

SUGGESTIONS FOR CONSTITUTION REVIEW COMMISSION
RULES WORKING GROUP
MAY 17, 2017

The proposed draft rules deviate from the rules of the previous CRC in some significant ways. Primary concerns relate to

- A lack of transparency and respect for the Sunshine Rules;
- A lack of articulated provisions for meaningful public engagement;
- The potential for leverage and influence over commission members; and
- An unclear track for approval of proposals.

It is essential to establishing public confidence in the CRC process that you address each of the specific concerns listed below. Rather than list concerns in order of importance, for the convenience of the Rules Committee, concerns will be addressed below by Rule number.

- **Rule 1.6:** The draft rules appear to give the Chairman the right to stop citizens from distributing literature in the public areas of the Capitol or outside of other designated meeting space like hallways and galleries. The Chairman should not be allowed to infringe upon the rights of citizens to express themselves freely and petition their government.
- **Rule 1.17:** This rule allows electronic attendance at meetings via teleconference or telephone. All members who have been awarded the special privilege to serve on this CRC should make every effort to attend all meetings in person except in cases where attendance is not possible. The rule provides that the chair has the sole and unlimited power to approve electronic attendance. How will the chair determine what good cause will be required for electronic appearance? Electronic attendance should not be permitted except for extraordinary reasons such as ill health or disability.
- **Rule 1.18:** Absences should be only for good cause such as illness, family emergency or impossibility of travel and this good cause should be stated in the written notice. The rule should require members, who have accepted the honor and responsibility of being on the CRC, to attend in person unless they state in writing the reasons for their inability to attend.
- **Rule 1.23:** The draft rules limit transparency by changing the requirement that records be “open” to requiring that the Commission’s records be “accessible”? What does “accessible” mean? The word “open” is the word that is used in the open records laws. At a minimum the Rules Committee should maintain the word “open” in this rule.
- **Rule 1.24:** The draft rules limit transparency by allowing private meetings between members to discuss commission business. Why? Every other collegial body except the legislature is required to notice all meetings to discuss official business. This rule would encourage the conduct of serial private meetings and facilitates doing commission business out of the public eye in violation of the spirit of Florida’s government in the sunshine laws. And the incorporation of the constitutional provision for *legislative* open

meetings is not necessary or appropriate for this Commission.¹ Furthermore, the provision that applies to the Legislature is self-executing which means that the very people who may be violating the open meetings laws determine if there has been a violation. There should be a strict rule against any number of Commissioners discussing Commission business among themselves except at noticed meetings.

- **Rule 2.2:** In 1997-1998, reports of CRC committees were reported to the full commission but were advisory only. The full CRC had the power to overrule a negative recommendation from a committee. The proposed rules give committees power to end consideration of proposals. This means that a small number of commissioners have the power to stop proposals that a supermajority of the CRC members might want to entertain. This change from the 1998 rules should be rejected. See also **Rules 2.12, 2.13, 2.14.** Committee powers should be continued as they were in the last CRC and these original rules should be retained.
- **Rule 2.4:** The proposed rules remove the requirement that committee meetings be scheduled so that members do not have conflicts with other committee meetings. There is no reason for this as it is important for all members to attend all meetings of committees to which they have been assigned. Excuses for failure to attend should only be given for good cause as discussed above with regard to Rule 1.18.
- **Rule 2.8:** In the 1998 Rules committee, chairs were given the responsibility of preserving order and decorum in the committee room. Instead, this proposed rule gives committee chairs the authority to decide whether members of the public will be recognized to speak at all. This discretion should be removed and *committee chairs should be required to permit the public to be heard* on all issues taken up at each committee meeting. Reasonable time limits should be established. The only reason to exclude members of the public should be for public disturbance or disorderly conduct as provided in the 1997-1998 rule.
- **Rule 2.12:** This proposed rule seems to limit transparency by providing that only votes of committee members on “*final consideration*” of a proposal should be recorded. All votes relating to specific proposals made by individual commissioners should be recorded so that the public is able to know how each commissioner votes each time a vote to advance, kill or amend a proposal is taken.

¹ Art. III, Sec. 4(e) provides: The rules of procedure of each house shall provide that all legislative committee and subcommittee meetings of each house, and joint conference committee meetings, shall be open and noticed to the public. The rules of procedure of each house shall further provide that all prearranged gatherings, between more than two members of the legislature, or between the governor, the president of the senate, or the speaker of the house of representatives, the purpose of which is to agree upon formal legislative action that will be taken at a subsequent time, or at which formal legislative action is taken, regarding pending legislation or amendments, shall be reasonably open to the public. All open meetings shall be subject to order and decorum. This section shall be implemented and defined by the rules of each house, and such rules shall control admission to the floor of each legislative chamber and may, where reasonably necessary for security purposes or to protect a witness appearing before a committee, provide for the closure of committee meetings. Each house shall be the sole judge for the interpretation, implementation, and enforcement of this section.

- **Rule 2.14:** The proposed rules provide for each committee to address one or more articles of the constitution. Yet this rule gives the Commission Chair the power to remove any proposal reported favorably by one committee and refer it to another. This appears to give the Commission Chair power to kill a proposal by sending it to a less hospitable committee that does not even handle the relevant constitutional Article. On the other hand it permits the Chair to advance a proposal that the original committee decides to kill by sending to a more favorable committee. This power is not consistent with the committee structure and creates a possible appearance of abuse of power. See also **Rule 4.5**. If committees are arranged by constitutional article, then only the committee dealing with the corresponding article should consider the proposal.
- **Rule 2.16:** This rule removes the requirement that proposals reported from committees be placed on the calendar for consideration by the full commission and only provides that reported proposals be “available” to be placed on the calendar. This gives the Rules and Administration Committee the power to eliminate proposals from consideration. The changes should be rejected and the 1997-1998 rule should be used.
- **Rule 3.3:** This rule substantially changes the 1997-1998 procedure. It requires the Commission to consider any public proposal if one commissioner chooses to sponsor it. The earlier rule required one commissioner to move its consideration and then required that ten commissioners vote to consider before it was put into the commission process for full consideration. This new rule has the potential to burden the Commission with many more proposals than might be otherwise necessary, taking time away from other more widely approved proposals. Combined with the fact that Rules and Administration has no obligation to calendar any item, this rule concentrates the fate of public proposals in a small handful of commissioners.
- **Rule 5.3:** This rule should also prohibit any Commissioner from casting a vote unless they are present.

Additional considerations:

1. Provide for public hearings around the state after proposals have been reported by Style and Drafting and before the final vote is taken.
2. Provide for consideration of public comment (written or in person) prior to adoption of proposals
3. While the published ethical rules provide that commission members cannot take anything of value from someone lobbying an issue, there is an exception for campaign contributions. That means legislators and other elected officials might be influenced to vote on issues based on whether their votes will yield campaign contributions. Please consider changing the ethical rules so that legislators or other elected officials are prohibited from taking campaign contributions from any person or organization lobbying an issue before the CRC and for one year thereafter.
4. Provision for electronic participation by members of the public at committee meetings would greatly enhance public confidence in this process. If any electronic participation is allowed, we urge you to create opportunities that

would allow citizens from all around the state to provide input electronically to committees on important issues.