OHIO CONSTITUTIONAL MODERNIZATION COMMISSION

Constitutional Revision and Updating Committee

Dennis P. Mulvihill, Chair
Charles F. Kurfess, Vice-chair

June 8, 2017

Ohio Statehouse
Room 017

OCMC Constitutional Revision and Updating Committee

Chair	Mr. Dennis Mulvihill
Vice-chair	Mr. Charles Kurfess
	Ms. Janet Abaray
	Mr. Roger Beckett
	Rep. Robert Cupp
	Rep. Glenn Holmes
	Sen. Kris Jordan
	Sen. Vernon Sykes
	Mr. Mark Wagoner

OHIO CONSTITUTIONAL MODERNIZATION COMMISSION

CONSTITUTIONAL REVISION AND UPDATING COMMITTEE

THURSDAY, JUNE 8, 2017
11:30 A.M.
OHIO STATEHOUSE ROOM 017

AGENDA

I. Call to Order

II. Roll Call

III. Approval of Minutes

- Meeting of May 11, 2017

  [Draft Minutes – attached]

IV. Next Steps

- The committee chair will lead discussion regarding Article XVI (Amendments).

  [Memorandum by Steven H. Steinglass titled "Issues Concerning Article XVI and the Amendment Process" – attached]

  [Planning Worksheet – Attached]

V. Old Business

VI. New Business

VII. Public Comment

VIII. Adjourn

OHIO CONSTITUTIONAL MODERNIZATION COMMISSION

MINUTES OF THE
CONSTITUTIONAL REVISION AND UPDATING COMMITTEE

FOR THE MEETING HELD
THURSDAY, MAY 11, 2017

Call to Order:

Chair Dennis Mulvihill called the meeting of the Constitutional Revision and Updating Committee to order at 11:07 a.m.

Members Present:

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

Approval of Minutes:

The minutes of the April 13, 2017 meetings of the committee were approved.

Reports and Recommendations:

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

Chair Mulvihill began the meeting by announcing that the committee would be hearing a second presentation on the initiative and referendum sections of Article II. He said some amendments have been introduced that the committee would be addressing. He thanked Shari L. O'Neill, interim executive director and counsel, and Steven H. Steinglass, senior policy advisor, for their work assisting the committee. He also thanked committee members, particularly noting the success of the committee in leaving partisan politics out of the meetings. He said the committee has made policy judgments, but that they were made in the spirit of preserving the people's right to use ballot initiatives, and did require some give and take among the members. He said, in aggregate, the committee's work reflects the collective wisdom of those judgments and those compromises.

Describing the existing sections of Article II, Chair Mulvihill said the initiative and referendum provisions contain some of the most confusing and difficult-to-understand language in the constitution. He said the committee's work has been to modernize, streamline, and clear out the density contained in those current provisions.

He continued that the committee has reorganized and rewritten the sections to accomplish its goals. He said the recommendation is the result of four-and-a-half years, during which the committee heard dozens of presentations, received much public comment and input, and had strong bipartisan support for the changes. He said the recommendations were approved by the committee in a unanimous vote.

He said, from the outset, the committee was committed to protecting the strong history of provisions that allow Ohioans the right to initiate laws and constitutional amendments. At the same time, he said, "we have 105 years of history to see what has worked and what has not."

Summarizing the committee's work, Chair Mulvihill said the committee had a sense the constitutional initiative has been abused over the years, while the statutory initiative has been underutilized. He observed that, since 1913, there a have been 69 citizen-initiated constitutional amendments submitted to the voters, with 14 in the last 16 years. He said, of the 69, 18 were approved by the voters, or 26 percent of the time, with the General Assembly having 154 submitted to voters, with 106 approved, for a total of 68.8 percent. He noted that Ohio currently has the tenth longest state constitution in the country, in terms of the number of words.

Since 1913, he said there have only been 12 statutory initiatives submitted to the voters, with only three passing, and only one since 1949. He explained that this means that when the initiative process is used, 85 percent of the time the petitioners use the constitutional route. He said this has resulted in many concepts being implanted, or attempted to be implanted, in the constitution that would be better served being in the Ohio Revised Code.

Chair Mulvihill said the committee concluded that the most obvious reason for the discrepancy between the over-used constitutional initiative and the under-used statutory initiative is the existence of the supplementary petitions and the lack of protection to initiated laws against interference by the General Assembly.

He said the committee's philosophy was that the state constitution exists to establish the basic framework of government; that there are three branches of government and their relationship to one another; the relationship between state and local governments; and the relationship between citizens and government, primarily through the Bill of Rights.

He continued that what have emerged lately are initiated amendments to the constitution that are inconsistent with the purpose of the constitution. He said, without commenting on the merits of any of these items, but only their placement or attempted placement in the constitution, there has been a trend of placing in the constitution topics such as casino gaming, including the specific land plots for that purpose, age limits for judicial office, smoking bans, minimum wage, treatment in lieu of incarceration for drug offenders, and marijuana legalization, including reference to specific land plots.

He said irrespective of whether someone would support or oppose any of these issues, the committee felt these kinds of initiatives do not really belong in the constitution but rather in the Revised Code. So, he said, the committee's work, in addition to modernizing and making the provisions readable and understandable, was designed to encourage petitioners to take the statutory, rather than the constitutional, route when undertaking the initiative process.

He said the committee also had a goal of reducing the influence of politics and political gamesmanship that occasionally impair the abilities of citizens to get their petitions to the ballot.

He summarized the recommendations as follows:

- Making the sections largely self-executing, consistent with explicit wishes of the 1912 commission;
- Making the statutory initiative more user-friendly by eliminating the supplementary petition and by creating a safe-harbor provision protecting those initiated statutes from amendment or repeal from the General Assembly for five years, absent a 2/3 super majority vote in each house of General Assembly;
- Decreasing the number of signatures required to initiate a statute from six percent (assuming the supplementary petition was needed) to five percent;
- Creating constitutional authority for the initial 1,000 signature petition, submitted to the attorney general, a requirement presently in the Revised Code;
- Creating constitutional authority for the determination by the attorney general that the summary of the initiative or referendum is fair and truthful;
- Requiring initiatives to use gender-neutral language, where appropriate;
- Providing that the one amendment rule applies to both initiated constitutional amendments and legislatively initiated amendments;
- Increasing the passing percentage for constitutional amendments from 50 to 55 percent;
- Permitting initiated constitutional amendments to be on the ballot in even years only, when more people actually vote;
- Providing clarity by specifying dates when proposed statutory and constitutional initiatives can be submitted, and when the attorney general, secretary of state, and ballot board must complete their work;
- Permitting the General Assembly to modernize the signature-gathering process by using electronic signatures;
- Front end loading the work on the ballot board by requiring it to draft the ballot language and title after the petitioners submit the 1,000 signatures to the attorney general, but before the petitioners gather the hundreds of thousands of signatures that are required;
- Allowing the petitioners to suggest ballot language and the title to the ballot board;
- Allowing the petitioners to appeal to the Supreme Court at any time during the process if they are dissatisfied with a ruling from the attorney general, secretary of state, or ballot board; and,
- Retaining the historic role of the attorney general, the secretary of state, and the ballot board in managing the initiative process.

Chair Mulvihill said the committee strongly believes that, on balance, the suggested changes create a far superior, fairer, and more transparent process for statutory and constitutional initiatives; protect the rights of petitioners to bring their ideas to the voters and reduce the potential for political interference with that right; allow constitutional amendments to be

considered by more voters, knowing the significant drop-off between even and odd year elections; and encourage petitioners to use the statutory process, rather than placing in the constitution issues that belong in statutory law.

Chair Mulvihill said the committee considers the proposals to be in compliance with the single subject requirement because the subject would be "reforming the initiative process." He noted that the committee received last-minute proposed amendments to the re-write of the initiative which will be considered. However, he noted those proposed amendments are not to the report and recommendation and do not substantively change the recommendations in the report. He emphasized the technical conveyance to the Commission is the report and recommendation rather than the re-write.

Chair Mulvihill recognized Senator Vernon Sykes for the purposes of describing the proposed amendments. Sen. Sykes invited George Boas, deputy chief of staff for the Senate Democratic Caucus, to review the amendments with the committee.

Mr. Boas directed the committee's attention to the first amendment, titled "Adding Timeframe for Attorney General Action." (Attachment A) He said the amendment establishes a time frame for the attorney general to review a submitted initiated constitutional amendment or initiated statute to determine if it is sufficient and if the summary is a fair and truthful statement. He said this proposed amendment clarifies how long the attorney general has, saying it is ten days. That requirement is currently in statutory law.

Committee member Janet Abaray asked if this amendment would cause any problem, specifically, whether the fact it was not included in the previous draft was intentional. Chair Mulvihill said it does not create an issue, and Mr. Boas said that this is the current process according to the relevant statute. Steven H. Steinglass, senior policy advisor, commented that the failure to include it was a drafting oversight, and indicated that including it is a good precaution. Ann Henkener, director and legislative director of the League of Women Voters of Ohio, noted that she had submitted comments to the chair, and that the subject of this proposed amendment was part of her comments. Mr. Boas said the next three proposed amendments also are based on Ms. Henkener's comments.

Mr. Boas continued, describing a second proposed amendment titled "Petition Requirements Conflict Correction." (Attachment B) He said this amendment would remove language within proposed Section 1d(A) referencing a "summary approved by the attorney general," and substituting it with the phrase "title and ballot language prescribed by the ballot board." He said the reason for this is that, because the ballot board review is now front loaded, the amendment places that review as part of the initial petition process. He said the reason for the change is that it makes sense to have the ballot language be part of the petition process.

Describing the third proposed amendment, titled "Annual Deadline to File a Proposed Initiated Statute," (Attachment C) Mr. Boas indicated that this change would replace February with April, and June with July, thus delaying by two months the deadlines for an initiated statue. He said this would give petitioners more time to perform all the necessary tasks to get an initiated statute on the ballot.

The fourth proposed amendment, titled "Annual Deadline to File a Proposed Constitutional Amendment," replaces the deadline in June with a July deadline. (Attachment D)

Ms. Henkener noted that the summary needs to be part of the original petition with 1,000 signatures, but the current provision in Section 1d is different.

Ms. Abaray asked whether Mr. Mulvihill is comfortable stating these changes do not change the report and recommendation. Mr. Mulvihill said he reviewed the proposed amendments along with committee member Roger Beckett and Mr. Steinglass, and their collective view is that these changes work.

Sen. Sykes separately moved to adopt amendments numbered 1, 2, 3, and 4, with Mr. Beckett seconding those motions. There were no objections to adopting the amendments.

Mr. Mulvihill asked for discussion on the report and recommendation.

Representative Bob Cupp observed that the re-write, at various points, alternates between the use of the word "shall" and the word "may." He wondered whether a revision was in order to create consistency. Chair Mulvihill said the point was to give petitioners an option to submit language to the ballot board at their discretion.

Mr. Steinglass said there are areas of the re-write where drafting could be improved. He acknowledged, however, that there will be edits undertaken when the General Assembly takes up the matter and those types of issues can be corrected at that time.

Chair Mulvihill noted that the first sentence of the report and recommendation needs to match with the title of the report.

He also noted an issue with the first line of the second paragraph, wondering if it should reference "Section 17." Mr. Steinglass said the committee had to address a couple of issues in the latter part of Article II that were buried in the initiative and referendum. He said the change does not affect the substantive policy.

Mr. Steinglass commented that the committee has not yet addressed Article XVI.

Mr. Beckett commented that the report and recommendation will be reviewed before it leaves the Commission, allowing technical issues to be corrected.

Chair Mulvihill asked for a motion to approve the report and recommendation. Ms. Abaray so moved, with Mr. Beckett seconding the motion. A voice vote was taken and the motion passed.

Complimenting Chair Mulvihill, Mr. Kurfess said the ponderous work of the committee to meet exactly what it set out to do is in large part to Chair Mulvihill's commitment. He thanked Chair Mulvihill not just for getting everyone involved, but in giving his own personal time, study, and input. He said "I think that we can be confident in what we have done and a sense of pride. I want to personally thank you for your effort and I hope it will be received appropriately by the General Assembly."

Chair Mulvihill thanked Mr. Kurfess for his compliment and for his help.

Mr. Kurfess also thanked staff for its assistance.

Sen. Sykes said he agrees with Mr. Kurfess that the committee has done a lot of work. He said, reviewing the current budget, he does not believe that the legislature acknowledges or appreciates the work of the committees, but that should not take away from the efforts of this committee and its leadership.

Chair Mulvihill then called for a roll call vote on the motion to approve the report and recommendation. The vote was as follows:

Mulvihill – yea
Kurfess – yea
Abaray – yea
Beckett – yea
Cupp – yea
Holmes – yea
Sykes – yea

The motion passed, with seven in favor, none opposed, and two absent.

Chair Mulvihill said it is not confirmed that the committee will meet next month. He said one of the amendments he received that was not brought forward today deals with Article XVI, which is part of the committee's charter. He said if the committee does meet in June, there will be an opportunity to give that due consideration.

Mr. Steinglass said that the General Assembly had identified review of the amendment process as one of the purposes for creating this Commission. As part of this review, the committee has been addressing the initiative process. Article XVI is the other part of the constitution that governs the amendment process, but the committee has not yet considered this article. He said he and the chair had discussed the need to address issues concerning constitutional conventions and possibly even constitutional revision commissions. He said it is also possible to look at the experiences of other states in amending their constitutions. He encouraged committee members to think about better ways to address the amendment process.

Mr. Beckett said there are two issues to focus on: one is the parity question indicating that rules that apply to the legislature should apply to the people. He said a second question relates to the requirement of a convention call every 20 years, observing that many states are replacing that requirement with commissions.

Ms. Abaray said Mr. Beckett's contributions to the report and recommendation should be acknowledged, as well as the public interest groups that have contributed.

Chair Mulvihill agreed and thanked them for their service.

Adjournment:

With no further business to come before the committee, the meeting adjourned at 11:48 a.m.

Approval:

The minutes of the May 11, 2017 meeting of the Constitutional Revision and Updating Committee were approved at the June 8, 2017 meeting of the committee.

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Dennis P. Mulvihill, Chair

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Charles F. Kurfess, Vice-chair

Adding timeframe for Attorney General Action

Language Change:

Within Section 1a (B)(1) on page 2 after the word "shall" insert ", within ten days, ".

Within Section 1b(B)(1) on page 5 after the word "shall" insert ", within ten days, ".

Effect:

Establishes a timeframe for the Attorney General to review a submitted initiated constitutional amendment or initiated statute to determine if it is sufficient and if the summary is a fair and truthful statement. The 10-days suggested in this amendment aligns with current law and the language for review of a referendum petition in 1c.

Rationale:

A time frame for review is important to protect the rights of petitioners. Under current law the requirement is 10 days and though there are reasonable scheduling rational to extend the ballot board review timeframe to 14 days, no such reason exists for Attorney General Review. This amendment creates consistency within the recommended new language and avoids unintended changes to current law.

Petition Requirements Conflict Correction

Language Change:

Within Section 1d (A) on page 11 after "a full and correct copy of the" strike the remainder of the sentence "summary approved by the attorney general." And insert "title and ballot language prescribed by the ballot board."

Effect:

This amendment creates consistency between 1d(A) which deals only with petition requirements and 1a(C)(2), 1b(C)(2), and 1c(E)(1) which require the ballot language to be printed as part of the petition and explicitly state no other summary is required. 1d(A) without this amendment directly conflicts with that provision.

Rationale:

Since the ballot language is what electors will be met with in the booth, it makes sense to have the ballot language be part of the petition process. Nothing in the amendment would preclude circulators from sharing the attorney general approved summary with electors.

Annual Deadline to File a Proposed Initiated Statute

Language:

Within section 1b(F) on page 6 and the top of page 7 replace each "February" with "April".

Within section 1b(H) on page 7 replace "June" with "July".
Effect:

Delays by two months the deadline for an initiated statute to appear at the next available election and delays by one month the deadline for the General Assembly to act or the petition to be withdrawn.

Rationale:

This amendment is supportive of the goal of making the initiated statute more attractive as compared to the constitutional amendment. The General Assembly will still have 3 months on which to work on the proposal before it is placed on the ballot. It is appropriate to avoid undue delay in when a certified question is placed before the voters. This still leaves more than 125 days for preparation for the issue to be presented to electors.

Annual Deadline to File a Proposed Constitutional Amendment

Language:

Within section 1a(F) at the top of page 4, replace "June" with "July"

Effect:

Delays by one month the deadline for an initiated constitutional amendment to appear at the next available election.

Rationale:

Under current law, initiated amendments must be filed at least 125 days before next general election. This always falls in early July. It is appropriate to avoid undue delay in when a certified question is placed before the voters. In addition, moving the title and ballot language process to the front end will simplify what needs to occur after certification and before an issue is submitted to the voters.

OHIO CONSTITUTIONAL MODERNIZATION COMMISSION

MEMORANDUM

TO:	**Chair Dennis Mulvihill, Vice-chair Charles Kurfess, and Members of the Constitutional Revision and Updating Committee**
CC:	**Shari L. O'Neill, Interim Executive Director and Counsel to the Commission**
FROM:	**Steven H. Steinglass, Senior Policy Advisor**
DATE:	**June 8, 2017**
RE:	**Issues Concerning Article XVI and the Amendment Process**

This memorandum reviews Article XVI of the Ohio Constitution concerning amendments to the constitution (other than the constitutional initiative) and identifies issues that the committee might wish to discuss.

The charge to the Ohio Constitutional Modernization Commission specifically identified the amendment process and instructed the commission to "consider[] the problems pertaining to the amendment of the Constitution."[1]

To fulfill this portion of its statutory charge, this committee has spent more than four years reviewing Article II, Section 1 *et seq*., which contains the provisions governing the constitutional initiative (in addition to provisions governing the statutory initiative and the referendum). The committee has not undertaken a systematic review of Article XVI, which addresses the other methods for amending the Ohio Constitution. [2]

Current Provisions of Article XVI

Article XVI currently contains three sections.

Section 1, which was adopted in 1851 and amended in 1912 and 1974, permits the General Assembly by a three-fifths vote to propose amendments to the voters. Proposed amendments must be submitted on a separate ballot without party designation of any kind; they may be submitted at either a special or a general election. This section also made legislatively-proposed amendments subject to the one amendment/separate vote requirement. The 1912 amendment to this section eliminated the super-majority requirement under which amendments proposed by the

General Assembly had to receive a majority of those voting at the election. Finally, the 1974 amendment created the ballot board, addressed various ballot issues, and gave the Ohio Supreme Court original and exclusive jurisdiction over issues concerning the ballot process. Section 1 in its entirety now provides as follows:

Section 1

Either branch of the general assembly may propose amendments to this constitution; and, if the same shall be agreed to by three-fifths of the members elected to each house, such proposed amendments shall be entered on the journals, with the yeas and nays, and shall be filed with the secretary of state at least ninety days before the date of the election at which they are to be submitted to the electors, for their approval or rejection. They shall be submitted on a separate ballot without party designation of any kind, at either a special or a general election as the general assembly may prescribe.

The ballot language for such proposed amendments shall be prescribed by a majority of the Ohio ballot board, consisting of the secretary of state and four other members, who shall be designated in a manner prescribed by law and not more than two of whom shall be members of the same political party. The ballot language shall properly identify the substance of the proposal to be voted upon. The ballot need not contain the full text nor a condensed text of the proposal. The board shall also prepare an explanation of the proposal, which may include its purpose and effects, and shall certify the ballot language and the explanation to the secretary of state not later than seventy-five days before the election. The ballot language and the explanation shall be available for public inspection in the office of the secretary of state.

The Supreme Court shall have exclusive, original jurisdiction in all cases challenging the adoption or submission of a proposed constitutional amendment to the electors. No such case challenging the ballot language, the explanation, or the actions or procedures of the general assembly in adopting and submitting a constitutional amendment shall be filed later than sixty-four days before the election. The ballot language shall not be held invalid unless it is such as to mislead, deceive, or defraud the voters.

Unless the general assembly otherwise provides by law for the preparation of arguments for and, if any, against a proposed amendment, the board may prepare such arguments.

Such proposed amendments, the ballot language, the explanations, and the arguments, if any, shall be published once a week for three consecutive weeks preceding such election, in at least one newspaper of general circulation in each county of the state, where a newspaper is published. The general assembly shall provide by law for other dissemination of information in order to inform the electors concerning proposed amendments. An election on a proposed constitutional amendment submitted by the general assembly shall not be enjoined nor invalidated because the explanation, arguments, or other information is faulty in any way. If the majority of the electors voting on the same shall adopt such amendments the same shall become a part of the

constitution. When more than one amendment shall be submitted at the same time, they shall be so submitted as to enable the electors to vote on each amendment, separately.

Section 2, which was adopted in 1851 and amended in 1912, provides that the General Assembly can by a two-thirds vote propose a convention call to the voters "to revise, amend, or change this constitution." This section provides in its entirety:

Section 2

Whenever two-thirds of the members elected to each branch of the general assembly shall think it necessary to call a convention to revise, amend, or change this constitution, they shall recommend to the electors to vote on a separate ballot without party designation of any kind at the next election for members to the general assembly, for or against a convention; and if a majority of all the electors, voting for and against the calling of a convention, shall have voted for a convention, the general assembly shall, at their next session, provide, by law, for calling the same. Candidates for members of the constitutional convention shall be nominated by nominating petitions only and shall be voted for upon one independent and separate ballot without any emblem or party designation whatever. The convention shall consist of as many members as the house of representatives, who shall be chosen as provided by law, and shall meet within three months after their election, for the purpose, aforesaid.

Section 3, which was adopted in 1851 and amended in 1912, provides for an automatic vote on a convention call every 20 years. This provision borrows a procedure first adopted by New York in 1846 and now contained in the constitutions of 14 states.[3] This provision provides in its entirety:

Section 3

At the general election to be held in the year one thousand nine hundred and thirty-two, and in each twentieth year thereafter, the question: "Shall there be a convention to revise, alter, or amend the constitution[,]" shall be submitted to the electors of the state; and in case a majority of the electors, voting for and against the calling of a convention, shall decide in favor of a convention, the general assembly, at its next session, shall provide, by law, for the election of delegates, and the assembling of such convention, as is provided in the preceding section; but no amendment of this constitution, agreed upon by any convention assembled in pursuance of this article, shall take effect, until the same shall have been submitted to the electors of the state, and adopted by a majority of those voting thereon.

History of Article XVI and the Power to Amend the Ohio Constitution

1802 Constitution

The 1802 Constitution Convention, which was mandated by Congress, met in November 1802, and in the course of 25 working days adopted Ohio's first constitution. The convention did not

submit the 1802 Constitution to the voters,[4] but on February 19, 1803, Congress recognized Ohio's adoption of a constitution and formation of a government.[5]

The 1802 constitution provided that the people shall "have at all times a complete power to alter, reform or abolish their government, whenever they may deem it necessary."[6] But the 1802 constitution provided only one formal way to change the constitution – through a constitutional convention.[7] The General Assembly could by a two-thirds vote propose a convention and submit the convention call to the voters, who could approve a convention by a vote of a majority of those voting for Representatives.[8] In 1818, the voters rejected a convention call, but they approved one in 1849. The 1802 constitution only provided that the convention would "consist of as many members as there shall be in the General Assembly;" that it would "be chosen in the same manner, at the same place, and by the same electors that choose the General Assembly;" and that it "shall meet within three months after the said election for the purpose of revising, amending or changing the constitution."[9] After the voters approved the convention call in 1850, the General Assembly adopted more detailed legislation governing the 1850-51 Constitutional Convention, including the number of delegates (108), the date for their election, the number of delegates per county, the date and place when and where the convention would initially meet, the compensation of delegates, and the compensation of delegates ($3.00 per day).[10]

1851 Constitution

The 1850-51 Constitutional Convention proposed two new methods for revising the Ohio Constitution. First, the General Assembly was given the power by a three-fifths vote to propose amendments to the voters. Second, the voters were given the opportunity every 20 years to vote on whether they wanted a constitutional convention. The 1851 Constitution also provided additional requirements concerning the holding of a convention, including the timing of the election of delegates (at the next election for members to the General Assembly), the number of delegates (the same as the number of members of the House of Representatives, and the timing of the convention (meeting within three months of the election).

In addition to proposing a new constitution the 1850-51 convention proposed an independent provision on intoxicating beverages, and the voters approved both the new constitution and the separate liquor amendment.

In 1871, the 20-year constitutional call was on the ballot, and the voters approved the call, but in 1874 they rejected the proposed 1874 constitution as well as three independent provisions on controversial issues.[11]

In 1891, the voters rejected the 20-year constitutional call, but in 1896 the General Assembly proposed a convention. The Ohio Supreme Court, however, ordered state officials not to put the proposed call on the ballot, because the joint resolution that sought to authorize the convention contained "legislative" language concerning the operation of the convention, including the mode of voting, the printing of ballots, the length of the convention (no more than 90 days), and the compensation of delegates.[12]

1912 Convention

In 1910 (one year early), the General Assembly proposed and voters overwhelmingly approved a call for a convention. Subsequently, the General Assembly adopted detailed legislation describing the conduct of the 1912 convention including the non-partisan selection delegates, the financing of the convention, and the date of the convention.[13]

The 1912 Constitutional Convention proposed the adoption of provisions for direct democracy, including the initiative and the referendum.[14] The proposal also contained greater details concerning the logistics of a convention, including a new constitutional provision that the vote for delegates be "on a separate ballot without party designation of any kind"[15] and a new constitutional requirement that "[c]andidates for members of the constitutional convention shall be nominated by nominating petitions only and shall be voted for upon one independent and separate ballot without any emblem or party designation whatever."[16]

1912 Proposal for the Use of Constitutional Revision Commissions

One proposal made at the 1912 convention supported the use of constitutional revision commissions instead of constitutional conventions. This proposal would have repealed all provisions dealing with constitutional conventions – both those proposed by the General Assembly and those held pursuant to the mandatory 20-year vote. The proposal permitted the General Assembly (by a two-thirds vote) to ask the voters to approve the appointment by the governor of a fifteen-person commission to recommend changes in the constitution. Proposed amendments would go directly to the ballot and not to the General Assembly. The proponent of this proposal, and the only delegate to address its substance, F. M. Marriott, a lawyer from Delaware County, argued that the tools for constitutional revision – the initiative and amendments proposed by the General Assembly – were sufficient. He also pointed to the cost of constitutional conventions in arguing against their continued use. After a relatively brief debate, the delegates rejected the commission proposal by a vote of 84-15.[17]

Constitutional Amendments Under Article XVI

From 1852 to 1911, the General Assembly proposed 37 amendments to the voters. Of these, the voters approved 11 of them. Of the 26 proposed amendments that the voters rejected, 19 received more positive than negative votes but failed to obtain a majority of the votes of those voting at the election. Thus, all but seven of the proposed 37 amendments received more positive than negative votes.[18]

In 1912, the Ohio Constitutional Convention proposed 42 amendments, and the voters approved 34 of them. Constitutional amendments proposed by conventions were not subject to the supermajority requirement. And from 1913 to 2016, the General Assembly proposed 154 amendments, and the voters approved 106 of them.[19]

Between 1973 and 1978, the Ohio Constitutional Revision Commission (1970s Commission) made 63 recommendations to the General Assembly. Of these, the voters approved 16 amendments (which contained 28 of the 1970s Commission proposals). On the other hand, the

voters rejected four amendments (which contained 14 of the 1970s Commission proposals). For a variety of reasons, the General Assembly did not propose 21 of the 1970s Commission's recommendations to the voters.[20]

From 1932 to 2012, Ohio voters have rejected the mandatory call on the holding of the convention. During this period, the vote was as follows:

Votes on Mandatory Convention Call
1932-2016

11-8-1932	Failed	853,619	1,056,855	44.7%
11-4-1952	Failed	1,020,235	1,977,313	34.0%
11-7-1972	Failed	1,291,267	2,142,534	37.6%
11-3-1992	Failed	1,672,373	2,660,270	38.6%
11-6-2012	Failed	1,523,239	3,248,142	31.9%

Discussion Questions Concerning Constitutional Conventions and Commissions

What would an Ohio constitutional convention look like?

The Ohio Constitution provides limited guidance concerning a constitutional convention, including the timing of the election of delegates, the number of delegates, the use of a non-partisan ballot for the mandatory convention call and for the election of delegates, and for the exclusive use of nominating petitions. Historically, additional details concerning the financing of a convention have been provided by the General Assembly. The committee could address whether more detail about a proposed convention should be included in the convention.

When does a proposed convention call go on the ballot?

The mandatory constitutional call will next be on the ballot on November 2, 2032. A convention call may only be placed on the general election ballot, but the General Assembly by a two-thirds vote can put a convention call on the ballot at any time.

When does a proposed constitution go on the ballot?

The constitution is silent as to when a proposed new constitution (or convention-proposed amendments) will go on the ballot. The 1912 proposals were strategically presented to the voters at a special election held on September 3, 1912, the day after Labor Day.[21]

What are the districts from which convention delegates are selected?

The constitution does not identify the districts, but in 1911, the General Assembly used the same districts as used for members of the House of Representatives. Given that the number of delegates is the same as the number of members of the House of Representatives, there sees to be

an assumption that the General Assembly will use the House district lines for the election of convention delegates.

Can the General Assembly limit the authority of a convention authorized through the mandatory convention call?

The constitution specifies the precise question that must be presented to the voters: "Shall there be a convention to revise, alter, or amend the constitution"?[22] The question does not appear to have been addressed, but there is a very strong argument that the General Assembly may not modify the mandatory call and make it a limited call.

Can the General Assembly place a call for a limited convention on the ballot?

It is likely that the General Assembly may propose a limited convention. There is no Ohio precedent on point, but other states have used limited constitutional conventions, and most state courts permit the use of limited conventions, absent express contrary authority.[23]

Is a constitutional convention limited to proposing a new constitution or can it make multiple proposals to the voters?

An Ohio constitutional convention is not limited to only proposing a new constitution. In 1851 and 1874, the conventions proposed a new constitution as well as separate amendments. And in 1912, the convention did not propose a new constitution but rather proposed 42 different amendments.

May Ohio voters to initiate a constitutional convention?

There is no authority for Ohio voters to initiate a constitutional convention. The delegates at the 1912 Convention discussed the possibility of giving the voters this power, but they rejected this proposal by a vote of 68-29.[24] Currently, four states – Florida, Montana, North Dakota, and South Dakota – permit a convention to be initiated.[25]

Can the amendment process used for a revision, as contrasted to the amendment, of the constitution?

There is no evidence that this issue has ever arisen in Ohio, but in some states "revision" is a term of art, and only a convention can be used to *revise* the constitution; in those states, a constitutional revision may not be accomplished through the amendment process.[26]

How are convention delegates selected?

Delegates are selected at an election held at the same time as the general election on a non-partisan ballot. They are nominated only by nominating petitions.

Can a constitutional convention propose constitutional changes by article?

Yes, but the mandatory convention call cannot be limited to specified articles.

Can a constitutional convention propose multiple discrete amendments?

Yes, and 1912 is the prime example of the use of multiple amendments.

How does Ohio compare to other states in terms of the ease and frequency of constitutional amendments?

Ohio is one of only five states that permit the initiation of constitutional amendments, that have a mandatory convention call, and that permit the state legislature to proposed constitutional amendments. The four others are Michigan, Missouri, Montana, and Oklahoma.[27] None of these states, however, are among the states that have most frequently amended their constitutions.

Are constitutional conventions still a viable method for revising state constitutions?

State constitutional conventions, once the primary way of revising state constitutions, have fallen out of favor, and Professor Robert F. Williams, one of the nation's leading state constitutional scholars, has observed that they "seem to have lost their *legitimacy* in the public mind."[28] Since 1776, there have been 233 state conventions in the United States, but 170 of them took place in the eighteenth and nineteenth centuries.[29] In the first half of the 20th century, there were 27 state constitutional conventions, largely the result of the Progressive Movement. Since 1950, there have been 36 state constitutional conventions, in part the result of the United States Supreme Court's reapportionment decisions. But in this period, only 11 states have approved new constitutions proposed by constitutional conventions, with the most recent approval Rhode Island in 1986. And, since 1950, voters in six states rejected convention-proposed constitutions.[30]

What has taken the place of constitutional conventions for revisions of state constitutions?

The predominant method for amending state constitutions today is through legislatively-proposed amendments and the constitutional initiative. Constitutional revision commissions, however, have taken the place of conventions for major constitutional revisions.[31]

Is there a model state constitutional revision commission?

There is no model state constitutional revision commission. States that have used such commissions have followed widely divergent policies. One state, Florida, is unique in that in addition to the traditional methods of constitutional revision, the Florida Constitution creates a state constitutional revision commission that can place proposed amendments directly on the ballot.[32] Most commissions work like the Ohio's two commissions and require the commission to make recommendations to the state legislature. State constitutional revision commissions differ, however, in the composition and selection of commissioners and the role that they play.[33] The experiences of other states with commission-based constitutional revision have differed widely, and commentators have identified the ingredients for success as including the existence

of bipartisan support for constitutional reform, the leadership of key political leaders, and the presence of public support.[34]

Endnotes

[1] Ohio Rev. Code § 103.61.

[2] For a comprehensive review of constitutional revision in Ohio, see Steven H. Steinglass, *Constitutional Revision: Ohio Style*, 77 Ohio St. L. J. 281 (2016) (hereafter "*Steinglass, Constitutional Revision*").

[3] *See* John Dinan, *The Political Dynamics of Mandatory State Constitutional Convention Referendums: Lessons from the 2000s Regarding Obstacles and Pathways to Their Passage*, 71 Mont. L. Rev. 395 (2010); *see also* Robert J. Martineau, *The Mandatory Referendum on Calling a State Constitutional Convention: Enforcing the People's Right to Reform Their Government*, 31 Ohio St. L. J. 421 (1970).

[4] *See Steinglass, Constitutional Revision*, at 289.

[5] Act of Feb. 19, 1803, ch. 60, 2 Stat. 202, 202–03.

[6] Art. VIII, Section 1 (1802).

[7] *See* Article VII, Section 5 (1802).

[8] *Id.*

[9] *Id.*

[10] *See* 48 Ohio Laws 19 (1850).

[11] *See Steinglass, Constitutional Revision*, at 302-03.

[12] *See State ex rel. Attorney General v. Kinney*, 47 N.E. 569, 569 (Ohio 1897).

[13] *See* S.B. 15, 79th Gen. Assemb., Reg. Sess. (Ohio 1911).

[14] In addition, the 1912 convention recommended the rejection of the supermajority requirement for legislatively-proposed amendments by proposing that amendments proposed by the General Assembly need only receive a majority of those voting on the issue. *See* Art. XVI, Section 1 ("If the majority of electors voting on the same shall adopt such amendments, the same shall become part of the constitution."). Amendments proposed by a constitutional convention are not subject to a supermajority vote. *See Steinglass, Constitutional Revision*, at 299-300.

[15] Art. XVI, Section 1 (1912).

[16] Art. XVI, Section 2 (1912).

[17] *See* 2 *Proceedings and Debates of the Constitutional Convention of the State of Ohio* 1910 – 1912 (1912) (hereafter "*1912 Debates*").

[18] *See Steinglass, Constitutional Revision*, at 310.

[19] *See id*. at 308-09 & 313.

[20] *See id*. at 334-45 (discussing the work of the Ohio Constitutional Revision Commission).

[21] *See id.* at 308.

[22] Article XVI, Section 3 (1851).

[23] *See generally* Robert F. Williams, *The Law of American State Constitutions* 392-97 (2009).

[24] *See* 1912 *Debates*, at 1368.

[25] *See Book of the States, 2015*, Table 1.4 (2015).

[26] *See Steinglass, Constitutional Revision,* at 323-25.

[27] *See Book of the States, 2015*, Tables 1.3 & 1.4 (2015).

[28] Robert F. Williams, *Should the Oregon Constitution Be Revised, and If So, How Should It Be Accomplished?*, 87 OR. L. REV. 867, 901 (2008).

[29] *See* John J. Dinan, *The American State Constitutional Tradition,* 7-8 (2006).

[30] *See Steinglass, Constitutional Revision,* at 332-33 & nn. 348-54.

[31] *Id.* at 353-54.

[32] *See Williams, The Law of American State Constitutions*, at 369-71.

[33] *Id*. at 366-74.

[34] *See Steinglass, Constitutional Revision,* at 333-34.