualified.⁵

This addition was adopted, and the committee reported both sections back to the convention.

The discussions of Sections 2 and 3 resulted in provisions that assigned roles to the General Assembly and the governor in selecting penitentiary and benevolent institution directors, and provided a procedure for filling director vacancies in penitentiaries and benevolent institutions.

While a significant portion of the discussion dealt with the purposes of incarceration and compensation for prison labor, these topics did not culminate in a recommendation.

Although Sections 2 and 3 may seem overly concerned with how the officers of the institutions are selected, in 1850-51, a concern about legislative overreaching, as well as a related desire to elevate the role of the voter, heightened delegates' interest in the topic.⁶ Indeed, a large part of the delegates' discussion about public institutions centered on which branch of government should control and regulate these institutions.

Aside from expressing general support for public institutions, the convention delegates' primary goal seems to have been to address the election-versus-appointment issue. The meandering discussion allowed delegates to express opinions on crime and punishment, racial segregation, and political power, but the discourse never ripened into a substantive policy statement or consensus for an approved recommendation. While one delegate attempted to expand the concept of "public institutions" to include a provision related to prison labor, his proposal was rejected. No other delegate appears to have attempted to propose a new amendment.

Relationship to Statutory Law

The provisions in Article VII, Sections 2 and 3 are not self-executing, and the General Assembly has adopted more detailed statutory provisions.

Article VII, Section 2 references "directors of the penitentiary" but does not create that role. The phrasing of Article VII, Section 2 suggests that the referenced positions already exist. Thus, its primary purpose, as well as that of Section 3, is not to create the roles but to describe how the roles are to be filled.

Under current statutory law, the most analogous position to that of the "directors of the penitentiary" is possibly the director of the department of rehabilitation and correction, a statutory department head role identified in R.C. 121.03, at subsection (Q). R.C. Chapter 5120 relates to the Department of Rehabilitation and Correction (DRC), providing under R.C. 5120.01 that the director is the executive head who has the power to prescribe rules and regulations, and who holds legal custody of inmates committed to the DRC. While R.C. Chapter 5145 generally concerns "the penitentiary," its current focus is on details related to managing the prison population, rather than the role of the director of the penitentiary.

In relation to Article VII, Section 3, R.C. 3.03 provides specific instructions for the governor's exercise of the power to appoint to fill a vacancy in office, with the advice and consent of the Senate.⁷

Amendments, Proposed Amendments, and Other Review

In the 1970s, the Ohio Constitutional Revision Commission (1970s Commission), recommended the repeal of Sections 2 and 3, finding them to be obsolete. As the committee of the 1970s Commission noted, the sections derived from a time when nearly all appointing power was vested in the legislature, so that the provisions were deemed necessary to allow a transfer of that

power to the governor, with the advice and consent of the Senate. However, the 1970s Commission observed that the office of the directors of the penitentiary is no longer in existence. The Commission report further noted that, by the 1970s, the only state institution that could be considered a “benevolent institution,” the Ohio Soldiers’ and Sailors’ Orphans’ Home, was governed by a statutory five-member board of trustees appointed by the governor with the advice and consent of the Senate. Thus, neither Section 2 nor Section 3 was deemed to be necessary for the state to carry out functions related to the incarceration of prisoners or the support of state “benevolent institutions.”

Litigation Involving the Provision

In re Hamil, 69 Ohio St. 2d 97, 437 N.E.2d 317 (1982), invited the Supreme Court of Ohio to consider whether a “benevolent institution” included a private psychiatric facility. In that case, the juvenile court found a 13-year-old charged with delinquency to be a mentally ill person in need of hospitalization at a state facility. When the superintendent at the state facility determined a more appropriate placement was at a private facility, the court ordered the juvenile’s private placement and further ordered that the state would be responsible for the full expense of his care, with reimbursement by his parents to the extent of their insurance coverage and ability to pay. On appeal, the Court held the juvenile court had acted beyond the scope of its jurisdiction in ordering the state to pay the cost of care of a juvenile in a private psychiatric hospital.

Acknowledging Article VII, Section 1’s requirement that state institutions of this kind “shall always be fostered and supported,” the Court interpreted this mandate as indicating the state’s “strong responsibility to care for citizens placed in its public institutions.” *Id.*, 69 Ohio St. 2d at 99, 431 N.E.2d at 318. However, the Court observed that, historically, the phrase “benevolent institution” has been used to refer to state-owned and operated institutions, not private institutions. *Id.*, 69 Ohio St. 2d at 100, 431 N.E.2d at 318. Therefore, the Court found, “no justification exists * * * for imposing a similar duty upon the state to care for persons confined to privately operated facilities over which the state has no control.” *Id.*, 69 Ohio St. 2d at 99, 431 N.E.2d at 318.

Presentations and Resources Considered

Furderer Presentation

On March 9, 2017, the committee heard a presentation by Darin Furderer, who is a corrections analyst at the Correctional Institution Inspection Committee, on the leadership arrangements for correctional facilities and the use of the term “director.”

Mr. Furderer noted the title of “director” is not used to refer to the head of the penitentiary. He added that the DRC currently uses the term “warden” to refer to a person in charge of an adult correctional facility, and the Department of Youth Services uses the term “superintendent” to refer to a person in charge of a youth correctional facility.

Discussion and Consideration

The Committee noted that the governor appoints a “director” of DRC, who is the head of the department rather than the head of the penitentiary. The DRC director then appoints the persons who run the correctional facilities.

Committee members agreed the sections appear to be obsolete, noting that they focus on who appoints the heads of these institutions, an issue that has been settled for a long time and is not relevant to any present procedure.

Conclusion

The Education, Public Institutions, and Local Government Committee concludes that Article VII, Sections 2 and 3 are no longer relevant and should be repealed.

Date Issued

After formal consideration by the Education, Public Institutions, and Local Government Committee on April 13, 2017, and May 11, 2017, the committee voted to issue this report and recommendation on May 11, 2017.

Endnotes

¹ An analysis of this debate, including a table of the participating delegates and an excerpt of the proceedings, is contained in a memorandum provided to the Committee. See O’Neill, Article VII (Public Institutions) at the 1851 Constitutional Convention (August 23, 2016). The discussion, in full, may be found in Ohio Convention Debates, pages 539-49, available at <http://quod.lib.umich.edu/m/moa/aey0639.0002.001?view=toc> (last visited Aug. 23, 2016).

² As originally introduced, Section 2 provided as follows:

The Directors of the Penitentiary, and the Trustees of the Benevolent Institutions, now elected by the General Assembly of the State, with such others as may be hereafter created by subsequent Legislative enactment shall, under this constitution, be appointed by the Governor, by and with the advice and consent of the Senate.

³ See David M. Gold, *Judicial Elections and Judicial Review: Testing the Shugerman Thesis*, 40 Ohio N. L. Rev. 39, 51 (2013).

⁴ See Barbara A. Terzian, *Ohio’s Constitutional Conventions and Constitutions*, in *The History of Ohio Law* 40, 52 (Michael Les Benedict and John F. Winkler, eds., 2004).

⁵ Currently, Section 3 provides: “The governor shall have power to fill all vacancies that may occur in the offices aforesaid, until the next session of the General Assembly, and, until a successor to his appointee shall be confirmed and qualified.”

⁶ As Steinglass and Scarselli note: “Over the course of five decades under the first constitution * * * the people began to see the legislature as the source of many, if not most, of the problems of government, and the new constitution reflected this general distrust of legislative power. * * * [T]he new constitution took the

appointment power away from the General Assembly. All key executive branch officers became elected officials, as did all judges.” Steven H. Steinglass & Gino J. Scarselli, *The Ohio State Constitution* 35 (2nd prtg. 2011).

⁷ R.C. 3.03 provides:

When a vacancy in an office filled by appointment of the governor, with the advice and consent of the senate, occurs by expiration of term or otherwise during a regular session of the senate, the governor shall appoint a person to fill such vacancy and forthwith report such appointment to the senate. If such vacancy occurs when the senate is not in session, and no appointment has been made and confirmed in anticipation of such vacancy, the governor shall fill the vacancy and report the appointment to the next regular session of the senate, and, if the senate advises and consents thereto, such appointee shall hold the office for the full term, otherwise a new appointment shall be made. A person appointed by the governor when the senate is not in session or on or after the convening of the first regular session and more than ten days before the adjournment sine die of the second regular session to fill an office for which a fixed term expires or a vacancy otherwise occurs is considered qualified to fill such office until the senate before the adjournment sine die of its second regular session acts or fails to act upon such appointment pursuant to section 21 of Article III, Ohio Constitution.

Appendix 2

Education, Public Institutions,
and Local Government Committee

Minutes of the Committee

Minutes of the Committee

NOTE: In the early years of the Commission, committee records were kept on an ad hoc basis by various individuals assisting the Commission. Unfortunately, this left committee records, in particular, in a haphazard state. After the hiring of permanent staff in 2014, committee records were regularly kept and put into a standardized format. In addition, staff revised early committee minutes, where available, to put them into the standardized format and to correct any errors or omission discovered during the process. Both the original and revised minutes have been retained with the full files of the Commission; however, the revised minutes have been endorsed as the official record of the committee and are the only documents included here.



OHIO CONSTITUTIONAL MODERNIZATION COMMISSION

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

FOR THE MEETING HELD
THURSDAY, MAY 9, 2013

Call to Order:

Chair Chad Readler called the meeting of the Education, Public Institutions, and Local Government Committee to order at 11:55 a.m.

Members Present:

A quorum was present with Chair Readler, Vice-chair Gilbert, and committee members Beckett, Brooks, Clyde, Faber, Huffman, Macon, Sykes, and Taft in attendance.

Approval of Minutes:

This being the first meeting of the committee, there were no minutes to approve.

Discussion:

Chair Readler opened the meeting by calling on all committee members to introduce themselves.

Chair Readler then reviewed items on the committee agenda including Article VI (Education), Article VII (Public Institutions), Article XV (Miscellaneous), School Funding, Article X (County and Township Organizations), and Home Rule as well as Adjoining Regionalization and Economic Development.

Chair Readler inquired as to the pleasure of the committee regarding the committee's organizational structure as well as the order in which issues would be discussed.

It was suggested that the committee might consider the formation of subcommittees, due to the broad scope of the issues tasked to it. Vice-chair Gilbert suggested that education and school funding be paired and discussed together. He then asked to be updated on the current levels of school funding around the state. The discussion included a proposal for three subcommittees,

education, local government, and miscellaneous. It was suggested that the committee should wait to divide into subcommittees until the committee's work load deemed it necessary.

Vice-chair Gilbert then brought up the selection and order in which issues might be discussed. He suggested calling on experts to give presentations before the committee, as well as reaching out to different communities.

Governor Bob Taft commented that he would like to see a summary of previously proposed amendments.

Committee member Paula Brooks suggested reaching out to the attorney general's office to give the committee "the lay of the land" regarding the constitutionality of education.

Committee member Larry Macon suggested reaching out to Senior Policy Advisor Steven H. Steinglass for recommendations for the committee's direction and issue selections.

The committee then discussed issues regarding the staffing of the committee and the role the staff could potentially play.

Adjournment:

With no further business to come before the committee, the meeting adjourned at 12:35 p.m.

Approval:

The minutes of the May 9, 2013 meeting of the Education, Public Institutions, and Local Government Committee were approved at the June 13, 2013 meeting of the committee.

/s/ Chad A. Readler
Chad A. Readler, Chair

Edward L. Gilbert
Edward L. Gilbert, Vice-chair



OHIO CONSTITUTIONAL MODERNIZATION COMMISSION

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

FOR THE MEETING HELD
THURSDAY, JUNE 13, 2013

Call to Order:

Chair Chad Readler called the meeting of the Education, Public Institutions, and Local Government Committee to order at 9:36 a.m.

Members Present:

A quorum was present with Chair Readler, Vice-chair Gilbert, and committee members Beckett, Brooks, Clyde, Huffman, Sykes, and Taft in attendance.

Approval of Minutes:

The minutes of the May 9, 2013 meeting were reviewed and approved.

Presentations and Discussion:

Chair Readler called on John Barron of the Ohio Casino Control Commission to address Article XV (Miscellaneous). Mr. Barron's testimony reflected on Article XV, Section 6(C) of the constitution. He gave an overview of Section 6, an explanation of the Casino Control Commission, and a general update on the four existing casinos in Ohio. He noted that nothing in the constitution, specifically Article XV, Section 6(C) restricts the Casino Control Commission in any way. In light of House Bill 7 of the 130th General Assembly, Representative Matt Huffman asked whether the committee would consider a clarification of the term "lottery" within the constitution.

Chair Readler recognized Gregory Trout, chief counsel for the Bureau of Criminal Investigation, and former chief counsel to the Ohio Department of Rehabilitation and Correction, to address part of Article VII (Public Institutions). Mr. Trout reflected that Article VII, Section 2 appears obsolete when compared to the state's current system of rehabilitation and correction. Providing an overview of the content of Article VII as well as of the state prison system, Mr. Trout then answered committee members' questions.

Chair Readler next called on Stephen Wilson, legislative liaison for the Ohio Rehabilitation Services Commission (n/k/a Opportunities for Ohioans with Disabilities Agency). Mr. Wilson also addressed Article VII, Section 1, pertaining to “Institutions for the benefit of the insane, blind, and deaf and dumb.” Mr. Wilson suggested several updates to this section, commenting that the language has not been amended since 1851 and is one of the only sections to never be amended in any way. He said the current language in this section does not properly reflect the values of Ohio citizens with disabilities. He added the language also contradicts the work currently being done by the Rehabilitation Services Commission to focus on the abilities of the individual rather than the disabilities.

Chair Readler indicated the committee would discuss local government at the committee’s July 11, 2013 meeting, while education would be discussed at the meeting on August 8, 2013.

Adjournment:

With no further business to come before the committee, the meeting adjourned at 11:02 a.m.

Approval:

The minutes of the June 13, 2013 meeting of the Education, Public Institutions, and Local Government Committee were approved at the July 11, 2013 meeting of the committee.

/s/ Chad A. Readler
Chad A. Readler, Chair

Edward L. Gilbert
Edward L. Gilbert, Vice-chair



OHIO CONSTITUTIONAL MODERNIZATION COMMISSION

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

FOR THE MEETING HELD
THURSDAY, JULY 11, 2013

Call to Order:

Chair Chad Readler called the meeting of the Education, Public Institutions, and Local Government Committee to order at 9:32 a.m.

Members Present:

A quorum was present with Chair Readler, Vice-chair Gilbert, and committee members Brooks, Clyde, Macon, Sykes, and Taft in attendance.

Approval of Minutes:

The minutes of the June 13, 2013 meeting were reviewed and approved.

Presentations and Discussion:

Chair Readler announced that the next meeting of the committee would occur on August 8, 2013, indicating that Vice-chair Gilbert would be scheduling speakers and would appreciate the committee's suggestions for potential presenters. Suggestions included a representative from the attorney general's office and an Ohio college professor.

Chair Readler offered special thanks to Governor Bob Taft for organizing the speakers for the day's meeting, which would address the topic of local governments.

Chair Readler recognized Lavea Brachman and Alison D. Goebel of the Greater Ohio Policy Center to present on local government structure, cost, and opportunities for collaboration. Ms. Brachman is the co-founder and executive director of the organization, while Ms. Goebel is associate director. The speakers gave a PowerPoint presentation entitled "Overview of Local Government in Ohio." Following the presentation, Ms. Brachman and Ms. Goebel answered questions from committee members.

Representative Kathleen Clyde moved to take more thorough notes for the duration of the meeting because the Ohio Government Television was not taping the meeting like they were the previous day's meetings. Committee member Paula Brooks seconded the motion, and it passed unanimously.

Representative Vernon Sykes asked whether Ohio has a large number of local governments because it is a large state with many people who are in favor of local government services. Rep. Sykes continued, asking if the state could be more efficient with more government collaborations and fewer entities. The presenters said they are reporting on current data only but offered to return at a later date to talk about more options to streamline local government. Chair Readler noted that they would be added to a list of people to come back when the committee talks more in-depth about possible changes.

Gov. Taft asked about inter-county collaboration and whether the presenters were aware of any studies relating to the Summit County charter leading to further partnerships. The presenters noted that both formal and informal collaboration have occurred. They commented that Akron was not hit as hard by economic downturn as other counties in Ohio, a circumstance that can be attributed to work between the city, county and local chamber of commerce.

Ms. Brooks noted that Franklin County was the fastest growing county in Ohio and the only AAA rated county in the state. She inquired if the presenters had any data-driven studies to back up the Akron example. The presenters noted that Akron is doing better than other cities of comparable size. Ms. Brooks asked if there is data showing this information. The presenters noted that they could make available the data they have on trends and prosperity in Akron. Vice-chair Gilbert said strong relationships and same party affiliation have played a great role in Akron's ability to foster collaboration.

Committee member Larry Macon asked the presenters to note three startling statistics they have found over the course of their research on Ohio local governments. The presenters noted the decline in Ohio's population, the aging population, and that the state has not been attracting the Generation Y population as it should.

Chair Readler recognized Eugene Kramer, attorney-at-law and advisor to Summit and Cuyahoga Counties, to present on the creation of their county charters. Mr. Kramer provided testimony along with a memorandum entitled "Article X Ohio Constitution: County and Township Organization and Government: The Ohio Constitutional Revision Commission Local Government Committee Perspective." Following the presentation, Mr. Kramer answered questions from committee members.

Gov. Taft asked about the 1970s Commission's proposal to eliminate multiple majority power over municipalities and townships. Mr. Kramer noted that this proposal would not have succeeded. Mr. Kramer said the group will put a great deal of time and effort into proposals. The committee and Commission should focus on putting ideas together that could be championed by legislative members.

Vice-chair Gilbert asked if charters are generally citizen-driven. Mr. Kramer confirmed. Vice-chair Gilbert noted that in Cuyahoga County a suit was filed seeking for elected officials to be permitted to finish their terms before the charter government began. Mr. Kramer noted that elected office is not a vested right and that they were required to turn over their offices. Mr. Kramer further noted that, under Article X, county charters can provide for the number and selection method of county officials.

Ms. Brooks reiterated that there are only two counties that have instituted charters and asked why some small counties have not instituted them. She asked if Mr. Kramer could provide the committee with data supporting the notion that charters were associated with lower cost and had fewer employees. Mr. Kramer said Cuyahoga County showed a reduction in personnel and established human resources that brought employees under a personnel system.

Chair Readler then called on Harold Babbit, adjunct professor teaching local government law at Cleveland-Marshall College of Law, to present on municipal corporations. Prof. Babbit said he has been an educator on municipal law for 30 years. He indicated the history of Ohio reflects that the state was established as sovereign and the General Assembly all-powerful, subject only to the constitution. He said local governments were governed entirely by the state. He added that Article XVIII, which was adopted in 1912, changed the way local governments could be run, as previously they had been stifled.

Prof. Babbit explained that Section 3 is the heart of Article XVIII. He said Section 3 has had over 100 years of review by the Ohio Supreme Court and is well-centered. Under Section 3, municipalities were granted powers of local self-government and powers of local police (so long as they do not conflict with general law). Prof. Babbit noted that Senior Policy Advisor Steven H. Steinglass explained this in his book on the Ohio Constitution.¹ Prof. Babbit commented that although the book dates to 2004, there have been no major, new law changes in this section.

Prof. Babbit further explained that the Ohio Supreme Court still struggles with home rule jurisdiction between municipalities and the state. For example, he said an Ohio city passed an ordinance stating that natural gas drilling must be approved at the local level first, which is typically considered at the state level. He said a case is currently pending in the Ohio Supreme Court to decide whether home rule takes precedent on this issue.

Prof. Babbit noted that, at the time of the 1912 adoption, the drafters thought Section 7 was the heart, but that section has not proven to be quite as important. He said municipalities without a charter still have the same powers, just not procedurally. He indicated non-chartered cities have to abide by state law when they are established. Following his presentation, Prof. Babbit answered questions from committee members.

Ms. Brooks asked if municipalities have more authority than counties and why municipalities were given more authority. Prof. Babbit said this was part of a grander national movement to grant more power to the people, bringing government closer to its citizens.

¹ Steven H. Steinglass and Gino J. Scarselli, *The Ohio State Constitution* (2nd prtg. 2011).

Gov. Taft said Mr. Kramer referenced statewide law that restricts municipal regulation. Prof. Babbit noted that he was not aware of Supreme Court rulings on this matter. He said the most contentious issues involve mandatory employment of municipal employees. He commented that the General Assembly has the sole power to take up employment issues. He said other contentious cases have to do with police power regulations, such as the regulation of guns. Prof. Babbit noted General Assembly regulated that 15 rounds are allowed in a clip but a city passed an ordinance that said only ten rounds are allowed in a clip. He said, eventually, the General Assembly passed a law that said municipalities did not have power to regulate gun control that supersedes state law.

Gov. Taft asked if there are any areas of Article XVIII that the Commission should review. Prof. Babbit said that overall the language in Article XVIII is good.

Representative Vernon Sykes asked if there are any common understandings about municipal corporations that could be added to the constitution. Prof. Babbit said he could not think of any ideas offhand, and he had no further recommendations.

With no further questions, Chair Readler was excused from the meeting for a previously-held engagement.

Vice-chair Gilbert then called on Kevin McIver, chief of the Opinions Section at the Office of the Ohio Attorney General, to present on interpretations of local government sections of the Ohio Constitution. Mr. McIver provided written testimony. Following the presentation, Mr. McIver answered questions from the committee members.

Rep. Sykes asked if a chartered county should have more authority relating to home rule. Mr. McIver said Article X grants counties same home rule standards. There is the same jurisprudence under Article X as Article XVIII. Rep. Sykes asked if state law prevails over charters. Mr. McIver answered that there is very little guidance on this question, so it is subject to speculation at this point. Mr. McIver noted that as more counties adopt charters, it will become clear what laws prevail.

Vice-chair Gilbert asked why some county personnel in chartered counties are under different policy standards. Mr. McIver noted that personnel must follow the requirements of their charter. If specific information is not covered by the charter, they must follow state law.

Ms. Brooks asked to confirm that a charter could be better or worse than current government based on the language of the charter. Mr. McIver said adoption of a charter is only another plan for organizing government. There is no guarantee that problems will not occur based on the establishment of charter language.

Gov. Taft inquired about county commissioners proposing county charters and putting the proposal on a local ballot. Mr. McIver said that right now a majority of county commissioners could bring up an alternative government form.

Adjournment:

With no further business to come before the committee, the meeting adjourned at 11:47 a.m.

Approval:

The minutes of the July 11, 2013 meeting of the Education, Public Institutions, and Local Government Committee were approved at the August 8, 2013 meeting of the committee.

/s/ Chad A. Readler

Chad A. Readler, Chair

Edward L. Gilbert

Edward L. Gilbert, Vice-chair



OHIO CONSTITUTIONAL MODERNIZATION COMMISSION

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

FOR THE MEETING HELD
THURSDAY, AUGUST 8, 2013

Call to Order:

Chair Chad Readler called the meeting of the Education, Public Institutions, and Local Government Committee to order at 10:28 a.m.

Members Present:

A quorum was present with Chair Readler, Vice-chair Gilbert, and committee members Beckett, Clyde, Coley, Stautberg, Sykes, and Macon in attendance.

Approval of Minutes:

The minutes of the July 11, 2013 meeting were reviewed and approved.

Presentations and Discussion:

Chair Readler introduced the committee to the topic of the meeting, education. Chair Readler offered special thanks to Vice-chair Gilbert and Senior Policy Advisor Steven H. Steinglass for organizing and inviting the speakers.

Chair Readler called on Mr. Steinglass, to provide an overview of education and the materials he distributed to the group via email prior to the meeting. Mr. Steinglass said that public education has deep roots in the United States, and was established in the Northwest Ordinance. He provided the committee with electronic copies of excerpts from the recommendations on Article VI by the Ohio Constitutional Revision Commission, an excerpt about Article VI from his book, an article about the *DeRolph v. State* line of cases, and an article on the Ohio Constitution and schools published by the Cleveland State Law Review.

Chair Readler then recognized Paolo DeMaria, principal consultant of Education First Consulting. Mr. DeMaria provided a PowerPoint presentation entitled, "Education: Fundamental

Concepts.” Following the presentation, Mr. DeMaria answered questions from committee members.

Committee member Larry Macon asked what state laws about public education are challenging. Mr. DeMaria said the system does not do a good job of accommodating students who consume education through multiple sources, for example, students taking online courses, courses at a traditional public school, and post-secondary courses. He said the state needs to ensure there are sound structures in place, but it can be difficult to reconcile if the student is benefitting. He said it can be challenging to appropriately distribute limited funds to all education sources that receive state funding, and that tax law is also a challenge. Mr. DeMaria urged committee members to be attentive to the intersection of education and tax policy.

Vice-chair Gilbert asked how charter schools have impacted public school funding. Mr. DeMaria stated that some resources are available solely for public schools and that charter schools operate on less money than public schools. He added that charter school enrollment decreases student numbers at public schools.

Chair Readler noted that the education system has changed, but the constitution has not. He said Ohio is experiencing a great change in education. Mr. DeMaria echoed that there has been a lot of recent innovation and pushing of the envelope with regard to education in Ohio.

Chair Readler then called on Reid Caryer, assistant attorney general in the education section at the Office of the Ohio Attorney General. Mr. Caryer stated that the attorney general’s education section represents entities of public education. He said, because provisions of the Ohio Constitution dealing with education could be subject to litigation, Mr. Caryer could not speak to specific situations, but gave an overview of the function of the education section.

Mr. Caryer said the section represents higher education as well as primary and secondary education. In relation to higher education, he said his agency serves as general counsel to Ohio’s public colleges and universities. He said the section works with schools’ legal counsels to give general advice, including answering daily questions and providing training. In relation to primary and secondary education, he said the attorney general’s office deals with issues of transportation, nutrition, and other matters, along with addressing schools that are in fiscal emergency and academic distress. Thus, he said they have a diverse caseload.

Vice-chair Gilbert asked about the difference between the State Board of Education and the Department of Education. Mr. Caryer stated that the State Board of Education is a decision-making body while the Department of Education is administrative.

Committee member Roger Beckett asked about major constitutional, contentious issues. Mr. Caryer stated that they have seen a lot of cases about First Amendment issues, public access to higher education, and school safety.

Representative Bill Coley asked about changing the funding model to directly funding students instead of school districts. Mr. Crayer stated that because that question, if it were enacted, could potentially lead to litigation, he could not comment.

Chair Readler called on Richard Lewis, executive director of the Ohio School Boards Association, who presented on the challenges and opportunities facing public education in Ohio. Following his presentation, Mr. Lewis answered questions from committee members.

Vice-chair Gilbert asked about the potential consequences of removing local control from schools. Mr. Lewis said this might result in a “one size fits all” mentality, adding it would be best to institute a funding model that fills current gaps.

Mr. Beckett asked about larger issues. Mr. Lewis noted that charter schools and vouchers, the school funding model, tax rollback changes, and collective bargaining are all issues. Chair Readler asked about the constitutionality of these issues. Mr. Lewis said that Ohio has made great strides and serious improvements, and is becoming more equalized. But, he said, low wealth and rural communities continue to fall behind. He noted a better funding formula would help. Chair Readler asked if this issue would be best solved in the legislature or the courts. Mr. Lewis said the courts would be a last resort, and that the General Assembly and local school boards would make the best decisions.

Mr. Macon asked if mayoral control of the Cleveland School District has been more effective than a traditional set-up. Mr. Lewis said the particular arrangement in Cleveland was crafted by the legislature and approved by the community. He said whether the transition can be cited as a success is unknown at this time. Oftentimes, he noted, mayoral control leads to a surge in progress which dwindles to previous levels of achievement.

Requesting Mr. DeMaria to return to the podium, Representative Vernon Sykes asked Mr. DeMaria about early childhood education, noting that provisions regarding early childhood education requirements were incorporated into the Florida Constitution. Rep. Sykes wondered if Ohio has any constitutional requirements relating to early childhood education, and whether Mr. DeMaria has suggestions for promoting early childhood education through the constitution. Mr. DeMaria said he believes that policy changes regarding early childhood education would be a better fit for the General Assembly.

Chair Readler thanked all speakers for their presentations. He then addressed the September meeting and proposed that the meeting should be organizational, allowing the committee to discuss steps for moving forward.

Adjournment:

With no further business to come before the committee, the meeting adjourned at 11:43 a.m.

Approval:

The minutes of the August 8, 2013 meeting of the Education, Public Institutions, and Local Government Committee were approved at the September 12, 2013 meeting of the committee.

/s/ Chad A. Readler

Chad A. Readler, Chair

Edward L. Gilbert

Edward L. Gilbert, Vice-chair



OHIO CONSTITUTIONAL MODERNIZATION COMMISSION

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

FOR THE MEETING HELD
THURSDAY, SEPTEMBER 12, 2013

Call to Order:

Chair Chad Readler called the meeting of the Education, Public Institutions, and Local Government Committee to order at 10:30 a.m.

Members Present:

A quorum was present with Chair Readler, Vice-chair Gilbert, and committee members Beckett, Brooks, Clyde, Huffman, Macon, Sykes, and Taft in attendance.

Approval of Minutes:

The minutes of the August 8, 2013 meeting were reviewed and approved.

Discussion:

Chair Readler summarized the work of the committee over the previous months, asking committee members for their opinions regarding topics for future committee meetings. Vice-chair Ed Gilbert noted that the committee has two paths: one path involving discussion and handling of soft topics versus a path that addresses hard topics.

Committee member Larry Macon asked about the difference between a soft topic and a hard topic. Mr. Gilbert elaborated that the soft topics may include casinos, in which there is passed legislation and where the law has both been vetted and defined. He said the committee work with regards to casinos would be slight by way of recommendations to the full Commission. He said the hard topics would include education, a topic that stirs dissension among key players.

Committee member Paula Brooks stated that education should be the focus of the committee moving forward. She added it is in the best interest of the children of Ohio to consider early learning initiatives and to pay attention to factors that include demographic issues surrounding

learning. Representative Vernon Sykes agreed with Ms. Brooks that the significance of education, namely early childhood learning, is invaluable.

Chair Readler inquired about the most effective and efficient means to address the issues of education, public institutions, and local governments. Governor Bob Taft noted there is no urgency in examining a constitutional amendment, and suggested that the committee hear from local government representatives to identify key priorities. Ms. Brooks added there is a Local Government Commission which could share findings with the committee.

Chair Readler suggested each committee meeting be allotted for a topic; with the three categories of topics being education, local government, and public institutions. Ms. Brooks suggested inviting James Heckman, professor at the Center for the Economics of Human Development at the University of Chicago, to present to the Committee his work on early childhood learning.

Chair Readler asked committee members' opinions on the order for future meetings. Committee member Roger Beckett noted that presentations from past committee meetings have not given him a grasp on constitutional topics or suggested a priority. He suggested a helpful course of action would be to have more focus placed on the constitutional problems of the three categories of topics. Ms. Brooks inquired whether Mr. Beckett was referring to the constitutional problems or challenges. Mr. Beckett stated to identify the problems within the constitution would be a helpful course of action.

Mr. Gilbert noted that the charge of the committee is to examine the hard issues and gather recommendations. He suggested setting the committee topic priorities as being, first, education, second, public institutions, and third, local governments. Committee members accepted this suggestion.

Representative Kathleen Clyde added that, while the committee is examining education, it should also assess higher education issues surrounding student loan debt, thus ensuring a robust discussion of education from early childhood through K-12 as well as higher education.

Chair Readler mentioned that there are obsolete portions of the constitution that require examination, asking whether the committee wants to examine the obsolete portions first and transition to education. Ms. Brooks suggested that a subcommittee of the Education Committee to address obsolete "deadwood" portions of the constitution.

Mr. Gilbert agreed with Ms. Brooks, adding that most of the obsolete sections are not to be addressed by this committee. He suggested that the a subcommittee address obsolete portions, allowing the full committee to move forward on the topic of education. The committee agreed with this suggestion.

Mr. Beckett stated that Article VII, Section 1 of the constitution was not addressed. Ms. Brooks added this portion of the constitution is worth addressing as it contains offensive language. Mr. Gilbert agreed with Ms. Brooks and Mr. Beckett, stating that Senior Policy Advisor Steven H. Steinglass has outlined these provisions. Rep. Sykes added that the committee should submit a request to Mr. Steinglass to report on these provisions.

Gov. Taft said the committee should bring in experts on state constitutions to provide testimony. Ms. Brooks agreed with this suggestion. Chair Readler suggested Mr. Steinglass provide testimony. Rep. Sykes noted the importance of providing the public an opportunity to contribute.

Ms. Brooks asked whether the committee meetings will be video recorded. Chair Readler stated that video recordings are not yet made available to the committee. Mr. Beckett added that video recordings of committee meetings is still under discussion and, according to Ohio Government Television rules, only committees chaired by members of the General Assembly are approved for video recordings. He said it is his understanding this topic will be addressed by the General Assembly.

Mr. Macon asked if persons slated to present to the committee can submit a synopsis version of their presentation in advance, stating that having some background information before the committee meeting is helpful. Ms. Brooks asked whether appearances before the committee should be regarded as presentations or testimonies, suggesting that, as they are not sworn in, "presentation" may be a more appropriate term. Mr. Gilbert noted the term "presentation" over "testimony" is indeed less intimidating. Mr. Macon noted the term "presentation," rather than "testimony," is used at meetings of the full Commission.

Adjournment:

With no further business to come before the committee, the meeting adjourned at 11:22 a.m.

Approval:

The minutes of the September 12, 2013 meeting of the Education, Public Institutions, and Local Government Committee were approved at the November 14, 2013 meeting of the committee.

/s/ Chad A. Readler
Chad A. Readler, Chair

Edward L. Gilbert
Edward L. Gilbert, Vice-chair



OHIO CONSTITUTIONAL MODERNIZATION COMMISSION

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

FOR THE MEETING HELD
THURSDAY, NOVEMBER 14, 2013

Call to Order:

Vice-chair Ed Gilbert called the meeting of the Education, Public Institutions, and Local Government Committee to order at 11:11 a.m.

Members Present:

A quorum was present with Vice-chair Gilbert and committee members Beckett, Brooks, Clyde, Coley, Macon, Sykes, and Taft in attendance.

Approval of Minutes:

The minutes of the September 12, 2013 meeting were reviewed and approved.

Presentation and Discussion:

Vice-chair Gilbert called on Charles E. Wilson, professor emeritus of law at The Ohio State University Moritz College of Law, to present to the committee on education.

Committee member Larry Macon asked Prof. Wilson to share his opinion on Ohio's education system. Prof. Wilson led discussion and provided historical background on the Supreme Court Case of *DeRolph v. State of Ohio*, a landmark case in Ohio constitutional law that deemed the state's public education funding approach "failed to provide for a thorough and efficient system of common schools."

Mr. Macon asked whether language within the Ohio Constitution should define the roles of courts when dealing with matters of education. Senator Bill Coley contended that without maintaining the separation of powers, the courts could rule roughly similar to judicial monarchy. Prof. Wilson stated a form of judicial review would be a beneficial compromise.

Prof. Wilson added, with regard to the current language, the constitutional review of the education system could benefit from a closer examination of the definition of “efficiency.” Prof. Wilson furthered explained that, in most states, inequities deem a system inefficient.

Governor Bob Taft remarked that the term “inefficient” may convey wasteful. Prof. Wilson provided historical background of a study Samuel Lewis, Ohio’s first Superintendent of Common Schools, conducted while visiting every county public school system within the state. He said the General Assembly tasked Mr. Lewis with establishing standards that public school systems and its teachers needed to meet to ensure that students received a quality education.

Prof. Wilson expounded that the term “common school” is defined by the following guidelines:

- Public provision for the cost of schools;
- No selectivity for attendance;
- Separation of church and state;
- Local control- community controls schools without state or federal intervention;
- Open and forgiving- expulsion of student is difficult to execute; and
- Gender neutrality.

Vice-chair Gilbert asked Prof. Wilson to discuss law and policies of early childhood education. Prof. Wilson stated that Florida’s State Constitution says that every four-year old is entitled to a free, high-quality preschool education. Vice-chair Gilbert asked why four years of age defines preschool, and whether there is statistical evidence to offer support. Prof. Wilson surmised a cost association and the cognitive development of four-year olds bear reasoning. Representative Vernon Sykes agreed with Prof. Wilson that there are cost factors in determinations regarding early childhood. Committee member Paula Brooks asserted a return on investment with regard to early childhood is an advantageous outcome. In agreement with Ms. Brooks, Prof. Wilson stated that states that have chosen to invest in early childhood education reaped significant expenditure savings, noting as an example a savings in imprisonment expenditures.

Prof. Wilson asserted that changes in our society warrant changes to our education system. He asserted that, if given leeway, the General Assembly can determine a thorough and efficient public education system and in turn would not need to use the constitution to delve into the matter; but it is society that demands intervention. Gov. Taft stated the committee should devise language that mirrors Florida’s constitution concerning early childhood education in addition rewriting the thorough and efficient clause within the Ohio Constitution. Complementing Gov. Taft’s assertion, Prof. Wilson added that the language should reflect set parameters of a fundamental right to a thorough and efficient education. Gov. Taft noted the language should also use “and/or” language to indicate a high-quality education.

Prof. Wilson stated that there is high correlation between educational resources and the quality of education, asserting that one may measure the quality of education based on the input of educational resources invested in the children that, in turn, lends focus to improving programming. Vice-chair Gilbert inquired whether Ohio should do away with standardized testing. Prof. Wilson stated assessments provide narratives of student progression but added that high-stakes testing and other forms of measurement do diminish an interest in schooling. He

said, “ultimately it is our society that drives and encourages lifelong learning and not the utilization of standardized testing.” Prof. Wilson further explained that the Ohio Supreme Court has given the General Assembly leeway and flexibility to experiment by way of vouchers and charters. Prof. Wilson noted the disparity in funding and lack of equity warrants investigation and justifies the connection between family wealth to testing scores and how the availability of educational resources are interconnected.

Vice-chair Gilbert thanked Prof. Wilson for his presentation and engagement in meaningful discussion before the committee. Mr. Macon added that the committee should invite Prof. Wilson to engage in discussion with regards to educational equity in the future.

Adjournment:

With no further business to come before the committee, the meeting adjourned at 1:03 p.m.

Approval:

The minutes of the November 14, 2013 meeting of the Education, Public Institutions, and Local Government Committee were approved at the December 12, 2013 meeting of the committee.

/s/ Chad A. Readler

Chad A. Readler, Chair

Edward L. Gilbert

Edward L. Gilbert, Vice-chair



OHIO CONSTITUTIONAL MODERNIZATION COMMISSION

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

FOR THE MEETING HELD
THURSDAY, DECEMBER 12, 2013

Call to Order:

Chair Chad Readler called the meeting of the Education, Public Institutions, and Local Government Committee to order at 9:15 a.m.

Members Present:

A quorum was present with Vice-chair Gilbert and committee members Beckett, Brooks, Clyde, Sykes, and Taft in attendance.

Approval of Minutes:

The minutes of the November 14, 2013 meeting were reviewed and approved.

Presentations and Discussion:

Chair Readler called on Malcolm Costa, president and chief executive officer, and Allyson Lee, director of the Head Start program, at Akron Summit Community Action Inc. to present on Head Start and its role in early childhood education.

Vice-chair Ed Gilbert asked Mr. Costa whether Head Start has turned away children due to a lack of funding. Mr. Costa remarked that the federal sequestration did affect monies but no child was turned away. Mr. Gilbert asked why an amendment to the constitution is necessary if Head Start is working well. Mr. Costa answered that attendance and retention is a problem that could be addressed.

Chair Readler asked the ages of children in Head Start. Ms. Lee responded that the ages of children in Head Start are between birth and five years old.

Representative Kathleen Clyde asked for the presenters to provide a snapshot of the kind of family that enrolls a child in Head Start, particularly their level of income. Ms. Lee answered

that enrollment eligibility is based on the age of the children and household income, remarking that most families are at or below the federal poverty line. Rep. Clyde asked whether the Head Start in Akron has a lengthy waiting list. Ms. Lee shared that the waitlist for the Akron Head Start is short due to the varied childcare options available to families that may not qualify for Head Start.

Governor Bob Taft asked whether there is data revealing how the graduates of Head Start are performing with regard to kindergarten readiness. Ms. Lee indicated they are at the beginning stages of tracking Head Start graduates. She said she could provide data at a future committee meeting. Mr. Costa remarked that a constitutional amendment that ensures funding sustainability for early childhood education would be a celebrated action.

Representative Vernon Sykes thanked Mr. Costa and Ms. Lee for their presentations and willingness to educate members of the Committee on the value of Head Start programming.

Chair Readler recognized William Sims, president and chief executive officer of the Ohio Alliance for Public Charter Schools, to present to the Committee.

Mr. Gilbert asked Mr. Sims to expound on the definition of “special education.” Mr. Sims said “special education” is a term related to students having an Individualized Education Plan (IEP).

Chair Readler asked whether there are specific charter schools that provide services to special education students, and Mr. Sims replied yes.

Gov. Taft asked Mr. Sims whether his organization has amendment language that will modernize the Constitution with regard to charter schools. Mr. Sims replied that language can be devised.

Chair Readler asked Mr. Sims to discuss the evolution of schools with regards to science, technology, engineering, and math (STEM) and its role within charters. Mr. Sims asserted the biggest challenges are how to adapt to changing circumstances, compete globally, and address the need for individualized programming.

Chair Readler noted that charters receive less funding than public schools and asked Mr. Sims to share his opinion. Mr. Sims asserted the issue must be a charge for policymakers. Rep. Sykes noted that, as policymakers, the General Assembly must grapple with issues of adequacy and availability of monies. In response, Mr. Sims asserted the challenge in addressing adequacy and funding is that they school funding relies too heavily on local property taxes. He noted the challenge ahead for policymakers is to use state funds that can also combat funding disparity. Rep. Sykes questioned how much state participation is appropriate with regards to charters.

Chair Readler called upon William Phillis, executive director of the Ohio Coalition for Equity and Adequacy of School Funding, and Attorney Nicholas Pittner, of Bricker & Eckler, LLP, to provide background on common schools and funding.

Mr. Pittner noted that he was the lead attorney for the plaintiffs in the DeRolph school funding case, sharing background on the case. Mr. Pittner concluded that the Ohio education system

remains inadequate because the funding issue has not been addressed and there continues to be over reliance on local property taxes, thus leaving a disparity.

Mr. Gilbert asked whether the presenters could provide a thumbnail sketch of funding alternatives. Mr. Phillis affirmed the connection between opportunity and funding must be examined and that funding should depart from the dependence on local property taxes. He noted a worthwhile alternative is to increase state support from the current 43 percent to 65 percent and endow the state with accountability for funding.

Chair Readler questioned the definition of “thorough and efficient” within today's education system. Mr. Phillis asserted the 19th century definition of a thorough and effective system was searching for equity and adequacy within the system.

Rep. Sykes added that an established standard or mechanism by which difficult decisions must be made would lessen the reliance on the legislative branch.

Committee member Paula Brooks asserted having a first-hand understanding of the inadequacies within our education system on the local level affirms the need to make strong recommendations to the General Assembly to tackle the issues of educational disparity within the state.

Chair Readler thanked the presenters for their presentations and insight.

Adjournment:

With no further business to come before the committee, the meeting adjourned at 11:39 a.m.

Approval:

The minutes of the December 12, 2013 meeting of the Education, Public Institutions, and Local Government Committee were approved at the April 10, 2014 meeting of the committee.

/s/ Chad A. Readler

Chad A. Readler, Chair

Edward L. Gilbert

Edward L. Gilbert, Vice-chair



OHIO CONSTITUTIONAL MODERNIZATION COMMISSION

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

FOR THE MEETING HELD
THURSDAY, MARCH 13, 2014

Call to Order:

Chair Chad Readler called the meeting of the Education, Public Institutions, and Local Government Committee to order at 10:30 a.m.

Members Present:

A quorum was not present with Chair Readler and committee members Clyde, Coley, Macon, and Taft in attendance.

Approval of Minutes:

There being no quorum, the minutes of the December 12, 2013 meeting were not approved.

Discussion:

Chair Readler proposed that the committee have a general business meeting to discuss the agenda and schedule for upcoming meetings and to lay out the priorities for the committee. Two handouts were given to committee members to review. The first was a copy of a section of an article from the Michigan Constitution and the second was a proposal given by Bill Phillis addressing the issue of education reform.

Governor Bob Taft suggested it would be helpful to hear from major associations that represent the different types of local government in Ohio to see if there are changes to the constitution that they would propose. Chair Readler agreed and said that the committee would first work through Article VI relating to education before turning to local government topics later in the year.

Senator Bill Coley commented that technology has changed the concept of education and that the committee should look at the constitution to see if there is a need to focus on the education of individuals or on the reform of governmental institutions. Chair Readler agreed, mentioning that

some of the language in this Article of the constitution has been around for over one hundred years.

Committee member Larry Macon asked about the Michigan Constitution, saying its education provision was so distinguished compared to Ohio's. Chair Readler referred to Article VIII, Section 2 of the Michigan Constitution and the subject of the appropriateness of leaving the decisions in the hands of judges or the hands of legislators. He said the provision suggests policy decisions should not be made in the court. Committee members also acknowledged the lack of compliance with the *DeRolph v. State of Ohio* case.

Sen. Coley shared his desire to make sure to build in the flexibility for districts to make these decisions for themselves, citing the city of Cincinnati and the creation of their own charter schools.

Chair Readler reiterated the point that the committee should ensure that the constitution is keeping up with the evolution that has occurred in some school districts and the different types of schools that there are in Ohio.

Mr. Macon added that he believes it is necessary to include wording about discrimination in order to emphasize the equability of the education system in the amendment. Chair Readler said he believes how that is done should be left to policy makers.

Gov. Taft asked committee members if they find any provisions of the education article to be obsolete or outdated.

Chair Readler responded that he does not think there are any provisions that everyone would agree are obsolete. He mentioned that he feels Article VI, Section 4, which refers to the State Board of Education and the order for selecting members, should be changed. He also proposed a change regarding early childhood education, and the constitutional right to early childhood education.

Committee member Paula Brooks had a clarifying question about the early childhood proposal in the handout and wanted to make sure to talk about the funding component for this if the committee is going to make it a requirement in the constitution.

Chair Readler encouraged formal proposals to be submitted so that the committee can start talking about these issues in further detail and conduct hearings.

Gov. Taft commented on the growing consensus and support for more opportunity for early childhood education, indicating that the debate lies on whether to provide funding for all children or just low income children. He said, if the committee does move toward an amendment, he said he feels that it should at least allow for state funding of early childhood education but not require it.

Sen. Coley noted that the problem is the distribution system, indicating if the state is still looking at education as buildings and structures then it should rethink the way funds are distributed.

Gov. Taft noted that the language in the constitution can have unintended consequences and there is always the danger of how the court will interpret the language.

Chair Readler suggested that the committee work with current language to modernize it and again encouraged the submission of formal proposals.

Ms. Brooks offered to collaborate with Gov. Taft to work on the early childhood education piece.

Chair Readler re-emphasized that during this calendar year the committee would be committed to the education portion of the constitution.

Ms. Brooks expressed her concern about the workforce of tomorrow and how the current education system is structured to meet the needs of employers. She suggested that the committee take time to hear from the business committee so that they have the opportunity to give their input.

Adjournment:

With no further business to come before the committee, the meeting adjourned at 11:00 a.m.

Approval:

The minutes of the March 13, 2014 meeting of the Education, Public Institutions, and Local Government Committee were approved at the April 10, 2014 meeting of the committee.

/s/ Chad A. Readler
Chad A. Readler, Chair

Edward L. Gilbert
Edward L. Gilbert, Vice-chair



OHIO CONSTITUTIONAL MODERNIZATION COMMISSION

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

FOR THE MEETING HELD
THURSDAY, APRIL 10, 2014

Call to Order:

Chair Chad Readler called the meeting of the Education, Public Institutions, and Local Government Committee to order at 9:18 a.m.

Members Present:

A quorum was present with Chair Readler, Vice-chair Gilbert, and committee members Brooks, Coley, Macon, Talley, and Taft in attendance.

Approval of Minutes:

The minutes of the December 12, 2013, and the March 13, 2014 meetings were reviewed and approved.

Discussion:

Chair Readler announced that no speakers would be present at the meeting but that there were two documents to discuss. He identified "Document D," originally distributed at the committee's December 2013 meeting, as being redistributed to the committee for reference purposes. He then presented a document that he had prepared laying out the three sections of Article VI that he would like the committee to consider amending. Those sections are Sections 1, 2, and 3. The document provided a preliminary proposal prepared by Chair Readler for the committee to review.

In his proposal, Chair Readler expressed that Article VI, Section 1 could be removed entirely. He added there are duplications and inconsistencies within the sections. He said he also added a proposal to revise Section 1 to express an anti-discrimination policy, noting that the committee had previously discussed doing so.

Vice-chair Ed Gilbert mentioned that, with regard to the proposal to revise Section 1 to add an anti-discrimination statement, that age, disability, and sexual orientation also should be included.

Chair Readler responded by noting that he borrowed the non-discrimination language from the Michigan Constitution and from Title VII that the committee had previously reviewed.¹ He agreed that disability should be added, but that he felt age was already included in statute in the section that determines the age at which children may attend public school. Regarding sexual orientation, Chair Readler said he recognized that it is a topic on the minds of many policymakers and that this is an evolving issue that would require some discussion.

Mr. Gilbert suggested that the committee add his ideas to the initial language so that the topics can be debated thoroughly. He also raised the issue of property taxes being tied to public education funding and said he would like to see that portion removed.

Committee member Paula Brooks responded to Chair Readler's proposal, saying she is not sure why he would want to eliminate Section 1. She asked whether another section in the constitution satisfies the "disposition of lands" statement.

Chair Readler noted was that his intention was to make it clear that the state would use state money to fund public education.

Ms. Brooks pointed out that the language in Section 1 currently is directory language, and that she does not feel that the proposed language mandates that the use of public funds and tax dollars to be expended for the school system.

Chair Readler suggested the committee could add the words "by taxation or otherwise." Ms. Brooks commented that it is important that the recommendation is clear that the school systems will not rely solely on "public funds."

Governor Bob Taft commended Chair Readler's efforts, saying he noticed the emphasis on "public school system of the state." He suggested the committee look into whether that would include funding for scholarships, vouchers, and EdChoice programs. He said he is concerned by any language that would preclude those programs. Gov. Taft said it is a significant policy issue to allow local cities to appoint school board officials, noting that cities across the country have adopted systems that provide for mayoral appointment of school board members. He said he feels that this is an option the committee may want to preserve for Ohio in the future. He referenced Cleveland City Schools as his example.

¹ Title VII of the federal Civil Rights Act of 1964, described as "An Act to enforce the constitutional right to vote, to confer jurisdiction upon the district courts of the United States to provide injunctive relief against discrimination in public accommodations, to authorize the attorney General to institute suits to protect constitutional rights in public facilities and public education, to extend the Commission on Civil Rights, to prevent discrimination in federally assisted programs, to establish a Commission on Equal Employment Opportunity, and for other purposes." Available at: <https://www.eeoc.gov/laws/statutes/titlevii.cfm> (last visited Sept. 16, 2016).

Chair Readler noted his belief that Cleveland voters passed a referendum to authorize the city to appoint those members.

Ms. Brooks commented that it may become appropriate to look at different school boundaries in general. She noted that Maryland has a very good system of county-wide schools and could be a model. She said the committee could at least look at the way the districts are formed.

Committee member Larry Macon noted that the proposal eliminated the phrase “prescribed by law,” suggesting that the committee should insert a statement to guarantee educational equity.

Chair Readler suggested that Professor Charlie Wilson could be invited to return to speak to the committee again on education. He expressed that the General Assembly should have the power to adapt the public school system as needed and that the committee would not want to create a situation where the language can be debated by the courts.

Mr. Macon asked if Chair Readler was suggesting that the committee should not introduce and address the idea of equitability.

Chair Readler replied by noting that the discrimination piece was added to the language, and that the challenge with inserting equitability language is that the committee would have to clarify what kind of guidance to use.

Mr. Macon suggested that once the committee hears from experts that it could make that a consideration in the document.

Senator Bill Coley said he likes the suggested language and agreed with Chair Readler that the committee should leave it up to elected officials to decide what is equitable. He said he is concerned about the last sentence of proposed Section 1 in that it would not allow vouchers to be used for high-performing religious schools. He added that he wants to make sure that the committee does not prescribe things in the constitution that will limit the use of technology or fail to anticipate future changes in the classroom. He said the committee needs to be sure there is flexibility in how schools are funded.

Ms. Brooks said she was particularly struck by the proposal’s elimination of the phrase “thorough and efficient.” She said she is concerned about the educational level of workers, pointing out that international companies are hesitant to invest more in the United States. She said she feels that the committee must work closely with the business community and the schools. She commented that public education is the great equalizer in society and the committee needs to carefully craft this language.

Mr. Gilbert said he does not think anyone would disagree with including the phrase “thorough and efficient” as well as “equitable” education. He said the hard part is finding the definition of that. He wondered why there is not a definition section and added that the committee can use that language if it identifies what is meant by it. Mr. Gilbert noted in both the Michigan and Ohio constitutions, there is no definition section to detail what is really meant by the language.

He added that, in Article VI, Section 2, the word “city” is used, but there is no obvious reason why that word is used instead of “jurisdiction.”

Gov. Taft pointed out that there are a number of school districts that do not include any cities.

Ms. Brooks responded that there is only one city where city boundaries and school boundaries match up in Franklin County.

Mr. Gilbert said that the committee needs some expert advice, agreeing it would be helpful to have Prof. Wilson consider some of these issues. He said that he feels challenged to have the committee work along in this process, suggesting the committee take advantage of the expertise of those who have extensive experience in this field.

Sen. Coley commented that experts should be given parameters. He asked if the committee is comfortable saying that these decisions are up to the legislature and the elected officials to decide. He said that the committee needs to discuss this because he does not want the courts to step in unless conditions are violated. He said he feels that the point of the committee’s activity is to rewrite these sections of the constitution so it is clear that the courts cannot step in unless certain conditions are not met.

Mr. Macon asked what the General Assembly has done in terms of funding. He added that the Supreme Court has determined many times that the way Ohio funds schools is not constitutional.

Sen. Coley answered that the General Assembly has done that and that the committee should not leave ambiguity in the constitution, allowing the courts to decide. He said more money will always be the answer. He said “Let’s put our cards on the table and say here is what we think is the right thing and here is where the courts need to step in.”

Ms. Brooks said she was still struggling with quality and noted that it is the return on investment that the public expects.

Chair Readler said that the product specification should come from General Assembly and that this is a critical threshold issue to discuss. He continued that the details should be left to the General Assembly and the governor, as opposed to the courts.

Mr. Gilbert asked if the funding for local schools included other money besides property taxes. He added that, in his community, he sees these property tax issues all the time and that this seems to be an inefficient and inappropriate way to fund schools.

Chair Readler commented that the question for the committee is what the constitution should say.

Committee member Pierrette Talley said she was struck by Ms. Brook’s concerns around quality and how to measure what the outcome looks like. She said she hears the committee saying that

issue would be best ascribed to the General Assembly. Ms. Talley said she is concerned that the education system would change every time there are new elected officials or a new government, arguing that it should not. She suggested the committee should have some kind of language about how education should be measurable.

Mr. Macon responded that, in light of the discussion, he hopes that the committee can understand its own internal process and the stages it must go through to move whatever recommendation that it is trying to make. He said, at some point, the committee should discuss this.

Chair Readler reminded the committee that the process is that the committee makes recommendations and eventually there will be a vote by the full Commission, then the recommendation goes to the legislature, and then to the ballot.

Gov. Taft said the committee needs to keep in mind that the words “throughout the state” are included. He volunteered to find an expert or authority on the governance of the school board.

Ms. Brooks noted that the major goal is to make sure that Ohio has a competitive workforce, saying the committee needs to hear from individuals in the private sector workforce.

Mr. Macon proposed that the committee give a list of topics it would like Prof. Wilson to address. He then commented on the issue of early education, in terms of detailing age. Mr. Macon said he would like to see some suggested language in that area because the committee had decided it would focus on early education as a committee.

Chair Readler called for other discussion points, and reminded committee members to let the chairs know if there is someone they would like to bring in for a presentation.

Adjournment:

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

Approval:

The minutes of the April 10, 2014 meeting of the Education, Public Institutions, and Local Government Committee were approved at the June 12, 2014 meeting of the committee.

/s/ Chad A. Readler
Chad A. Readler, Chair

Edward L. Gilbert
Edward L. Gilbert, Vice-chair



OHIO CONSTITUTIONAL MODERNIZATION COMMISSION

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

FOR THE MEETING HELD
THURSDAY, JUNE 12, 2014

Call to Order:

Chair Chad Readler called the meeting of the Education, Public Institutions, and Local Government Committee to order at 9:18 a.m.

Members Present:

A quorum was present with Chair Readler, Vice-chair Gilbert, and committee members Brooks, Clyde, Macon, Sykes, Talley, and Taft in attendance. Senator Tom Sawyer joined the Committee for the hearing as a non-voting member.

Approval of Minutes:

The minutes of the April 10, 2014 meetings were reviewed and approved.

Presentations and Discussion:

As reported by Chair Readler, the committee engaged in a lengthy discussion of the history of the current language in Article VI, Sections 1 through 3, and heard testimony regarding respective proposals made by Chair Readler and Charles E. Wilson, professor emeritus at the Ohio State University Moritz College of Law, to revise the current constitutional language. Prof. Wilson, who presented lengthy, detailed remarks, testified that the historical basis for Section 1 may no longer make that section relevant. Prof. Wilson also testified regarding the historical underpinnings of the "thorough and efficient system of common schools" provision in Section 2. Finally, Prof. Wilson addressed early childhood education and how the issue has been addressed in other states. Prof. Wilson concluded his remarks by sharing two alternative proposals for amending Article VI, Section 2.

Two other speakers, Maureen Ready, of the Ohio Friends of Public Education, and Stephen Dyer, of Innovation Ohio, testified in opposition to changes to Section 2's "thorough and efficient" language.

Chair Readler announced that, at its next meeting, the committee would discuss the proposals put forward during recent meetings, and would hear from Senior Policy Advisor Steven H. Steinglass regarding the current necessity of Article VI, Section 1.

Adjournment:

With no further business to come before the committee, the meeting adjourned.

Approval:

The minutes of the June 12, 2014 meeting of the Education, Public Institutions, and Local Government Committee were approved at the September 11, 2014 meeting of the committee.

/s/ Chad A. Readler

Chad A. Readler, Chair

Edward L. Gilbert

Edward L. Gilbert, Vice-chair

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



Co-Chair
William G. Batchelder, Speaker
69th House District

OHIO CONSTITUTIONAL MODERNIZATION COMMISSION

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

**FOR THE MEETING HELD
THURSDAY, SEPTEMBER 11, 2014**

Call to Order:

Chairman Readler called the meeting of the Education, Public Institutions, and Local Government to order at 10:26 a.m.

Members Present:

A quorum was present with committee members Readler, Gilbert, Beckett, Clyde, Coley, Macon, Sykes, and Taft in attendance.

Approval of Minutes:

The minutes of the June 12, 2014 meeting of the committee were approved.

Topics Discussed:

School Funding/Thorough and Efficient Clause

Robert Alt, President and CEO of the Buckeye Institute for Public Policy, was invited to speak about policy and issues related to education in Ohio. Mr. Alt began his presentation by providing background about the Buckeye Institute, explaining that it is a think tank dedicated to public policy related topics.

Mr. Alt provided a brief overview of the history of educational policy issues in Ohio, including the work of his organization. During his introductory remarks, Mr. Alt posited that the legislature, not the courts, should decide the contours of state educational policy. Mr. Alt opined that judicial intervention in legislative action is not best for policy decisions, and that broad or generalized language in the constitution about education would invite improper judicial intervention into education policy decisions.

Mr. Alt stated that the language used in certain proposed amendments that the committee has been considering is not clear. Mr. Alt claimed that phrases such as “high quality” and “basic school readiness” are not concrete enough, and would invite a wide range of possible judicial interpretation, which are really policy questions that should be left to the determination of the legislature and the people.

When asked why he thinks courts are ill-equipped to handle questions such as these since the justices of the Ohio Supreme Court are elected and should reflect the people’s will, Mr. Alt responded that judges are not able to run on specific educational or policy platforms like legislators, making their job fundamentally different than those of other elected officials.

When asked what he would like to see done with the provision, Mr. Alt responded that while he does not like the current “thorough and efficient” language, he does not believe it should be removed from the Ohio constitution. He also does not like the proposed alternatives and believes they should not be adopted.

When asked to identify what he believes to be ineffective with Professor Charlie Wilson’s proposals, Mr. Alt responded that the terms used in the proposals are too “aspirational” and that there would be no standard by which to measure “these broad terms” because they are “sufficiently vague.”

Mr. Alt responded to other concerns and questions throughout his presentation offering:

- He does not have a proposal to “fix” current language because he feels this is a legislative issue rather than a constitutional one.
- He believes the section of the proposal that addresses early childhood education is vague and will end up in the hands of the courts rather than the legislature and noted that judges are not experts, and that these types of questions should be left to the legislature.
- Mr. Alt also stated that the terms “uniform” and “equitable” are too vague and do little to define basic school readiness or other educational standards.
- Mr. Alt added that the legislature, which has responsibility for the budget, should establish what it should and can pay for instead of having the courts mandate what they need to fund.
- When asked about the inherent overlap between the branches of government, Mr. Alt responded that while there is, of course, overlap between the branches, a functioning system needs a robust judiciary protecting the rights of the people, but his concern lies with adding layers that make it more ambiguous for the courts to do that.

With no other questions from the committee, Mr. Alt concluded his presentation.

Professor Charlie Wilson of the Moritz College of Law at the Ohio State University was then invited to respond to Mr. Alt’s presentation. Prof. Wilson observed that despite the fact that

every state constitution has an educational provision, he is unaware of any example where a state court micromanages the educational process.

Several committee members questioned Prof. Wilson regarding what he thinks about the differences between the two proposals. Prof. Wilson replied that the first version is a “bare bones” proposal, striking the “thorough and efficient” language and adding more specificity. Prof. Wilson explained that the second version maintains “thorough and efficient” while providing specificity, and includes references to early childhood education.

When asked if there has been precedent with courts defining thorough and efficient, Prof. Wilson responded that there has been, and that language from his proposal (equitable, safe, and secure) is derived from court opinions interpreting the language. He noted that Ohio is one of three states in the country in which the state supreme court has held that education is not a fundamental right. Prof. Wilson added that he believes education should be a fundamental right.

With no other questions from the committee, Prof. Wilson concluded his remarks.

Mr. Alt was then invited to address Prof. Wilson’s remarks. Mr. Alt stated that when interpreting language, the courts will turn to the dictionary first, then to legislative history. Mr. Alt continued to express his concerns with the ambiguity of the language in Prof. Wilson’s proposal. Mr. Alt then concluded his remarks.

Chairman Readler proposed that the committee distribute the language in the amendments being considered and invite the public to make comments. Chairman Readler expressed his opinion that the committee would be unlikely to reach an agreement on proposing any new language to the full Commission. He noted that perhaps the committee should be addressing the DeRolph decision, and reminded the committee that they may want to move on to other topics at some point.

For the next meeting the committee would like to distribute the different proposals and get some public input. The Chair would like the committee to consider whether there would be enough votes to pass the proposal, not only through the committee, but also through the full Commission.

Adjournment:

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

Attachments:

- Notice
- Agenda
- Roll call sheet
- Proposed language in options under consideration
- Biographical sketch of Robert Alt
- Prepared remarks of Robert Alt

Approval:

The minutes of the September 11, 2014 meeting of the Education, Public Institutions, and Local Government Committee were approved at the November 13, 2014 meeting of the committee.

/s/ Chad A. Readler

Chad A. Chair Readler, Chair

/s/ Edward L. Gilbert

Edward L. Gilbert, Vice-chair



OHIO CONSTITUTIONAL MODERNIZATION COMMISSION

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

FOR THE MEETING HELD
THURSDAY, NOVEMBER 13, 2014

Call to Order:

Chairman Readler called the meeting of the Education, Public Institutions, and Local Government to order at 11:10 a.m.

Members Present:

A quorum was present with committee members Readler, Gilbert, Brooks, Macon, Sykes, and Taft in attendance.

Approval of Minutes:

The minutes of the September 11, 2014 meeting of the committee were approved.

Topics Discussed:

Article VI, Section 2 (Thorough and Efficient Clause)

Justice Paul Pfeifer, of the Ohio Supreme Court, presented on Article VI, Section 2, and the impact of the *DeRolph* litigation as it relates to the “thorough and efficient” clause. Justice Pfeifer explained that he is the only justice still at the Supreme Court who sat on all four *DeRolph* cases, giving him a unique perspective on that era. In addition, when the case started in the trial court, he was in the legislature, and even before that he had been part of an ad hoc group seeking equitable education funding. He stated that he did not believe all of the decisions regarding education should be left to the legislature, but rather that the constitution should provide duties, or at least a minimum level or bar of acceptable education, that the legislature require be provided to all students in Ohio.

Justice Pfeifer explained the *DeRolph* cases determined Ohio was failing to meet the standards set out in the Ohio Constitution. He said that the decision to take the case was controversial at the time, as some justices felt it was a political, not a justiciable, question. He said that although then-governor George Voinovich initially was taken aback by the Court’s finding that Ohio’s

school funding system was unconstitutional; he quickly rose to the challenge and was able to do positive work in improving schools. Justice Pfeifer stated that the court never intended to tell the legislature what to do, as that was not their place, but rather to tell the legislature that what they were currently doing was not enough.

Justice Pfeifer stated that having language regarding education in the Ohio Constitution served a worthy purpose. He stated that although he had not thought about alternative language (to replace the “thorough and efficient” clause), he cautioned against continuing to use that specific language and thought that the committee could come up with a new way of articulating the minimum standard that the legislature would have to meet. The challenge was in trying to define what “thorough and efficient” meant. The fourth time the Court wrestled with the question, it finally concluded that it should release jurisdiction as litigation was not proving to be the answer to the problem, and because the lion’s share of school districts had improved their facilities by that point. Prior to *DeRolph*, the state had contributed literally nothing to educational facilities, but by the end there was significant funding. Justice Pfeifer said, however, that if the question came up today, given the Court’s current make-up, the Court probably would not vote to take the case.

He said the case also demonstrated that there is no area of law for any elected official that is beyond reach when citizens think the official has not met the duties of office. He concluded that the “thorough and efficient” clause serves a worthy purpose and he does not advocate removing it.

Justice Pfeifer then took questions from the committee members. Governor Taft stated that he concurred with the statements that Justice Pfeifer made during his testimony, and inquired as to whether Justice Pfeifer had any thoughts regarding new language that could replace the thorough and efficient clause.

Justice Pfeifer stated that he had not given any thought to new language, but stated that he would not be opposed to more modern language to replace it, and thought that the committee would be capable of drafting new language. He said that the issue that was not in the case is the problem of most urban districts, which is that the dropout rate is high and children are not being educated. But, he admitted, there are so many factors other than funding involved, such as poverty and the child’s home life. Justice Pfeifer said he does not think that a constitutional provision necessarily is the right way to deal with those issues.

Dr. Macon then asked Justice Pfeifer to clarify whether he thought the words “equity” or “equality” should or could be added to the provision. Justice Pfeifer said he would not be opposed to language requiring the state to provide a basic level of funding for schools, and then for the state to provide that. He said that it is possible to determine what a minimum level of funding is required to provide a basic education. Justice Pfeifer also stated that this standard belongs in the Ohio Constitution, but that the legislature should decide what is required to achieve this standard.

Vice Chair Gilbert then asked Justice Pfeifer if he thought the Supreme Court should issue an advisory opinion regarding Article VI, Section 2. Justice Pfeifer stated that he would not be opposed to that idea, and, in fact, had made a proposal to the Judicial Branch and Administration of Justice Committee on this point.

With no other questions from the committee, Justice Pfeifer concluded his testimony.

Article VI, Section 1 (Ohio School and Ministerial Land)

Chairman Readler invited testimony from former Ohio Supreme Court Justice Robert R. Cupp, Chief Legal Counsel for the Ohio Auditor of State, regarding Article VI, Section 1. Mr. Cupp prepared a written report for the committee regarding School and Ministerial Lands. He explained that while some of the committee members may see this as an obsolete provision, there is still a use for it as the oversight of school lands.

Mr. Cupp provided a brief history of the provision, indicating that initially these lands were managed by township trustees, but over time questions arose about the competency of their management and, in 1914, the auditor of state was designated as supervisor of the lands, a situation that existed until 1985, when these duties were transferred to the Director of Administrative Services. Then, in 1988, legislation went into effect that transferred supervision of the lands to the Board of Education in each school district that had been allotted these lands. He said it is unclear how much real estate of this nature is out there, but the most recent transfer was in 2009 to the Upper Scioto School District in Hardin County. He said the land has a current market value of \$2.5 million and is leased out for farming. The school district derives \$247,000.00 in annual revenue from this lease.

Chairman Readler thanked Mr. Cupp for his report and stated that while he previously thought Article VI, Section 1, might be an obsolete provision, Mr. Cupp's testimony and report show that there is some continuing role for Section 1 to play in the future.

Having no questions from the committee, Mr. Cupp concluded his testimony.

Committee Discussion

The committee then discussed the testimony of both Justice Pfeifer and Mr. Cupp. Vice Chair Gilbert thought the committee should bring in an expert who could testify about the impact that the "thorough and efficient" clause has on the minority community, and what would happen if that language were changed or removed. Vice Chair Gilbert suggested that the committee should reach out to the black caucus to see if they knew of anyone who could speak to the committee about these issues at the next meeting.

Dr. Macon asked Governor Taft about his experience regarding the *DeRolph* cases and the thorough and efficient clause. Governor Taft responded that by the time he became governor, *DeRolph* had been decided and his administration sought to comply with the court's ruling.

Dr. Macon then asked Governor Taft if there was any discussion within his administration as to clarifying the language. Governor Taft stated that he and his administration looked to the

language of the court, and focused on the deplorable conditions and the discrepancies between schools. Governor Taft stated that this was the main focus, prioritizing school funding for facilities and updating buildings. Governor Taft also stated that while they may not have completely changed the school funding formula, they did seek to increase it so that the benefit would go to the poorest (in both property wealth and income) communities.

Commission member Brooks also stated that she would like to hear from someone who could testify as to what impact changing (or not changing) the thorough and efficient language would have on the minority community.

Sen. Sawyer commented that he was involved with school funding as it related to imposition of property tax in the early 1980s and that problems with funding and taxation have been problematic ever since. Rep. Sykes stated that the legislature has been reluctant to raise taxes to fund schools and has relied upon the constitutional provision to support decisions that raise enough revenue to fund the schools. Chair Readler suggested it might be helpful to have a speaker address the committee about the property taxation system and how it relates to school funding.

Report and Recommendation Process

Executive Director Hollon then addressed the committee to explain how the staff and the committee will work together to prepare reports and recommendations to the full Commission, and provided an example from another committee. Director Hollon added that this committee's report may be longer than the example provided because of the unique history and litigation relating to the education articles in Ohio's Constitution.

Chair Readler suggested that it might be possible for the committee to begin to entertain a draft report and recommendation on Article VI, Section 2.

Adjournment:

With no further business to come before the committee, the meeting adjourned at 12:25 p.m.

Attachments:

- Notice
- Agenda
- Roll call sheet
- Biographical sketch of Justice Paul E. Pfeifer
- Prepared remarks of Justice Paul E. Pfeifer
- Biographical sketch of former Justice Robert R. Cupp
- Prepared remarks of former Justice Robert R. Cupp

Approval:

The minutes of the November 13, 2014 meeting of the Education, Public Institutions, and Local Government Committee were approved at the January 15, 2015 meeting of the committee.

/s/ Chad A. Readler

Chad A. Chair Readler, Chair

/s/ Edward L. Gilbert

Edward L. Gilbert, Vice-chair



OHIO CONSTITUTIONAL MODERNIZATION COMMISSION

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

FOR THE MEETING HELD
THURSDAY, JANUARY 15, 2015

Call to Order:

Chairman Readler called the meeting of the Education, Public Institutions, and Local Government Committee to order at 11:10 a.m.

Members Present:

A quorum was present with committee members Readler, Gilbert, Beckett, Brooks, Clyde, Coley, Macon, Sykes, and Taft in attendance.

Approval of Minutes:

The minutes of the November 13, 2014 meeting of the committee were approved.

Presentations:

Stephanie Morales
Member, Board of Education
Cleveland Municipal School District

Stephanie Morales, a member of the Board of Education of the Cleveland Municipal School District, presented to the committee on the subject of Article VI, Section 2 (Thorough and Efficient clause) and how it is applied in her community. She is a human resources business partner at Nationwide Insurance, and is the parent of students in the school district.

Ms. Morales indicated that Cleveland MSD is a poor school district, having many transient families, and many students who do not speak English as a first language. Funding for local school districts from the state is critical to this district. State money, including matching funds, awarded to the school district allows the district to function and to maintain its facilities. Ms. Morales urged the committee to take no action that would weaken the state's contribution to education throughout the state. Her district has the only unelected board of education in the state of Ohio; members are appointed by the mayor rather than being elected by the voters. The

organizational structure has worked well in Cleveland for 17 years because the local community was involved in determining the structure of the board of education.

Committee member Brooks asked whether Ms. Morales believes revision of the “thorough and efficient” clause is needed. Although Ms. Morales suggested the language could be strengthened and made more specific, Ms. Brooks wonders if she could specifically suggest ways to revise that language. Ms. Brooks also wondered if Ms. Morales could explain how the structure of the school administration in Cleveland has worked well, specifically the elements that have contributed to its success.

Ms. Morales stated that there is a synergy between the mayor, the superintendent, and the board which works well. She said “Our governing structure creates that synergy. This is why we were able to pass the Cleveland plan. It was unprecedented, and all feel they have a vested interest in what is happening.”

Committee co-chair Gilbert asked whether Ms. Morales feels the State of Ohio is treating her district fairly as compared to other districts. Ms. Morales said that she chose to live in Cleveland and send her kids to Cleveland schools. By contrast, she said, most of the 30,000 students in her district have no choice. She knows parents in affluent neighborhoods, and funding levels seem higher in those communities.

Mr. Gilbert wondered if Ms. Morales is speaking for the Hispanic community. Ms. Morales said one high school predominantly serves the Hispanic community. She said that school is struggling; they have increased the graduation rate within that group but more support is needed.

Committee member Sen. Coley noted that the amount spent per pupil in Cleveland was more than in Beachwood, yet Beachwood has local money. Ms. Morales said she believes people should be able to choose where they live and how they fund their schools, but this is comparing apples to oranges. The challenges are different in these communities. In Cleveland there are many homeless, disabled, or transient students. There are many issues in the Cleveland district that suburban districts don’t have.

Sen. Coley asked Ms. Morales if she would like to prohibit richer districts from spending more on their students in order to get parity. He said the state currently spends 12 billion dollars on K-12 education, then asked, if she does not like that number, whether there is a number that would be enough. Ms. Morales declined to respond.

Committee member Macon asked if schools in Cleveland are receiving “equal” education, asking Ms. Morales to define “equal.” Ms. Morales said there are pockets in the district that have nurtured a process that works, but the district still has a long way to go with some of the schools. She said, speaking as a parent, she can see the gaps in the basic fundamentals of what it takes to teach a child.

Mr. Macon asked whether if the term “thorough and efficient” was removed it would be enough to fill the gap that she sees in these schools. Ms. Morales said she would like a chance to ensure a complete understanding of what that means. Mr. Macon asked whether adding “equitable” or

“equal” would add meaning and Ms. Morales agreed that it would. Mr. Macon then asked whether it would be enough to add the words “without discrimination.” Ms. Morales said she prefers “equitable.”

Committee member Taft asked if Ms. Morales feels an elective system discourages service on a school board, noting that mounting a campaign to run for office is a lot of expense and work. Is the appointive system better? Ms. Morales said yes, and described a two-step process by which the district advertises openings and works with groups to be sure those expressing interest have a true interest, as well as useful experience. A committee then reviews the applicants and decides which applications go forward for an interview with the mayor. This helps insure different areas of expertise are represented, she said.

Mr. Taft asked whether this method for selecting boards is permanent. Ms. Morales deferred to Kevin Burtzlaff, Counsel for Cleveland Municipal School District Board of Education, who answered yes.

Committee member Clyde said she is struggling with this because there are not a lot of written proposals for change that the committee has considered. Rep. Clyde asked whether, from her perspective as a school board member, Ms. Morales could recommend the type of process for amending the “thorough and efficient” clause to provide a more equitable education that she and her board members would have trust in. Rep. Clyde asked whether this would be a proposal written by a legislator, or something where the Commission could meet with boards around the state or work with education associations for proposals. Ms. Morales answered that there is a school board association, and that her preference would be for the Commission to reach out to the school board association because that group communicates with all to get feedback to give to the Commission.

Chair Readler said one of his concerns is that the constitution has to allow flexibility for changing times. He wondered what changes Ms. Morales has seen. Ms. Morales indicated that the district has allowed the board more autonomy in the selection and retention of teachers, allowing the board to remove teachers if they are not achieving. The board also has been able to identify schools where the students need more help, and then to work with nonprofit organizations to get help with tutoring, providing after school services and meeting other needs. She also said the board has the authority to work with the individual schools to decide which teachers they want in their building, rather than those decisions being made elsewhere.

Chair Readler asked whether, if the committee adds the word “equal,” if this would mean that every district has to follow Cleveland’s model.

Mr. Taft remarked that the system in Cleveland was established by statute. He wondered why, if this is a good system, it wasn’t originally done by voters in Cleveland, and why, if a statute can make this happen, would we need to change the constitution. He asked whether the legislature can do what they did in Cleveland and in other cities without it being challenged for its constitutionality.

Attorney Burtzlaff answered that when legislation organizing the school district passed in 1997, it provided that in 2002 there would be a referendum, giving voters the chance to decide whether to keep it. He indicated there was a constitutional challenge to this in federal court in the case of *Mixon v. Ohio*, in which the Sixth Circuit Court of Appeals decided there was no fundamental right to elect an administrative body. He also mentioned there was a related state court case regarding Article VI, Section 3 (without providing a citation) which found there is nothing specific about board members needing to be elected. The law was upheld by the referendum in which 72 percent voted to keep this appointed board. The district is under state control, and under federal court order. Under the current constitution the legislature could do this for another city if desired.

Sen. Sawyer asked whether the board has the tools to attract a teacher workforce of quality and diversity to keep pace with the changing demographics of the school district. Ms. Morales said that, prior to the Cleveland plan, her answer would have been no, but at just this past meeting the board received a presentation outlining talent-recruiting tools, plans, and materials allowing them to attract top candidates. She said there is also a support system where principals can identify additional development needs for teachers in order to help them reach needed achievement levels.

Dr. Renee A. Middleton
Dean, Patton College of Education and Human Services
Ohio University

The committee then heard a presentation by Renee A. Middleton, Dean of Education at Ohio University regarding Article VI, Section 2 (Thorough and Efficient clause). Dean Middleton said Ohio has been a forerunner in requiring a “thorough and efficient” system of schools. She said the public school system must be retained at all costs. She said Ohioans hold themselves accountable; all children have a right to a “thorough and efficient” system of education regardless of his or her circumstances. She emphasized that this needs to be done without the old reliance on property taxes, and that the state should ensure educational opportunities for all.

Sen. Coley noted there have been many changes in the classroom in the last 10 years, asking what has changed in the way information is brought to the students. Dean Middleton said in today’s classrooms there is a greater focus on new learning standards, helping young learners think critically and solve problems. Teachers are using the best tools to guide children. The technologies found in affluent areas would be nice, but the teachers are still able to teach with modern techniques even in low income areas. Some counties have fewer opportunities but educators have to educate students as they come. Even the students who are not ready to learn are expected to achieve the same outcome. She said despite under-resourced public education, students are still learning because of the dedication of teachers.

Mr. Macon asked whether it would be acceptable if the constitution simply said “let us not be prejudiced.” Dean Middleton answered that “thorough and efficient” is part of our history. She said there are other documents that prevent discrimination. The legal basis of those words is clear, and the words are there for a purpose. She said that rather than removing “thorough and efficient” we should build on what we mean by these words.

Mr. Macon asked whether we are refining our history by having the words “no discrimination.” Couldn’t we define “thorough and efficient” as “we don’t discriminate”? Isn’t there also discrimination in regard to socio-economic status? Dean Middleton agreed but said she thinks “thorough and efficient” gets at that, and that some discrimination is based on economic disparities.

Ms. Brooks asked whether learning readiness in the context of “thorough and efficient” could mean all children go to kindergarten learning prepared. She suggested that there should be a linkage between local government and wrap-around services through counties so that issues that interfere with a child’s ability to learn could be addressed. She wondered whether Dean Middleton was seeing the complexity of educational difficulties addressed by the requirement of a “thorough and efficient” system of education. Dean Middleton said that the constitution should form the bedrock for what we mean by education for children. The constitution is our conscience about what we value, where we are as a state, and how we invest in the education of all children.

Ms. Brooks asked whether that concept applies to an equal education and early childhood readiness prior to kindergarten. Dean Middleton said she would use the word “equitable,” equating “equitable” with “excellence.” She said we have to be committed to investing in public education with our resources.

Mr. Gilbert asked whether she was saying that “thorough and efficient” equals “fair and equitable.” Dean Middleton agreed. Mr. Gilbert asked whether she felt that should be explained in the constitution, and whether early childhood education should be included in the constitution. Dean Middleton answered that there are things that can go into legislation that don’t necessarily have to be in the constitution. She said there is a role for the General Assembly, without the constitution, about what can be offered for early childhood education.

Rep. Clyde observed that the committee has not had a proposal before it in a formal way for amending the constitution. She wondered what process Dean Middleton would feel confident in if the committee were to consider an amendment. Dean Middleton said she would endorse any process that would include pre-kindergarten through college, and that it would be important for the legislature to have input from stakeholders. She said that former Governor Strickland used the Department of Education to convene stakeholders when he reviewed educational issues during his governorship. She said there should a model where respected members of those groups have a part in the process, and that the process should be bipartisan.

Ms. Brooks asked whether “thorough and efficient” is currently inadequate or whether Dean Middleton would recommend adding something. Dean Middleton said she has no problem adding “equitable” in the language, and that teachers know this better than anyone.

Chair Readler asked whether Dean Middleton feels that Ohioans are thinking of education when voting for public officials, to which Dean Middleton answered yes. She said America is a great experiment and that we are still trying to figure out how to educate children. She said the

constitution is so important because everyone including judges, governors, and legislators have to follow it.

Mr. Gilbert asked if the constitution currently covers higher education, and Dean Middleton deferred to Dean Steven Steinglass, who answered that there is nothing on higher education. With this, the committee thanked Dean Middleton for her presentation.

Committee Discussion:

The committee then discussed what its next action should be. Mr. Gilbert noted that the committee has exhausted this topic. Executive Director Steven Hollon was asked how the committee should proceed under the rules. Mr. Hollon stated that staff needs direction from the committee before proceeding with preparing a report and recommendation. Specifically, he said the staff needs to know whether the committee wants to keep the provision as it is, whether there should be change, and, if so, what change might be wanted. He said once there is consensus in the committee, a draft report and recommendation could be prepared for the committee's review and that the committee might need to go through several drafts.

Mr. Macon stated he hopes the committee could have several versions of the proposals it is looking at, with some alternatives. Chair Readler referred committee members to the materials that were distributed to the committee, noting that there are several proposals. Ms. Brooks noted that there may be additional proposals, including one from the Cleveland Schools' model. Mr. Hollon said he would follow up with Ms. Morales and Mr. Burtzlaff for suggestions.

Mr. Gilbert commented that this will take some time, asking whether the committee could firm up its position on the various proposals at the next meeting.

Sen. Sawyer commented that he has an intense interest in this topic and that he would like to change committee assignments so that he could be on this committee in an official way. He said he will be working through channels on this request but asked whether, in the meantime, he could take part in the debate even though he would not be a voting member of the committee.

Chair Readler invited Sen. Sawyer to participate as he might until that question gets resolved.

Mr. Taft commented that the committee seems to have done a thorough job of exploring this issue, and asked whether at the next meeting people with proposed amendments could introduce them at that time.

Chair Readler agreed that in the next meeting the committee would focus on reviewing the language in the various proposals and taking votes on whether to adopt any of them.

Chair Readler then clarified that the committee would be voting on what language to request for the report and recommendation, rather than to vote on an actual report and recommendation. Mr. Hollon said that would be an informal vote, and that there would be time to adjust and change that. He said the staff only requires some sense from the group as to what direction they are headed.

Adjournment:

With no further business to come before the committee, the meeting adjourned at 12:45 p.m.

Attachments:

- Notice
- Agenda
- Roll call sheet
- Biographical sketch of Stephanie Morales
- Prepared remarks of Stephanie Morales
- Biographical sketch of Dean Renee Middleton
- Prepared remarks of Dean Renee Middleton

Approval:

The minutes of the January 15, 2015 meeting of the Education, Public Institutions, and Local Government Committee were approved at the March 12, 2015 meeting of the committee.

/s/ Chad A. Readler

/s/ Edward L. Gilbert

Chad A. Readler, Chair

Edward L. Gilbert, Vice-Chair



OHIO CONSTITUTIONAL MODERNIZATION COMMISSION

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

FOR THE MEETING HELD
THURSDAY, MARCH 12, 2015

Call to Order:

Chairman Chad Readler called the meeting of the Education, Public Institutions, and Local Government Committee to order at 9:30 a.m.

Members Present:

A quorum was present with committee members Readler, Gilbert, Coley, Cupp, Curtin, Macon, Sawyer, Taft, and Talley in attendance.

Approval of Minutes:

The minutes of the January 15, 2015 meeting of the committee were approved.

Presentations:

“Article VI, Section 2 (School Funds)”

*Darold Johnson
Legislative Director
Ohio Federation of Teachers*

The committee welcomed Darold Johnson, legislative director for the Ohio Federation of Teachers. Mr. Johnson provided written comments indicating the preference of his organization that the current language in Article VI, Section 2 of the Ohio Constitution, be retained. He said the Ohio Supreme Court in the *DeRolph* cases defined what thorough and efficient means, noting an article from Rutgers University outlining a similar experience in New Jersey.

Mr. Johnson entertained questions from the committee at the conclusion of his remarks.

Vice-Chair Edward Gilbert asked whether New Jersey had expanded “thorough and efficient” to define anything else or to include early childhood education. Mr. Johnson said that he was not

aware that had happened. He said that his group's parent organization, the American Federation of Teachers, does support early childhood education.

Committee member Dr. Larry Macon asked how much discussion has occurred in Mr. Johnson's organization regarding the "thorough and efficient" clause. Mr. Johnson said that there was a lot of discussion when they thought changes in the provision were being contemplated. He said the organization developed its rationale based upon those conversations.

Dr. Macon asked whether the organization had come up with any alternatives to "thorough and efficient," to which Mr. Johnson answered that because civil rights already exist in federal law, and in federal constitutional amendments, and because case law in this area is settled, the feeling is that the Ohio Constitution should only be changed in order to reflect changes that would be for the purpose of correcting problems for which there are no other options.

Dr. Macon wondered whether it would suffice for the committee to change the language to include "equitable" or "equal." Mr. Johnson said that "through and efficient" is better than "equitable" or "equal" because *DeRolph* has defined the phrase and is a benchmark. Removing "thorough and efficient" would cause a bigger loss than would be gained from including the word "equitable."

Committee Member Sen. Bill Coley asked whether keeping the current constitutional language would permit a system whereby people could select their own educational resources, in the same way the state allows welfare recipients to make their own nutritional selections. Mr. Johnson said that the constitution allows a lot of flexibility right now.

Chair Readler summed up some of the history of the section, indicating that "thorough and efficient" has been open to conflicting meanings and has been used by courts to impose their own views, which, in his opinion, upsets the balance of power. He also noted that the concerns in 1851, when this provision was adopted, were not the same as they are now. He asked why the American Federation of Teachers prefers court involvement.

Mr. Johnson answered that the three branches of government are equal and do have the ability to affect policy. He said sometimes the courts will move the boundaries beyond where people want them to go, but courts are consistent and willing to do the hard work to move past partisanship in many instances. He said that the four *DeRolph* decisions occurred because the legislature wasn't doing what the court had ordered it to do, and courts have a function of ensuring that schools are thorough and efficient.

Mr. Readler noted that the New Jersey litigation went on for 25 years, and the court there even ordered the legislature to raise taxes to fund public schools. Mr. Readler asked whether Mr. Johnson believes that was a good development. Mr. Johnson said that his comments are on the process. He said Ohio's justices are elected, and the public has a way to seek redress if it doesn't like a judicial decision.

Mr. Gilbert asked whether Mr. Johnson's view is that the clause should not be removed, and Mr. Johnson agreed this was what he is advocating. Mr. Gilbert commented that making a change to

“thorough and efficient” would involve more court activity and litigation, rather than less, so the better course would be to leave it alone because the meaning is settled at this point. Mr. Johnson agreed with Mr. Gilbert’s assessment.

Committee member Rep. Mike Curtin said the U.S. Constitution and the state constitution are full of aspirational language, and that “thorough and efficient” is one example of this. He said there was a high level debate in 1851 before this language was adopted, and the drafters knew that every generation would work through what the expectations would be. Rep. Curtin said “thorough and efficient” is not an invitation for courts to meddle. The fact that Ohio had one episode of litigation [*DeRolph*] that lasted 10 years is not enough to say that the language is not acceptable. Like the concept of due process in the U.S. Constitution, “thorough and efficient” is a concept that evolves with the law. He said that the job of legislators is to reinterpret what expectations are and what means the state has to achieve them. He said no sum of money was set for a reason. Rep. Curtin said the committee should keep the language because it has served the state very well. He applauded *DeRolph* as having set the standard.

Mr. Johnson then concluded his remarks.

“Summary of Presentations on School Funds”

Steven H. Steinglass
Senior Policy Advisor

Steven H. Steinglass, Senior Policy Advisor, briefly summarized the prior presentations and discussion that occurred with regard to Article VI, Section 2 (School Funds). He indicated that the committee could take one of several options: repeal the section, keep it without change, or adopt one of the proposals that were presented. Additional questions include whether early childhood education should be included, and whether education should be defined as a fundamental right.

Mr. Steinglass said changing the language would result in litigation, which would result in a lot of effort and expense in order to re-define the new language. He said if there is a change, it could be given a later effective date so as to allow school districts to prepare. He also said “thorough and efficient” is an elastic clause that each generation can examine and define for itself.

Committee Discussion:

Chair Readler then invited the committee members to discuss their views on Article VI, Section 2, and wondered what the committee’s consensus was about whether to change it.

Committee member Mr. Bob Taft said that *DeRolph* had an impact on his term as governor. He said they increased spending and improved facilities at that time, and other governors continued that work. Governor Kasich is now considering “thorough and efficient” and the *DeRolph* definitions as he works on his education budget. Mr. Taft said the language is hard to understand, but each new generation can read-in its own understanding of what it means. He said

it is hard to imagine changing it without there being a lot of resulting litigation. He said creating education as a “fundamental right” could crowd out other priorities of society, including healthcare, daycare, or other needs. He continued, saying the question of determining the quality of education has been a big debate over time, but it is best processed through the legislature rather than through the courts. He said the concept of “fundamental right” invites court involvement. Mr. Taft said “thorough and efficient” has taken on sacrosanct status, and his inclination is to leave it alone as it gets interpreted and reinterpreted through the generations.

Sen. Coley said that he seconds Mr. Taft’s comments. He added that “we must be pragmatists,” as our society has become more partisan and ideological. He said “thorough and efficient” has true meaning for most people, with certain gradations of interpretations, but that everyone collectively decided to bring schools up to a certain standard. Sen. Coley said that a compelling reason is needed to change along with consensus to change. He feels the committee does not have a compelling reason or consensus, so his vote is to leave the provision alone.

Vice-chair Gilbert said he agrees with the comments of Mr. Taft and Sen. Coley, particularly Sen. Taft, but his question for Mr. Steinglass is whether early childhood education must be in the constitution in order to be effectuated, rather, couldn’t the legislature just handle that. Mr. Steinglass said that the constitution does not need a reference to early childhood education in order for the General Assembly to fund it, and that the same is true for higher education.

Vice-chair Gilbert asked Director Hollon what is the next course of action for the committee if it wants to vote on retaining Article VI, Section 2. Director Hollon said that once the committee decides on a course of action, the staff will draft a report and recommendation, and that, in this instance, the committee should decide whether it wants a report and recommendation on this section alone, on Section 1 and 2, or on the entire article.

Dr. Macon asked if there are problematic aspects of the various proposals.

Mr. Steinglass then described alternatives 1 and 2.

Dr. Macon said he agrees with his colleagues on maintaining the “thorough and efficient” clause, but he also would like to expand and clarify what that is. He wondered if Mr. Steinglass could help him understand, at a later time, what has been defined in the cases. Mr. Steinglass said he would talk to Professor Charlie Wilson and get some research on this for Dr. Macon.

Sen. Coley commented that it would be good to be able to allow a marketplace for educational alternatives under the Constitution.

Mr. Steinglass said that the phrase “common schools” is understood to mean “public schools,” and that a 100 percent voucher system might be taking things too far under Article VI, Section 2. He said within a narrow area the state has some discretion, and how that is exercised is up to the General Assembly.

Sen. Coley said additional items might crowd out other items and interfere with having a balanced budget. He said there are already issues with limited resources. Sen. Coley concluded that he is in favor of leaving the provision as is.

Vice-chair Gilbert said that while he believes it would be good to have more language to explain the meaning of “thorough and efficient,” the reality is the only ones who would win from trying to do this would be lawyers.

Vice-chair Gilbert then moved to retain Article VI, Section 1 and Section 2 as they are. Motion was seconded, and a roll call vote was taken.

The motion unanimously passed.

Director Hollon asked whether the committee wanted a report and recommendation on both sections together, and Chair Readler agreed that one report and recommendation for those two provisions would be acceptable.

Mr. Taft said he would like the committee to have a discussion about Article VI, Section 3, relating to boards of education, specifically whether there should be a change in the way individuals obtain seats on the boards. Director Hollon suggested that Sections 3 and 4 seem to go together and could form the basis of one report and recommendation.

Sen. Coley said he would like to review Sections 5 and 6, commenting that they are phrased more like legislation and they may need some revision.

Chair Readler said that after the committee concludes its review of Article VI, it might then review Article VII, Public Institutions.

Rep. Curtin said that he would like to add a topic if the committee agrees, and that is the earmarking of revenues for K-12 education. While he recognizes a provision regarding the net proceeds from the lottery is in the constitution, he wonders what other states do in regard to earmarking revenues for education. He said the highest constitutional obligation is education, and that he has introduced legislation on this topic.

Sen. Coley said the legislature has many priorities and all of them are important. He said casino revenues currently go to education.

Mr. Steinglass pointed out that Article XV, Section 6a, concerning the state lottery, has been assigned to this committee for review.

Vice-chair Gilbert said he would like further information from Mr. Steinglass about having education consist of “0 to 12” as opposed to “K to 12”.

Mr. Steinglass pointed out that the earmarking provision only says “K to 12.”

Adjournment:

With no further business to come before the committee, the meeting adjourned at 11:10 a.m.

Attachments:

- Notice
- Agenda
- Roll call sheet
- Prepared remarks of Darold Johnson

Approval:

The minutes of the March 12, 2015 meeting of the Education, Public Institutions, and Local Government Committee were approved at the October 8, 2015 meeting of the committee.

/s/ Chad A. Readler

Chad A. Readler, Chair

/s/ Edward L. Gilbert

Edward L. Gilbert, Vice-chair



OHIO CONSTITUTIONAL MODERNIZATION COMMISSION

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

FOR THE MEETING HELD
THURSDAY, MAY 14, 2015

Call to Order:

Chair Chad Readler called the meeting of the Education, Public Institutions, and Local Government Committee to order at 9:45 a.m.

Members Present:

Chair Readler and committee members Beckett, Brooks, Curtin, and Taft were in attendance.

Reports and Recommendations

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

Counsel to the Commission, Shari L. O'Neill, presented for the first time, the report and recommendation on Article VI, Section 1 (Funds for Religious and Educational Purposes) to which the committee recommended no changes.

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. Originally adopted in the 1851 constitution, the provision specified that the principal of all funds of this nature would forever be preserved inviolate and undiminished, and that the income from those funds must be applied to the specific objects of the original grants or appropriations.

Ms. O'Neill summarized the history of the provision, which 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. The 1802 Enabling Act, by which Congress provided Ohio a path to statehood, furthered this educational goal by containing an unusual provision that offered Ohio one section, number 16, in every township or other equivalent lands, that would solely be dedicated to the establishment of schools. The 1802 Ohio Constitution

further reinforced the importance of education by providing in Article VIII, Section 3, that “religion, morality, and knowledge, being essentially necessary to good government and the happiness of mankind, schools and the means of instruction shall forever be encouraged by legislative provision, not inconsistent with the rights of conscience.”

Ms. O’Neill further indicated that these lands were leased by the General Assembly, with many leases being as long as 99 years and renewable forever, but after Congress permitted land sales with the consent of township residents, the state allowed that the proceeds from the sale of school lands would be deposited in the Common School Fund, to benefit schools within the townships. The report and recommendation further indicates that, over time, the state changed the entity responsible for the supervision of such lands, with responsibility now being entrusted to the board of education in each school district that was allotted these lands.

Describing ministerial lands, Ms. O’Neill noted that the designation of land for religious purposes stems from English and European traditions that established a state church and then allocated public resources for the support of that religious organization. Thus, the report and recommendation describes how Ohio’s ministerial lands were identified as section 29 in a number of counties that can be traced to the original “purchases,” two purchases by the Ohio Company, and one purchase by John Cleves Symmes, and that these “ministerial lands” are found nowhere in the United States but in these three parts of the state of Ohio. However, in 1968, after Congress acted to limit the use of sale proceeds from the sale of ministerial lands to educational purposes only, Ohio voters approved an amendment to Article VI, Section 1 that expressly allowed the General Assembly discretion to disperse money set aside in the trust fund.

Executive Director Steven C. Hollon said these reports and recommendations will be brought back to the committee, at its next meeting, for a vote. Once approved by the committee, they will go to the full Commission for its review.

Article VI, Section 2 (School Funds)

Ms. O’Neill then presented, for the first time, the report and recommendation on Article VI, Section 2 (School Funds) to which the committee recommended no changes.

Ms. O’Neill gave a description of the report and recommendation for Article VI, Section 2, relating to school funds, indicating that the provision requires the General Assembly to 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, stipulating that no religious or other sect or sects shall ever have any exclusive right to or control of any part of the school funds of this State.

Ms. O’Neill stated that 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. She said 22 states are recognized as having constitutional provisions imposing educational standards similar or identical to Ohio’s thorough and efficient clause, but the definition of common schools as well as what constitutes a thorough and efficient system varies widely from state to state.

Ms. O'Neill concluded by stating that the report and recommendation indicates that the committee concludes that Article VI, Section 2 should be retained in its current form. She then invited questions and comments from committee members.

Committee member Paula Brooks asked why the report and recommendation for Article VI, Section 2 was simply to retain the provision as it is, rather than that it include a requirement of early childhood education as the committee had discussed. Ms. O'Neill answered that the report and recommendation had been drafted based upon the vote taken at the last Education, Public Institutions, and Local Government Committee meeting on March 12, 2015, and that the instruction from the committee had been for staff to draft a report and recommendation that simply retained Article VI, Section 2 in its present form.

Chair Readler confirmed that this had been the vote and the instruction to staff. Ms. Brooks stated that she would like the committee to reconsider that issue prior to approving the report and recommendation, because many speakers, experts in education, and other members of the committee all support the concept that access to early childhood education makes a positive impact on the ability of children to succeed in school.

Chair Readler then recognized Representative Michael Curtin, who complimented staff on the reports and recommendations.

Committee member Governor Bob Taft asked whether Ms. Brooks is contemplating a possible amendment to this language. She answered affirmatively and said she would be willing to work with Gov. Taft on this. He said he is sympathetic with the issue and agrees that early childhood education is important, but that the challenge is in trying to draft an amendment that would not be incredibly expensive to carry out. Ms. Brooks said there is plenty of data showing that early intervention is effective, and that investing in it pays off. She also said she accepts that the General Assembly could move forward on this issue, and that she hopes leadership understands that it is "pay me now or pay me later." She said early learning in the state is important, especially for children in an urban environment.

Chair Readler thanked Ms. O'Neill for her work on the reports and recommendations, and Ms. O'Neill acknowledged the assistance and contribution of Senior Policy Advisor Steven H. Steinglass in preparing the reports and recommendations.

Presentations:

The committee received presentations from two speakers representing local boards of education.

"Local Boards of Education"

Gary L. Baker, II

President, Columbus Board of Education

Columbus, Ohio

Columbus Board of Education president, Gary Baker, II gave a presentation on the importance of the local board of education for urban school districts. In his remarks Mr. Baker provided

demographic data which demonstrates how diverse the student population is, the challenges this diversity brings, and the role the school board has in providing leadership to staff, to help each child reach maximum potential.

He said Columbus City Schools is the largest school district in the state of Ohio, encompassing approximately 127 square miles, and employing 8,000 staff members. The student population, of slightly more than 51,000 children in K–12, is comprised of seven nationalities including 58.09% African America, 27.28% Caucasian, 6.79% Hispanic, 5.35% Multi-racial, 2.15% Asian, 0.20% American Indian/Alaskan Native, and 0.04% Pacific Islander. The first language for 12% of the student population is something other than English. There are more than 90 different languages spoken across the school district. More than 83% of the students are considered economically disadvantaged. Approximately 14% of the students have been identified as having a disability, and only one fifth of the students are at the same school for an entire school year.

Mr. Baker stated with the challenges of so many different languages, socio-economic concerns, disabilities, and the mobility of a significant portion of the schools' population, the board has had to adapt and make accommodations in order to determine the best way to allocate and provide the resources needed for each child.

Ms. Brooks thanked Mr. Baker for coming. She acknowledged that school attendance is a huge factor in making sure children are able to succeed, asking whether there is anything the committee ought to be considering along those lines, such as mobility and housing issues.

Mr. Baker answered that everyone wants a safe community, good jobs, and wants to be able to put down roots and stay. He said neighborhoods have to be safe and secure, and people have to find employment. He said his district has many single parent families, parents with two or three jobs, and children who are homeless. He said anything that will help stabilize neighborhoods will help. He agreed that early childhood education is an important component for child success.

Governor Bob Taft thanked Mr. Baker for his willingness to serve in a leadership role, saying he is interested in Mr. Baker's decision to run, and asking whether it was expensive or difficult to campaign. Mr. Baker said he feels he has a calling to public service, so that running was a natural progression from that. He said serving on the board takes a lot of time, but board members are glad to do it because they have a commitment to the students. He said he is proud of the great strides the district has made.

Gov. Taft asked Mr. Baker whether he could address the issue of whether there are qualified persons in the community who are discouraged from running because of the rigors of campaigning. Mr. Baker said money and time are a factor, and that when he first ran he did not expect to be elected because there were no open seats, but that he beat a long-term incumbent. He said campaigning is about recruiting volunteers, being passionate, and fundraising. He said he made many appearances to let people know about his passion for the job. He said serving on a school board is a great opportunity to be a leader, and that the future of our country is the future of children.

Chair Readler asked whether the constitutional language in place is serving our community well, wondering, from Mr. Baker's perspective, what is the balance of power between the legislature and the districts. Chair Readler asked whether the constitution should be changed to alter that balance. Mr. Baker said the control of local districts should reside at the school board table, and that things as they work now do work relatively well. He said the General Assembly has provided local boards the opportunity to participate in the process. He said the current system has served us well, and that he is a firm believer that school boards should be elected by those individuals who reside in the district. Mr. Baker added that those who are elected must share a passion for education, must want to improve teaching and learning, and to focus on student achievement.

Ms. Brooks said she met with Mayor Frank G. Jackson in Cleveland, and complimented him on a board member, Stephanie Morales, who had presented to the committee about her experiences on the Cleveland Municipal School District board. Ms. Brooks repeated Ms. Morales' opinion that the appointment method for serving on a school board was preferred over the elective method. Ms. Brooks asked whether Mr. Baker sees a possibility for both systems to be used and to let the local people determine the best approach.

Chair Readler explained to Mr. Baker that the function of this committee is to see if Ohio's constitutional language is adequately addressing the needs of schools. Chair Readler asked Mr. Baker how he viewed the balance of power between the legislature and local school boards. Mr. Baker said control of local districts should reside at the school board level. The current system has served well. He continued, saying as much local power as possible should be retained and school board members should be elected.

Ms. Brooks said Cleveland has been served well by an appointed board. She asked Mr. Baker if he could say that both approaches should work and that there should be some flexibility to determine the best way.

Mr. Baker answered that he prefers local control, meaning that if people in a district want a hybrid board or one that is appointed they should have that option. He said he believes the best school board is one that is elected by residents of the district, but flexibility can be important as well.

Chair Readler excused himself from the meeting and Gov. Taft served as chair for the remainder of the meeting.

Eric Germann
Member, Board of Education
Lincolnview Local Schools

Lincolnview Local Schools' board member, Eric Germann gave a presentation regarding the importance of the local board of education for small and rural school districts. In his remarks Mr. Germann described local boards of education as the epitome of the concept of representative government.

He said the local board plays a vital role in shaping, adopting, and enforcing policy. The board levies, collects, and operates on tax revenue, maintains a balanced budget, and engages the community in developing both budget and tax policies. The board also works with economic development groups and business developers to encourage economic development and growth of the wage and tax base.

The board also serves as an arbiter for student and employee discipline, and provides the forum for those who wish to petition the governing body for change.

Rep. Curtin asked if Mr. Germann had any thoughts about what the state's policy ought to be in terms of the financial support for charter schools. Mr. Germann answered that the question ties back to accountability, indicating there are some effective charter schools and some that, if they were public, would be judged inadequate in their performance. He said that while his board is not necessarily opposed to charter schools, it has seen students transition out to charter schools and then, when the charter school doesn't work, the students come back, and by the time they come back all the funding has gone to the charter school. He said that online schools have a place, and work for some students. He said his board sees this as an accountability issue and an equity issue. He said, as a public school district, his district is judged on performance, and would be challenged if the numbers were bad, indicating this should also be the case for charter schools.

Rep. Curtin asked whether Mr. Germann and his colleagues feel comfortable being assertive with their state representatives, explaining that often board members are reticent in engaging state legislators. Rep. Curtin said he shares the view that charter schools are fine, if they are excellent, and that 75 percent are doing the job, but he said state legislators don't hear a lot from boards and superintendents of school districts. Mr. Germann said he is his board's legislative liaison, and that he enjoys meeting with legislators. He acknowledged that new board members sometimes have a reluctance to engage with legislators, worrying that if they push too hard they might make it worse for their districts, and also not knowing how lobby to or engage legislators. He said that is a barrier each individual has to break down.

Ms. Brooks asked Mr. Germann whether he feels early learning is well supported in his community, and whether students are getting adequate resources and if parents are able to afford it. She also asked whether there is flexibility to deal with transportation issues, and whether the current model of the elected school board is adequate to allow his board to tackle those issues. Mr. Germann said there is a county-wide Headstart program at the Thomas Edison Learning Center, and that they have worked out a cooperative transportation program. He said they are looking at various ways to move that program in-house or expand it. He said getting to students early and preparing them for school is important, and that it is possible to recognize the children who did not have preschool. Describing his district's transportation issues, he said their busses travel 144,000 miles per year, that they have 16 busses, and that hour-long bus rides are common. He said he prefers a locally elected board, and that election is best because board members are accountable at the ballot box.

“Article VI, Section 3 (Public School System, Boards of Education)”

Steven H. Steinglass
Senior Policy Advisor

Senior Policy Advisor, Steven H. Steinglass made a brief presentation to the committee on the topic of Article VI, Section 3 (Public School System, Boards of Education) before the time allotted for the meeting came to a close.

Ms. Brooks asked whether the committee could return to Mr. Steinglass’s presentation at the next meeting, and Gov. Taft agreed that a more extensive presentation and discussion could occur at the next meeting, noting that before the committee can consider whether to retain Article VI, Section 3, the committee needs more information.

Mr. Steinglass offered to explore the policy discussion surrounding Article VI, which is that, while education is an important local issue, there isn’t a constitutional provision that requires that there be local school boards. He said he can’t figure out why the rural districts are excluded from the referendum. Gov. Taft agreed that the referendum applies to all cities, not just home rule cities. He said the issue should be discussed at a future meeting.

Adjournment:

With no further business to come before the committee, the meeting adjourned at 11:00 a.m.

Approval:

The minutes of the May 14, 2015 meeting of the Education, Public Institutions, and Local Government Committee were approved at the October 8, 2015 meeting of the committee.

/s/ Chad A. Readler

Chad A. Readler, Chair

/s/ Edward L. Gilbert

Edward L. Gilbert, Vice-chair



OHIO CONSTITUTIONAL MODERNIZATION COMMISSION

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

FOR THE MEETING HELD
THURSDAY, JULY 9, 2015

Call to Order:

Governor Bob Taft called the meeting of the Education, Public Institutions, and Local Government Committee to order at 10:11 a.m. Gov. Taft explained that he was chairing the committee meeting today as both Chair Chad Readler and Vice-chair Edward Gilbert were unable to attend.

Members Present:

Committee members Cupp, Curtin, Macon, and Taft were in attendance.

Presentations:

“Joint Vocational Schools”

Sue Steele

Board Member

Great Oaks Institute of Technology and Career Development

Sue Steele, board member of the Great Oaks Institute of Technology and Career Development (Great Oaks) gave a presentation on the value of joint vocational schools. Providing statistics for Great Oaks, Ms. Steele state that Great Oaks has educates approximately three thousand high school students per year plus thousands of other students through other programs. She said more than twenty-four thousand adults have been served in the adult education programs. Approximately ten thousand students have earned their GED, and nearly 46 percent of those students have gone on to college. Great Oaks operates on money received from state and local resources. A 2.7 mill property tax levy provides 61 percent of needed funding, along with 36 percent from state funds, and grants and miscellaneous making up 3 percent.

Ms. Steele has been involved with Great Oaks for seventeen years, 13 of which she has served as chair or vice-chair. She explained some of the duties of the board which include, among other

items, hiring and budgeting, identifying possible ballot issues, determining policy, and setting and monitoring goals for the district. She further explained that some rule changes last year have created some concerns for the board. Specifically that future board members could be appointed instead of elected, and they can be term-limited. The concern being that this approach threatens the loss of institutional knowledge.

Gov. Taft asked Ms. Steele if she was speaking on behalf of all career centers to which Ms. Steele responded that she is speaking first on behalf of Great Oaks, but a workgroup has been established to ensure their voices are heard.

Gov. Taft asked, regarding current legislation on board composition, if the association is suggesting this be addressed through the constitution. Ms. Steele replied no, because they think they can address it through legislation. If necessary, they would work to go through the constitution but would prefer to work with the legislature. She further explained the concern with the changes is that local boards can now appoint business people, but what happens if the appointee does not live in the district and is not involved in the community. They might very well be an outstanding person, but without the local connection, they may be more focused on money than with seeing students succeed. Elected board members are held accountable by the public, but an appointee is not.

Representative Bob Cupp asked how many people serve on the board of Great Oaks. Ms. Steele replied that there are thirty-five board members. Rep. Cupp asked how the board functions with so many members. Ms. Steele explained there are five committees, with seven members each, which meet prior to the board meetings. The chairs of the five committees attend a second meeting where they describe what the committees have been working on. If an item needs to be approved, one of the chairs will make a motion; another chair will second the motion, then five chairs vote. She further explained with the diversity of the members of the board, they are able to accomplish a great deal. Ms. Steele said “We network a lot, using emails and phone calls.” She said everyone is there for the same purpose which is for the benefit of all the students which includes adults, juniors, and seniors. Ms. Steele then described the newest opportunity they’ve been able to bring into the middle schools, which is a pre-engineering program.

Ms. Steele further explained the board is very diversified, with every member recognizing they are all there for the same purpose – the students. Utilization of emails and phone calls help them maintain momentum in their work, rather than only conducting business at the monthly meetings. Ms. Steele said the newest initiative is to bring pre-engineering into the middle schools. In addition, the modern career center is a new environment in which students earn dual credits for college. Some students will have completed nearly enough credits for an associate degree when they graduate high school.

Rep. Cupp asked whether any school district has selected non-board members to be part of the larger board. Ms. Steele said she is aware of only three that have done so, with two of those selected being former board members. A third such member is a business person who knows a lot about career tech but has not been involved in the educational system. She said her board is concerned this type of appointment will become unmanageable as it is still a gray area with how the law is worded. The primary concern is that that CEOs and CFOs from private businesses will

take over the board. Ms. Steele said it is possible that the thirty-five people currently on the board could be gone by 2020, being replaced with a whole new board. She stated the Great Oaks program is tops in the nation and the board should maintain the status quo.

Rep. Cupp said complimented Ms. Steele and the other board members for the great work they are doing for Great Oaks.

Gov. Taft asked how many of the thirteen thousand students who take classes in their homes are enrolled in full time career tech at their home school. Ms. Steele responded none. She said they do have satellite programs, and students are there for part of the day.

Gov. Taft then thanked Ms. Steele for her presentation and for her years of service.

“Educational Service Centers”

*Al Haberstroh
Board Member
Trumbull County Educational Service Center*

Albert Haberstroh, board member of the Trumbull County Educational Service Center, presented on the value of educational service centers. Mr. Haberstroh said he was serving his eighth year on the Trumbull county school board as an elected board member, and he was here on behalf of the students.

Mr. Haberstroh explained what he does as a school board member, and the special interest he has in children with developmental problems. Speaking from personal experience, he talked about the role the educational service center played for his grandson, who as a young student was diagnosed as autistic and could not hear. He was placed in a special education program and corrective action was taken so he could hear. Today he is a happy, straight-A third grader.

Mr. Haberstroh said he believes as a board member he has a mission. He makes himself available to parents who have a child with developmental issues. He wants to do whatever he can to help the child attain success. He said one way he does this is to talk with students and ask them what they plan to do after graduation. If a student has not taken the ACT, for example, he will help them prepare for the test.

Mr. Haberstroh said the board is also a resource for adults who want to be teachers. The board provides professional development for 500 to 600 teachers so they can expand their capabilities, such as training them on how to explain the Common Core curriculum.

Another example Mr. Haberstroh provided of a board action related to bussing for special education students. They were able to partner with a local transit service for the elderly and save the county between \$3,000 and \$6,000.

Mr. Haberstroh closed by stating these are just a few of the things he and other board members do in their role.

Gov. Taft thanked Mr. Haberstroh for his service, and for sharing his very compelling, personal story.

Gov. Taft then asked for questions from the committee. Rep. Cupp asked if the constitution is set up properly for the legislature to make the laws or whether changes should go into the constitution. Mr. Haberstroh replied that he has asked for change, stating that districts are required to belong to an educational service center but they have no representation on the board. Because of funding issues, districts have had to combine, and there is a concern about how many districts will be represented on the board of the educational service center.

Mr. Haberstroh said he would rather have an elected board than an appointed board. Someone who campaigns for a seat on the board has a strong interest in the purpose of the board. If a board member is appointed, rather than elected, that person might not be as passionate.

Mr. Haberstroh gave an example of someone he served with who would never have been appointed. To her every student was special, and she wanted to make sure everyone had opportunities. She served on the board for twelve years, was a second grade teacher for 40 years, and, to this day, she sends every student she ever had a birthday card.

Rep. Cupp then stated that school district boards are elected, educational service center boards are elected, but joint vocational school boards are appointed. In the past, people have asked him why there is a difference. Rep. Cupp asked if it would be better to follow the joint vocational model and use the appointment process, wondering whether, for these elections, people really know who they are voting for. Rep. Cupp then asked Mr. Haberstroh for his thoughts on appointment versus election for these board positions.

Mr. Haberstroh stated that the people who are elected are similar to him. He belongs to political organizations, is active in his community, and donates to most neighborhood organizations in his county that are interested in education. He asked, "Do I care if any of them know who I am or that I support them? I would say someone who is running has a vested interest, but someone who is appointed may not be as enthusiastic."

Rep. Cupp asked Mr. Haberstroh if he felt, as a member of the local school board, that being appointed to the educational service center by the local board would make it better. Mr. Haberstroh said most local board members use the services of the educational service center, yet they have no clue that there are students for whom someday the highlight of their life would be being able to perform everyday activities like walking or using the bathroom without assistance. He said if there is too much division between the boards, it takes away the concentration on local districts, and might dilute both of the boards. He said the people on the educational service center board do not bring certain elements such as business acumen.

Mr. Haberstroh addressed the issue of a levy. He said "they do not have the means so they cannot put on a levy." He said it would be difficult for them to have a levy because it would be difficult to convey to the voters everything the board does. For example, the board has a program where they take children who would normally be in the juvenile system, and working with the police chief, let them stay in their homes and provide schooling. Mr. Haberstroh said that in relation to

his own school district, as a board member there he represents only 700 students, but in the educational service center he represents 30,000.

Additional Testimony

Gov. Taft then asked if anyone else at the meeting would like to testify. Executive Director Steven C. Hollon introduced Damon Asbury, Director of Legislative Services for the Ohio School Boards Association.

Mr. Asbury spoke briefly to note items that were circulated to the committee. Describing his organization, he said it represents 191 city school districts, 49 joint vocational school districts, and 52 career centers, with the remaining 300 plus districts being local school districts.

After describing the materials he circulated, he encouraged committee members to visit a career center in their communities, saying they would be impressed with the opportunities available. He said the schools were originally set up for students who were “not college material” but now they “try to create pathways for students.” He said Ohio has been a leader in the field of creating career education opportunities, and other states continue to look to our model.

Senior Policy Advisor Steven H. Steinglass asked if this should be covered in the constitution, or handled via legislation. Mr. Asbury replied that the legislative process would be the best; the constitution may be too general. He noted that it will be hard to create continuity if major joint vocational school board changes happen.

Rep. Cupp asked how the change to the joint vocational school boards should occur. Mr. Asbury said that change was attached to the budget, and that there was a stand-alone bill that never got a hearing but was just attached to the budget at the last minute.

Gov. Taft posed a question for Mr. Asbury to ponder, which was what percentage of students in 11th and 12th grade should be in full-time career tech programs and how that would be determined. Mr. Asbury said, unfortunately, the Ohio Department of Education does not have that information. Gov. Taft responded that he knows three years ago the number was about twenty percent. To Gov. Taft, that seems extremely low. Mr. Asbury said he will talk to colleagues about that and try to get up-to-date information.

“Article VI, Section 3 (Public School System, Boards of Education)”

*Steven H. Steinglass
Senior Policy Advisor*

Senior Policy Advisor Steven H. Steinglass continued his review of Article VI, Section 3, public school system boards of education.

Mr. Steinglass reviewed his memorandum on Article VI, Section 3 that was distributed to the committee prior to the meeting. He pointed out that the first clause of Article VI, Section 3, “... supported by public funds,” is intended to ensure public funds do not apply to private and

parochial schools. He further explained that he is not talking about Article VI Section 4 (State Board of Education). He stated that he has not heard a great deal of clamoring for changes here.

Mr. Steinglass also remarked, regarding the first part of the second clause, there is a sense from reviewing the history that the size of some school boards had gotten a bit out of control. He still has not answered to his satisfaction why there is a limit to this clause applying only to urban schools and not to rural districts. He commented that the only answer so far seems to be that the rural school districts wanted it this way forty years ago, and referred to Delegate Knight's quote, contained in Mr. Steinglass' memorandum: "I have no desire to force a referendum on any people who do not want it." Dean Steinglass stated that he has not discovered any strong advocacy for changing these provisions.

Mr. Steinglass explained that the last part of the second clause has to do with elected versus appointed school board members. Referring to the Cleveland Municipal School District, Mr. Steinglass explained there is a state statute that gives the mayor of a city under federal desegregation orders (of which Cleveland is the only city) the authority to appoint members of the school board. The Cleveland mayor appointed school board members and the voters approved the appointment via a referendum. Mr. Steinglass also explained that the referendum was challenged in the courts, and the courts decided that while there has to be a referendum at some time, it does not have to come before the appointment. Four years after the appointment is not too long to wait.

Mr. Steinglass concluded his remarks by stating "We have a relatively bare bones provision, with questions that are not answered. The policy issue becomes whether this relatively-limited provision is the right way to go, or whether there are specifics that need to be changed."

Gov. Taft thanked Mr. Steinglass and asked for questions from the committee. There were none.

Gov. Taft stated that he wonders what would happen if the Cleveland approach proves successful. He asked whether this would prompt the legislature to allow other districts to have appointed boards. He said, as the constitution has been interpreted, apparently they could, so long as they include a provision allowing for a referendum within a certain number of years following the appointments. He asked Mr. Steinglass if this is correct, and Mr. Steinglass answered that is how he interprets the cases and the constitutional provision. He said there are two ways this could be done: from the bottom up using the petition process, or the General Assembly could impose it.

Gov. Taft then asked a question regarding religious liberty. He explained that the Colorado Supreme Court struck down a school voucher program under which a local board created the first district-level voucher program in the country. This particular proposal was declared unconstitutional by the Colorado Supreme Court based on the Colorado version of the Blaine Amendment, prohibiting public funds for private schools. In Ohio, programs have been upheld, so based on this broad grant of authority in Article VI, Section 3, does that mean there probably would be nothing precluding the legislature from authorizing local school districts to initiate district level voucher programs? Mr. Steinglass replied he has not read the case, or thought about

it, but tends to agree, although there may be something else there. His first reaction is to agree that there would not be a problem with that delegation under the Ohio Constitution.

Gov. Taft asked if there were any other questions for Mr. Steinglass, and being none, he thanked him for his presentation.

Committee Discussion:

Gov. Taft then asked Mr. Hollon where the committee currently stands, noting that the committee needs to discuss Article VI, Section 3. He asked whether the committee should request a draft of a report and recommendation on Article VI, Section 3.

Mr. Hollon replied that there are currently two draft proposals to come before the committee – Article VI, Section 1 (Funds for Religious and Educational Purposes) and on Article VI, Section 2 (School Funds) – however, no action can be taken on these today due to lack of a quorum.

Mr. Hollon then commented that what the staff would like to see is a preliminary sense of the committee in order to have an idea of what they want with a particular provision. He said he does not perceive there to be a suggestion that the committee would seek a change to Article VI, Section 3 (Public School System, Board of Education). He offered that staff could start drafting a report and recommendation suggesting that Article VI, Section 3 be kept as it is, and could bring a draft forward at the next meeting just to expedite it, without necessarily taking a vote. Gov. Taft asked whether the committee thinks a change is desirable. Mr. Hollon said the staff is working to have Richard Ross come to the next meeting in relation to Article VI, Section 4 concerning state boards of education.

Gov. Taft then asked about the current status of the life of the Commission, and Mr. Hollon stated that under current legislation it will terminate January 1, 2018. Rep. Cupp asked, regarding the planning worksheet, where the committee is at the current time. Mr. Hollon said the committee has been dealing with Article VI, Sections 1 and 2, for which reports and recommendations have been drafted. He said Article VI, Sections 3 and 4, will be next, with the goal set by Chair Readler to complete the rest of Article VI before taking on some of the other issues. Mr. Hollon said that as the committee goes through the meetings, the staff will update the list so the committee can have a visual representation of where it stands.

Mr. Steinglass commented that early on in the life of the Commission, the committee had presentations on other articles, including Article XVIII. He said staff may want to recirculate the material to members who were not on the committee at the time. Gov. Taft said this is a good suggestion.

Committee member Representative Michael Curtin brought up an exchange between Gov. Taft and committee member Paula Brooks, on early childhood education, which is referenced in the minutes for the May 14, 2015 meeting on page five. He wondered where this issue stands. Gov. Taft said they left it where Ms. Brooks might consider possible changes or amendments and that they would consider proposed language. He said she has not yet submitted any language, and he does not know whether she intends to. Mr. Hollon confirmed that we were going to discuss the

issue again today with a quorum, to see if the committee had reconsidered from their previous vote to keep Article VI, Section 2 as it is. Gov. Taft said he himself strongly supports early childhood education, but that the General Assembly has the ability to pass laws providing for that. He said it is not a question about whether the state has the authority to do so. He said he is not sure what amendment might be appropriate from that standpoint.

Adjournment:

With no further business to come before the committee, the meeting adjourned at 11:35 a.m.

Approval:

The minutes of the July 9, 2015 meeting of the Education, Public Institutions, and Local Government Committee were approved at the October 8, 2015 meeting of the committee.

/s/ Chad A. Readler

Chad A. Readler, Chair

/s/ Edward L. Gilbert

Edward L. Gilbert, Vice-chair



OHIO CONSTITUTIONAL MODERNIZATION COMMISSION

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

FOR THE MEETING HELD
THURSDAY, OCTOBER 8, 2015

Call to Order:

Chair Chad Readler called the meeting of the Education, Public Institutions, and Local Government Committee to order at 9:40 a.m.

Members Present:

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

Approval of Minutes:

The minutes of the March 12, May 14, and July 9, 2015 meetings of the committee were approved.

Reports and Recommendations:

Chair Readler then recognized Shari L. O'Neill, counsel to the Commission, who provided the second reading of the reports and recommendations for Article VI, Section 1, and Article VI, Section 2.

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

Ms. O'Neill said that Article VI, Section 1, dealing with the funds deriving from the sale or other disposition of lands or other property granted or entrusted to the state for educational or religious purposes, dates back to Northwest Ordinance, and helped establish the importance of education to the state. She said the provision related to tracts of land in each township that were set aside for educational or religious purposes. Ms. O'Neill indicated that the current version of the section allows the General Assembly the discretion to use or dispose of funds deriving from these lands, with some lands still providing revenue to local school districts for educational

purposes. Ms. O'Neill said the report and recommendation concludes that the committee recommends that Article VI, Section 1 be retained in its current form.

Upon motion by Senator Tom Sawyer, with a second by Representative Bob Cupp, the committee then voted unanimously to issue the report and recommendation for Article VI, Section 1.

Article VI, Section 2 (School Funds)

The committee then turned its attention to the second reading of the report and recommendation for Article VI, Section 2. Ms. O'Neill indicated that this section requires the General Assembly to act to secure a "thorough and efficient" system of public education across the state, and that it was the first of many similar provisions to be placed in state constitutions nationwide. Ms. O'Neill noted that the report and recommendation indicates this historical background as well as outlining the litigation history surrounding the "thorough and efficient" requirement. She said the report and recommendation sets forth the committee's conclusion that the provision should be retained in its current form.

Upon motion by committee member Roger Beckett, which was seconded by committee member Edward Gilbert, the committee voted unanimously to issue the report and recommendation for Article VI, Section 2.

Article VI, Section 3 (Public School System, Boards of Education)

The committee then heard a first reading of a report and recommendation for Article VI, Section 3, dealing with local boards of education. Ms. O'Neill indicated that this section provides for the organization, administration, and control of the state's public schools, specifically allowing city school districts the ability to determine for themselves the number of members and organization of the district board of education. Ms. O'Neill stated that the report and recommendation describes the history of the provision as dating to the 1912 Constitutional Convention, as well as discussing the history of litigation surrounding the provision. Ms. O'Neill said the report and recommendation indicates the committee concludes that Article VI, Section 3 should be retained in its current form.

Committee Discussion:

Chair Readler then asked the committee for comments and discussion regarding the report and recommendation, first recognizing Governor Bob Taft. Gov. Taft said he would like to delay moving forward on the report and recommendation until there is resolution of litigation involving the Youngstown School District. He said one of the arguments in that litigation relates to whether Article VI, Section 3 was violated, thus, the outcome of that case could affect the committee's recommendation about the section.

Sen. Sawyer commented that there also is pending in the General Assembly a bill related to the topic, specifically House Bill 70, and that it would be his preference to hold off on moving forward with the report and recommendation for that reason.

Mr. Gilbert raised that he would like to see the report and recommendation include a mention of charter schools. Chair Readler added that he is aware of a recent Ohio Supreme Court case involving charter schools, which case might be included in the report and recommendation.

At the conclusion of this discussion, the committee agreed to postpone a second reading of the report and recommendation for Article VI, Section 3 until more information is available from these sources.

Presentation:

Article VI, Section 4 (State Board of Education)

Chair Readler then turned the committee's attention to Article VI, Section 4, relating to the state board of education. After describing the section, Chair Readler recognized William L. Phillis, executive director of the Ohio Coalition for Equity and Adequacy of School Funding, who appeared before the committee to advocate for a return to an all-elected membership for the state board of education.

Mr. Phillis began by describing the history of the state superintendent of schools and the state board of education. He said that the superintendent role was created by constitutional provision in the 1912 Constitutional Convention, with the enabling legislation to be assigned to the governor's office. In 1953, voters passed a constitutional amendment establishing a state board of education and superintendent of public instruction to be appointed by the board, a measure that Mr. Phillis interpreted as indicating an intention to separate the state education agency from the governor's office. Mr. Phillis said after the amendment was adopted the legislature determined that one member of the board would be elected from each congressional district. Mr. Phillis continued by noting that, throughout the period from 1956 to 1991, the state board engaged only three state superintendents, and that there was a mutually cooperative relationship between the Ohio Department of Education and the local education community, a situation he said is not happening today.

Mr. Phillis continued that, in 1991, the governor took over the role of selecting the state superintendent, and began the process of trying to change the elected board to an appointed board. He said at that time it was argued that the state board had too many members, and legislation was enacted to reduce the membership of the board to 11 members, one for each group of three senate districts. Mr. Phillis said changes occurring as a result of the *DeRolph* litigation then created a hybrid board in which eight members were appointed, with 11 members being elected. Mr. Phillis said that this change resulted in several developments: a rapid turnover in state superintendents compared to previous years; the board and superintendent being unduly encumbered by partisan politics; and a strained relationship with local school districts. Mr. Phillis said that the culture of the Ohio Department of Education "seems to have changed from a public school district advocacy and support role to an adversarial role toward school districts."

Mr. Phillis then said he advocates for a state board of education that would consist of one elected member from each congressional district or some other district configuration; function without regard to partisan labels and politics; select a superintendent independent of the governor or

other state officials; demand that professional education staff members have appropriate qualifications; and demand total transparency and accountability of the superintendent and Ohio Department of Education staff.

Mr. Phillis then entertained questions from the committee.

Rep. Cupp asked, when the provision on the state board was adopted in 1953 delegating to the General Assembly the responsibility for the powers and duties of the board and superintendent, why the amendment was crafted so that the General Assembly made those decisions rather than specifying if it was going to be an elected board. Mr. Phillis answered that he understands that there was considerable opposition from some quarters to the concept of a state board of education, and that the reason may have been to dissipate some of the opposition to the amendment. Mr. Phillis said the amendment as currently written allows the General Assembly to do whatever it wants to, and that in some states the provision allows the state to put together an alternative department of education and leave the constitutional superintendent with nothing to do. He said his advocacy would be for a provision which would separate the superintendent's office from the governor's office and bring it under an independently-elected board. He said that would be in line with the intent of the amendment, and that, by analogy, local boards are not under the city council or mayor, except in Cleveland.

Representative Michael Curtin then referenced Mr. Phillis's recommendation that an elected state school board be based upon representatives from each congressional district. Rep. Curtin asked, with State Issue 1 on the ballot (creating an independent redistricting commission for state legislative districts) and likely to pass, whether it would make sense to change the recommendation to allow board membership to be based on state senate districts rather than on congressional districts. Mr. Phillis answered that he has no objection to Rep. Curtin's suggestion; he is not necessarily sold on using congressional districts. Rep. Curtin said he would be reluctant to embrace a proposal to elect by congressional districts until Ohio has districts that look rational. He said, assuming a favorable vote on State Issue 1, he would not be reluctant to support a proposal to have state board members to be elected from, say, three state senate districts. He said, that way, there is a grouping of several regions of Ohio that have similar interests. Mr. Phillis said the original recommendation was to use court of appeals districts (there were nine at the time), and that this is another grouping that might be considered.

Mr. Beckett suggested that it might be useful to connect the state board of education with the board of regents. He said, in the past, there was a much clearer separation between K-12 education and higher education, but that distinction is being reduced with high school students taking college courses and other similar activity. He said the board of regents is created by the legislature, not the constitution, and that, in many ways, this section of the constitution requires that this distinction remain. He asked whether Mr. Phillis thinks that the inclusion of this section of the constitution is doing anything to limit the ability of the state to create a more effective system that would comprise K-16, rather than just K-12. Mr. Phillis answered that, at one point in time, the state board had responsibilities to higher education. He said that up until the time of Governor Rhodes, the state board of education had responsibilities for technical schools and community colleges, which seemed to work very well. He said he would have favored the state

board assuming greater responsibilities, rather than creating the state board of regents, but that is just his opinion.

Rep. Cupp said he recalls that, in addition to every governor wanting to run the system, the elected board had its own difficulties in that they ran in congressional districts which became bigger and bigger, that candidates had to run on a nonpartisan ballot, and that nobody knew who they were. He said that if the public had a question or complaint they didn't go to the state board because they didn't know who that was. He said it was a question of accountability; if the districts are so big, the board members are unknown. He wondered how to ensure a system that has more accountability to the public. Mr. Phillis commented that members of the public often don't know the public officials who represent them, but that in the past, when he was a local school superintendent assisting with putting together state vocational school plan, the board members were visible. He said he doesn't have an answer, but he thinks the problem applies overall, and that people aren't necessarily engaged in political activity unless there is some tough problem they have personally. He said he would advocate for a larger board rather than a smaller one.

Rep. Cupp followed up by stating that people do know there are state legislators even if they don't know who they are. He said there is an accountability issue here. He said the court of appeals districts plan may work, but a problem is that the Third Appellate District has 17 counties, and is a geographically large area. He said the one-man-one-vote rule doesn't apply to appellate judicial districts, but may apply to board members.

Sen. Sawyer commented that he is never introduced as a former member of the state board of education. He noted that, when he is asked about the offices that he has run for, he says that was the hardest one, for the reason that the district is so big, and the position is so little known. He said he ran for it when he had just come out of Congress, so everyone knew him, he was able to raise a good deal of money, and he knew how to campaign. He said in his state board district everyone knew who the board member was for a brief period of time, but he left because he went to the state senate when a new district opened up. He said he agrees that a larger state board makes for smaller districts and a greater attachment to the districts and the constituents.

Committee member Paula Brooks stated that whether the state board is elected or appointed, she is having a hard time grasping why that is the fundamental issue. She said she has not met a state school board member as a county commissioner. She said regardless of whether a board is elected or appointed, she doesn't see the progress in getting children what they need to participate in a demanding world economy. She said she doesn't understand the gist of what he is recommending and why elected officials would be better than appointed officials.

Mr. Phillis said his perspective is from half century of work in public education. He said having worked in a state agency, observing the operation of an elected board versus a hybrid board, his conclusion is that education needs to be operated by people who are solely or primarily interested in education.

Ms. Brooks continued that she is afraid that, in politics, people who are getting elected are looking to the next office. She said she thinks the board needs people who are intelligent and understand developmental assets. She said she doesn't see eye to eye with him on this.

Mr. Phillis said he believes that the elective process works when it comes to mayors, city councils, and commissioners, and it should work when it comes to education. He said boards should be independent of partisan politics and bickering. He said, after observing the two ways the board has operated, a board needs to be independent of politics to the extent possible. Mr. Phillis recalled the comments from a board member from Dayton who, after serving a couple of terms, was defeated. Mr. Phillis said that person felt that although he lost the race, he was grateful for the chance to serve because of his interest in public education, and that he recognized he never would have been appointed to the job because he lacked the political connections that would have facilitated an appointment.

Gov. Taft commented that Minnesota and Wisconsin have no state board of education, wondering if Ohio really needs a state board at all. He said the governor and the legislature spend a lot of time and effort on education. He said the state board is not a policy-making body; rather, the policy is made in General Assembly by committees on education in conjunction with the governor. He wondered what the state board adds to this process. Mr. Phillis said it has been noted that the board was created to take the heat off of governors and legislators when unpopular decisions must be made, such as consolidating school districts or implementing controversial statewide initiatives in education. He said, as a result, the governor and the legislature may value having a state agency to handle such issues.

Mr. Phillis continued that it seems to him that state officials would want a state agency to provide leadership and coordinate education efforts, providing leadership for education. He commented that the state superintendent used to bring all the local superintendents to Columbus annually to rally for education, and to create some understanding about state policy. But, he said, one governor instructed the state superintendent to keep them out of Columbus. He said "we have lost that relationship between state board and community by having this appointment process."

Gov. Taft said he is a strong believer in local boards and local control, there is accountability between local boards and local legislators; they really know each other, which is a strong channel of communication, with much accountability. He said members of the state board do not have a strong platform to influence state policy because they don't have a strong presence. Mr. Phillis said he disagrees with that statement.

Rep. Cupp said states have an all-elected or all-appointed board, but our hybrid board is not working well, noting that "we clearly have something that isn't working properly now." He said one of the values of separating the state board from the executive branch is that there is greater continuity in education policy instead of a philosophical swing every few years. He said there have been about four different swings over about 10 years, resulting in so many changes that teachers and administrators aren't sure what they are supposed to do. He asked whether continuity is a virtue of an elected board.

Mr. Phillis said history shows that there were only three superintendents from the 1950s to the 1990s, versus a revolving door now. He said, with all due respect to legislators' and governor's roles in education, the state board can provide some necessary continuity and consistency. He said what we have now is an untenable flow of different policies and rules that prevent local superintendents and boards from operating with effectiveness and efficiency. He said the local perspective on changes to testing or teacher evaluation procedures can be that someone is setting a stage to cause public school districts to fail. He said a strong state board can be a help to the rest of state government as well as to the local communities, and can be a buffer.

Sen. Sawyer said it is a role provided by both the state board and the Department of Education. He added this role is also played by the board of regents for higher education. He said he liked the use of the word "buffer" for this role, and that such a board tempers and sustains continuity and maintains consistency over time. He said the board provides policy leaders in the legislative and executive branch with a touchstone. He noted that the buffer role is critically important. Because of this, he said he prefers a larger number of board members from smaller districts.

Chair Readler commented that the constitution is fairly limited, indicating the first question before the committee would be to determine what is the point of having the state board. He added that there is an established part of education that survives from election to election. He said taking politics out of education is a noble, possibly unachievable goal, but adding another body to a host of political players, adds to politicization rather than removes it.

Mr. Phillis said the decision to have a state board was a good idea, but a superintendent attached to the governor's office means every time the governor changes there is a new superintendent. He said education policy needs to have an opportunity to work, or for people to determine that it doesn't work, so a state board of education that is independent of the rest of the political process provides some continuity, and an aura of professionalism. He said the nature of professionals under the governor's office is different than those in the buffer zone. He said the nature of the type of person that comes to the Department of Education is different when the governor is in control of those appointments.

Chair Readler characterized Mr. Phillis' position as being that Ohio needs a state board to protect it from the governor and the legislature. He said he is not clear on these different roles, and removing the state board would mean more local control.

Mr. Phillis said jumping from one policy to the next creates some issues, emphasizing the need for continuity.

Chair Readler then thanked Mr. Phillis, commenting that this discussion kicked off a lot of ideas for the committee to work on. He said the committee will continue to discuss the topic at its next meeting, and asked committee members if, in addition to hearing from current or past state school board members, they had suggestions for other speakers.

Next Steps:

Mr. Beckett said he is interested in not losing this connection with higher education, and would like to hear from someone from the state board of regents, or from another state that has a different system (K-16).

Sen. Sawyer mentioned John Carey, chancellor of the Ohio Department of Education, who he said has been through the whole spectrum of this topic. Sen. Sawyer commented that the state doesn't effectively have a board of regents, but rather has a "department of higher education" that is being bureaucratized.

Ms. Brooks said Linda Stern Kass is someone who is a champion of early learning.

Rep. Cupp said the committee could rely on representatives from national organizations such as the Education Commission of the States, the National Conference of State Legislatures, or the Council of State Governments, who might give an overview of what other states are doing.

Adjournment:

With no further business to come before the committee, the meeting adjourned at 11:20 a.m.

Approval:

The minutes of the October 8, 2015 meeting of the Education, Public Institutions, and Local Government Committee were approved at the January 14, 2016 meeting of the committee.

/s/ Chad A. Readler

Chad A. Readler, Chair

/s/ Edward L. Gilbert

Edward L. Gilbert, Vice-chair



OHIO CONSTITUTIONAL MODERNIZATION COMMISSION

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

FOR THE MEETING HELD
THURSDAY, JANUARY 14, 2016

Call to Order:

Chair Chad Readler called the meeting of the Education, Public Institutions, and Local Government Committee to order at 9:39 a.m.

Members Present:

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

Approval of Minutes:

The minutes of the October 8, 2015 meeting of the committee were approved, subject to a correction as noted by Representative Robert Cupp.

Presentation:

Article VI, Section 4 (State Board of Education)

Chair Readler directed the committee's attention to Article VI, Section 4, relating to the State Board of Education. After describing the section, Chair Readler then introduced Tom Gunlock, president of the State Board of Education, who addressed the committee on the structure and operation of the board. Mr. Gunlock told the committee that, in addition to serving as member and president of the state school board, he is a director of construction and property management for RG Properties in Dayton.

Mr. Gunlock prefaced his remarks by indicating that the opinions contained in his presentation are his own, and are not necessarily shared by other members of the board. He added that he is not speaking on behalf of the board, and that his motive in serving on the board and in providing remarks to the committee is to improve educational outcomes and opportunities for Ohio's children.

Mr. Gunlock described the composition of the state board as having 19 members, with 11 members elected and eight members appointed by the governor. He said each elected member represents three contiguous state Senate districts, or approximately one million people. He indicated that it is difficult for the elected board members to achieve name recognition because their constituency is so large, with each district consisting of one million voters each. He said that is a greater number of constituents than that of every other elected official in Ohio, other than those elected to statewide offices. Regarding the appointed members, Mr. Gunlock said the governor makes four appointments every two years, subject to the advice and consent of the Ohio Senate. He said at least four of the appointed members represent Ohio's rural school districts.

He said all members are subject to four-year terms, with term limits of eight years total. He said the chairs of the House and Senate committees on education serve as ex-officio members of the State Board of Education. Commenting on the size of the board, Mr. Gunlock said that Ohio's board consisting of 19 voting members is much larger than the boards in most other states.

Mr. Gunlock said the board meets in Columbus monthly for two days, with the boards' committees occasionally meeting between the monthly meetings of the full board.

Describing the Ohio Constitution's inclusion of Section 4, Mr. Gunlock summarized that the constitution requires a state board as well as a state superintendent appointed by the board, and leaves the details to be defined by statutory law. Comparing Ohio's scheme with that of other states, he said the majority of states have a state board and state superintendent, but no state has a governance structure quite like Ohio's, in which the size of the board, and the combination of appointed and elected members who select the state superintendent, are somewhat unique. Mr. Gunlock directed the committee to the Education Commission of the States' report, State Education Governance Models, which he provided to the committee to allow it to compare the various state board governance structures.

Describing the history of the board, Mr. Gunlock said when the newly-created board met in 1956 it had 23 members, one elected from each Congressional district. He said the board's duties were prescribed by R.C. 3301.07, which required it to generally supervise the system of public education in the state, including policy forming, planning, and evaluation of the functions of the public schools. He said the Revised Code also charges the board with the responsibility of issuing educator and staff licenses, as well as revoking licenses in cases of unprofessional conduct.

Mr. Gunlock continued that, for some time, the board generally operated "under the radar" because not many people knew the board existed or what it did. He added, as the economy began to shift away from a primarily industrial model, the growing importance of education placed increasing demands on the educational system, increasing the visibility and importance of the board.

Mr. Gunlock noted that Ohio's governance structure may be interfering with the board's ability to meet Ohio's educational challenges. He described that there are three different organizations

creating education policy in Ohio: the governor, the legislature, and the state board. He said, in addition, each chamber of the General Assembly has one or more standing committees that deal with education. Further, he noted that two joint legislative committees – the Joint Committee on Agency Rule Review, and the recently-created Joint Education Oversight Committee – also provide oversight. He said the 19 members of the state board, some elected and some appointed, are responsible for selecting a state superintendent with no direct link to either the governor or the legislature.

He added that matters are complicated by a high turnover rate among all board members, and the increasing politicization of the board in recent years, despite that board members are elected on a non-partisan ballot.

Mr. Gunlock said, “I believe it is ridiculous to think for one minute that the Ohio Department of Education or individual school districts can be successful with this many bosses, competing priorities and agendas. Remember, primary and secondary education in Ohio is a \$20 billion a year operation with children’s futures at stake. It’s difficult to imagine any organization being successful under those conditions.”

He said, in his opinion, the current governance structure simply is not working, and that this system does a “great injustice to the employees of the Department of Education and school districts around the state.” He added this structure is unfair to students at a time when they most need the help of education policymakers. He asked the committee to consider changes to streamline and improve this system.

Chair Readler then opened the floor for questions.

Rep. Cupp asked whether the situation Mr. Gunlock described, in which there is divided authority in policymaking and implementation of policy, represents a temporary phenomenon based on personalities, or an ongoing situation. Mr. Gunlock said that situation will continue because the current system is fundamentally flawed. He said whenever there are three people making policy, two of the three people need to bow out. As an example he described that the General Assembly gave the board responsibility for setting graduation requirements, and the board did so, but at the last minute the General Assembly rejected the board’s requirements and provided its own. He said, as a result, the requirement became for students to take a test on physical science despite that half of the school districts around the state did not teach that course.

Rep. Cupp followed up, asking whether the issue of multiple policymakers could be resolved by a change in the statutes, or whether a constitutional change is required. Mr. Gunlock answered that it can be done either way, but that the easiest way would be legislatively. He said his solution would be to have the governor appoint, with the Senate’s approval, between five and seven people who know how to do education policy, and that these appointees should not be political but should have a background in education. He said those appointees should be paid a substantial salary to meet at least on a weekly basis. He indicated the group would then figure out how to implement a policy, for example, how to achieve a third grade reading guarantee across the state, and would recommend statutory changes to the General Assembly. He said “we

need people who know how to do education policy.” He said the state board could continue to govern teaching licensures, district transfers, and similar tasks.

Governor Bob Taft commented that the state board serves as a buffer and provides continuity, but that some states do not have a state board. He asked whether there are benefits to having a state board of education.

Mr. Gunlock said, ideally, the General Assembly and the governor would not be involved in education policy, but acknowledged that this will not occur. He said education represents a significant portion of the state budget, and the General Assembly naturally wants a say in how the money is spent. Nevertheless, he said, “we are dealing with kids’ lives, and when we mess up it is affecting kids.”

Committee member Paula Brooks commented that, as a county commissioner, she has been involved in an initiative to try to affect better birth outcomes, specifically trying to reduce premature births and reduce infant mortality. She said her group has considered complicated issues related to social determinants and poverty. She asked whether the governor has considered putting together a task force such as Mr. Gunlock described in order to consider how poverty affects educational outcomes. She also asked what Mr. Gunlock would consider to be the “gold standard” regarding educational policy.

Mr. Gunlock answered he does not know if there is a gold standard, and has not studied what other states have done. He clarified that his testimony is based on his board experience, which has caused him to conclude the current system for setting educational policy is not working correctly. With regard to Ms. Brooks’ first question, he said adding a committee does not resolve his concerns, and that if a committee is added, one or more other committees should be removed, “otherwise you are adding one more item to deal with.”

Committee member Roger Beckett commented that a current trend in education is the blending of elementary and secondary education with higher education, described as “college credit plus” programs. He said the traditional view of elementary and secondary education as being separate from higher education seems to be evolving. He said one of his concerns about this provision in the constitution is that it could create a barrier for that effort going forward. He said while there are now two separate boards, the Ohio State Board of Education and the Ohio Department of Higher Education (formerly the Ohio Board of Regents), the two groups are now situated next to each other in the same building, which Mr. Beckett said is an important development. Mr. Beckett asked Mr. Gunlock if he could address the role of higher education in the work of the state board.

Mr. Gunlock said it is “critically important” that the two agencies work hand in hand, especially when dealing with the college credit plus program. Acknowledging that college is expensive, he said such programs help families and students alleviate some of that cost, and that some of the courses are offered online.

Chair Readler noted that slightly more than half the states have a state board, usually by statute not constitution. He said, in most states, the members are appointed by the legislature, the

governor, or some combination of the two. He said selection of the superintendent is up to the board per Ohio's constitution, but his sense is that the governor, in essence, selects the superintendent. He asked whether it is typically the case that the new governor gets to select the superintendent.

Mr. Gunlock answered that Superintendent Susan Zelman served when Governor Taft was governor, but when Governor Strickland took over there was a controversial effort to remove Zelman from her position. Mr. Gunlock said the role of the state superintendent has become somewhat political, although he said "it is not necessarily wrong that [a governor] would want his pick." He said sometimes the change in superintendent occurs because the board is appointed by January first but the governor does not take office until mid-January. Thus, he said, the outgoing governor can still pick the board so long as the Senate majority is the same party and agrees with those picks.

Chair Readler asked Mr. Gunlock whether, in his opinion, it is better to have the governor make the appointments. Mr. Gunlock said, ideally, yes. He said it would be nice if the state board still picked the superintendent, but if the governor and the legislature must remain involved in education policy, whoever is setting policy needs to have a say in naming the superintendent.

Noting that the board supervises teacher licensing, Chair Readler asked whether that is a function that could be performed by the Department of Education. Mr. Gunlock answered that teacher's licenses should be handled by a board, whether appointed or elected. He said, where issues arise involving a license, the Department of Education handles the investigation, and the people handling the investigation should not be the people making the decision whether to revoke the license. He said the state board decides whether to agree or disagree with the department's hearing officer.

Rep. Cupp observed that, in some states, the selection of the chief state school officer is by a vote of the people, while other states have an appointed state superintendent. Mr. Gunlock said Indiana is one example of a state that elects its superintendent. Rep. Cupp added that California also does it that way. Mr. Gunlock said he has no view about whether that method is preferred, but he said Indiana has had problems after electing a controversial superintendent and has revised the role of the superintendent. He said there can be unintended consequences of making that position political.

There being no further questions for Mr. Gunlock, Chair Readler thanked him for his testimony.

Chair Readler then asked if members of the public attending the meeting had any questions or comments for the committee or for Mr. Gunlock. There being no public comments or questions, Chair Readler noted that the committee began its consideration of Article VI, Section 4 at its October 2015 meeting, and that a consistent theme reflected in the comments is that there might be a better way to do things than is currently the case. He said, however, that the committee has not identified a potential change to the constitutional language.

Gov. Taft commented that, having worked with former Superintendent Zelman, he would like to clarify some of the facts about her service and resignation. He said Superintendent Zelman had

just been hired when he began his term as governor, and that they established a close working relationship. He said it was a difficult situation for her, working closely with the governor but reporting to a state board of education, so she had to be extremely careful in working with his administration but also retaining the confidence of a board that, technically, was her boss. He said he shares Mr. Gunlock's concern about the dilution of authority and the difficulties of trying to serve many masters. He said it would work better if the governor could appoint all members of the state board, giving an opportunity for the governor and the state board to be aligned. But, he said, in the constitution, there is nothing to prevent the legislature from changing the law to allow the board to be appointed entirely by the governor.

Gov. Taft continued, saying his other observation is related to Mr. Beckett's comment. He noted that Florida has combined responsibility for secondary and higher education into one department. He said there is nothing in Ohio's constitution preventing the legislature from doing that. He said one question remains regarding the existing language, which is whether the constitution should prescribe that the superintendent shall be appointed, or whether that decision should be left to the legislature. He said, currently, the General Assembly determines the manner and terms for selecting the State Board of Education. He said one option would be to provide for a superintendent to be appointed as provided by law.

Chair Readler asked Gov. Taft whether it would be more appropriate to have the superintendent appointed by the legislature, or by the governor. Gov. Taft said under current law there could be a superintendent with no power, meaning there is nothing to say the superintendent has to be director of the Department of Education. Gov. Taft said the superintendent is an executive function that should be appointed by the governor.

Mr. Beckett asked for clarification, wondering if the superintendent is part of the governor's cabinet. Gov. Taft said the superintendent was in the cabinet in his administration, but that was a problem for the board. He added that he included the chancellor of the Board of Regents in the cabinet as well.

Mr. Beckett said whether to amend Section 4 is a question that is deeply intertwined with many issues that are otherwise dealt with by the legislature. He said the constitution only requires that there be a state board and a superintendent. He said there seems to be a complex system where two pieces of it are mandated through the constitution. He said it is not this Commission's role to try to address the larger problems. He said he does not see the benefit of these requirements remaining in the constitution: "they are tying our hands, especially regarding the evolving role of higher education." He said his initial notion is that the committee should consider removing Section 4, leaving educational policy in the hands of the legislature.

Chair Readler said, while current language does leave the powers and duties of the board and superintendent to the legislature, its use of the word "shall" raises the prominence and significance of the state board, and does tie the hands of the legislature. He said it is an appropriate discussion to consider what influence this language has on the General Assembly's role, noting it contributes to the problem of too many "cooks in the stew." He wondered if current language in Section 4 encourages that problem, and expressed the possibility that a future

meeting could include a presentation from someone from the legislature, or someone with historical knowledge, to provide some insight.

Representative Michael Curtin said before the committee considers specific language, it should try to solve for simplicity. He said another goal would be to try to minimize partisanship in politics. He said he would not have difficulty supporting gubernatorial appointments of state board members as long as the recruiting method was a broad, bipartisan, policy-driven method, to ensure that the candidates have been vetted in a bipartisan way with buy-in across the educational spectrum. So, he summarized, his goals would be to bring about simplicity and to have a state board that would hire a superintendent in a manner that depoliticizes the selection.

Ms. Brooks said she appreciates the goal of simplicity, but that the primary focus should be on helping children. She said “we should look for the best workforce, the best education, and should do our best for children.” She said if that is not the priority, she does not think the process discussion is significant. She said it is important to “look at what is best for the children.”

Chair Readler agreed that this should be the committee’s goal, but said that the current system may be interfering with that.

Gov. Taft, following up on Ms. Brooks’ comments, said he is a strong advocate for early childhood education, and that when he was governor there were programs in two different agencies. He said Superintendent Zelman was trying to coordinate those programs, but she did not report to him. He observed there could be a real advantage down the road if the governor is more in control.

Rep. Cupp suggested the reason why there is a hybrid board. He said, if education policy is directed by the governor, it could result in philosophical swings every four or eight years. The other concern if the governor appoints, is that the appointees will come from all the big cities, where the political power lies in the state, so some regions of the state will be forced to do things that do not make sense for them. He said the decision was to try to meet the interest of both the governor and that of the public, and that is where the hybrid board came from. He said the Senate was supposed to support that by confirmation, and the idea was to avoid getting all board members from a particular part of the state. He added that another goal was to have the terms of appointed members overlap between changes in administration, in order to provide more continuity. He acknowledged there has been concern about the governor pressuring people to resign so that he can appoint others.

Chair Readler noted that, regarding the issue of the governor’s powers and the checks and balances, the legislature still has a significant role, and the constitution says that, for instance, in Sections 2 and 3 of Article VI. He said the legislature has a prescribed role regarding education in the constitution. He said the question comes back to whether Section 4 helps or hurts achieving simplicity.

Mr. Beckett said the challenge for the committee is that a recommendation on this section cannot be made in a vacuum. He noted this is a set of questions largely in the hands of the General

Assembly, and that the committee probably should leave it with the legislature. He said it is difficult for him to accept that the committee would create a detailed solution to the problem, or to suggest answers that are in the purview of the General Assembly. He said maybe the next step is to have a conversation with some legislators on the education committee in the House and Senate, perhaps inviting them to a meeting. He said the committee does not want to complicate what the legislature wants to do, but rather could raise this issue and make them aware Section 4 is broken but the committee alone cannot fix it.

Gov. Taft suggested asking staff to see if there are any other executive department heads that are mandated in the Ohio Constitution. He said he does not think the constitution says there shall be a director of the Ohio Department of Transportation, for example. He asked where else the constitution mandates a specific department director. Chair Readler agreed that question is worth looking into, noting that Article VII (Public Institutions) mentions a “Director of the Penitentiary System.”

Chair Readler asked whether committee members could suggest any other speakers who might want to present on this topic. Ms. Brooks said she would give it some thought and let Chair Readler know. Chair Readler indicated the committee will be meeting in February, and additional speakers could be accommodated then.

Adjournment:

With no further business to come before the committee, the meeting adjourned at 10:48 a.m.

Approval:

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

/s/ Chad A. Readler

Chad A. Readler, Chair

/s/ Edward L. Gilbert

Edward L. Gilbert, Vice-chair



OHIO CONSTITUTIONAL MODERNIZATION COMMISSION

**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 30th, lagging behind Poland, Vietnam and Estonia. She noted that *Education Week* recently released its ranking of states' educational performance, ranking Ohio 23rd. 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 119th 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 121st 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

Chad A. Chair Readler, Chair

/s/ Edward L. Gilbert

Edward L. Gilbert, Vice-chair



OHIO CONSTITUTIONAL MODERNIZATION COMMISSION

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

**FOR THE MEETING HELD
THURSDAY, APRIL 14, 2016**

Call to Order:

Chair Chad Readler called the meeting of the Education, Public Institutions, and Local Government Committee to order at 9:41 a.m.

Members Present:

A quorum was present with Chair Readler, Vice-chair Gilbert, and committee members Beckett, Coley, Cupp, Curtin, Sawyer, and Taft in attendance.

Approval of Minutes:

The minutes of the February 11, 2016 meeting of the committee were approved.

Presentation:

Article VI, Section 6 (Tuition Trust Authority)

Chair Readler began the meeting by noting the committee would be receiving a presentation on Article VI, Section 6 dealing with the Ohio Tuition Trust Authority.

*Timothy Gorrell
Executive Director
Ohio Tuition Trust Authority*

Chair Readler introduced Timothy Gorrell, executive director of the Ohio Tuition Trust Authority (OTTA), an agency within the Department of Higher Education charged with responsibility for administering the tuition credits program set forth in Article VI, Section 6.

Mr. Gorrell indicated the OTTA originally was created in 1989 under R.C. Chapter 3334, with the purpose of helping families save for higher education expenses. He continued that, in

November 1994, Ohio voters approved State Issue 3, a constitutional amendment that provided the state's full faith and credit backing for the Ohio Prepaid Tuition Program (now known as the Guaranteed Savings Plan), and to clarify the federal tax treatment of that plan.

According to Mr. Gorrell, in 1996, Section 529 was added to the Federal Internal Revenue Code to provide a federal tax-advantaged way to save for college education expenses. Then, in 2000, the Ohio General Assembly authorized Ohio to offer variable savings plans, as well as allowing a state tax benefit by which Ohio residents can deduct up to \$2,000 a year, per beneficiary, from their Ohio taxable income.

In December 2003 the Guaranteed Savings Plan was closed to contributions and new enrollments in response to rapidly rising tuition costs and investment pressures due to the market environment, said Mr. Gorrell. Then, in 2009, existing legislation was changed to place OTTA under the Department of Higher Education, with the role of OTTA's 11-member board being limited to a fiduciary duty over the investments in OTTA's college savings plans.

Mr. Gorrell described OTTA as a "non-General Revenue Fund, self-funded agency," with all of its operating expenses being funded through account fees paid by CollegeAdvantage Program account owners.

Mr. Gorrell said OTTA currently sponsors three plans under the CollegeAdvantage 529 College Savings Program. He said funds invested in these plans may be used at any accredited college or university in the country, as well as at trade schools and for other education programs that are eligible to participate in federal financial aid programs. According to Mr. Gorrell, across the three plans, OTTA directly manages or oversees over 641,000 accounts and \$9.4 billion in assets as of March 31, 2016.

Mr. Gorrell further explained that, in November 1994, by adopting Article VI, Section 6, Ohio voters approved providing the Guaranteed Savings Plan with the full faith and credit backing of the state, meaning that, if assets are not sufficient to cover Guaranteed Savings Plan liabilities, the Ohio General Assembly will appropriate money to offset the deficiency.

Mr. Gorrell also indicated that OTTA has the responsibility to generate investment returns on assets to match any growth in tuition obligations, noting that, currently, OTTA has sufficient assets on a cash basis to meet the payout obligations of the existing tuition units and credits held by account owners.

Mr. Gorrell concluded that Ohio's CollegeAdvantage 529 College Savings Program, including the Guaranteed Savings Plan, helps Ohioans and others across the country save over time to help offset the future costs of higher education.

He said OTTA does not recommend any changes to the existing Article VI, Section 6 of the Ohio Constitution. Reiterating that the purposes of the constitutional amendment were (1) to clarify federal tax treatment of the Guaranteed Savings Plan, and (2) to provide the Guaranteed Savings Plan with the full faith and credit backing of the State of Ohio, he said the federal tax goal of the provision came from a period of unsettled case law that created uncertainty as to whether similar prepaid tuition programs were exempt from federal taxation. Because that uncertainty has since

been resolved by the codification of Internal Revenue Code Section 529, he said the constitutional provision is no longer necessary to clarify federal tax treatment of such plans. However, he said, with regard to the second purpose of establishing the full faith and credit backing of the Guaranteed Savings Plan, OTTA defers to experts in Ohio constitutional law as to whether the constitutional language is necessary to maintain that guarantee. He said OTTA believes its duty is to continue to service the existing Guaranteed Savings Plan account holders and to manage the investments in a way that minimizes risk to the state under the guarantee.

Chair Readler asked whether Article VI, Section 6(A) continues to have a purpose. Mr. Gorrell answered that his understanding is that when the plans began in the 1990s, these types of college savings plans were just starting up and many were guaranteed plans. He said at that time there were concerns about the status of the plans under federal tax law, and no federal guidelines. He said Ohio decided to address that concern, but after the constitutional amendment was adopted and the federal government caught up by codifying Section 529, Article VI, Section 6(A) was no longer necessary.

Chair Readler followed up, asking if Mr. Gorrell agreed that it is not necessary to remove Section 6(A). Mr. Gorrell said the Guaranteed Savings Plan has been closed since 2003, with each year having fewer account holders, so there will be a time in the future when the fund will not exist anymore. He concluded that the question of whether there needs to be a constitutional provision or not will be answered by the passage of time.

There being no further questions, Chair Readler thanked Mr. Gorrell for his presentation.

Article VI, Section 4 (State Board of Education)

Chair Readler then turned the committee's attention to its continuing consideration of Article VI, Section 4, relating to the state board of education and provision for the appointment of a state superintendent of public instruction.

Russell Harris
Ohio Education Association

Chair Readler recognized Russell Harris, education research development consultant for the Ohio Education Association (OEA), an organization that represents 122,000 educators across the state. Mr. Harris indicated that he was appearing to express the OEA's concerns relating to the suggestion that the state board of education be an all-appointed board.

Indicating the OEA has had a longstanding policy that supports an all-elected state board, Mr. Harris noted that state board members are among the few public officials who are considered to be "non-partisan." He said an all-appointed board would not be less political, and that, although there are some appointed board members in the current system, "having an all-appointed board would make it more vulnerable to the political whims of whoever is governor."

Mr. Harris said, in 1994, when the then-sitting board refused to appeal the state's loss in the *DeRolph* school funding case, the governor called for an all-appointed board. He said the General Assembly rejected this idea, but compromised by creating the current hybrid board

consisting of eight gubernatorial appointees and eleven elected representatives from districts that are each comprised of three state senate districts.

Mr. Harris continued that, while the current hybrid board has at times been subject to partisan politics, it also has agreed on important issues such as the need for stronger oversight and accountability for charter schools. He said having elected board members has made the overall board more responsive to the public's desire for reform. Nevertheless, he added there are still many instances where the votes of the board are "along party lines," with appointed members joining with members of their own party to form a working majority on most votes.

He said it is not clear just who the appointed or at-large members of the board represent. He said they may represent people in their home school district or county, or they may be carrying out the wishes of the governor who appointed them. In any event, he continued, they do not have to answer to the voters.

Mr. Harris concluded that, in order to best serve the needs of Ohio's students, the state board should be an independent voice for public education. He said an autonomous, all-elected board can better advocate for high-quality educational opportunities for all children, and for providing resources based on educational needs instead of political expedience.

Chair Readler thanked Mr. Harris for his remarks, asking Mr. Harris whether one of the speakers who had presented to the committee had proposed that the state board of education be all-appointed. Mr. Harris said the only speaker who had advocated for an all-appointed board was Tom Gunlock, current president of the State Board of Education. Chair Readler disagreed, saying his recollection was that Mr. Gunlock had suggested several possibilities for improvement, with one possibility being an all-appointed board.

Mr. Ed Gilbert asked whether Mr. Harris had suggestions regarding whether the superintendent should be elected or appointed. Mr. Harris said the OEA does not have an official position on that question, but has always operated under the model that the state board has one employee, who is the superintendent, and that the board has the ability to hire and fire the state superintendent. He noted there are only 13 states that have an elected superintendent, thus, in the majority of cases, the board has control over the state superintendent.

Chair Readler noted that in a majority of states the governor appoints the board members, unlike Ohio, adding that even though the state board is picking the superintendent, the governor is picking the board.

Representative Michael Curtin commented that all all-appointed boards are not created equal, suggesting that providing safeguards as to what sort of candidates would be forwarded to the governor for his consideration could help improve the composition of the board. He said, for example, there could be a nominating council to vet and forward names to the governor, and the council could be comprised of experienced stakeholders. He added that there could be criteria for who could be considered for a nomination. He said, for example, the candidate could be required to have served two terms on a local board of education before being considered, there could be a requirement for interviews by the council along with the council's approval by a supermajority vote (2/3 for example), followed by consent of the Senate by supermajority vote.

He asked Mr. Harris, if such a procedure were in place, whether the OEA would still oppose any type of appointment to the board.

Mr. Harris said Rep. Curtin's suggestion was an interesting prescription for the board's configuration, and would be better than the current structure. He said Rep. Curtin's plan would improve the appointment process, and that OEA would have to see the details. However, he said his organization would look at that plan much more favorably than it views the current system.

Senator Tom Sawyer asked whether Mr. Harris could describe how an all-elected board differs from a hybrid board in terms of problem-solving and decision-making. Mr. Harris said there are eleven races for the state board, noting that seven of the seats are up for a vote in November, and that for the last three election cycles there have been seven board member seats contested each time. He said there has been a great deal of campaigning for state board positions. Based on his experience attending all board meetings, he said he has noticed that elected members are aware of regional, parent, and local board concerns particularly relating to high-stakes testing. He said he has seen fair and well-intended resolutions go down, and said there would be a difference if it were an all-elected board. He emphasized the importance of removing topics from the governor's administration, citing this as a way of preventing recent scandals. He noted that when the General Education Development (GED) program was taken out of the Department of Education and given to a private firm, the price increased and there are many fewer GEDs being given now. He said board members are upset, and would like to work with the legislature to get it back into the hands of the department, but the elected members are sensitive to the preferences of the public while appointed members are not because they look to the administration's view. He said he thinks things would be different if there were an all-elected board, and the autonomy that goes with that.

Mr. Harris cited the current trend in which there is frequent turnover of the superintendent as one symptom of the problem, indicating that superintendents would not be forced out if there were an all-elected board. He said, however, that state board districts are unwieldy, with three senate districts together making one state board district. He said the current system results in a huge geographical area, with approximately 900,000 or more voters in each district.

Chair Readler asked whether Mr. Harris is proposing a board with 33 members, to which Mr. Harris said no, but that the districts are too big. He said the solution would be to follow the lines of Congressional districts.

Committee member Roger Beckett said currently the constitution is silent on the question of how the state board is selected; it is left to the legislature. He asked whether it is the association's position that the method of selecting the board should be taken out of statute and put in constitution. Mr. Harris said that would be OEA's first preference, and that OEA wants a constitutional amendment for all-elected board. Nevertheless, he said, OEA recognizes that statutes allow some flexibility because times change, technology changes, and the legislature needs to react. So, he said, the first preference would be for a constitutional amendment, and the second preference would be to leave Section 4 the way it is.

Senator Bill Coley said legislators generally care more about the opinions of the local boards in their home districts rather than those of the state board. He said he does not foresee a possibility

that the General Assembly would cede authority over education or educational funding to the state board. He asked whether, given that reality, a state board of education is necessary. He also wondered why it would not work to have a superintendent who is a member of the governor's cabinet.

Mr. Harris answered that the state needs a state board to implement legislation enacted at both state and federal levels, to set standards, and to define and coordinate rules. He said he agrees the legislature should not give up authority to provide funding and set direction, but implementing educational policy needs to be done by education professionals, not political professionals. He said that can be accomplished better with an all-elected state board.

Governor Bob Taft noted that, at the committee's last meeting, Senator Peggy Lehner had recommended that the superintendent be a member of the governor's cabinet appointed by the governor, but that the person would not change with every administration. He said the most interesting part of her testimony was her observation that the primary function of the board is to set a clear educational vision for the state, and to provide a long-term strategic plan or road map for everyone to follow. He said Sen. Lehner recommended that the board include key stakeholders selected on the basis of their expertise. He said he found that plan interesting, and suggested that the state board could include parents, or business leaders, for instance. Gov. Taft asked for Mr. Harris' reaction to Sen. Lehner's model.

Mr. Harris said he worked for the secretary of education in Pennsylvania for many years, and there that model worked very well, and under that model there was a lot of coordination with other members of governor's cabinet. He said, in a sense that plan moved things up a level to the cabinet level. He continued, if there were stronger, more representative, and experienced members of the board, they could lay out that vision, advocate programs and resources for children, and could deal with a secretary of education or other title who is in the governor's cabinet. But, he said, governors change and secretaries of education change. He asserted the reason for there being only a few superintendents over a span of 35 years was that the all-elected board was independent and autonomous and acted to maintain that continuity. He concluded, there are good attributes to both models, but there is a huge disruption to the educational improvement process when you change superintendents at the same time you change governors.

Gov. Taft noted he likes the concept of prescribing the nature of who is on board, requiring members who specifically represent the interests of teachers, school boards, and parents, for example, and selecting from a pool of candidates representing each seat.

Mr. Harris said that plan relates to the best aspects of Rep. Curtin's suggestion, and reduces the problem of board members having no background in educational policy. Mr. Harris said, if Ohio had a system with those requirements, it would be a better system than the current system.

Chair Readler commented on the need to take politics out of education. He asked how the system could be made less political. He said he is not sure the constitution should prescribe the selection of the members. He said the Pennsylvania model is very governor-dominated. He asked Mr. Harris whether, under the current constitutional language, change is being inhibited because the board is required to appoint the superintendent. He said the constitution has tied the hands of groups that want to resolve these issues.

Mr. Harris said the fact that the state superintendent is the single employee of the board has been a good model and has allowed for the independence and autonomy of the state board through the decades with the result that the board has had a nonpartisan history. He said he would be hesitant to take that authority away from the state board and give it to the governor unless things really changed and there were a system such as described by Rep. Curtin and Gov. Taft.

Chair Readler commented that he would like to make the process less political, but he is not sure how. Mr. Harris gave school funding as an example, saying he worked on seven school funding cases across the country and that, because of the money involved, they politicized education in an unnecessary way. He said 49 states have now had school funding litigation. He said the conversation about education becomes about budgets, budget residuals, and the politics of spending, and not about the needs of children, or the educational system. He remarked, “we need to get the conversation back to the educational needs of the students,” adding the focus should be on the efficient administration of schools, and encouraging the best people to be teachers. He emphasized, “we need a strong, well-qualified board of education to take that on.”

Mr. Gilbert said he has a concern about Mr. Harris’ proposal to provide for an all-elected board in the constitution because the state’s history of gerrymandering has made the African American community concerned about being pushed out of the educational process. He said he does not know the current makeup of the board, but is concerned that if it is all-elected it will exclude African Americans, who predominantly rely on the public school system.

Mr. Harris noted that Sen. Sawyer has worked on that problem. He said Ohio badly needs redistricting reform, with fair districts for both the General Assembly and Congress. He said, until that happens, Mr. Gilbert’s concerns are valid because of the way the districts are drawn. Mr. Harris said he is optimistic and hopeful regarding redistricting reform. But, he said, in addition to the problems and solutions noted by Rep. Curtin and Gov. Taft, there should be diversity on the state board; thus, the criteria for choosing board members should include candidates who can serve minorities with expertise.

Mr. Gilbert asked about the current makeup of the board. Mr. Harris said there are many women members, and one Hispanic member, but no African American members of the board. He said all members realize diversity is a big problem.

There being no further questions for Mr. Harris, Chair Readler thanked him for his presentation.

Discussion:

Chair Readler then led the committee in its discussion of possible recommendations for Article VI, Section 4.

Mr. Beckett said consideration of Section 4 poses some complex questions. He said, in his view, there are parts of the section that bind the hands of the legislature, for example, there is no constitutional provision relating to the board of higher education or its chancellor, and therefore there is a forced separation between K-12 and higher education. He said, in recent years, states have begun to blend both of those educational systems, recognizing that some overlap is helpful.

As a way of assisting the committee in considering possible revisions to Section 4, Mr. Beckett proposed a revision that would broaden the General Assembly's ability to include higher education, giving the legislature more flexibility. He said his proposal also removes the constitutional requirement that there be a superintendent who is appointed by the state board. He said this does not mean there should not be a state board, but, rather, that the legislature should have the flexibility to best determine how appointments should be made or how K-12 and higher education work together.

Mr. Beckett proposed the following language for Article VI, Section 4:

To oversee education in this state, the General Assembly may provide for boards, departments, and directors that may be selected in such manner and for such terms as may be provided by law, and may prescribe by law their respective powers and duties.

Gov. Taft commended Mr. Beckett on his proposal, and said he thinks it is something the committee should seriously consider. He said, although the committee has not formally discussed this until now, it is clear that there are many views on the issue, noting his own views and those of Senator Peggy Lehner, who presented to the committee at its February 2016 meeting. He said, as compared with the local boards of education, he is not sure that the state board provides a significant measure of accountability given the size of the state board districts. Gov. Taft said the constitution has good language already that ought to be retained, for instance Article VI, Sections 2 and 3. He said language in those sections covers the educational needs of the state. He said his first inclination would be to totally remove Section 4, but that would be interpreted as a recommendation to eliminate the state board, which is not his intent.

Sen. Sawyer, expanding on Gov. Taft's comments, said the Ohio Constitution is modeled on the United States Constitution, which describes the functions the government is called to undertake and how Congress is to fulfill those responsibilities. He said this flexibility is expanded on in Mr. Beckett's proposal, which gives clarity, and reflects a goal of considering the changing nature of education in modern environment. He said he believes the proposal provides for the latitude the legislature needs, but should be combined with an electoral environment in which an elected board can provide the right circumstances for an appointed superintendent. He said while there are many formats by which that could be achieved, he would like to provide for the legislature to do that.

Mr. Gilbert said he appreciates what Mr. Beckett has proposed, but his concern is that the draft language does not require the General Assembly to do anything because it does not use the word "shall." He said that sends a bad signal to the public. He said the current language is a mandate, but under Mr. Beckett's proposal the legislature could decide to do nothing. He said a second problem is that the proposal ignores the problems that resulted in the *DeRolph* litigation, which is that poor districts were suffering because no one cared. He said there ought to be mandated language, and there must be some thought given to quality across-the-board for all school districts.

Rep. Curtin said he is concerned about the proposal, noting if this were the new Article VI, Section 4, it would wipe out the state board and the superintendent, replacing them with the great

unknown. He said, despite concerns, the existing section has served the state well. He said, “we have been trying to solve for partisanship, and increase the level of expertise of board members, but this exacerbates the problem because it gives the General Assembly the opportunity to do nothing and to leave it to the governor.”

Chair Readler said he agrees the proposal has some unknown aspects, leaving details to be addressed at some point. He observed the majority of states create state boards by statute and have resolved problems by having some kind of role for the governor. He said Ohio is the only state that has a constitutional superintendent of public instruction. Chair Readler said Mr. Beckett’s proposal would seem to take Ohio closer to other states, but that does not mean they are right and Ohio is wrong. Chair Readler asked Rep. Curtin if he has thoughts on how to ameliorate the concern about the unknown result of the proposed change.

Rep. Curtin said it is not possible to change Section 4 without a vote of the people, and, further, it would be necessary to have the support of stakeholders. He said the proposal, as drafted, “would invite warfare; we wouldn’t get it out of the Commission.” He remarked, “ideological warfare is at an all-time high, primarily because of gerrymandered districts.”

Mr. Beckett said, as a public member, he does not have knowledge of legislative concerns but can appreciate them. Responding to Gov. Taft, Mr. Beckett said what his proposal does could be addressed under Article VI, Sections 2 and 3. He agreed that eliminating Section 4 would be a mistake, and said he is not suggesting that. He agreed the proposal could be revised to include mandatory language. Mr. Beckett said he shares Rep. Curtin’s concern about how this might unfold, but noted it could be “the worst solution except for all the alternatives.” He said it would be a mistake to be more specific in the constitution, a result that concerns him. He said he wants to give the legislature the ability to address issues more effectively, rather than to allow the legislature to avoid the issues.

Sen. Coley commented that the proposed draft is a good starting point. He observed that sometimes people take questions as advocacy, cautioning that no one is suggesting that the state board be abolished. He suggested including a trigger mechanism so that the change would not take effect until 2023. He said, at that point, concerns would be alleviated because districts would be redrawn.

Rep. Curtin emphasized the importance of placing education in the hands of professionals. He said he would worry about turning policy over to the General Assembly. He said some things are so important that politics should be limited, and that nothing is more worthy of that goal than K-12 education. He said this type of proposal runs counter to the shared goal of reducing partisanship in education, suggesting that “if we could have a proposal that captures our shared goal of lowering partisanship and increasing expertise than we are onto something.”

Gov. Taft noted the role of the superintendent of public instruction in Ohio is for K-12, but that Florida has combined all educational sectors. He said, looking forward, the committee might want to preserve the option to have K-12 combined with higher education.

Mr. Gilbert agreed, saying “we need to look at expertise in the educational field.” He added that Mr. Beckett has done “an excellent job raising our attention to these matters, but to move forward we should turn to counsel, absorb comments, and come up with some alternatives.”

Sen. Sawyer commented that, as the committee progresses, it is important to remember the distinction between development of policy by the state board, and the administration of policy by the Department of Education. He said making sure the requirements of thoroughness and efficiency are carried out as a matter of policy should be done without regard to politics and partisanship. He continued, if there is a place where policy can be altered over time through elected board members, that is where democracy comes in. He concluded it is important to make sure the work of the Department of Education reflects the intended will of the elected board.

Gov. Taft asked whether staff could draft language that, without specifying who should be on the state board, would encourage the legislature to provide specifics that would secure greater expertise on the state board.

Rep. Curtin noted that many state boards reserve seats for people with expertise. But, he said, that is a matter for legislation, adding that, by statute, many boards are required to have certain members with expertise. He agreed that draft language would be useful.

Sen. Sawyer agreed with Rep. Curtin’s comment, saying the boards are where the General Assembly puts expertise within the departments.

Chair Readler asked whether requiring expertise should be part of the constitution, noting he is a minimalist and is not sure whether that is a subject for legislation. He wondered if there could be a proposal that would satisfy everyone.

Mr. Beckett said if the committee agrees to something along these lines, the legislature is going to have to act. He suggested the committee consult with the legislature. He remarked, “we have to be able to go to the voters and say this is intended to fix that problem.”

Rep. Curtin said, if the committee has staff follow up by providing draft language, there would be something for legislators to consider. He cautioned, however, that he does not want to propose something that would “create a firestorm in the educational community.”

Chair Readler asked how the committee should proceed. Sen. Coley suggested draft language could be a staff project.

Sen. Sawyer said he would want to provide the least-prescriptive mandate, noting that, under the U.S. Constitution, when there is a function created, it requires Congress to take action.

Rep. Curtin suggested a draft include a trigger date that is out several years. He said this will reduce anxiety and give time to deliberate.

Gov. Taft suggested staff have one version of proposed language that deals with the composition of the board, including the proposals suggested by Sen. Lehner as expressed in her presentation to the committee. He added there should be a succinct statement of purpose, such as “there shall

be a state board of education with authority to prescribe a clear vision for education in this state.” He said it would be useful to consider defining the role of the board in terms of long-term vision and planning in the state. He added he would encourage legislative members to convene with their respective caucuses to help refine language.

Rep. Curtin said if the committee has drafts of both statutory and constitutional language, the committee should allow the interested groups who have testified to offer more commentary on the direction of the committee, adding this would give the groups an opportunity to study the proposal.

Chair Readler emphasized the committee has been receptive to the public, and encouraged participation by interested groups.

New Business:

Chair Readler then asked if there was new business to come before the committee. Sen. Coley directed the committee’s attention to Article XV, Section 6 (Lotteries, Charitable Bingo, Casino Gambling), noting that the proscriptive language used in that section does not belong in constitution. He said he would like a presentation on that issue, asking that the question be revisited because of the monopoly issue that voters passed in November 2015. He said he would like to look at that issue as a committee because it is an area ripe for consideration now that the anti-monopoly provision passed. He noted the General Assembly has allowed promotional gaming, which has cost schools, a result that was not the intention of the voters. He said the committee might find a presentation on that topic interesting.

Chair Readler said Article XV, Section 6 is on the committee’s list, but maybe at the next meeting the committee can discuss when is the most appropriate time to bring that up.

Adjournment:

With no further business to come before the committee, the meeting adjourned at 11:24 a.m.

Approval:

The minutes of the April 14, 2016 meeting of the Education, Public Institutions, and Local Government Committee were approved at the September 8, 2016 meeting of the committee.

/s/ Chad A. Readler

Chad A. Readler, Chair

/s/ Edward L. Gilbert

Edward L. Gilbert, Vice-chair



OHIO CONSTITUTIONAL MODERNIZATION COMMISSION

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

**FOR THE MEETING HELD
THURSDAY, JUNE 9, 2016**

Call to Order:

Vice-chair Edward Gilbert called the meeting of the Education, Public Institutions, and Local Government Committee to order at 9:40 a.m.

Members Present:

A quorum was not present with Vice-chair Gilbert, and committee members Brooks, Curtin, Sawyer, and Taft in attendance.

Approval of Minutes:

There being no quorum, the minutes of the April 14, 2016 meeting were not approved.

Presentation:

Article VI, Section 5 (Loans for Higher Education)

*David H. Harmon
Former Executive Director
Ohio Student Loan Commission (1984-1988)*

Vice-chair Gilbert announced the committee would be considering Article VI, Section 5, relating to loans for higher education. He introduced David H. Harmon, former executive director of the Ohio Student Loan Commission (OSLC), who provided information about his agency's role in facilitating college loans for Ohio students.

Indicating that he was employed with OSLC from 1977 to 1988, and was executive director from 1984-88, Mr. Harmon testified that Ohio was one of the earliest states to recognize a need for the support and encouragement of the provision of credit for the financing of higher education. He noted the General Assembly acted in July of 1961 to create the Ohio Higher Education

Commission, whose purpose was to guarantee repayment of student loans made by banks, savings and loan companies, and credit unions. The Higher Education Commission collected an insurance premium on each loan as it was made, covering administrative expenses and creating an insurance fund from which lender guaranty payments could be made. The state seeded the new organization with start-up funds that were later repaid in full.

Following the model established in Ohio and several other states, Mr. Harmon said the federal government moved in 1965 to create a federal program operating on the same principles. He said the federal Guaranteed Student Loan Program was a part of the Higher Education Act of 1965. In response, in 1967, Ohio designated the Ohio Higher Education Commission as the state's guaranty agency, renaming it the Ohio Student Loan Commission.

Mr. Harmon said the federal program provided for the "re-insurance" of all loans – meaning whenever the states paid off an insured loan, the federal government would reimburse the agency for each payment. He said OSLC continued collecting insurance premiums as loans were approved, providing the necessary revenue for agency operations.

Mr. Harmon said the OSLC had a board of nine commissioners appointed by the governor and confirmed by the Ohio Senate. He said the commissioners met monthly to review agency operations and reported to the governor. Daily operations were under the control of an executive director who staffed and administered the agency. Mr. Harmon said he was the fifth executive director, serving in that capacity until 1988.

Mr. Harmon said the OSLC was a self-sustaining entity, but operated like other state agencies in that its budget was approved in the state's biennial budgeting process and the commission's employees were state employees.

Prior to joining the OSLC in 1977, Mr. Harmon said he had been associate director of education lending at the Ohio State University. He said he was asked to take over as executive director at the OSLC when the previous director retired in 1984. During his time with the agency, Mr. Harmon said the annual loan volume grew from \$21.1 million in 1970 to \$120.3 million in 1978 – a 570 percent increase. He said the volume of loans guaranteed in 1979 was nearly double the 1978 loan volume. Mr. Harmon said the commission began with only three employees in 1962, but grew to over 50 in 1970, and reached nearly 250 by the early 1990s.

Mr. Harmon said the 1980s saw the beginning of competition for loan volume, as several multi-state guaranty agencies began offering services to Ohio students, schools, and lenders. He said, although these competitors were non-profits, as required by federal law, increased loan volume brought increased revenue – thereby enhancing the ability of these agencies to offer enhanced support and automation.

Mr. Harmon said the OSLC lacked the resources and spending authority to match these competitors on a feature-by-feature basis, but did respond to competitive developments. He said in 1992, the General Assembly authorized a move of the Ohio Instructional Grant Program from the Ohio Board of Regents to the OSLC, resulting in the agency being renamed to the Ohio Student Aid Commission (OSAC).

He noted that, despite the fact that the agency provided schools and students with enhanced service levels and streamlined processes, schools, lenders and student borrowers all found the competitive offerings from the out-of-state guarantors to be compelling, and the OSAC's market share, expressed as loan volume, plummeted. An additional factor was the creation of the Federal Direct Loan Program, created by President Bush as a pilot program in 1992. In 1993, President Clinton moved the Direct Loan Program from a pilot to fully operational status, anticipating that it would ultimately grow to replace the Guaranteed Student Loan Program.

Mr. Harmon said these changes caused the OSAC to vote in 1995 to abolish the agency. He said, by that time, the OSAC's share of Ohio's loan volume had fallen to below 50 percent and revenues declined along with the loan volume. He said the OSAC ended its 36-year run at the end of the state's biennial budget cycle in 1997. He said the state's guaranty agency designation was awarded by the U.S. Department of Education to an out-of-state competitor, and the grant and scholarship programs were transferred to another state agency. He noted that from the perspective of Ohio's students, schools, and lenders, it was a seamless transition.

Mr. Harmon added that the Guaranteed Student Loan Program and the Federal Direct Student Loan Program operated in parallel until 2010, when President Obama directed that all new loans be made through the Direct Loan Program. He said the switch to 100 percent Direct Lending was effective July 1, 2010 was enacted by the Health Care and Education Reconciliation Act of 2010 – the same legislation that created the Patient Protection and Affordable Care Act (PPACA), now known popularly as “Obamacare.”

Mr. Harmon observed that this development ended a public/private partnership that helped students and families pay for higher education for 35 years. He said guaranty agencies, which once totaled 50, with an agency designated in each state, shrank to only six or seven, because guarantors either merged with other agencies, closed their doors, or struggled to repurpose themselves.

He said, as a result of this change, the Direct Loan Program has become the primary source of assistance to students to help pay for postsecondary education. He said it is estimated that over 60 percent of all college and university students have to borrow to pay their bills and the resulting levels of indebtedness have become a social issue. He remarked that, in Ohio, 69 percent of all college graduates have student loan debt, which averaged just over \$29,000.

He said under the current system, all new federal loans are made directly by the federal government, but are disbursed, serviced, and collected by private contractors. While some private loan programs are offered by a variety of lending institutions, they represent a small fraction of the annual total of new loans being made.

Mr. Harmon then answered the committee's questions.

Committee member Paula Brooks asked Mr. Harmon to describe his current employment, and he said he coordinates services nationwide for nonprofit and for profit companies that deal in federally-backed direct loans for higher education. Ms. Brooks asked whether a system

involving private sector loans was adequate to meet the needs of students who need loans to be affordable.

Mr. Harmon said the cost of the student loan program is a factor, and with the private loan market there is a need for profit. He said government programs emphasize helping students. He said, in his view, a balance of programs is the best approach.

Governor Taft noted that Ohio created the program in 1961, but the effective date of the section is 1965, wondering how Section 5 came to be in the constitution. Mr. Harmon said the point of the constitutional section in 1965 was to allow the Ohio Student Loan Commission to become the guaranteed agency under the federal loan program. He said that change allowed the state to have the federal agency housed within state government.

Gov. Taft asked whether that section is now needed. Mr. Harmon answered that, with the move to the federal direct loan program, no states have a guaranteed program any longer. Thus, he said, the section is no longer necessary.

Gov. Taft asked whether Mr. Harmon knew of any adverse consequences if the section were repealed. Mr. Harmon answered that under the current circumstances it is not needed.

Vice-chair Gilbert commented on Mr. Harmon's testimony indicating the federal direct student loan program had been part of the same legislation that produced Obamacare, asking whether a potential future repeal of Obamacare might impact the student loan program and revive a need for Ohio to have a constitutional section relating to student loans.

Mr. Harmon said although the legislation was passed under same the omnibus act, the two programs are separate. Thus, he said, if Obamacare were repealed it would not affect the federal direct loan program. He said, however, that he anticipates other changes in the future that may shift some of the burden back to the states.

Vice-chair Gilbert asked whether such a development would affect Article VI, Section 5.

Mr. Harmon said unless new legislation is a precise mirror of previous legislation, it is unlikely that Section 5 could be repurposed for the new legislation. He said he is not sure a change in the constitution was ever necessary to allow the OSLC, but any need for new law could be done by statute rather than by constitutional amendment.

Rae Ann Estep
Former Executive Director
Ohio Student Aid Commission (1995-97)

Vice-chair Gilbert then recognized Rae Ann Estep, who is currently deputy director of operations at the Office of Budget and Management (OBM). She testified that she was appearing before the committee to offer information about her experience in her former position as executive director of the Ohio Student Aid Commission (OSAC) from 1995-1997. Ms. Estep said the mission of the OSAC was to guarantee the loans to persons or the parents of persons attending or planning

to attend eligible academic institutions. She said OSAC's primary duty was to administer the federal-guaranteed student loan program, and to provide loan information to students and their families. She said the OSAC also administered a state grant and scholarship program. According to Ms. Estep, the OSAC consisted of nine persons serving three-year terms, with two members representing higher education institutions, one representing secondary schools, and the three remaining members representing approved lenders. Ms. Estep said, during her tenure, the OSAC staff consisted of an executive director and 225 employees.

Ms. Estep continued that, in the summer of 1995, the OSAC began proceedings to dissolve itself due to changes in financial aid policy on the federal and state levels in the 1990s. She said a primary factor was competition from private companies and the OSAC's subsequent declining market share of student loans. She noted that, in 1989, the OSAC guaranteed 99 percent of the state's higher education loans, but that number fell below 50 percent in 1995. She commented that the OSAC administered a federal program with federal money, and was in direct competition with private companies offering the same service. She said the OSAC also faced the threat of cuts in funding from the federal government due to the federal government's rapidly changing financial aid policy. According to Ms. Estep, when the new federal direct lending program was established, it took away the OSAC's market share, ultimately leading to the vote to dissolve the agency.

Ms. Estep concluded by saying because the OSAC was financed by the federal government, its closing did not have a direct cost-saving measure for Ohioans. She said the grant and scholarship program, which was the only part of the OSAC's operations financed by the state, was transferred to the Ohio Board of Regents. She said the OSAC's final closure occurred on June 30, 1997. Ms. Estep noted that her tenure at the agency was focused on closing the OSAC and assisting its employees in transitioning to new positions.

Vice-chair Gilbert said a major complaint about student loans is the high interest rates that accompany them, asking whether a repeal of Section 5 would affect interest rates.

Ms. Estep deferred to Mr. Harmon to answer the question. Mr. Harmon answered that interest rates reflect the cost of borrowing at the federal level. He said the rates are variable, but the real problem for students is not the rates but rather the level of indebtedness. He said, generally, rates have been at a level reflecting where the market is over the years.

Ms. Brooks asked Mr. Harmon about a program in Maryland designed to keep graduates in the state by forgiving student loans if students pursue work in needed fields. She asked whether Mr. Harmon thought the committee should review that type of program and whether removing Section 5 might interfere with an effort to create such programs in Ohio.

Mr. Harmon said an aspect of student lending is the selective forgiveness or repayment in exchange for students entering fields that are being promoted. He said such a program could be handled separately from the current constitutional provision. He noted that type of program was never part of the OSLC. He said, if the state wanted to create such a program, it could do so legislatively.

Elaborating further on the topic, Mr. Harmon said there are a lot of those types of programs around the country; some are private sector, while others originate with the local government. He noted that when he was with the OSLC, Vinton County put together a local program to attract doctors to the community. He noted other programs that encourage teachers to take employment in low-income communities.

Vice-chair Gilbert asked whether eliminating Section 5 could prevent such programs, and Mr. Harmon answered that kind of program was never part of Section 5, and could be done by legislation.

Report and Recommendation:

Article VI, Section 3 (Public School System, Boards of Education)

Vice-chair Gilbert recognized Shari L. O'Neill, counsel to the Commission, for the purpose of giving a presentation of a report and recommendation for Article VI, Section 3 (Public School System, Boards of Education).

Ms. O'Neill noted that the provision bears some relevance to ongoing litigation in the case of *Youngstown City Sch. Dist. Bd. of Edn. v. State of Ohio*, 10th Dist. App. No. 15AP-941, currently pending in the Franklin County Court of Appeals. She said, as an update, oral argument was held in that case on April 14, 2016. She added that the docket reflects that one judge on the panel, Judge William Klatt, recused, and Judge Lisa Sadler replaced him on the panel by court order on April 18, 2016. She said no further developments on that case are recorded, and the decision of the court remains pending.

Ms. O'Neill described that Article VI, Section 3 authorizes the enactment of laws for the organization, administration and control of the state's public school system, reserving to city school districts the power by referendum to determine the number of members and the organization of their boards of education.

She indicated that the report and recommendation provides the history of the section, indicating it was adopted during the Progressive Era, and created, for the first time, a constitutional, statewide framework for school governance by mandating law that would organize, administer, and control a statewide public school system while allowing city school districts the power by referendum to organize their own school boards.

Ms. O'Neill described that the report and recommendation empowers the General Assembly to make laws governing the public school system and gives voters in some, but not all, school districts the power to determine by referendum the number of members and the organization of the district board of education. She said, under the provision, voter control of local school districts applies only to school districts "embraced wholly or in part within any city" and thus does not extend to "non-city" school districts. She further noted that the report and recommendation outlines activity of the 1970s Ohio Constitutional Revision Commission, which recommended no change to the section, as well as detailing presentations provided by several school board members who explained their roles to the committee. She said the report and

recommendation records the committee's conclusion that the current state of the law as it has developed around Article VI, Section 3 lends a meaning that could be lost if the section were changed. Thus, she said, the committee recommends Article VI, Section 3 be retained in its current form.

The committee briefly discussed the significance of having a second reading on Article VI, Section 3, wondering whether an additional reading, as well as discussion, was in order due to the lack of a quorum, and considering whether the *Youngstown City School District* case was an impediment to the committee moving forward on the report and recommendation. Steven C. Hollon, executive director, explained that the committee would be meeting again in September and could have an additional reading, with a potential vote, at that time.

Discussion:

The committee discussed what its next steps should be with regard to Article VI, Section 5. Gov. Taft suggested the Department of Higher Education might wish to opine on whether the section should be retained. Steven C. Hollon, executive director, said he had been in contact with counsel from the Department of Higher Education who had referred him to Ms. Estep, but that he would contact the department again to see if additional names could be provided.

Gov. Taft said the precise question is whether, if Section 5 were not in the constitution, the legislature could enact statutes related to or guaranteeing student loans in the future.

Ms. Brooks agreed, stating she would want to preserve authority for loan forgiveness programs, and if that authority derives from the constitutional provision it would be important to retain it.

Gov. Taft wondered if the attorney general could provide an opinion on that question.

Steven H. Steinglass, senior policy advisor, said, generally speaking, the General Assembly has broad plenary power to do what it wants in a range of areas. He added the precise question is whether, if the General Assembly acted, there would be other provisions of the constitution that might constrain it. He noted Section 5 has a "notwithstanding clause," indicating the drafters must have had some concerns that there were other constitutional provisions that might have inhibited the authority the General Assembly. He identified that as an area of research that could be pursued.

Mr. Steinglass further observed that in 1964-65 the Ohio Supreme Court threw out legislation that used state revenue bonds to fund economic development.¹ He said the following year Article VIII, Section 13 was approved, creating a constitutional basis for that kind of economic development. He hypothesized that the people who supported the student loan guarantees wanted to be careful and so went the amendment route and put in the "notwithstanding" language.

Senator Tom Sawyer asked Mr. Steinglass to look into that issue for the September meeting of the committee.

¹ *State ex rel. Saxbe v. Brand*, 176 Ohio St. 44, 197 N.E.2d 328 (1964).

Representative Mike Curtin asked whether the OCMC has the authority to request an attorney general opinion if it is considering eliminating a constitutional provision, noting that there is a concern about unintended consequences. Alternately he wondered whether the Legislative Service Commission could be consulted.

Mr. Hollon said staff would seek out all possibilities. He noted other committees have been addressing provisions which are obsolete. He said this section raises some interesting questions that would be explored.

Ms. Brooks said it would be important to get more data from an economic development viewpoint, suggesting maybe the section does not need to be eliminated but could be amended.

Mr. Hollon noted this is just the beginning of the committee's review of the section, and that further information, including other speakers, would be provided at a future meeting.

Vice-chair Gilbert noted the committee would not get to a discussion about Article VI, Section 6 (Tuition Trust Authority) due to a lack of a quorum, and said he expected that topic to come up at the next meeting.

Adjournment:

With no further business to come before the committee, the meeting adjourned at 10:33 a.m.

Approval:

The minutes of June 9, 2016 meeting of the Education, Public Institutions, and Local Government Committee were approved at the September 8, 2016 meeting of the committee.

/s/ Chad A. Readler

Chad A. Readler, Chair

/s/ Edward L. Gilbert

Edward L. Gilbert, Vice-chair



OHIO CONSTITUTIONAL MODERNIZATION COMMISSION

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

FOR THE MEETING HELD
THURSDAY, SEPTEMBER 8, 2016

Call to Order:

Chair Chad Readler called the meeting of the Education, Public Institutions, and Local Government Committee to order at 11:09 a.m.

Members Present:

A quorum was present with Chair Readler, Vice-chair Gilbert, and committee members Beckett, Coley, Cupp, Curtin, Sawyer, and Taft in attendance.

Approval of Minutes:

The minutes of the April 14, 2016 and June 9, 2016 meetings were approved.

Presentations:

Senator Bill Coley
Senate District 4
“Ohio: The State of Gaming”

Chair Readler recognized Senator Bill Coley, a member of the committee, who presented on the topic of casinos and other gambling operations in the state as provided by Article XV, Section 6.

Sen. Coley expressed that the language contained in Article XV, Section 6 does not belong in a constitution, and that, if it were legislation, it would not be considered to be well-written. He said, during the time the Commission has been reviewing the constitution, no witnesses have advocated putting language of this length, detail, and complexity in the constitution.

Sen. Coley emphasized he is not advocating eliminating casinos or gaming, noting that voters said they wanted to legalize gambling. Instead, he said, the problem is that the constitutional

provision indicates exactly where the gaming can occur, language that does not belong in a constitution.

Examining the history of the provision, Sen. Coley said Article XV, Section 6 had been promoted as a way to increase jobs and provide additional tax revenue for the state. He said the casino proponents had promised many more jobs and tax revenue dollars than have been realized. He said one example is that while employment during the construction phase inflated the number of jobs by ten thousand, those were temporary jobs that are gone now. Sen. Coley suggested Ohio officials were too trusting of the financial projections provided to them.

Sen. Coley said he has chaired the General Assembly's Permanent Joint Committee on Gaming and Wagering since its creation. He added that he is a member of the National Council of Legislators from Gaming States (NCLGS), and is currently serving as president. He said that his service in NCLGS has helped him understand the extent to which Ohio and other states have been taken advantage of by the gaming industry.

One example, he said, is that Ohio allowed casino operators to deduct from their revenue the amount that would be used for promotion. He said Ohio had been told that other states do not tax promotional activity. However, he said casinos engage in constant promotions in which they give away free play, and all of that promotional activity is untaxed.

Sen. Coley said, in reality, the average tax revenues have been 42 percent lower than originally presented. He said the state has given away over \$400 million in tax revenue. He questioned how long Ohio will continue to give a constitutionally-protected monopoly to out-of-state interests that have shorted Ohio taxpayers out of hundreds of millions of dollars in tax revenues.

Chair Readler asked, if gaming is not going away, whether Sen. Coley is proposing simply to eliminate the section or whether he advocates replacing it with statutory law. Sen. Coley answered he would like to see the section rewritten in a way that guarantees that gaming will stay in Ohio, that allows local entities to have a say in whether expansion occurs, and that protects currently-existing revenues.

Chair Readler asked whether Sen. Coley had language to propose, and Sen. Coley said he does not have that yet. He said the first question is whether the committee agrees the provision needs to change.

Representative Mike Curtin asked whether Sen. Coley advocates removing the section from the constitution and putting the details in statute. Sen. Coley answered that is part of his proposal, but he also wonders why there is a constitutionally-protected monopoly when the casinos did not deliver what was promised. He explained that, in the casino world, investment opportunities are worldwide, so investment decisions are triggered by the total return on investment. So, he said, there is a solid business reason why casino proponents did what they did.

Thanking Sen. Coley for his testimony, Chair Readler said the committee would return to this issue at a future meeting.

Michael Kirkman
Executive Director
Disability Rights Ohio
“‘Fostering’ Institutions and People with Disabilities”

Chair Readler then recognized Michael Kirkman, who is executive director of Disability Rights Ohio, noting that Mr. Kirkman would be addressing the committee on the history of Article VII, Section 1, relating to “Institutions for the Insane, Blind, and Deaf and Dumb.”¹

Mr. Kirkman began by noting that the word “institution” is ambiguous because an institution can be a physical place or a service, among other things. He said the language of the section is not self-executing, requiring action by the General Assembly.

He continued that his research did not indicate that the state currently operates institutions for the blind and deaf. He said although there is a school for the blind and a school for the deaf, they are operated under the auspices of the Department of Education and do not appear to be connected to Article VII, Section 1.

Describing the history of the state’s involvement in the care of the mentally disabled, Mr. Kirkman said the earliest attempts to provide care reflected a lack of understanding. He noted that, in the 1800s, reformers Benjamin Rush and Dorothea Dix led campaigns to provide more humane treatment to mentally ill persons. He said during that period, twenty states expanded the number of mental hospitals. He noted that, prior to the passage of Section 1 in 1851, Ohio had provided for the care and treatment of the insane, although most responsibility fell to charities, counties, and churches. After 1851, Mr. Kirkman commented that the state population grew, and there came a need for the state to sponsor asylums to provide more humane treatment to the mentally ill. He said there was no scientific evidence that Dix’s asylum model actually had a therapeutic value, but many believed asylums helped.

Mr. Kirkman commented that, as time went on, these institutions changed for the worse. Further problems were related to the philosophy behind the Eugenics Movement in the early 20th century, which regarded “feble-mindedness” as being genetic, and which was viewed as justification for mandatory sterilization. Mr. Kirkman noted examples of persons or groups who were institutionalized or sterilized solely because of race or economic status rather than due to actual mental incapacity.

Mr. Kirkman remarked that, in the 1960s, attitudes changed, and the field of psychiatry adopted new views on treating and institutionalizing the mentally ill. He said during that period the mental hospital was replaced with community care and neighborhood clinics. In the 1980s, he said, law evolved to where the state is now required to provide training to people in commitment, and the mentally ill are afforded equal protection and due process rights under the Fourteenth Amendment.

¹ Article VII, Section 1 reads: “Institutions for the benefit of the insane, blind, and deaf and dumb, shall always be fostered and supported by the state; and be subject to such regulations as may be prescribed by the General Assembly.”

He commented there has been a significant depopulation of state hospitals since the 1980s, with the unfortunate result that many mentally disabled persons became homeless or were imprisoned. He further noted that assistance to that population is now governed by the Americans with Disabilities Act (ADA), which focuses on services in the community rather than institutionalization.

He said Ohio currently has six psychiatric hospitals with a total of 1,067 beds. He said as many as 70 percent of this population has been committed as a result of a criminal proceeding.

Mr. Kirkman emphasized that the language used to describe those with psychiatric disabilities is a “major focus in the mental health world.” He said the word “insane” is offensive and discriminatory, with the current trend in the Ohio Revised Code being to identify people first and the disability second.

Mr. Kirkman suggested that, because Ohio does not operate any institution for the “blind” or the “deaf and dumb,” and because the trend is away from institutionalizing the mentally incapacitated, Article VII, Section 1 could be eliminated. As further support, he noted that funding state institutions takes away from community-based services. He said eliminating the section would not affect treatment of persons in the criminal justice system because treatment for those persons is required by the United States Constitution and derives from the inherent authority of the state to prescribe criminal laws.

Rep. Curtin asked whether advocates for the developmentally disabled would agree with Mr. Kirkman’s recommendation that the section could be eliminated with no adverse effects. Mr. Kirkman said the provision does not deal with the system in place for the developmentally disabled, but rather only addressed the “insane, blind, deaf and dumb.” However, he said many people would oppose removing the section because of the current climate, citing two bills in Congress relating to federal mental health law. He said one bill would push more toward hospitalization of patients, while the other would expand funding for current services. He said the debate in Congress has been polarized around how many beds are needed and whether the affected persons could be treated in the community. He said it looks like Congress may pass a bill after the recess. He noted that some could see removal of Article VII, Section 1 as an attempt to put the state out of the institution business, but he does not see it that way.

Committee member Ed Gilbert said he is concerned about removing the provision as opposed to correcting the language, because removal might suggest there would be no protection for mentally ill individuals. He said he would be interested in drafting language that would simply bring the section up to date. He noted a debate that occurred in the Bill of Rights and Voting Committee about the proper wording for persons who have mental health issues as described in Article V, Section 6. He suggested it would be possible to draft language that is more acceptable, so people would not take it the wrong way as they might do in the case of removal. He acknowledged “it would be heavy lift to do that.” Mr. Gilbert also asked whether the phrase “deaf and dumb” is currently accepted.

Mr. Kirkman answered that the deaf community does not like the word “dumb,” and that many do not consider themselves having a disability but rather that they simply have a different

language. He said the main point he would emphasize is that the deaf and blind are integrated into society now and are not institutionalized.

Seeking clarification, Chair Readler noted the word “dumb” is objectionable, and Mr. Kirkman agreed. Chair Readler also commented that the word “insane” is also not accepted, and Mr. Kirkman acknowledged the only context in which “insane” is still used is as a term of art in criminal law.

Chair Readler asked about the challenges of changing the language. Mr. Kirkman noted that whatever language is used today will have a different meaning in ten years. He said the better focus is on making the language consistent with federal law in terms of not segregating people.

Chair Readler asked about the legal force of the provision, noting it is not self-executing but must be supplemented by statute. Mr. Kirkman noted that an argument that the constitutional provision supports requiring the state to pay for institutionalization has been rejected in favor of the view that statutes control that question.

Representative Bob Cupp asked whether there is some other authorization in the Ohio constitution for use of public funds to assist those with disabilities. Mr. Kirkman said the power to do that existed before the 1851 constitution. He said the inherent authority to use public funds to assist the disabled lies with the general authority to provide for the general welfare of people in the state. But, he acknowledged, taking this language out could be viewed by some as eliminating a backstop.

Chair Readler asked if staff could provide insight on what the Constitutional Revision Commission recommended regarding Article VII, Section 1 in the 1970s. Senior Policy Advisor Steven H. Steinglass answered that this was one of the most contentious issues in the 1970s. He said at that time a majority of the commission voted to change the language to remove the offending words, but there were cases establishing a right to treatment. Thus, some 1970s Commission members wanted to put a right to treatment in the constitution, a proposal that achieved majority support but not the requisite two-thirds of the commission. He noted there is a minority report signed by nine or ten members of the 1970s Commission, saying the language should be strengthened consistent with the emerging right-to-treatment movement.

Mr. Steinglass continued that the General Assembly has plenary authority, and that a specific provision of the constitution is not needed to allow the General Assembly to enact law related to institutions for persons in need of care. He said the provision derives from the mid-19th century, when litigation was not viewed as an option. He said these mandates were addressed to the legislative branch, with no conception that the provision could be used as a basis for suing to protect an individual right.

Rep. Curtin added that the debate in the 1970s Commission was taking part in a supercharged climate, recalling that John Gilligan campaigned for governor by taking reporters to view these “medieval-type” institutions in order to emphasize a need to modernize. Rep. Curtin said there was no consensus as to how to replace those institutions, but now that is no longer a question and it is assumed those populations will be treated humanely.

Committee member Roger Beckett asked if the word “insane” is considered antiquated and offensive. Mr. Kirkman answered the word is not just antiquated but is not used clinically, and the mentally ill consider it to be stigmatizing.

Mr. Gilbert asked if Mr. Kirkman could recommend alternative language to the words “insane” and “dumb.” Mr. Kirkman said the problem with terms like this is that there is always the risk that in five years the preferred usage will be completely different.

There being no further questions for Mr. Kirkman, Chair Readler thanked him for his presentation.

Report and Recommendation:

Article VI, Section 3 (Public School System, Boards of Education)

The committee then turned to a discussion of whether to hear a final presentation and then vote on a report and recommendation for Article VI, Section 3 (Public School System, Boards of Education).

Governor Bob Taft said he would like to defer concluding the committee’s work on Article VI, Section 3 because he would like the committee to consider recommending elimination of the provision’s distinction between rural and urban school districts. Referring specifically to language excepting city school districts from the requirement that the General Assembly determine by law the size and organization of district boards of education, Gov. Taft said the basis for that exception is unclear. He said this exception could impede the ability of the General Assembly to address educational challenges across the state.

Senator Tom Sawyer said he concurs with Gov. Taft’s request to wait on issuing the report and recommendation, noting that the role of the General Assembly has changed in the last few decades in relation to public schools and the funding of nonpublic schools. He said it would be worthwhile to look at that issue. He said this section was written when Ohio, like other states, was expanding on its educational requirements, and, while the provision still may be sufficient, the current use of public funds for education may make it important to take a new look at the provision.

Mr. Gilbert commented that he heard from the head of the Youngstown NAACP, who would like the opportunity to present to the committee on the topic of Article VI, Section 3. Thus, he agrees with waiting to conclude the committee’s review of the section.

Chair Readler indicated that, in light of the requests by Gov. Taft, Sen. Sawyer, and Mr. Gilbert, the committee would postpone concluding its work on Article VI, Section 3.

Adjournment:

With no further business to come before the committee, the meeting adjourned at 12:30 p.m.

Approval:

The minutes of the September 8, 2016 meeting of the Education, Public Institutions, and Local Government Committee were approved at the November 10, 2016 meeting of the committee.

/s/ Chad A. Readler
Chad A. Readler, Chair

/s/ Edward L. Gilbert
Edward L. Gilbert, Vice-chair



OHIO CONSTITUTIONAL MODERNIZATION COMMISSION

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

FOR THE MEETING HELD
THURSDAY, NOVEMBER 10, 2016

Call to Order:

Chair Chad Readler called the meeting of the Education, Public Institutions, and Local Government Committee to order at 9:39 a.m.

Members Present:

A quorum was present with Chair Readler, Vice-chair Gilbert, and committee members Beckett, Cupp, Curtin, Sawyer, and Taft in attendance.

Approval of Minutes:

The minutes of the September 8, 2016 meeting were approved.

Reports and Recommendations:

Article VI, Section 5 (Loans for Higher Education)

Chair Readler recognized Shari O'Neill, counsel to the Commission, for purposes of a presentation on the report and recommendation for Article VI, Section 5. Ms. O'Neill indicated that the section expresses a policy encouraging financial support for state residents wishing to pursue higher education, specifically declaring it to be in the public interest for the state to guarantee the repayment of student loans, and authorizing laws to carry into effect such purpose.

Ms. O'Neill described that, as part of the article dedicated to education, Section 5 provides for a program to guarantee the repayment of student loans for state residents as a way of promoting the pursuit of higher education.

She said the provision was adopted by voters upon being presented as Issue 1 on the May 1965 ballot, and expresses a public policy of increasing opportunities for state residents to pursue higher education by guaranteeing higher education loans and allowing laws to be passed to

effectuate that purpose. The section also exempts state expenditures for student loan guarantees from the limitations on state spending contained in Article VIII (relating to state debt), and Article XII, Section 11 (preventing the state from issuing debt unless corresponding provision is made for levying and collecting taxes to pay the interest on the debt).

Ms. O'Neill said the provision was effectuated by statutes that first created the Ohio Student Loan Commission (OSLC), and, later, in 1993, by statutory revisions that created the Ohio Student Aid Commission (OSAC). According to the report and recommendation, the OSAC was empowered to collect loan insurance premiums, depositing them into a fund in the custody of the state treasurer to be used solely to guarantee loans and to make payments into the OSAC operating fund. The report and recommendation references an attorney general opinion indicating that the obligations incurred by OSAC are not backed by the full faith and credit of the state and, therefore, that the obligee would not have recourse to other funds of the state.

The report and recommendation elaborates that, by 1995, the changing landscape of the student loan market rendered the utility of OSAC obsolete, partly due to the success of a federal direct-lending program, and partly because private companies were offering the same service. Thus, by 1997, the OSAC was dissolved, with remaining functions and duties of OSAC being transferred to the Ohio Board of Regents.

Ms. O'Neill elaborated that the report and recommendation reviews presentations to the committee by David H. Harmon, executive director of OSLC from 1977 to 1988; and by Rae Ann Estep, executive director of the OSAC from 1995-1997. The report summarizes Mr. Harmon's presentation as giving a history of student loans in Ohio, describing how, in 1961, the General Assembly created the Ohio Higher Education Commission, whose purpose was to guarantee repayment of student loans made by banks, savings and loan companies, and credit unions. The report and recommendation further summarizes Mr. Harmon's comment that, in 1965, the federal government created its student loan program, and that the purpose of Section 5 was to allow OSLC to become the guaranteed agency under the federal loan program. The report and recommendation describes Mr. Harmon's conclusion that, with the move to the federal direct loan program, Section 5 is no longer necessary.

With regard to Ms. Estep's presentation, the report and recommendation describes that she presided over an agency of 225 employees, but that her role was primarily to oversee the dissolution of the agency due to the changes in student loan governance and administration.

Ms. O'Neill said the report and recommendation indicates the committee's acknowledgement that, as matters currently stand, Article VI, Section 5 would appear to be non-functional because it is not necessary to facilitate activities of the Ohio Department of Higher Education in relation to student loans, grants, and scholarships, to accommodate the federal student loan program, or to support private lender activity related to student loans.

The report and recommendation notes that, despite this acknowledgement, the committee's concern that future changes to the federal government's student loan programs and policies could result in Ohio and other states taking on additional responsibilities related to student loan guarantees. The report and recommendation also notes that, although the committee was

uncertain whether the provision is necessary to support programs that forgive student loan debt in order to foster the provision of needed services in underserved areas of the state, the committee was reluctant to recommend its elimination in case it could be implemented in that manner.

Ms. O'Neill stated that the report and recommendation concludes that the consensus of the committee was that the section expresses an important state public policy of encouraging higher education and helping students afford it, and so should be retained in its present form.

Chair Readler thanked Ms. O'Neill for the presentation, and asked the members of the committee for their comments. There being none, he called for a motion to issue the report and recommendation, which was provided by Representative Bob Cupp. The motion was seconded by Vice-chair Ed Gilbert, and a roll call vote was taken. The motion to issue the report and recommendation for Article VI, Section 5 passed unanimously, by a vote of seven to zero.

Article VI, Section 6 (Tuition Credits Program)

Chair Readler then asked Ms. O'Neill for a presentation on Article VI, Section 6, which supports the creation of a program allowing families to purchase tuition credits as a way of encouraging saving for higher education costs.

Ms. O'Neill described that the report and recommendation indicates Section 6 is designed to promote the pursuit of higher education by establishing in the constitution a government-sponsored program to encourage saving for post-secondary education. She said the report and recommendation summarizes the history of the section as beginning in 1989, when the General Assembly enacted Revised Code Chapter 3334, establishing a college savings program and creating the Ohio Tuition Trust Authority (OTTA), an office within the Ohio Board of Regents (now the Department of Higher Education). The OTTA was designed to operate as a qualified state tuition program within the meaning of section 529 of the federal Internal Revenue Code. The report and recommendation further describes the statutory scheme by which tuition credits may be purchased and used.

Ms. O'Neill continued that the report and recommendation indicates Section 6 was proposed to voters as Issue 3 on the November 1994 ballot as a way to "increase opportunities to the residents of the State of Ohio for higher education and to encourage Ohio families to save ahead to better afford higher education."

She said the report and recommendation further describes a presentation to the committee by Timothy Gorrell, executive director of the Ohio Tuition Trust Authority (OTTA), who expressed that his agency is part of the Department of Higher Education and is charged with responsibility for administering the tuition credits program set forth in Article VI, Section 6. The report and recommendation presents Mr. Gorrell's view that, at the time of its adoption, the section addressed a period of unsettled case law that created uncertainty as to whether similar prepaid tuition programs were exempt from federal taxation, a status that has since been resolved by the codification of Internal Revenue Code section 529. However, the report and recommendation notes that Mr. Gorrell nevertheless opined that Section 6 should be retained because one purpose

of the provision, to establish the full faith and credit backing of the state for the Guaranteed Savings Plan, remains viable.

Ms. O'Neill said the report and recommendation summarizes the committee's conclusion that, although no new Guaranteed Savings Plan account holders have been added since 2003, the fact that some accounts are still active may require the constitutional provision to be retained in its current form. The report and recommendation notes that, although the committee was reluctant to alter or repeal Article VI, Section 6, a future constitutional review panel may conclude there is no justification for retaining the section because all accounts have been paid out.

Thus, the report and recommendation concludes that Article VI, Section 6 should be retained in its current form.

The presentation on Section 6 having concluded, Chair Readler asked committee members if they had any questions or comments. Rep. Cupp asked whether Mr. Gorrell had provided information on the obligation of the state to back tuition trust accounts, to which Ms. O'Neill replied he had not. There being no further discussion, Chair Readler then entertained a motion by Mr. Gilbert to issue the report and recommendation. The motion was seconded by Senator Tom Sawyer, and a roll call vote was taken. The motion passed unanimously by a vote of seven to zero.

Ms. O'Neill indicated that the two reports and recommendations would now be presented to the Coordinating Committee for approval before being forwarded to the full Commission for its consideration.

Discussion:

Article VII, Section 1 (Institutions for the Benefit of the Insane, Blind, and Deaf and Dumb)

Chair Readler then turned the committee's attention to Article VII, relating to Public Institutions. He indicated that Section 1 of that article raises two issues. First, he said, the language used to refer to the persons being aided by public institutions is outdated and could be viewed as offensive. He said a second issue is whether there is continuing relevance for the section.

Steven C. Hollon, executive director, pointed out a memorandum being provided to the committee that discusses Section 1 as well as Sections 2 and 3 of Article VII.

Chair Readler asked Mr. Gilbert for information about a similar discussion regarding outdated language that had occurred in the Bill of Rights and Voting Committee in relation to Article V, Section 6 (Mental Capacity to Vote).

Mr. Gilbert said that is still an unresolved issue, although there is consensus that the language, which refers to "idiots and insane persons," must be changed.

Mr. Hollon noted that the report and recommendation on that section was not adopted by the Commission, but it was not because of the substitute language the committee had proposed, which was to refer to the subject persons as those lacking the “mental capacity” to vote.

Chair Readler noted that reference was not an exact fit for the language in Article VII, Section 1.

Sen. Sawyer said some of the reference derives from clinical usage and some of it derives from law, asking whether that was the fundamental problem.

Mr. Gilbert said the Bill of Rights and Voting Committee struggled with several different replacements. He said one of the primary issues was whether the probate court should be involved in the determination of whether a person has the mental capacity to vote. In regard to the discussion about Article VII, Section 1, he asked what language could replace “insane, blind, deaf and dumb.” He said he is not sure the committee has had enough presentations on the question to be able to determine how to replace what all agree is outdated language.

Sen. Sawyer asked whether the committee could consult experts to see if there are separate bodies of nomenclature that might be better.

Chair Readler agreed with this proposal.

Committee member Roger Beckett asked whether there is a difference in the issue the committee is dealing with here as opposed to the voting issue. He said voting has to be resolved within the constitution because it is a right. He said, Article VII, Section 1 has more of a public policy purpose of encouraging the legislature to do something that perhaps, at the time, was not as common a thing. He said, by comparison, today the fact that institutions provide assistance and support for people with mental or physical disabilities is more understood and accepted, and less controversial.

Mr. Beckett continued, saying one option is to suggest the removal of the section. He said the General Assembly would still have the authority to continue anything it is currently doing. He said this is a more arcane topic for the constitution, adding “If we are going to try to describe in the constitution language about how modern medicine will keep up with these issues, it will be a continuing problem.” He said the only possible concern is to be sure the committee is not suggesting the state should somehow limit its existing programs.

Chair Readler said his sense from testimony is that this section has never been used as authority for enacting law on this topic.

Committee member Bob Taft endorsed Mr. Beckett’s comment, directing committee members to a memorandum provided by Michael Kirkman, executive director of Disability Rights Ohio at the last meeting. He said Mr. Kirkman recommended that the section be deleted because there is a strong preference for community-based treatment rather than institutional treatment.

Chair Readler noted that the committee agrees the language should go, but that rewriting the section is a challenge. He added that Sections 2 and 3 in Article VII would seem to be unnecessary.

Gov. Taft agreed, saying those two sections appear to be obsolete.

Rep. Cupp said the purpose of the sections appears to focus on who is to appoint the governance of these institutions, an issue that has been settled for a long time and is not relevant to any present procedure. He said these sections do not deal with an allocation of authority, nor with a limit on the powers of government, so they seem to be superfluous.

Mr. Gilbert said he thinks the conclusion of the Bill of Rights and Voting Committee report and recommendation on Article V, Section 6 was that the language was archaic. But, he said, he is nervous about removing Article VII, Section 1, not wanting to send a message that the state no longer fosters support for the disabled.

Chair Readler directed the committee to Mr. Kirkman's testimony, noting that under federal law there are some established constitutional rights that would impact the rights of someone in an institution.

Mr. Beckett said one of the key words that that make him less hesitant to remove the section is the word "institutions." He said the movement has been away from institutionalizing people and toward other types of programs and support. He said removing it does not mean the committee would be suggesting that support or services would be eliminated.

Representative Mike Curtin asked whether Mr. Kirkman is the only person the committee has heard from. He said he would be more comfortable if he were sure word has gone out within the disability and legal community to see if they are comfortable with removing the section.

Mr. Hollon suggested that he would contact Mr. Kirkman for names of persons who could provide additional perspective.

Rep. Cupp asked whether there might be someone associated with the Ohio State Bar Association who might identify a speaker.

Gov. Taft said Mr. Kirkman pointed out that these kinds of institutions existed before 1851, so presumably, the General Assembly has the authority to establish institutions if they see fit.

Steven H. Steinglass, senior policy advisor, noted the Ohio Constitution gives the legislature plenary power. He said this provision was a creature of its time when there was uncertainty, and was addressed to the legislature to require legislative action. He indicated the provision was considered for amendment by the Ohio Constitutional Revision Commission in the 1970s, but failed to get the requisite 2/3 vote. He indicated there was a nine-person minority report written, and, at a time when the rights of the handicapped were at the fore, there was pressure to create a constitutional right to treatment. He offered that staff would provide the committee with the 1970s Commission report.

Chair Readler said he can see the view that there is some broader right being discussed. He said his sense is there will not be broad majority support for that.

Peg Rosenfeld, elections specialist with the League of Women Voters of Ohio, who was seated in the audience, suggested a change in the wording that would say “provision” instead of “institutions.” Thus, she said, “Provision shall be made for people with mental or physical disabilities.” She said there may be a problem ordering the General Assembly to provide services.

Chair Readler said his general reaction is that would make this a broader basis for limitations on the legislature. But, said Ms. Rosenfeld, it gets away from the institutional requirement.

Mr. Gilbert said it is important not to remove a state obligation in favor of private sources, since, if those sources lose their funding, there would be nothing to take their place. He said he would support another presentation on that issue. He said simply taking Section 1 out sends a signal the committee may not want to send.

Chair Readler asked if the legislative members of the committee might serve on a related General Assembly committee and have some knowledge of this issue.

Sen. Sawyer said he served on a committee relating to implementing the Americans with Disabilities Act. He said the committee is in a simpler position here, to recognize need and then provide the constitutional underpinning that that would require. He cautioned that it is important not to try to legislate in the constitution by taking up language of this kind.

Gov. Taft said, reflecting on the history of the *DeRolph* litigation, he is leery of creating a constitutional right to help.¹ He said he trusts legislators to help the welfare of the public. Commenting on Sections 2 and 3, he said the state has departments to deal with these issues, suggesting that the committee should hear from those directors.

Chair Readler suggested that, at its next meeting in January, the committee can have two speakers on Section 1. He added he thinks the committee’s consensus is that Sections 2 and 3 are obsolete but wonders if the committee requires a speaker.

Mr. Hollon said he is not sure there would be a speaker on Sections 2 and 3, but that staff could provide a memorandum. Chair Readler agreed a short memo on that topic would be useful.

Adjournment:

With no further business to come before the committee, the meeting adjourned at 10:27 a.m.

¹ See *DeRolph v. State*, 78 Ohio St.3d 193, 1997-Ohio-84, 677 N.E.2d 733 (*DeRolph I*); *DeRolph v. State*, 89 Ohio St.3d 1, 2000-Ohio-437, 728 N.E.2d 993 (*DeRolph II*); *DeRolph v. State*, 93 Ohio St.3d 309, 2001-Ohio-1343, 754 N.E.2d 1184 (*DeRolph III*); and *DeRolph v. State*, 97 Ohio St.3d 434, 2002-Ohio-6750, 780 N.E.2d 529 (*DeRolph IV*).

Approval:

The minutes of the November 10, 2016 meeting of the Education, Public Institutions, and Local Government Committee were approved at the January 12, 2017 meeting of the committee.

/s/ Chad A. Readler

Chad A. Readler, Chair

/s/ Edward L. Gilbert

Edward L. Gilbert, Vice-chair



OHIO CONSTITUTIONAL MODERNIZATION COMMISSION

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

FOR THE MEETING HELD
THURSDAY, JANUARY 12, 2017

Call to Order:

Chair Chad Readler called the meeting of the Education, Public Institutions, and Local Government Committee to order at 9:42 a.m.

Members Present:

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

Approval of Minutes:

The minutes of the November 10, 2016 meeting were approved.

Presentations and Discussion:

“Disability Rights and the ADA”
Ruth Colker, Professor of Law
Moritz College of Law
The Ohio State University

In relation to the committee’s review of Article VII, Section 1, which requires institutions for the “benefit of the insane, blind, and deaf and dumb” to always be fostered and supported by the state, Chair Readler introduced Professor Ruth Colker, who is Distinguished University Professor and Heck-Faust Memorial Chair in Constitutional Law at the Ohio State University’s Moritz College of Law. Prof. Colker began her presentation by indicating her first recommendation would be to repeal Section 1 as unnecessary. Failing that, she said, her second recommendation would be to recommend new language that would meet the underlying purpose of the original section, but would be more respectful and consistent with other provisions. She said, in this regard, she would recommend changing the language to state:

The state shall always foster and sustain services and supports for people with disabilities who need assistance to live independently; these services and supports will, to the maximum extent possible, be provided in the community, rather than in institutions.

Prof. Colker said, in formulating this language, she consulted with members of the disability rights community. She said the revision is more respectful, and offers a more functional definition of disability. She said another goal was to have the section be more consistent with modern notions under federal law and the United States Constitution.

Addressing the terms used in the current section to describe persons with disabilities, Prof. Colker said the disability rights community prefers “person first” language, thus persons with psychiatric impairment would not be described as “the insane.” She said the thinking behind this word choice is that disability status is only one aspect of personhood. She added that descriptors such as “insane” or “deaf or dumb” are not used. Instead, such persons would be described as being individuals with psychiatric, speech, sensory, visual, or intellectual impairments. Describing definitions that have been used at the federal level, she said no one definition would serve the purpose, and that the federal government has chosen different functional definitions depending on the context.

Prof. Colker emphasized considering the kind of assistance the state is saying it wants to provide. Noting federal case precedent, she said the United States Supreme Court and Congress have adopted the concept that people with disabilities should be integrated into communities as much as possible. She cited an example as being that the Individuals with Disabilities Education Act (IDEA) provides that states must have procedures assuring, to the maximum extent appropriate, that children with disabilities are educated with children who are not disabled, and that special or separate placement occurs only when the nature or severity of the disability is such that education in regular classes with the use of supplementary assistance cannot be achieved satisfactorily. She said this has been the preference since 1975, and suggests a default principle that persons with disabilities be placed in an integrated environment.

Noting Section 1’s use of the word “institutions,” Prof. Colker said this word choice suggests a preference for an institutional setting, a concept that is no longer the prevailing view. She said she tried to craft language that would indicate an understanding that, aspirationally, the state would try to place people in a community setting, rather than have the default be placing them in institutions.

She said this approach is also reflected in the Americans with Disabilities Act, which was passed in 1990. Citing the case of *Olmstead v. L.C. ex rel. Zimring*, 527 U.S. 581 (1999), she said the ADA is violated when people who are able to live in the community are placed in institutions because, as the U.S. Supreme Court concluded, unjustified isolation is discrimination based on disability. She noted that principle is stated in the Court’s finding that there is a presumption of deinstitutionalization, and that states are required to provide community-based treatment for persons with mental disabilities when it is determined “that such placement is appropriate, the affected persons do not oppose such treatment, and the placement can be reasonably accommodated, taking into account the resources available to the State and the needs of others with mental disabilities.” *Olmstead* at 607.

Prof. Colker having concluded her remarks, Chair Readler opened the floor for questions.

Committee member Mike Curtin asked whether her suggested language could be interpreted as creating a fundamental right. He said a concern is whether it could permit a court to tell the General Assembly how much money needs to be allocated to meet this mandate.

Prof. Colker answered that would depend on what doctrine or rule of law applies. She said she relied on the language in the *Olmstead* decision indicating the resources of the state are a consideration. She said, as a result, her recommendation would be to describe the state's obligation as being "to the maximum extent possible." She said the definition of a fundamental right does not mean limitless support, but rather means a court would develop a pragmatic rule that is flexible. She said the phrase "fundamental right" is not a helpful term; rather, the more relevant question is what rule would apply. She said *Olmstead* does not stand for the notion of limitless support, but does mean there is an obligation. She said one goal in changing Section 1 would be to maintain the principle articulated in the current provision that the state should be doing something for people who cannot live without assistance.

Committee member Paula Brooks commented that the *Olmstead* case came up in her role as county commissioner, noting it is an issue whether the state has an obligation to provide an institution if a segment of the population requires it. She asked whether Prof. Colker's suggested language would impact the creation of a separate facility for those suffering from autism, for example. Prof. Colker said an alternate version of her recommended language could read "to the maximum extent appropriate," which would allow creation of separate facilities for autism if needed. She said "We would always hope the state would do what is appropriate. For some, an institutional setting is necessary and appropriate." She said her goal is to flip the default principle away from institutionalization, but not in a way that would harm anyone.

Representative Bob Cupp said the current language talks about "institutions for the benefit," commenting that Prof. Colker's language in one sense appears to be a limitation. Prof. Colker said the drafters of the current provision wrote it in the passive voice. She said placing the state at the beginning of the sentence, saying that "the state shall always foster and support institutions," does not change the underlying meaning of the sentence. Rep. Cupp said he is more concerned about the term "institution" as a limiting factor in the current language. He said there is some argument the obligation should be broader than that, but the follow up is how the courts would interpret it.

Prof. Colker said the problem with the current language is that it is unconstitutional and illegal under the ADA because it indicates the state only has an obligation to support people who are in an institutional setting. She said from a policy perspective that is wrong, and is also unconstitutional and illegal. She said it is not helpful to have something in the constitution directing the state to do something that is not constitutional.

Chair Readler said his sense is that the committee agrees the language in the current section is antiquated and offensive. He said his question is whether the phrase "people with disabilities" is broader than what is reflected in the current language. Prof. Colker said that language would be both broader and narrower, explaining that, for instance, there are many people with visual impairment in the community who would not be covered by her language because they do not need support. She said there will be people who have a certain kind of condition that makes it

difficult for them to live independently. She said her language would include people who are not covered in the current language.

Chair Readler ask if there is a “gold standard” definition of disability. Prof. Colker answered that the ADA says the term “disability” means a physical or mental impairment that interferes with one or more major life activity.

Chair Readler asked, if Ohio did not have Section 1, whether the standard would be found in state law. Prof. Colker said eliminating Section 1 would not have a significant impact because *Olmstead* already requires the state to provide for the disabled. She said a constitution is aspirational, and that keeping and refining the obligation set out in Section 1 would continue that aspirational goal using language that is respectful and modern. She said repeal of Section 1 might not make a difference to Ohioans, but as an aspirational statement it may matter.

Summing up Prof. Colker’s presentation, Chair Readler acknowledged there is a tension between what is aspirational and what is a fundamental right. He said Prof. Colker’s suggested language is very helpful.

Committee member Bob Taft asked about the phrase “assistance to live independently,” wondering if placement in a small group home would be considered living independently. Prof. Colker said the phrase in the second part of her proposed language indicating the support would be provided to allow community living “to the maximum extent possible,” recognizing that each individual might need a different level of assistance. Gov. Taft asked whether the proposed language, creating an obligation to sustain services and support, might create a problem if the state has a budget crisis and has to reduce the level of support. Prof. Colker answered that the current provision mandates state support, and that, as a state, it would be important to maintain that obligation.

Senator Bill Coley asked whether, if rewriting the language is not an option, Prof. Colker would recommend keeping the current provision or repealing it. Prof. Colker said her preference would be to delete it.

There being no further questions for Prof. Colker, Chair Readler thanked her for her presentation.

“Institutions for the Benefit of the Insane, Blind, and Deaf and Dumb”
Marjory Pizzuti, President and CEO of Goodwill Columbus
Ohio Association of Goodwill Industries

Chair Readler introduced Marjory Pizzuti, who is president and chief executive officer of Goodwill Columbus, which is a member of the Ohio Association of Goodwill Industries (OAGI). Ms. Pizzuti described OAGI as consisting of 16 autonomous Goodwill organizations that provide employment and family strengthening services to individuals with disabilities. She said her organization serves more than 77,000 individuals, with 85 percent of those persons having a disadvantaging condition such as long-term unemployment, incarceration, low educational attainment, and physical or intellectual disabilities. She said Goodwill chapters throughout Ohio are partners and providers of services through many state agencies, including Opportunities for Ohioans with Disabilities, and the Ohio Departments of Aging, Jobs and Family Services,

Developmental Disabilities, Rehabilitation and Corrections, and Mental Health and Addiction Services.

Describing the history of the international Goodwill movement, Ms. Pizzuti said Goodwill was founded in Boston in 1902 by a Methodist minister and early social innovator who collected used household goods and clothing in wealthier areas of the city, then trained and hired recently settled immigrants to repair the used goods before reselling them. She identified the Goodwill social enterprise philosophy as promoting “a hand up, not just a hand out,” and that this model has created independence and economic self-sufficiency by providing appropriate training, skill building, and support. She said her organization seeks to provide support to individuals with disabilities, and to assure that all citizens can be full and active participants in the community.

Addressing current Section 1, Ms. Pizzuti said the commitment to community based integration may be fundamentally at odds with the intent of Section 1, which specifically references “institutions.” She said she would be focusing on three issues raised by the current section: first, the implications of the wording used to describe the population that this section is referencing; second, the appropriateness of continuing to include that provision in Article VII, Section 1, given the historical focus on institutions serving those individuals; and, third, the fundamental question of whether any reference to a specific population should be included anywhere in the Ohio Constitution.

With regard to the terminology used to describe persons with disabilities, Ms. Pizzuti said the current section is not only offensive but inappropriate based on the current understanding of illness and disabilities. She said, while this language was relevant at the time of adoption, there is no place for this language in current or future revisions of the Ohio Constitution. However, she recognized that an attempt to revise the terminology is difficult and ultimately would not resolve the problem because society’s perceptions and acceptance of individuals with disabilities continue to evolve, and contemplating any language that could endure the test of time would be futile.

Ms. Pizzuti continued that the movement toward community integration has been reflected in the downsizing of the state’s institutional facilities, the increase in competitive integrated employment, and the transition into community-based settings. She said this is an intentional and widely-acknowledged paradigm shift for the full integration of individuals with physical and intellectual disabilities into communities.

Acknowledging the good intentions of the drafters of Section 1 to protect and serve individuals with disabilities, she said her organization, nevertheless, believes Article VII, Section 1 may not be the appropriate place in the Ohio Constitution to state this commitment, because the section refers to state institutions as the mechanism to support individuals with physical and intellectual disabilities. She identified numerous governmental agencies that provide community-based support.

Ms. Pizzuti said there is a more fundamental question of whether there is a rationale to have any reference in the Ohio Constitution to a need to foster and support individuals with disabilities, and, if so, where to place such a reference. She said it is possible such a “general welfare” statement could be incorporated in the Bill of Rights or the Preamble. She said Article VII, Section 1 provides an important voice for individuals with disabilities, although the notion of

institutionalization and the language used in Article VII, Section 1 is obsolete. She said her organization encourages the committee to work toward balancing the need to modernize the language with the need to reaffirm the spirit of the intent of the provision, which is to provide assistance that “fosters and supports” opportunities for individuals with disabilities.

Chair Readler thanked Ms. Pizzuti for her comments and invited committee members’ questions.

Rep. Cupp asked whether Goodwill operates an intermediate care facility. Ms. Pizzuti said her chapter does operate such a facility. Rep. Cupp asked whether the facility receives state support and Ms. Pizzuti agreed it does. Rep. Cupp noted that the state is fostering and supporting private institutional facilities.

Mr. Curtin asked Ms. Pizzuti her opinion of a change that would indicate the state “shall always endeavor to foster,” instead of just “foster,” adding the phrase “to the extent possible” rather than “to the maximum extent possible.” Ms. Pizzuti said she would take that suggestion back to her organization to see what they think.

Ms. Brooks said she agrees the provision is in the wrong section of the constitution. She asked Ms. Pizzuti to identify others in the disability community who might wish to provide input on changing the section. Ms. Pizzuti said county boards of developmental disability might be helpful, as well as other organizations. She offered to provide a list to the committee.

Ms. Brooks asked what would occur if there is a major change in the position of the federal government on the ADA, and Section 1 were eliminated. Ms. Pizzuti identified this as a “fairly dramatic” change, but that, from her own perspective, the state is on a philosophical pathway that helps persons with disabilities because it is the right thing to do, and she believes the state would continue on that pathway. However, she said Medicaid is the major funder of these types of activities, so a change in the federal position would be significant.

Rep. Cupp asked whether keeping the existing provision, but substituting the offending language would resolve the problem. Ms. Pizzuti said the question would be twofold. She said if, in fact, Article VII has the specific heading of “public institutions,” and the section no longer requires institutions, the section may need to be in another article.

Chair Readler said it is good to raise the point of where the section belongs. He wondered if the disability community has proposed any constitutional language or attempted a change in the past. Speaking from the audience, Michael Kirkman, executive director of Disability Rights Ohio, said he is aware of no such effort.

There being no further questions, Chair Readler thanked Ms. Pizzuti for her remarks.

“Institutions for the Benefit of the Insane, Blind, and Deaf and Dumb”
Sue Hetrick, Executive Director
The Center for Disability Empowerment

Chair Readler recognized Sue Hetrick, executive director of the Center for Disability Empowerment, to provide her agency’s perspective on potential changes to Section 1. Ms. Hetrick described that her agency operates a center for independent living, and that such

facilities have been around since the 1970s. She said the concept that persons with disabilities, with assistance, could be integrated into the community corresponded with the civil rights movement. She said her organization emphasizes consumer control, and that 51 percent of the board of directors is comprised of persons who are disabled. She said, unlike other organizations that only serve one type of population, her agency serves anyone with any disability. She said her agency also does not require a medical investigation prior to assisting someone who is disabled, meaning that persons who say they are disabled will be served without medical proof.

Focusing on Section 1's references to persons who are disabled, Ms. Hetrick said disability is regarded as a neutral difference, meaning that it results from the interaction of the individual with his or her environment, rather than from other causes. She said, despite the emphasis on integrating persons into the community, Ohio continues to have a culture of institutions, maintaining schools for the deaf and for the blind, as well as nursing facilities sometimes being mental health institutions. She said any congregate setting can be an institution. However, she said, under *Olmstead*, if the appropriate supports and services are in place segregation is not necessary.

Chair Readler asked committee members if they had questions for Ms. Hetrick.

Sen. Coley reiterated his previous question, asking whether, if the section is not revised, it should be removed or kept as is. Ms. Hetrick answered that, if the constitution is to provide sections protecting gender and religion, there should be a section acknowledging and protecting persons with disabilities. Thus, she said, if revision is not an option she would prefer that the section be left as is.

Asking about the state's maintenance of a special school for the blind, Rep. Cupp asked whether that is an appropriate institution. Ms. Hetrick said, from the perspective of the disability community she represents, families choose that as a placement because they feel there is no other choice. She said if there are appropriate services elsewhere then the preference would be not to have a separate segregated classroom.

Rep. Cupp asked whether integrating a blind student would imply that the student should have one-on-one assistance all day. Ms. Hetrick said her expertise is not in sensory disabilities so she is not clear what integration would require.

Chair Readler asked Ms. Hetrick's opinion of the proposed language provided by Prof. Colker. Ms. Hetrick said she had not had a chance to think about that, and would be sharing the proposed language with her colleagues to get input. Chair Readler commented the committee will meet in March, and welcomed Ms. Hetrick to submit more materials in preparation for that meeting.

Ms. Hetrick having concluded her remarks, Chair Readler thanked her for her presentation.

Chair Readler suggested the committee review the report on Section 1 by the Constitutional Revision Commission in the 1970s, as well as other related materials, to submit names of any speakers they would like to hear, and to come to the next meeting prepared to continue the discussion of what to recommend regarding Article VII.

Mr. Curtin said it would be useful to have proposed language, and wondered if there are enough votes to eliminate the section altogether. He encouraged Rep. Cupp to bring suggested language forward that would clarify that the state's obligation to provide assistance is not limitless. Mr. Curtin said having replacement language is preferable to getting rid of the section.

Adjournment:

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

Approval:

The minutes of the January 12, 2017 meeting of the Education, Public Institutions, and Local Government Committee were approved at the March 9, 2017 meeting of the committee.

/s/ Edward L. Gilbert
Edward L. Gilbert, Vice-chair



OHIO CONSTITUTIONAL MODERNIZATION COMMISSION

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

FOR THE MEETING HELD
THURSDAY, MARCH 9, 2017

Call to Order:

Vice-chair Edward Gilbert called the meeting to order at 3:02 p.m.

Members Present:

A quorum was present with Vice-chair Gilbert and committee members Beckett, Coley, and Taft in attendance. At the invitation of the vice-chair, Representative Glenn Holmes and Senator Vernon Sykes participated as ex officio non-voting members of the committee.

Approval of Minutes:

The minutes of the January 12, 2017 meeting of the committee were approved.

Presentations and Discussion:

Vice-chair Gilbert began the meeting by indicating that Article VII, Sections 2 and 3, relating to directors of the penitentiary and other public institutions, had been the subject of some discussion and questions in previous committee discussions. As a result, a speaker has been arranged to address the committee on this issue.

Darin Furderer
Corrections Analyst
Correctional Institution Inspection Committee

Vice-chair Gilbert introduced Darin Furderer, corrections analyst at the Correctional Institution Inspection Committee. Mr. Furderer was asked to speak about the use of the term “director” in relation to the penitentiary and how management of the state penal facilities is organized.

Mr. Furderer said that the term “director” is outdated and is no longer used to refer to the head of the penitentiary. The Department of Rehabilitation and Corrections (DRC) uses the term

“warden” to refer to a person in charge of an adult correctional facility, and the Department of Youth Services (DYS) uses the term “superintendent” to refer to a person in charge of a youth correctional facility. He said he believes that superintendents are appointed by the governor.

Mr. Furderer noted that there are 27 adult facilities, including both publicly- and privately-run facilities, and three state-run youth correctional facilities in the state.

Mr. Furderer having concluded his remarks, Vice-chair Gilbert asked if the committee had questions.

Committee member Bob Taft noted that the governor appoints a “director” of DRC, who is the head of the department rather than the head of the penitentiary. The department director then appoints the persons who run the correctional facilities.

After a brief discussion, committee members agreed that, given the current governance arrangements for correctional facilities, Sections 2 and 3 of Article VII serve no modern purpose.

There being no further questions, Vice-chair Gilbert thanked Mr. Furderer for his presentation.

Vice-chair Gilbert then opened the floor for discussion regarding changes or modifications to Article VII, Section 1, regarding the state’s obligation to provide institutions for the “insane, blind, and deaf and dumb.”

Vice-chair Gilbert mentioned that proposed wording for a re-write of Section 1 had been sent to the committee by email. The proposed wording, for discussion by the committee, is as follows:

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

Senator Bill Coley expressed concern that this wording leaves open the possibility of a person claiming any condition would qualify as a disability or handicap. He suggested changing the language to allow the General Assembly to determine which conditions will be subject to the provision.

Vice-chair Gilbert remarked that the committee’s past discussion was about how to provide support to the individuals who need assistance. He said he agrees with Sen. Coley’s sentiment, but stressed the need to strike a balance between retaining a state obligation and giving the legislature flexibility to address the issue in a reasonable fashion. Sen. Coley reiterated his concern that, with the proposed wording, there would be a “rush to the courthouse” by people wanting to self-identify a condition that requires support by the state.

Committee member Roger Beckett also expressed concern about the courts being used to define disabilities eligible for support. He suggested deleting “and be subject to such regulations” to more clearly show that the General Assembly is regulating not just the support provided, but also defining the disabilities to be covered. There was general agreement from committee members on the proposed wording change.

Committee member Bob Taft wondered whether the wording would be acceptable to advocacy groups, especially Disability Rights Ohio. Michael Kirkman, executive director of Disability Rights Ohio, was in the audience and offered his thoughts. Mr. Kirkman said he thought the language seemed fine at first glance, but suggested also deleting “or handicap” as being duplicative of the term “disability.” The committee agreed to this suggestion. Gov. Taft asked which option disability advocates would prefer: the proposed language or deleting Section 1 altogether. Mr. Kirkman suggested that the proposed language would be preferable to deletion. In response to a request from the committee, Mr. Kirkman offered to confer with other advocates about the proposed language and report back at the next committee meeting.

Vice-chair Gilbert requested that staff circulate the suggested language to all committee members, showing the language as proposed by email along with changes suggested by the committee. The language to be circulated would be as follows:

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

Vice-chair Gilbert then began a discussion of how the committee would address the large list of items remaining on its schedule. He said, after the last meeting, he contacted several members to ask them to take the lead on making an initial assessment of the remaining items. He said Gov. Taft had agreed to take the lead on sections related to municipal corporations and home rule (Article XVIII), Committee member Paula Brooks had agreed to take on sections related to counties and townships (Article X), while Vice-chair Gilbert himself would make an initial assessment of the miscellaneous provisions (Article XV). He said the purpose of the initial assessment is to identify those provisions that require detailed discussion by the committee, and to more quickly dispense with non-controversial issues. He asked the identified members to bring to the next committee meeting a list of provisions the committee could consider for no change.

The committee briefly discussed the lottery and gambling section (Article XV, Section 6), and the marriage provision (Article XV, Section 11). Senior Policy Advisor Steven H. Steinglass offered that if the committee wants to consider removing certain provisions, other states have approached the removal of constitutional provisions by converting them to statute and protecting them with a safe harbor provision for a certain period of time in order to provide transition for the affected interests.

Gov. Taft recalled that there had been a presentation on the home rule issue early in the committee’s review process and requested any information from that presentation that was available. Mr. Steinglass confirmed his recollection and noted that the presentation was given before the Commission had staff. Mr. Steinglass said he would confer with staff to identify any past presentations or other information on the home rule issue.

Mr. Beckett mentioned that there also was a presentation on the state board of education. It was noted that the issue of local boards of education was put on hold due to pending litigation. Vice-chair Gilbert requested an update from staff at the next meeting as to the status of the state board of education issue and local school board litigation.

Adjournment:

With no further business to come before the committee, the meeting adjourned at 3:28 p.m.

Approval:

The minutes of the March 9, 2017 meeting of the Education, Public Institutions, and Local Government Committee were approved at the April 13, 2017 meeting of the committee.

/s/ Edward Gilbert _____
Edward Gilbert, Vice-chair



OHIO CONSTITUTIONAL MODERNIZATION COMMISSION

MINUTES OF THE EDUCATION, PUBLIC INSTITUTIONS, AND LOCAL GOVERNMENT COMMITTEE FOR THE MEETING HELD THURSDAY, APRIL 13, 2017

Call to Order:

Vice-chair Edward Gilbert called the meeting to order at 9:44 a.m.

Members Present:

A quorum was present with Vice-chair Gilbert, and committee members Beckett, Coley, Craig, Cupp, Taft, and Talley in attendance.

Approval of Minutes:

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

Reports and Recommendations:

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

Vice-chair Gilbert began the meeting by bringing up the report and recommendation for Article VII, Sections 2 and 3, recommending repeal of these provisions relating to directors of the penitentiary and other public institutions. The committee confirmed that these constitutional provisions are outdated and should be repealed. Committee member Bob Taft moved the first reading of the report and recommendation, second by Senator Bill Coley. There were no objections.

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

Vice-chair Gilbert then turned the committee's attention to the report and recommendation for Article VII, Section 1, recommending amended language regarding the state's responsibility toward persons with disabilities. At its previous meeting, the committee had requested Disability Rights Ohio to review the proposed constitutional language and seek comments from allied

interest groups. Vice-chair Gilbert recognized Mr. Michael Kirkman, executive director of Disability Rights Ohio, to provide an update.

Mr. Kirkman reported that his consultations resulted in a couple of recommended changes to the proposed language. First, he said the term “habilitation” has become a term of art used primarily for Medicaid. As the term is now used, it generally means care and treatment, which would make its use redundant in the context of the proposed constitutional language. Therefore, Mr. Kirkman recommended the term be removed.

Mr. Kirkman went on to recommend including a specific reference to the independence of individuals with disabilities and their integration into the community. In particular, he recommended that, after the phrase “supported by the state,” the following phrase suggested by Prof. Ruth Colker be inserted: “and to the maximum extent possible, support independence and integration in the community.”

In discussing the suggested changes, committee members agreed that “habilitation” could be removed, but expressed concern about the other recommendation. Representative Bob Cupp expressed concern that the phrase “maximum extent possible” would be undefinable and could lead to significant litigation. Committee member Bob Taft said he felt the suggested language was vague and, in any event, would be more appropriate as statutory language.

Sen. Coley formally proposed removal of “habilitation” from the language in the report and recommendation and all committee members agreed. The committee decided not to make any additional changes.

There being no further questions or discussion, Vice-chair Gilbert thanked Mr. Kirkman for his presentation and ongoing assistance in helping the committee improve the proposed language in the committee’s report.

Committee member Petee Talley moved the first reading of the report and recommendation, to which all members agreed, with the revised constitutional wording as follows:

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

Presentations and Discussion:

Vice-chair Gilbert then recognized Gov. Taft to begin discussion regarding municipal home rule as found in Article XVIII, Section 3.

Gov. Taft referred the committee to a recommendation provided by the Ohio Municipal League (OML) dated April 10, 2017. As the recommendation had only arrived two days before the meeting, Gov. Taft suggested asking representatives from OML to present their recommendation at the next committee meeting. He also suggested notifying the offices of the Attorney General, the House Speaker, and the Senate President that the committee will be considering issues of

municipal pre-emption by state law and requesting any comments on the OML recommendations.

Senior Policy Advisor Steven H. Steinglass commented that Harold Babbit, adjunct professor at Cleveland-Marshall College of Law, and Columbus Attorney John E. Gotherman might be able to offer testimony on the complex issue of home rule based on their prior work. In particular, Mr. Steinglass referenced the prior testimony of Prof. Babbit at the July 11, 2013 committee meeting. Vice-chair Gilbert requested staff to distribute Prof. Babbit's testimony to the committee.

Committee members briefly discussed and agreed regarding the importance of including municipal residency requirements as part of the home rule discussion.

Mr. Steinglass provided some background on the history of municipal authority in Ohio. In the 19th century, he said, cities needed to obtain specific legislative approval for all authority. Many disputes and political battles between cities and the state led to the adoption of the home rule provision following the 1912 constitutional convention. Mr. Steinglass explained that the provision provides two powers: (1) an unqualified power of local self-government; and (2) a qualified local police power that may not conflict with general laws of the state. He said the local police power has been litigated often as to what constitutes a "conflict." He noted the Supreme Court has a multi-part test to determine if a conflict exists between local and state law.

In discussing this background, Vice-chair Gilbert asked about the parts of the Supreme Court's conflict test. Mr. Steinglass offered to verify the details of the test and report back to the committee. Rep. Cupp also clarified that "police power" in this situation means the broad regulatory power of municipalities, not just law enforcement.

The committee discussed how to proceed with this issue. Rep. Cupp requested to hear from a variety of interest groups on the clarification or expansion of home rule power in order to obtain a balanced perspective on the issue. Members suggested notifying the chamber of commerce and public employee unions, as well as the Ohio Certified Public Accountant association and the National Federation of Independent Businesses, based on some current issues before the legislature involving those organizations. Gov. Taft requested that all contacted parties receive the OML suggestion for comment and reaction and that there be good public notice for the committee's discussion of this topic. Vice-chair Gilbert requested Mr. Steinglass and staff to help identify groups who may be able to testify on different sides of the issue.

Committee members agreed to prioritize the issue of municipal home rule for their next meeting in May.

Vice-chair Gilbert opened the floor to public comment on the issue of municipal home rule. No members of the public offered comment.

Gov. Taft then brought to the committee's attention a concern expressed by the County Commissioners Association of Ohio (CCAO) regarding salaries of county commissioners. He noted the pay of county elected officials is governed by Article II, Section 20, which prohibits

any change of salary during a term of office. He said due to the staggered terms of county commissioners, this constitutional provision results in different commissioners receiving different salaries at the same time when a pay change is enacted by the General Assembly. In an email to Gov. Taft, CCAO asserted that all commissioners should be paid the same and suggested that compensation for county officials should be addressed in the same manner as judges in Article IV, Section 6(B).

The committee briefly discussed how to address this issue. Rep. Cupp mentioned that a constitutional amendment had been proposed in the Senate to create a special state commission that would set the pay of all public officials in Ohio. He said any consideration of this issue should keep the state commission approach in mind.

Mr. Beckett commented that the concept of prohibiting mid-term pay raises is commonly accepted, so it may be difficult to change. Gov. Taft noted that there is a difference between elected officials voting for their own pay raise, such as pay raises for General Assembly members, versus the legislature voting to raise the pay of other officials.

The committee discussed possible interested parties on this issue, including taxpayer associations and local government associations. Vice-chair Gilbert requested staff to obtain testimony on this issue for the June meeting.

Vice-chair Gilbert reviewed the previous assignment of certain members to do an initial review of different constitutional articles. He said, unfortunately, committee member Paula Brooks may not be able to undertake the county and township issues in Article X, so volunteers were requested. Committee member Roger Beckett was asked and agreed to review this article.

Vice-chair Gilbert requested that assigned members provide comments on their assigned sections to staff for distribution to the committee before the June meeting so that the list of provisions from each section can be discussed at that meeting. The assigned members are: Mr. Beckett on Article X, Mr. Gilbert on Article XV, and Gov. Taft on Article XVIII.

Vice-chair Gilbert then recognized Sen. Coley to begin discussion of the casino gaming provisions in Article XV, Section 6.

Sen. Coley stated his belief that the constitution should not contain specific business plans or create private monopolies like the provisions related to casino gaming. In addition, he expressed concern about the constitutionality of some current statutes related to casinos. He suggested that the casino gaming provisions should be removed from the constitution and placed in state statute. Sen. Coley circulated for committee consideration the following proposed constitutional changes to Article XV, Section 6:

- Delete sections (C)(1), (C)(2), (C)(3), (C)(5), (C)(6), (C)(8), (C)(9), (C)(10), (C)(11), and (C)(12) and convert the same provisions, if possible, into statutory language.
- Create the following new sections using language from the existing sections:

- (C)(1) Casino gaming is hereby authorized in the state of Ohio to create new funding for cities, counties, public school districts, law enforcement, the horse racing industry and job training for Ohio’s workforce.
- (C)(2) One hundred percent of the tax revenue derived from such gaming shall be distributed to or used for education, local governments, law enforcement training, the treatment of problem gaming and substance abuse, the Ohio state racing commission, and the operation of the Ohio casino control commission.
- Make the following changes in remaining sections:
 - In (C)(4): insert “no less than” before “fifty million dollars.”
 - In (C)(4): delete “for a total of two hundred million dollars (\$200,000,000).”
 - In (C)(4): delete “To carry out the tax provisions of section 6(C), and.”
 - In (C)(7): delete the word “four” where it appears before the word “casino.”

Gov. Taft requested clarification about how the transfer of language from the constitution into statute would happen. Sen. Coley suggested having simultaneous ballot issues that remove the constitutional language and create the statutory language. Sen. Coley recognized the two casino companies will fight this proposal but felt that racetrack owners would probably support the proposal.

Mr. Beckett agreed that the current language does not belong in the constitution. However, he expressed concern about the logistics of having it as a ballot issue. He said the General Assembly can place a constitutional amendment before the voters, but there is no process to place a law before the voters except through the statutory initiative process. Mr. Beckett asked whether the legislature could enact replacement statutory language in anticipation of the passage of a ballot issue to remove constitutional language.

Rep. Cupp raised a concern about whether other constitutional problems would occur if the current constitutional language was placed in the Revised Code, commenting that not all transferred provisions would necessarily be valid as statutory language. Vice-chair Gilbert expressed concern about whether, if given to the General Assembly, the current language would be substantively changed when converted into statutory language rather than just moved into the Revised Code.

Gov. Taft asked Mr. Steinglass to clarify whether the General Assembly can pass a law to take effect contingent on the passage of a constitutional amendment. Mr. Steinglass said that, based on case law, such an approach is not allowed. However, he suggested that other approaches have been used in other states, but was not sure if those alternatives would be possible in Ohio.

Alternatively, Mr. Steinglass mentioned the possibility of providing a “sunrise” provision in the proposed new statutory language such that it would take effect on a certain date (for example, January 1, 2018) rather than being contingent on the passage of an amendment. Rep. Cupp suggested that the idea of a sunrise is possible, but Ohio case law on the issue is unclear; there is no authoritative answer as to whether it would work.

In response to a question from Vice-chair Gilbert, Sen. Coley indicated that he has not yet asked the attorney general for any advice on this issue.

The committee agreed to make the issue of casino gaming the main subject of the July meeting.

Vice-chair Gilbert opened the floor to public comment. No members of the public offered comment.

Adjournment:

With no further business to come before the committee, the meeting adjourned at 10:54 a.m.

Approval:

The minutes of the April 13, 2017 meeting of the Education, Public Institutions, and Local Government Committee were approved at the May 11, 2017 meeting of the committee.

/s/ Edward Gilbert

Edward Gilbert, Chair



OHIO CONSTITUTIONAL MODERNIZATION COMMISSION

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

FOR THE MEETING HELD
THURSDAY, MAY 11, 2017

Call to Order:

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

Members Present:

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

Approval of Minutes:

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

Presentations and Discussion:

Garry Hunter

E. Rod Davisson

Ohio Municipal League and Ohio Municipal Attorneys Association

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Reports and Recommendations:

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

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

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

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

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

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

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

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

Adjournment:

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

Approval:

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

/s/ Edward Gilbert

Edward Gilbert, Chair

Appendix 3

Education, Public Institutions,
and Local Government Committee

Status of Assigned Constitution Sections

Status of Assigned Constitution Sections

When Commission created its subject matter committees, it charged each committee with the responsibility for reviewing certain assigned sections of the Ohio Constitution. In turn, each committee maintained a planning worksheet to track its progress in addressing each of its assigned sections. The following document is the final planning worksheet for this committee. It indicates all of the sections for which the committee was responsible and the final status of its reports on those sections. The status is based on the approval steps required in the OCMC Rules of Procedure and Conduct.

The status categories indicated on the worksheet are as follows:

| | |
|---------------------------------|--|
| Draft Status | The current status of a draft report & recommendation |
| Committee 1 st Pres. | First presentation to the committee of the draft report & recommendation |
| Committee 2 nd Pres. | Second presentation to the committee |
| Committee Approval | Approval by the committee of the report & recommendation |
| CC Approval | Approval by the Coordinating Committee |
| OCMC 1 st Pres. | First presentation to the Commission |
| OCMC 2 nd Pres. | Second presentation to the Commission |
| OCMC Approved | Adopted by the Commission |

Education, Public Institutions, and Local Government Committee

Planning Worksheet (Through June 2017 Meetings)

Article VI - Education

Sec. 1 – Funds for religious and educational purposes (1851, am. 1968)

| Draft Status | Committee 1 st Pres. | Committee 2 nd Pres. | Committee Approval | CC Approval | OCMC 1 st Pres. | OCMC 2 nd Pres. | OCMC Approved |
|------------------|------------------------------------|------------------------------------|-----------------------|----------------|-------------------------------|-------------------------------|------------------|
| Completed | 5.14.15 | 10.8.15 | 10.8.15 | 10.8.15 | 11.12.15 | 12.10.15 | 12.10.15 |

Sec. 2 – School funds (1851)

| Draft Status | Committee 1 st Pres. | Committee 2 nd Pres. | Committee Approval | CC Approval | OCMC 1 st Pres. | OCMC 2 nd Pres. | OCMC Approved |
|------------------|------------------------------------|------------------------------------|-----------------------|-----------------|-------------------------------|-------------------------------|------------------|
| Completed | 5.14.15 | 10.8.15 | 10.8.15 | 10.08.15 | 11.12.15 | 12.10.15 | 12.10.15 |

Sec. 3 – Public school system, boards of education (1912)

| Draft Status | Committee 1 st Pres. | Committee 2 nd Pres. | Committee Approval | CC Approval | OCMC 1 st Pres. | OCMC 2 nd Pres. | OCMC Approved |
|------------------|------------------------------------|------------------------------------|-----------------------|-------------|-------------------------------|-------------------------------|------------------|
| Completed | 10.8.15 | | | | | | |

Sec. 4 – State board of education (1912, am. 1953)

| Draft Status | Committee 1 st Pres. | Committee 2 nd Pres. | Committee Approval | CC Approval | OCMC 1 st Pres. | OCMC 2 nd Pres. | OCMC Approved |
|--------------|------------------------------------|------------------------------------|-----------------------|-------------|-------------------------------|-------------------------------|------------------|
| | | | | | | | |

| Sec. 5 – Loans for higher education (1965) | | | | | | | |
|--|---------------------------------|---------------------------------|--------------------|-----------------|----------------------------|----------------------------|---------------|
| Draft Status | Committee 1 st Pres. | Committee 2 nd Pres. | Committee Approval | CC Approval | OCMC 1 st Pres. | OCMC 2 nd Pres. | OCMC Approved |
| Completed | 11.10.16 | N/A | 11.10.16 | 12.15.16 | 12.15.16 | 3.9.17 | 3.9.17 |

| Sec. 6 – Tuition credits program (1994) | | | | | | | |
|---|---------------------------------|---------------------------------|--------------------|-----------------|----------------------------|----------------------------|---------------|
| Draft Status | Committee 1 st Pres. | Committee 2 nd Pres. | Committee Approval | CC Approval | OCMC 1 st Pres. | OCMC 2 nd Pres. | OCMC Approved |
| Completed | 11.10.16 | N/A | 11.10.16 | 12.15.16 | 12.15.16 | 3.9.17 | 3.9.17 |

Article VII - Public Institutions

| Sec. 1 – Insane, blind, and deaf and dumb (1851) | | | | | | | |
|--|---------------------------------|---------------------------------|--------------------|----------------|----------------------------|----------------------------|---------------|
| Draft Status | Committee 1 st Pres. | Committee 2 nd Pres. | Committee Approval | CC Approval | OCMC 1 st Pres. | OCMC 2 nd Pres. | OCMC Approved |
| Completed | 4.13.17 | 5.11.17 | 5.11.17 | 5.11.17 | 5.11.17 | 6.8.17 | 6.8.17 |

| Sec. 2 – Directors of penitentiary, trustees of benevolent and other state institutions; how appointed (1851) | | | | | | | |
|---|---------------------------------|---------------------------------|--------------------|----------------|----------------------------|----------------------------|---------------|
| Draft Status | Committee 1 st Pres. | Committee 2 nd Pres. | Committee Approval | CC Approval | OCMC 1 st Pres. | OCMC 2 nd Pres. | OCMC Approved |
| Completed | 4.13.17 | 5.11.17 | 5.11.17 | 5.11.17 | 5.11.17 | 6.8.17 | 6.8.17 |

| Sec. 3 – Vacancies, in directorships of state institutions (1851) | | | | | | | |
|---|---------------------------------|---------------------------------|--------------------|----------------|----------------------------|----------------------------|---------------|
| Draft Status | Committee 1 st Pres. | Committee 2 nd Pres. | Committee Approval | CC Approval | OCMC 1 st Pres. | OCMC 2 nd Pres. | OCMC Approved |
| Completed | 4.13.17 | 5.11.17 | 5.11.17 | 5.11.17 | 5.11.17 | 6.8.17 | 6.8.17 |

Article X - County and Township Organization

Sec. 1 – Organization and government of counties; county home rule; submission (1933)

| Draft Status | Committee 1 st Pres. | Committee 2 nd Pres. | Committee Approval | CC Approval | OCMC 1 st Pres. | OCMC 2 nd Pres. | OCMC Approved |
|--------------|------------------------------------|------------------------------------|-----------------------|-------------|-------------------------------|-------------------------------|------------------|
| | | | | | | | |

Sec. 2 – Township officers; election; power (1933)

| Draft Status | Committee 1 st Pres. | Committee 2 nd Pres. | Committee Approval | CC Approval | OCMC 1 st Pres. | OCMC 2 nd Pres. | OCMC Approved |
|--------------|------------------------------------|------------------------------------|-----------------------|-------------|-------------------------------|-------------------------------|------------------|
| | | | | | | | |

Sec. 3 – County charters; approval by voters (1933, am. 1957)

| Draft Status | Committee 1 st Pres. | Committee 2 nd Pres. | Committee Approval | CC Approval | OCMC 1 st Pres. | OCMC 2 nd Pres. | OCMC Approved |
|--------------|------------------------------------|------------------------------------|-----------------------|-------------|-------------------------------|-------------------------------|------------------|
| | | | | | | | |

Sec. 4 – County charter commission; election, etc. (1933, am. 1978)

| Draft Status | Committee 1 st Pres. | Committee 2 nd Pres. | Committee Approval | CC Approval | OCMC 1 st Pres. | OCMC 2 nd Pres. | OCMC Approved |
|--------------|------------------------------------|------------------------------------|-----------------------|-------------|-------------------------------|-------------------------------|------------------|
| | | | | | | | |

Article XV - Miscellaneous

Sec. 1 – Seat of government (1851)

| Draft Status | Committee 1 st Pres. | Committee 2 nd Pres. | Committee Approval | CC Approval | OCMC 1 st Pres. | OCMC 2 nd Pres. | OCMC Approved |
|--------------|------------------------------------|------------------------------------|-----------------------|-------------|-------------------------------|-------------------------------|------------------|
| | | | | | | | |

Sec. 3 – Receipts and expenditures; publication of state financial statements (1851)

| Draft Status | Committee 1 st Pres. | Committee 2 nd Pres. | Committee Approval | CC Approval | OCMC 1 st Pres. | OCMC 2 nd Pres. | OCMC Approved |
|--------------|------------------------------------|------------------------------------|-----------------------|-------------|-------------------------------|-------------------------------|------------------|
| | | | | | | | |

Sec. 4 – Officers to be qualified electors (1851, am. 1913, 1953)

| Draft Status | Committee 1 st Pres. | Committee 2 nd Pres. | Committee Approval | CC Approval | OCMC 1 st Pres. | OCMC 2 nd Pres. | OCMC Approved |
|--------------|------------------------------------|------------------------------------|-----------------------|-------------|-------------------------------|-------------------------------|------------------|
| | | | | | | | |

Sec. 6 – Lotteries, charitable bingo, casino gaming (1851, am. 1973, 1975, 1987, 2009, 2010)

| Draft Status | Committee 1 st Pres. | Committee 2 nd Pres. | Committee Approval | CC Approval | OCMC 1 st Pres. | OCMC 2 nd Pres. | OCMC Approved |
|--------------|------------------------------------|------------------------------------|-----------------------|-------------|-------------------------------|-------------------------------|------------------|
| | | | | | | | |

| Sec. 7 – Oath of officers (1851) | | | | | | | |
|----------------------------------|------------------------------------|------------------------------------|-----------------------|-------------|-------------------------------|-------------------------------|------------------|
| Draft Status | Committee 1 st Pres. | Committee 2 nd Pres. | Committee Approval | CC Approval | OCMC 1 st Pres. | OCMC 2 nd Pres. | OCMC Approved |
| | | | | | | | |

| Sec. 10 – Civil service (1912) | | | | | | | |
|--------------------------------|------------------------------------|------------------------------------|-----------------------|-------------|-------------------------------|-------------------------------|------------------|
| Draft Status | Committee 1 st Pres. | Committee 2 nd Pres. | Committee Approval | CC Approval | OCMC 1 st Pres. | OCMC 2 nd Pres. | OCMC Approved |
| | | | | | | | |

| Sec. 11 – Marriage (2004) | | | | | | | |
|---------------------------|------------------------------------|------------------------------------|-----------------------|-------------|-------------------------------|-------------------------------|------------------|
| Draft Status | Committee 1 st Pres. | Committee 2 nd Pres. | Committee Approval | CC Approval | OCMC 1 st Pres. | OCMC 2 nd Pres. | OCMC Approved |
| | | | | | | | |

Article XVIII - Municipal Corporations

Sec. 1 – Classification of cities and villages (1912)

| Draft Status | Committee 1 st Pres. | Committee 2 nd Pres. | Committee Approval | CC Approval | OCMC 1 st Pres. | OCMC 2 nd Pres. | OCMC Approved |
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Sec. 2 – General laws for incorporation and government of municipalities; additional laws; referendum (1912)

| Draft Status | Committee 1 st Pres. | Committee 2 nd Pres. | Committee Approval | CC Approval | OCMC 1 st Pres. | OCMC 2 nd Pres. | OCMC Approved |
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Sec. 3 – Municipal powers of local self-government (1912)

| Draft Status | Committee 1 st Pres. | Committee 2 nd Pres. | Committee Approval | CC Approval | OCMC 1 st Pres. | OCMC 2 nd Pres. | OCMC Approved |
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Sec. 4 – Acquisition of public utility; contract for service; condemnation (1912)

| Draft Status | Committee 1 st Pres. | Committee 2 nd Pres. | Committee Approval | CC Approval | OCMC 1 st Pres. | OCMC 2 nd Pres. | OCMC Approved |
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| Sec. 5 – Referendum on acquiring or operating municipal utility (1912) | | | | | | | |
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| Draft Status | Committee 1 st Pres. | Committee 2 nd Pres. | Committee Approval | CC Approval | OCMC 1 st Pres. | OCMC 2 nd Pres. | OCMC Approved |
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| Sec. 6 – Sale of surplus product of municipal utility (1912, am. 1959) | | | | | | | |
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| Draft Status | Committee 1 st Pres. | Committee 2 nd Pres. | Committee Approval | CC Approval | OCMC 1 st Pres. | OCMC 2 nd Pres. | OCMC Approved |
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| Sec. 7 – Home rule; municipal charter (1912) | | | | | | | |
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| Draft Status | Committee 1 st Pres. | Committee 2 nd Pres. | Committee Approval | CC Approval | OCMC 1 st Pres. | OCMC 2 nd Pres. | OCMC Approved |
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| Sec. 8 – Submission and adoption of proposed charter; referendum (1912) | | | | | | | |
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| Draft Status | Committee 1 st Pres. | Committee 2 nd Pres. | Committee Approval | CC Approval | OCMC 1 st Pres. | OCMC 2 nd Pres. | OCMC Approved |
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| Sec. 9 – Amendments to charter; referendum (1912, am. 1970) | | | | | | | |
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| Draft Status | Committee 1 st Pres. | Committee 2 nd Pres. | Committee Approval | CC Approval | OCMC 1 st Pres. | OCMC 2 nd Pres. | OCMC Approved |
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| Sec. 10 – Appropriation in excess of public use (1912) | | | | | | | |
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| Draft Status | Committee 1 st Pres. | Committee 2 nd Pres. | Committee Approval | CC Approval | OCMC 1 st Pres. | OCMC 2 nd Pres. | OCMC Approved |
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| Sec. 11 – Assessments for cost of appropriating property (1912) | | | | | | | |
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| Draft Status | Committee 1 st Pres. | Committee 2 nd Pres. | Committee Approval | CC Approval | OCMC 1 st Pres. | OCMC 2 nd Pres. | OCMC Approved |
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| Sec. 12 – Bonds for public utilities (1912) | | | | | | | |
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| Draft Status | Committee 1 st Pres. | Committee 2 nd Pres. | Committee Approval | CC Approval | OCMC 1 st Pres. | OCMC 2 nd Pres. | OCMC Approved |
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| Sec. 13 – Taxation, debts, reports, and accounts (1912) | | | | | | | |
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| Draft Status | Committee 1 st Pres. | Committee 2 nd Pres. | Committee Approval | CC Approval | OCMC 1 st Pres. | OCMC 2 nd Pres. | OCMC Approved |
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| Sec. 14 Municipal elections (1912) | | | | | | | |
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| Draft Status | Committee 1 st Pres. | Committee 2 nd Pres. | Committee Approval | CC Approval | OCMC 1 st Pres. | OCMC 2 nd Pres. | OCMC Approved |
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