



OHIO CONSTITUTIONAL MODERNIZATION COMMISSION

MINUTES OF THE LEGISLATIVE BRANCH & EXECUTIVE BRANCH COMMITTEE

FOR THE MEETING HELD
THURSDAY, FEBRUARY 12, 2015

Call to Order:

Chair Mills called the meeting of the Legislative Branch and Executive Branch Committee to order at 11:10 a.m.

Members Present:

A quorum was present with committee members Mills, Brooks, Davidson, Taft, Tavares, and Trafford in attendance.

Approval of Minutes:

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

Presentation:

Frank Strigari
Majority Counsel
Ohio Senate

Senate Majority Counsel Frank Strigari presented on Senate Joint Resolution 1 (SJR 1) regarding the creation of the Public Office Compensation Commission (POCC).

Mr. Strigari provided an outline of SJR 1, which would change the way the Ohio Constitution provides for how the salaries for elected officials are set. Currently, the General Assembly is constitutionally required to pass legislation that establishes compensation rates for public officials. This includes members and officers of the General Assembly, executive officers, the chief justice and the justices of the Supreme Court, the judges of the courts of appeals, the judges of the courts of common pleas, and county public officials, except for those officials elected under home rule.

Mr. Strigari noted that the General Assembly has not passed legislation to raise the salaries of public officials since it passed HB 712 in 2000. HB 712 included an annual cost of living

adjustment that ended in 2008. He emphasized that all public officials have been receiving the same salary since 2008.

Mr. Strigari also noted that 19 states have established compensation commissions. Of those 19, 13 were created by amendments to state statutes. This occurred in states such as Arizona, Arkansas, California, Hawaii, Idaho, Maryland, Texas, Washington, and West Virginia. The other six states that have compensation commissions established such a commission via statute. Mr. Strigari highlighted Arkansas, which passed a constitutional amendment establishing a compensation commission in November 2014. This commission is charged with compensating judges, legislators, and other elected officials. Mr. Strigari noted that the Arkansas Compensation Commission has been meeting frequently and is preparing to submit a pay plan soon.

He also highlighted the City of Columbus, which has established a compensation commission recently. In a statement about the newly created compensation commission, Mayor Mike Coleman said the commission, which puts the power to decide the pay of elected officials in the hands of the people, was an emerging best practice, and was “the right thing to do.” Mr. Strigari noted that compensation commissions seem to be gaining traction.

After presenting this background, Mr. Strigari discussed the provisions contained in SJR 1. SJR 1 would constitutionally establish the POCC, which would set salaries for elected officials in Ohio, except for those officials elected under home rule. If SJR 1 is adopted by three-fifths of each house before August 2015, it will be placed on the November 2015 ballot. SJR 1 is nearly identical to SJR 9, which was presented in the last General Assembly. SJR 9 was passed unanimously in the Senate in December 2014, but did not pass the House.

Mr. Strigari asserted that the central question to determine the success of SRJ 1 is whether the electors want legislators to establish their own salaries.

Mr. Strigari then detailed the organization of the proposed compensation commission. There would be nine voting members: two appointed by the Governor, two appointed by the President of the Senate, two appointed by the Speaker of the House of Representatives, one appointed by the Minority Leader of the Senate, one appointed by the Minority Leader of the House of Representatives, and one appointed by the Chief Justice of the Supreme Court. Additionally, some individuals would be prohibited from membership. These individuals include officers and employees of the state, family members of officers and employees of the state, individuals who have run for public office in the state in the last 12 months, and lobbyists. Members will be appointed to two-year terms and may serve four consecutive terms, but cannot serve more than eight years total.

The POCC would be required to meet every two years to review its compensation plan. The commission would prepare a draft of its compensation plan, have at least three public hearings to garner feedback from the public, and then prepare its final compensation plan by December 31 of every even numbered year. The final compensation plan would become law on July 1 of the following odd numbered year, unless the General Assembly opposes the proposed plan by concurrent resolution. Mr. Strigari also noted that, should the POCC raise salaries by more than the rise in cost of living, such a raise would need to be justified.

Mr. Strigari highlighted that SJR 1 would require the newly established compensation commission to meet immediately. If SJR 1 is approved, the compensation commission would need to set compensation levels by December 31 of this year, and those compensation rates would go into effect by July of next year. Mr. Strigari stressed that a compensation commission will work more quickly than any legislation on the subject. He then thanked the chairs and members of the Legislative Branch and Executive Branch Committee and opened the floor for questions.

Vice Chair Brooks asked about the characterization of compensation commissions as an emerging best practice. She enquired as to what documentation there was for such an assertion. She noted that she had not heard of any data from the National Association of Counties. Mr. Strigari said that little documentation exists on the success of compensation commissions, but that the National Conference of State Legislatures had some information. Mr. Strigari plans to provide Chair Mills with this information.

Vice Chair Brooks also inquired about the lobbyist exception to membership on the compensation commission. She stated that under Governor Celeste, when lobbyists were not documented in detail, the Governor passed an Executive Order that dealt with companies that had a matter before an agency for an extended period of time. These companies were considered lobbyists under the Executive Order. Vice Chair Brooks asked whether SJR 1 included this definition of lobbyist in its exception to membership on the compensation commission. Mr. Strigari replied that SJR 1 did not include any definition of that type. Vice Chair Brooks stated that such a definition should be considered.

Committee member Trafford asked about the breadth of the compensation commission's jurisdiction, and how non-elected officials would be distinguished from regular government employees. Mr. Strigari stated that the intention of the language is to give the POCC jurisdiction over the same individuals for which the General Assembly currently establishes salaries. Ms. Trafford commented on the ambiguity in case law about who is an employee and who is a non-elected official, and asked Mr. Strigari how such ambiguity should be handled in the Ohio Constitution. Mr. Strigari stated that the non-elected officials' language is meant to capture county boards of elections officials. These are individuals who are appointed, but have salaries established by the General Assembly. Mr. Strigari also noted that the Legislative Services Commission helped draft the language, and suggestions on drafting are welcome.

Ms. Trafford asked whether this bill has been passed by the Senate. Mr. Strigari stated that SJR 9, a nearly identical bill, was unanimously passed by the Senate. However, SJR 1 is still in committee.

Chair Mills opened the floor for additional questions. He noted that the staff of the Ohio Constitutional Modernization Commission can create drafting options to be considered by the committee. Mr. Strigari noted that sufficient time exists to make sure that the language is appropriate. Senator Tavares added it is an opportune time to take language proposals before the Senate Finance Committee.

Committee Discussion:

Chair Mills then brought up two other important issues to discuss: redistricting and term limits. Because these issues may go on the ballot this year, Chair Mills plans to hold committee meetings every month for the foreseeable future.

Redistricting Proposal

Chair Mills gave an overview of the work the committee has done on redistricting thus far. For many months, the committee has heard testimony on redistricting. In November and December 2014, the General Assembly moved forward with HJR 12, which affects the districts of the General Assembly. HJR 12 will be on the ballot this year. Because the committee is well informed on the redistricting issue, Chair Mills wondered whether it is appropriate for this committee to take a stance in support of the issue as it appears on the ballot. He then opened the floor for discussion on that issue.

Committee member Taft asked a broader question: is it the proper role of this commission to take positions on issues we did not initiate? Chair Mills affirmed that Mr. Taft re-phrased his question well and opened the floor for thoughts on the issue.

Ms. Trafford asserted several reasons why the committee might not want to weigh in on ballot issues. She stated that it is not in the purview of the committee to approve or criticize actions that the General Assembly may take independently of the Commission's recommendations. She mentioned that it may confuse or mislead the voters about where the policy originated. Senator Tavares responded that the committee has been highly involved in the redistricting issue and has discussed it at length. This may be a reason to analyze the ballot issue and see if it meets the goals of this committee. It might be a good idea even though the process is out of order. Senator Tavares commented that typically, the General Assembly would review recommendations of the Commission and not the other way around.

Vice Chair Brooks asked how the 1970s Ohio Constitutional Revision Commission decided to handle such issues. Chair Mills responded that his understanding is that no plan was put into place by the 1970s Commission, but that the issue could be researched. Committee member Davidson then mentioned that the current Commission should create a policy that defines its role in responding to ballot issues on which it is well informed. She stated similar situations will arise with the General Assembly in the future. Chair Mills asked for comments from OCMC Executive Director Steve Hollon and Counsel to the Commission, Shari O'Neill.

Ms. O'Neill affirmed Chair Mills's point; this issue was raised with the 1970s Commission but was never resolved. Ms. O'Neill offered to write a brief memo on the issue. Mr. Hollon stated that he informally raised the issue with the Joint Legislative Ethics Commission, and that while they did not give an outright prohibition, they did not state there would be no violation if members of the Commission choose to speak about items on the ballot. That choice is a matter for Commission leadership and authority given to the Commission by the General Assembly as to whether they want the Commission to speak out on ballot issues.

Chair Mills confirmed that this issue is on the agenda of the full commission, which will meet later today.

Legislative Term Limits

Chair Mills introduced the discussion on term limits and opened the floor to Mr. Hollon for an overview of that issue. Mr. Hollon called the Committee's attention to part two of the meeting materials, specifically the memo he wrote on options for amending Ohio Constitution Article II, Section 2, discussing term limits. The OCMC staff created two options for amending this section of the Constitution. The first option is to increase the term limit from 8 to 12 years and apply that increase to current members of the General Assembly. The second option is to increase the term limit from 8 to 12 years but it would not to apply to current members of the General Assembly.

Chair Mills asked whether there were any substantive questions about the proposals. There were none. Chair Mills then asked whether there were any questions on the merits.

Ms. Trafford inquired about the rationale for the two proposals. Chair Mills responded that the first option is more likely to be acceptable to 3/5 of the General Assembly, but that the second option is more likely to be acceptable to the voters. He also stated that testimony favors the change from 8 to 12 years, but also indicated that voters do not want to remove term limits entirely.

Committee member Taft asked whether other states have applied lifetime service requirements. Steve Steinglass, Senior Policy Advisor to the Commission addressed this question. Mr. Steinglass stated that some states do have lifetime service requirements. Some states limit how many consecutive terms a representative can serve, and others limit how many total terms representatives can serve. Mr. Steinglass also noted that there have been no successful repeals of constitutionally embedded term limits in the country. The only successes have been in lengthening the terms. In fact, Arkansas lengthened its term limits in November.

Mr. Taft then asked about the chart on the second page of Mr. Steinglass's memo. Mr. Steinglass explained that this chart shows which states have limits on consecutive terms. Only 15 states have consecutive term limits. Six states have repealed them, but the repeals occurred in states where the term limits were adopted by the legislature itself. Mr. Taft asked how many states have lifetime bans. Mr. Steinglass replied that six states have lifetime bans.

Ms. Davidson asked whether extending term limits would apply to sitting members of the General Assembly or only to those newly elected. Mr. Steinglass stated that in situations of prospective extension, there is much success. In California, there was a campaign to extend term limits for sitting legislators. That proposal failed. It was reintroduced a few years later, but only applied to newly elected members. Mr. Steinglass stated that while these examples exist, the number of states that have attempted an extension of term limits is small; it's misleading to say that a trend has occurred.

Vice Chair Brooks asked to clarify how many total states have term limits. Mr. Steinglass answered that 15 states currently have term limits. Vice Chair Brooks then confirmed that there

are no emerging best practices in regards to term limits. Mr. Steinglass agreed that trends are difficult to find.

Chair Mills inquired about options for how to proceed. Ms. Trafford stated if there is a compelling reason to extend term limits from 8 to 12 years, it should be done sooner rather than later. The only reason to delay the extension, she noted, would be that the amendment might be more likely to succeed.

Mr. Taft stated that, if the Committee decides to proceed, he would like to discuss the policy pros and cons of a lifetime limit on service in the General Assembly. Mr. Taft is interested in lifetime bans irrespective of chamber.

Chair Mills called for public comments. There were none. He stated that the term limits issue will re-appear on the March agenda. Chair Mills expressed that he would like to bring the issue for a vote at that meeting. Mr. Hollon reminded the Committee that, once it votes and approves a recommendation that will constitute a first draft. A second draft would then go to the full Commission the following month.

Adjournment:

With no further business to come before the committee, the meeting adjourned at 12:08 p.m.

Attachments:

- Notice
- Agenda
- Roll call sheet

Approval:

These minutes of the February 12, 2015 meeting of the Legislative Branch and Executive Branch Committee were approved at the March 12, 2015 meeting of the committee.

/s/ Frederick E. Mills

Frederick E. Mills, Chair

/s/ Paula Brooks

Paula Brooks, Vice Chair