

*Co-Chair*  
*Charleta B. Tavares*  
*Assistant Minority Leader*  
*15<sup>th</sup> Senate District*



*Co-Chair*  
*Ron Amstutz*  
*Speaker Pro Tempore*  
*1<sup>st</sup> House District*

## OHIO CONSTITUTIONAL MODERNIZATION COMMISSION

---

### MINUTES FOR THE MEETING HELD THURSDAY, DECEMBER 15, 2016

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

Co-chair Charleta Tavares called the meeting of the Ohio Constitutional Modernization Commission ("Commission") to order at 1:39 p.m.

#### **Members Present:**

A quorum was present with Commission Co-chairs Tavares and Amstutz, and Commission members Brooks, Clyde, Cole, Cupp, Curtin, Davidson, Fischer, Jacobson, McColley, Mills, Mulvihill, Peterson, Sapphire, Sawyer, Skindell, Sykes, and Talley in attendance.

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

The minutes of the November 10, 2016 meeting of the Commission were reviewed and approved.

#### **Standing Committee Reports:**

##### *Coordinating Committee*

Jo Ann Davidson, vice-chair of the Coordinating Committee, reported that the committee approved three reports and recommendations for no change. The first two, issued by the Education, Public Institutions, and Local Government Committee, related to Article VI, Section 5 (Loans for Higher Education), and Article VI, Section 6 (Tuition Credits Program). The third report and recommendation was issued by the Finance, Taxation, and Economic Development Committee, recommended retention of Article VIII, Sections 2l through 2s (Additional Authorization of Debt Obligations).

Vice-chair Davidson said the committee also heard a presentation regarding the Commission's Biennial Report for 2015-2016, which outlined all of the activities of the Commission and its committees over the past two years. Acknowledging the work of staff in putting together the Biennial Report, Vice-chair Davidson said the committee approved the report, which, along with

the three reports and recommendations, are being submitted for consideration by the full Commission.

Vice-chair Davidson added that the committee also decided to take the lead on reviewing and recommending possible revisions to gender-specific language currently in the constitution. She said the committee decided to give the Constitutional Revision and Updating Committee responsibility for recommending language that would ensure the use of gender-neutral language in future constitutional provisions.

### **Subject Matter Committee Reports:**

#### *Bill of Rights and Voting Committee*

Richard Saphire, chair of the Bill of Rights and Voting Committee, reported that the committee discussed Article V, Section 1, relating to the qualifications of an elector. He said the committee voted to postpone further discussion of that section until July 1, 2017. He said the committee will begin to look at remaining provisions of Article V at its next meeting.

#### *Constitutional Revision and Updating Committee*

Dennis Mulvihill, chair of the Constitutional Revision and Updating Committee, said the committee heard excellent suggestions regarding potential changes to Article II, Sections 1 through 1g, which govern the initiative and referendum process. He said Attorney Don McTigue, as well as representatives from the League of Women Voters of Ohio and Common Cause, were present to review with the committee their concerns and suggestions about improving the process. He said the committee will continue to consider possible revisions and hopes to have a recommendation in early 2017.

#### *Legislative Branch and Executive Branch Committee*

Committee Chair Fred Mills reported that the committee would meet later in the day to review and potentially issue two reports and recommendations relating to legislative procedures, and would also hear an update and continue its review of proposals relating to Congressional redistricting.

### **Reports and Recommendations:**

Co-chair Tavares recognized Shari L. O'Neill, counsel to the commission, to give a first presentation on behalf of the Education, Public Institutions, and Local Government Committee regarding two reports and recommendations.

#### *Article VI, Section 5 (Loans for Higher Education)*

Ms. O'Neill indicated that the report and recommendation expresses the committee's conclusion that Article VI, Section 5, relating to loans for higher education, should be retained in its current form because it articulates 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 continued that the report describes the history of the section as being adopted by voters in May 1965 as a way 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. She said the report outlines that the provision was effectuated by statutes that first created commissions to oversee student loans, but that, by 1995, the changing landscape of the student loan market, including the success of a federal direct-lending program, and the fact that private companies were offering the same service, rendered the commissions obsolete.

Ms. O'Neill said the report and recommendation indicates that Section 5 has not been amended or reviewed since its adoption, and that the section has not been subject to any Ohio Supreme Court decisions. Ms. O'Neill said the report describes that presentations by two former directors of the commissions that oversaw the state student loan program would support the conclusion that the constitutional section is currently nonfunctional.

She said the report explains the committee's view that, despite that Article VI, Section 5 would appear unnecessary 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, potential changes to the federal government's student loan programs and policies could render the section useful in the future. She said the committee also was uncertain whether the provision could be necessary to support programs that forgive student loan debt in order to foster the provision of needed services in underserved areas of the state. Thus, she said, the report concludes 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.

*Article VI, Section 6 (Tuition Credits Program)*

Ms. O'Neill presented the report and recommendation of the Education, Public Institutions, and Local Government Committee on Article VI, Section 6, relating to Ohio's tuition credits program. Stating the report concluded the section should be retained in its current form, Ms. O'Neill described that 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.

Ms. O'Neill summarized the report's description of the history of the section, indicating that, in 1989, the General Assembly enacted statutes that established a college savings program and created the Ohio Tuition Trust Authority (OTTA), an office within the Ohio Board of Regents (now the Department of Higher Education). She said the report describes that voters approved the creation of Section 6 in 1994 as a way to address concerns about the tax exempt status of such savings plans. Ms. O'Neill said the report indicates these concerns were resolved by changes in the federal tax code that confirmed the exempt status of these "529 plans," so named for the Internal Revenue Code section that describes them. Ms. O'Neill said the report outlines a presentation by the director of the OTTA, who described that 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. In addition, Ohio plan data indicate that, as of December 2015, over a half million accounts are open, with over \$9 billion in assets.

Ms. O'Neill said the report indicates that, although the need for the provision was resolved by the tax code change, the OTTA director recommended Section 6 be retained because one purpose of the provision is to establish the full faith and credit backing of the state for one of the savings plans offered by the program. She said the report indicates the committee's conclusion that although no new account holders for that plan 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, she said, the report concludes Article VI, Section 6 should be retained.

Co-chair Tavares thanked Ms. O'Neill for her presentation, indicating that a second presentation of these reports and recommendations would be heard at the next Commission meeting.

*Article VIII, Sections 2l, 2m, 2n, 2o, 2p, 2q, 2r, 2s (Additional Authorization of Debt Obligations)*

Co-chair Tavares recognized Doug Cole, chair of the Finance, Taxation, and Economic Development Committee, for the purpose of providing a first presentation of the committee's report and recommendation on Article VIII, Sections 2l through 2s, relating to the authorization of debt obligations.

Mr. Cole indicated the sections covered by the report and recommendation contrast with other debt authorization sections in Article VIII in that they still have outstanding bonding amounts and, as such, are the working subsections of the article. He said, as a result, while a previous report and recommendation recommended the repeal of Article VIII, Sections 2b, 2c, 2d, 2e, 2f, 2g, 2h, 2j, and 2k because they are obsolete, this report and recommendation recommends retaining Sections 2l through 2s because they are currently in use.

Mr. Cole indicated the report and recommendation outlines what each section does, briefly noting that the sections authorize debt to fund projects relating to state infrastructure. He said the sections do not have expiration dates but rather have maximum dollar amounts. He said the report and recommendation describes that the sections are relatively recent, that, for the most part, they have not been amended, and that there has been no litigation relating to the sections. He said the report concludes that because the bonds are still outstanding, the committee did not recommend change.

Mr. Cole having concluded his presentation, Co-chair Tavares thanked Mr. Cole and indicated the Commission would hear a second presentation on the report and recommendation at its next meeting.

**Rules of Procedure and Conduct:**

Co-chair Tavares then recognized Steven C. Hollon, executive director, for the purpose of providing a second presentation on proposed changes to the Commission's Rules of Procedure and Conduct.

Mr. Hollon described that the Organization and Administration Committee is proposing a change to Rules 5.4, 5.5, and 5.6 that would consolidate two committees, the Public Education and Information Committee and the Liaisons with Public Office Committee. He said the change was being recommended because the committees meet jointly. He said, if the Commission adopts the

change, the joint committee would be known as the Public Information and Liaisons with Public Offices Committee.

Co-chair Tavares then asked for a motion to adopt the rule change. Representative Bob Cupp so moved, with Representative Robert McColley seconding the motion. Co-chair Tavares asked for comment by the public and members of the Commission, and there was none.

Co-chair Tavares asked for a roll call vote, which was as follows:

Co-chair Tavares – yea  
Co-chair Amstutz – yea  
Brooks – yea  
Clyde – yea  
Cole – yea  
Cupp – yea  
Curtin – yea  
Davidson – yea  
Fischer – yea  
Jacobson – yea  
McColley – yea  
Mills – yea  
Mulvihill – yea  
Saphire – yea  
Sawyer – yea  
Skindell – yea  
Sykes – yea  
Talley – yea

The motion passed unanimously, by a vote of 18 in favor and none opposed, with 13 absent.

### **2015-2016 Biennial Report:**

Co-chair Tavares then recognized Mr. Hollon for the purposes of presenting the 2015-2016 Biennial Report. Mr. Hollon indicated that Ohio Revised Code 103.66 requires the Commission to issue a biennial report to the General Assembly. He said staff prepared the draft report, which, once adopted, will be submitted to the General Assembly. Mr. Hollon described the report as providing information about the Commission's membership, staff, and organization, as well as outlining the work of the various committees in reviewing the constitution and issuing reports and recommendations, and the adoption of reports and recommendations by the full Commission. Mr. Hollon indicated that, although the Biennial Report is complete, parts of the report would be revised by staff to reflect developments at the December 2016 Commission and committee meetings.

Co-chair Tavares opened the floor for questions. Mr. Cole asked that a portion of the draft report be revised to reflect that the Commission had not yet approved the report and recommendation for Article VIII, Sections 2l through 2s. Mr. Hollon agreed this change was necessary and indicated the final draft would so reflect.

Mr. Sapphire complimented the staff for the thoroughness of the report.

Representative Mike Curtin asked what would be the normal timing and protocol for reorganization of Commission, specifically in regard to filling vacant seats. Mr. Hollon said he would be meeting with Co-chair Tavares to discuss when and how that might be accomplished.

There being no further discussion or questions, Co-chair Tavares asked for a motion regarding the Biennial Report. Senator Mike Skindell moved to adopt the 2015-2016 Biennial Report, noting that items noted by Mr. Cole would be excluded. The motion was seconded by Commission member Patrick Fischer.

Co-chair Tavares asked for a roll call vote, which was as follows:

Co-chair Tavares – yea  
Co-chair Amstutz – yea  
Brooks – yea  
Clyde – yea  
Cole – yea  
Cupp – yea  
Curtin – yea  
Davidson – yea  
Fischer – yea  
Jacobson – yea  
McColley – yea  
Mills – yea  
Mulvihill – yea  
Peterson – yea  
Sapphire – yea  
Sawyer – yea  
Skindell – yea  
Sykes – yea  
Talley – yea

The motion passed unanimously, by a vote of 19 in favor and none opposed, with 12 absent.

Co-chair Tavares thanked staff for their work on the report.

### **Old Business:**

Co-chair Tavares then recognized Co-chair Amstutz and Rep. Curtin for the purposes of providing an update on the progress of House Joint Resolutions related to the work of the Commission.

Co-chair Amstutz said he and Rep. Curtin had acted on the House side to introduce the recommendations of the Commission relating to proposed changes to Article IV (Judiciary) and Article VIII (Public Debt and Public Works). He said they initially had proposed four separate resolutions, but then decided to introduce an additional joint resolution that brought the state debt resolutions into one. Thus, he said there were hearings on House Joint Resolution 12 (proposing

repeal of Article IV, Section 22 [Supreme Court Commission]), and House Joint Resolution 13 (combining Commission recommendations regarding sections of Article VIII), in the House Government Accountability and Oversight Committee. He said the purpose of introducing the resolutions was to get the discussion started. He said the introduction occurred in the bustle of the last few days of the General Assembly, so typically such resolutions would not be heard, but that they had a special waiver by the committee chair at the request of himself and Rep. Curtin.

Rep. Curtin added that he hoped the resolutions would moved forward in the next General Assembly, thanking Co-chairs Amstutz and Tavares for their work in facilitating this effort. Co-chair Tavares added that efforts by herself and Senator Bob Peterson in the Senate did not make the same progress but that they would continue to work on it.

Sen. Skindell noted that his membership on the Ballot Board called to mind a concern about combining the recommendations regarding Article VIII into one joint resolution. He wondered if the combination might raise a concern about having more than one subject as a single ballot issue.

Rep. Amstutz said the decision to combine the recommendations into one resolution was a preliminary legislative decision, but ultimately the General Assembly and the Ballot Board will have the opportunity to decide the one-subject question.

#### **New Business:**

Co-chair Tavares announced this was the last Commission meeting for Co-chair Amstutz, Sen. Sawyer, and Rep. Curtin. She asked them if they would like to provide remarks on the occasion of their departure.

Co-chair Amstutz said he has been accused of being a “policy wonk,” but that the Commission is great place to ply that approach. He said he has enjoyed this work although it has plodded at times and the Commission’s slow start was frustrating. But, he added, the Commission is doing important work, momentum has happened, and is is glad to have served. He suggested that the Commission revisit the one thing that fell apart, which was the recommendation regarding what to do about the “idiots and insane persons” language in Article V, Section 6. He said he is excited about the next phase of his career, but that his time on the Commission has been a “great run.” He said he wishes the Commission all the best in the future.

Rep. Curtin said he implores those in positions of relevance and authority to take note that in the last budget the life of the Commission was cut in half from its original statutory charge. He said he hopes they may see merit in restoring the full life of the Commission because there is a lot of good work still to do.

Sen. Sawyer said this meeting draws to an end a long chapter in the opportunities he has had. He said Co-chair Amstutz came into the House in 1983, “he came as I was going out” and “our paths have woven even since.” Sen. Sawyer said this is my penultimate meeting of responsibility, and that, after serving in the Ohio Senate now after 40 years, he could not ask for a more satisfying responsibility than this one. He said he is deeply gratified to have been able to serve on this body with this particular group of people. He said “We are diverse, we come from

a diverse state, and we face challenges, and we reach far into the future. I am proud to have been a part of it.”

Asked to comment on whether he would continue to serve on the Commission after being elected as justice of the Supreme Court of Ohio, Patrick Fischer said he is reviewing the issue of whether he will be able to remain on the Commission, saying he would like to do so. He said he has enjoyed his service, and that the work of the Commission is interesting and important. He noted “We didn’t get off the ground for two years. I ask the legislature if they would review this and give the Commission time. Because we have momentum here. If you think about what we have done so far, it is important.” Judge Fischer said he hopes more judges get on the Commission because that provides a different perspective that he thinks would be helpful. He added his wish that the Commission meet outside of Columbus, saying the more rural areas of the state would catch on to the project and that local papers would give the Commission’s work more attention and support.

**Adjournment:**

There being no further business to come before the Commission, the meeting adjourned at 2:25 p.m.

**Approval:**

The minutes of the December 15, 2016 meeting of the Commission were approved at the March 9, 2017 meeting of the Commission.

/s/ Charleta B. Tavares  
Co-chair  
Senator Charleta B. Tavares  
Assistant Minority Leader

/s/ Jonathan Dever  
Co-chair  
Representative Jonathan Dever

\* Having been approved in March 2017, the December 2016 Minutes were signed by Representative Jonathan Dever, who succeeded Representative Ron Amstutz as co-chair.