

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



Co-Chair
Ron Amstutz
Speaker Pro Tempore
1st House District

OHIO CONSTITUTIONAL MODERNIZATION COMMISSION

MINUTES FOR THE MEETING HELD THURSDAY, OCTOBER 13, 2016

Call to Order:

Co-chair Charleta Tavares called the meeting of the Ohio Constitutional Modernization Commission ("Commission") to order at 1:38 p.m.

Members Present:

A quorum was present with Commission Co-chairs Tavares and Amstutz, and Commission members Asher, Beckett, Bell, Brooks, Clyde, Cole, Coley, Cupp, Curtin, Davidson, Fischer, Jordan, Kurfess, McColley, Mills, Mulvihill, Peterson, Readler, Sapphire, Sawyer, Skindell, Sykes, and Taft in attendance.

Approval of Minutes:

The minutes of the September 8, 2016 meeting of the Commission were reviewed and approved.

Standing Committee Reports:

Coordinating Committee

Vice-chair Jo Ann Davidson, reporting on behalf of the Coordinating Committee, said the committee is reviewing steps that could be taken to make the constitution gender-neutral. She said the committee wishes to give chair Kathleen Trafford the opportunity to provide input as to which committee should have the task of determining how to handle the issue. She noted that Richard Sapphire, chair of the Bill of Rights and Voting Committee, had offered to have his committee address the question, and the Coordinating Committee would be deciding how to move forward at its next meeting.

Subject Matter Committee Reports:

Education, Public Institutions, and Local Government Committee

Chad Readler, Chair of the Education, Public Institutions, and Local Government Committee, reported that in September the committee heard a presentation by Senator Bill Coley regarding Article XV, Section 6 (Lotteries, Charitable Bingo, Casino Gaming). The committee also heard a presentation by Michael Kirkman, executive director of Disability Rights Ohio, regarding the public institutions provisions of Article VII. Mr. Readler said the committee has received reports and recommendations relating to Article VI, Section 5 (Loans for Higher Education), and for Section 6 (Tuition Credits Program), and is expected to vote to retain those sections in their current form. Mr. Readler added the committee has reviewed Article VI, Section 3 (Public School System; Boards of Education), and will be determining if there is a consensus to keep the provision as is or to recommend a change.

Finance, Taxation, and Economic Development Committee

Doug Cole, chair of the Finance, Taxation, and Economic Development Committee, reported that the Commission has approved three reports and recommendations from his committee on provisions related to state debt and general obligation bonds. He said those reports and recommendations largely wrap up the committee's work regarding Article VIII, other than the sections dealing with lending aid and credit. He said the committee will meet in November to continue that review.

Bill of Rights and Voting Committee

Reporting for the Bill of Rights and Voting Committee, Chair Richard Saphire said the year began with the committee recommending no change to Article I, Section 20 (Powers Reserved to the People), and that a report and recommendation to this effect was approved by the Commission in January 2016. He said the committee then recommended no change to Article V, Section 4 (Exclusion from Franchise), which relates to voting by persons convicted of a felony, and the Commission voted to adopt that recommendation. He said the committee's report and recommendation relating to Article V, Section 6 (Mental Capacity to Vote) had proposed changes to that section after nearly two years of deliberations. However, he said the report and recommendation did not receive sufficient votes to pass when it was submitted for the Commission's consideration. Mr. Saphire continued that the committee will be discussing whether to resubmit or revise that report and recommendation. He said the committee is currently reviewing Article V, Section 1 (Who May Vote), and he hopes the committee will complete its review of Article V in the coming months. He added the committee has several more Article I sections to consider, specifically slavery, involuntary servitude, health care, and property rights, and may recommend adding a provision related to a right to privacy.

Judicial Branch and Administration of Justice Committee

Patrick Fischer, vice-chair of the Judicial Branch and Administration of Justice Committee, reported the committee has been considering the grand jury system, and in this regard has heard

from a grand jury legal advisor in Hawaii about that state's system for conducting grand juries. He said the committee next expects to take up a review of changes to Article IV resulting from the Modern Courts Amendment.

Constitutional Revision and Updating Committee

Dennis Mulvihill, chair of the Constitutional Revision and Updating Committee, said the committee is making progress on proposing changes to the initiative and referendum process and expects to have something for full Commission review shortly.

He said the committee has addressed two primary concerns. The first is that Article II, Sections 1a through 1g, are difficult to read and understand, and so the committee is undertaking a rewrite of those sections. He said a second issue is the recent phenomenon of the misuse of the constitutional amendment process to create laws that should be statutory. He noted there have been 66 proposed initiated amendments to the constitution and only 12 initiated statutes since the initiative and referendum process was adopted as a result of the 1912 Ohio Constitutional Convention. He said only 18 of the proposed constitutional amendments and only three of the statutory initiatives have passed. Mr. Mulvihill said the committee would like to see those numbers flipped, because there is too much in the constitution that would be better placed in the revised code. He said while initiative and referendum is a right Ohioans hold dear, the process must be easier and more user-friendly.

Mr. Mulvihill said the committee, with the help of staff, is rewriting the sections in order to clarify their content. He said one improvement will be to improve the various steps in the process by making the calendar for accomplishing those steps prospective rather than retrospective. He added that, on a smaller scale, the committee may be recommending language that would allow the General Assembly to modernize the signature collection process. He said a more significant change, with regard to the statutory initiative process, would be to remove the requirement of a supplementary petition so that petitioners will not have to pursue a second round of petition signatures. He said that change will make it easier to engage in the statutory initiative process. At the same time, he said, the committee wants to improve the constitutional initiative process so that when a constitutional amendment is proposed, more people will consider and vote on it.

Mr. Mulvihill noted one option the committee is considering is to require a proposal for an initiated amendment to be approved in two separate elections. He said the committee is considering raising the threshold of the number of voters who must approve a ballot issue, but the committee also recognizes that if the number is too high an initiative would not pass. He said the committee is considering that idea, but has not reached a consensus yet. He added that the proposal to require two consecutive elections is gaining momentum, and the committee is still working on that process. Mr. Mulvihill noted the excellent rewrite of the sections that staff provided to the committee, saying it will make it easier for people to understand the process and will assist the courts and the secretary of state's office. He said these changes will meet the goal of the Commission to modernize the constitution, and the committee hopes to have something for the full Commission to consider shortly.

In relation to Mr. Mulvihill's comments, Representative Mike Curtin asked whether there has been any public comment period yet on the changes the committee is considering. Mr. Mulvihill said the public has been at the meetings, and there have been some presentations and comments related to the proposals. He added that the committee has received correspondence as well, and that there will continue to be input as the committee moves forward. Rep. Curtin replied that, given the historic significance of the initiative and referendum process, it would seem the public relations component of the Commission should make an effort to notify the public about the contemplated changes, so that interested parties could testify and provide opinions about the proposals. He emphasized the importance of having maximum public exposure before the recommendations would come to the full Commission. Mr. Mulvihill agreed that this is important and thanked Rep. Curtin for his comments.

Legislative Branch and Executive Branch Committee

Fred Mills, chair of the Legislative Branch and Executive Branch Committee, said the committee will meet next to continue to discuss categories of various sections of Article II relating to the legislative branch. Mr. Mills said Steven C. Hollon, executive director, has analyzed those sections and put them into ten categories. He said the committee has drafts of two reports and recommendations to discuss. He said after completing its coverage of Article II, the committee would be moving on to Article III, relating to the executive branch.

Rules of Procedure and Conduct:

Co-chair Tavares recognized Mr. Hollon, appearing on behalf of the Organization and Administration Committee, to present for the second time a proposal to amend Section 3, Rule 3.9 of the Rules of Procedure and Conduct. Mr. Hollon said the Commission heard a first presentation on September 8, 2016. He said the proposal is to amend Rule 3.9 to define a quorum of the full Commission to be 17 instead of 21 members. He said that change would allow the Commission to pass on minutes or otherwise conduct business, but does not change the existing rule with regard to needing 22 members to pass a proposal to change an existing constitutional provision.

Co-chair Tavares then asked for public comment or discussion by Commission members. There being none, she entertained a motion by Mr. Sapphire to adopt the proposed rule change, which was seconded by Commission member Jo Ann Davidson.

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

Co-chair Tavares – yea
Co-chair Amstutz – yea
Asher – yea
Beckett – yea
Bell – yea
Brooks – yea
Clyde – yea
Cole – yea

Coley – yea
Cupp – yea
Curtin – yea
Davidson – yea
Fischer – yea
Jordan – yea
Kurfess – yea
McColley – yea
Mills – yea
Mulvihill – yea
Peterson – yea
Readler – yea
Saphire – yea
Sawyer – yea
Skindell – yea
Taft – yea

The motion passed unanimously, by a vote of 24 in favor and none opposed, with 7 absent.

Executive Director’s Report:

Mr. Hollon reported that Commission members were being provided with magnets indicating the meeting dates for 2017, and thanked staff for putting that together.

New Business:

Co-chair Tavares then recognized Rep. Curtin for the purpose of introducing an item of new business.

Rep. Curtin noted that the Commission is scheduled to sunset at the end of 2017. He said, with that in mind, it behooves the Commission to have a process in place to move with as much expeditiousness as possible regarding recommendations to the General Assembly. He noted the Commission has proposed five amendments that were voted to be recommended. He said he is not aware of who has responsibility for ensuring those recommendations are put in joint resolution form by the Legislative Service Commission (LSC). He said he met with the co-chairs to discuss the process going forward. He said it is possible to get these recommendations voted out of the General Assembly and onto the 2017 ballot, and he wants to ascertain how the Commission will proceed.

Co-chair Ron Amstutz said his response is that this proposal makes common sense. He said he likes the suggestion that the default be that the day the Commission adopts a recommended change to the constitution, the co-chairs or their designees get the recommendations drafted through LSC in proper haste. He said that seems to make sense, and would allow the Commission to make recommendations and offer proposed language. He said his understanding is that the LSC function works only when a legislator asks for drafting. He said, if that connection is made, LSC can work with Commission staff. He said he would like to see the

Commission put that plan into operation. He said, in his mind, the Commission is already going down that road from last month's meeting, and should formalize it.

Mr. Mulvihill asked whether the proposal is to allow the committees to enlist help from LSC, or if it is to happen after full Commission adoption of the recommendation. Co-chair Amstutz said his sense of the process is that the function of the Commission is to develop the language, so that is what the LSC would be drafting anyway, with the rest just being procedural or mechanical. He said the Commission would have to draft the proposed language as soon as it has taken action on the recommendation.

Mr. Hollon indicated that LSC has assisted on a few early questions, but to have LSC redraft after every committee meeting makes it difficult. Mr. Hollon said, upon the passage of each report and recommendation, he drafts letters to the House and Senate leaders of the General Assembly and hand delivers the reports and recommendations as signed by the co-chairs, so that the General Assembly is on notice as to the actions of the Commission. He added, when he delivers those letters, the Commission could contact LSC to have them draft language according to the recommendation of the Commission. He said a recommendation for repeal would not need language. He noted that one recommendation adopted by the Commission offered proposed language, but there may be some necessity for the General Assembly to slightly modify a recommendation.

Rep. Curtin said his sense is it would be incumbent on the co-chairs to follow up with leadership in each of the houses to communicate to get things scheduled for introduction in the General Assembly. Co-chair Tavares then asked for a motion to this effect, and Rep. Curtin so moved, with Judge Fischer seconding the motion.

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

Co-chair Tavares – yea
Co-chair Amstutz – yea
Asher – yea
Beckett – yea
Bell – yea
Brooks – yea
Clyde – yea
Cole – yea
Coley – yea
Cupp – yea
Curtin – yea
Davidson – yea
Fischer – yea
Jordan – yea
Kurfess – yea
McColley – yea
Mills – yea
Mulvihill – yea

Peterson – yea
Readler – yea
Saphire – yea
Sawyer – yea
Skindell – yea
Taft – yea

The motion passed unanimously, by a vote of 24 in favor and none opposed, with 7 absent.

Co-chair Tavares then indicated the co-chairs would work with their respective caucuses to move the Commission’s recommended language along.

Adjournment:

There being no further business to come before the Commission, the meeting adjourned at 2:12 p.m.

Approval:

The minutes of the October 13, 2016 meeting of the Commission were approved at the November 10, 2016 meeting of the Commission.

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

/s/ Ron Amstutz
Co-chair
Representative Ron Amstutz
Speaker Pro Tempore