



## OHIO CONSTITUTIONAL MODERNIZATION COMMISSION

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### 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*

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Chad A. Readler, Chair

*/s/ Edward L. Gilbert*

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Edward L. Gilbert, Vice-chair