

proposed yet another mechanism of constitutional reform—a topical revision commission to address only tax and budget reform, which resembles in form the constitution revision commission. Citizens supported the institution of a Taxation and Budget Reform Commission in 1988, and it became the fifth tool for constitutional revision in Florida. The three proposals that were placed on the ballot by this specialized commission were adopted by the electorate in 1992.¹³

In 1997, Florida's second constitution revision commission got underway. The electoral failures experienced by the commissioners and staff of the first commission were certainly warnings to government leaders as they began thinking about appointing commissioners to examine Florida's constitution a second time. But the success of the Taxation and Budget Reform Commission in 1992 was a good omen. Ultimately, the 1997–98 CRC saw eight of its nine revisions adopted by the Florida electorate.

The history of Florida suggests that this state typically embraces constitutional change. Chesterfield Smith, the chair of the 1965–66 SRC, who is recognized as the master craftsman of the 1968 constitution that included these multiple paths for reform has said, "It is my own personal judgment that above all other matters, the new provisions in the 1968 Constitution authorizing means for further constitutional changes are the most important things in the new constitution."¹⁴ Floridians have now learned how to make good use of these tools for change; it simply took a little practice. The development and practice of the constitution revision process in Florida, and the differences between the two commissions are the focus of the balance of this chapter.

THE COMMISSION PROCESS

Florida's 1968 Constitution includes several clear mandates regarding the constitution revision process. It defined who would select members of the commission and how many appointments they would each have, when the commission would meet, what the commission would do (review the constitution, hold public hearings, draft revisions, if any), and by when it must complete its work. Beyond these parameters, it has been through practice that a logical process of reform has developed.

The commissions have used the State Capitol in Tallahassee as their home base and meet in the senate chambers. With the space in the Senate has also come the resources of that body in terms of the active participation

of the Secretary of the Senate (who served as Secretary of the CRC), electronic voting devices, recording equipment, court reporters, and any other logistical or institutional needs the commission may require. The commission also has easy access to government documents available at the state archives as well as research sources at Florida State University.

The commission process formally starts on the date of the first meeting of the constitution revision commission as determined by the appointed chair in accordance with the constitutional parameters of “within 30 days of the end of the legislative session” (July 6, 1977; June 16, 1997). It officially expires on the date of the general election where its proposed revisions are scheduled to appear, which will always be in November of the year following the commission’s initial meeting. The entire formal process from start to finish takes about sixteen months. In practice, however, the commission’s final meeting is dictated by when it must submit its revision proposals to the custodian of the state’s records, which has typically been in early May of the election year (May 11, 1978 and May 5, 1998). Thus, the 1997–98 CRC met for nearly eleven months, about two weeks longer than the 1977–78 CRC.

Generally, the first meetings of the commission in June and July are organizational meetings. Introductions are made, speeches and admonitions by the state’s political leaders and former commission members are given, committee assignments are divvied up, and the commission is oriented to its work. The second commission also adopted its rules at this early stage and in both instances, schedules were fleshed out for the coming months.

The second phase of the commission’s work begins in July and August and may continue into September. This is when the commission holds

TABLE 1.1
Constitutional Revision Commission Timetable

<i>June</i>	<i>July</i>	<i>Aug.</i>	<i>Sept.</i>	<i>Oct.</i>	<i>Nov.</i>	<i>Dec.</i>	<i>Jan.</i>	<i>Feb.</i>	<i>Mar.</i>	<i>Apr.</i>	<i>May</i>
Organizational meetings			Committee meetings and referrals to full commission						Adoption of revision ballot measures		
											Adoption of draft proposals
			Public hearings to solicit proposals						Public hearings on draft proposals		

*Revisions must be submitted to the Secretary of State no later than 180 days before the general election.

public hearings in locations across the state to solicit input from citizens on issues they perceive as important in revising the constitution. The first CRC held ten public hearings in the state's largest cities, traveling from Pensacola in the northwest to Jacksonville in the northeast to Miami in the south between August 18 and September 26, 1977. The 1997–98 CRC expanded that schedule slightly by holding hearings in twelve cities over a nine-week period starting in July and running through mid-September.

The proposals raised by citizens and interest groups at these hearings are recorded, fashioned into general statements by commission staff and considered by the full commission at meetings in Tallahassee that take place between September and December. Public proposals must be moved by a commissioner and receive ten votes in order to be sent to committee for further consideration. The first commission moved 232 issues culled from the public hearings to its priority list; the 1997–98 CRC sent 186 proposals to committee.¹⁵ Additionally, proposals offered by individual commissioners were considered by the commission and some advanced to committee under the same rule.

Most of the committee work takes place between September and December. Generally, committees are able to amend and combine proposals, but are obligated to return the proposals to the full commission with recommendations in support or opposition. Committees are not permitted to eliminate proposals from consideration. Strict timetables may be set for the committee's review; the 1997–98 CRC required the committee's report on proposals within three commission workdays but waived the rule on a number of occasions. As the proposals return to the full commission, each is given careful consideration and put to a vote sometime between mid-November through February. The work of the Style and Drafting Committee becomes important around this time as it reviews each adopted proposal for clarity and legal sufficiency, and begins to develop recommendations on the forthcoming difficult balloting decisions.

The commission takes to the road again in late February or early March to share its proposals with the public and solicit citizen comment. Each commission held only three public meetings during this phase (1977–78: Jacksonville, Tampa, and Miami; 1997–98: Ft. Lauderdale, Tallahassee, and St. Petersburg). When it returns to Tallahassee to finalize its work, which is due in early May, the commission begins the most arduous part of the process.

The final month of meetings, generally held in March and April, are when the working relations between commissioners are tested. In this

final phase the commission reviews all of the proposed changes, finalizes the language of the amendments, assembles them into revision measures, and reaches agreement on ballot language (a summary of the revision that is constitutionally limited to seventy-five words). Personal agendas that may have been suppressed throughout the process are most likely to come to the forefront of debate during these late days. But every member perceives that how the revisions are packaged (whether they are grouped, how they are grouped or whether they stand alone), the ballot language that appears before the voters (sometimes the only information that uninformed voters may have in casting their vote), and the sequence or order in which those revisions appear on the ballot are essential factors to the ultimate success of the constitution revision process.

The products of these final meetings are the revisions that will be placed on the November general election ballot. By constitutional fiat, the commission must report its revisions to the Secretary of State at least 180 days prior to the general election. The 1977–78 CRC submitted eight proposed amendments to the constitution, which included more than eighty-seven changes: forty-seven substantive and forty procedural.¹⁶ None of the revisions were supported by the popular vote in November 1978. The 1997–98 CRC ultimately proposed for the public's consideration nine revisions, which contained thirty-three distinct amendments.¹⁷ Of these, eight revision measures were successfully adopted by the voters and incorporated into the Constitution of 1968. The success of the latter commission is due in large part to the experiences of the first commission, and one of the most significant lessons learned involved good planning.

PLANNING: ESSENTIAL FOR SUCCESS

Any administrator with a mere month of experience knows that planning is an essential tool for any operation—be it public or private, nonprofit or commercial, military or educational. Planning and preparation are lubricants in a well-oiled machine and are critical to efficient and effective operations. Political leaders in Florida knew that in the tenth year after the adoption of the 1968 constitution the state would see its first revision commission under Article XI, Section 2. Governor Reubin Askew was the first governor to serve his entire tenure under the new constitution (1971–1979) and he appointed the first chair and the fourteen other commissioners to the CRC. He was also a member of the 1965–66

SRC that produced the 1968 constitution. But Askew and his advisers encountered some confusion in the language of the article addressing the timing of the first CRC.

Article XI, section 2a of the 1968 constitution called for the commission to convene “within thirty days after the adjournment of the regular session of the legislature convened in the tenth year following that in which this constitution is adopted.” Given the legislative timetable already established, that would have meant that the commission could assemble as early as June 3, 1978, but not later than July 3, 1978. Two other provisions, however, muddied the constitutional waters. First, the constitution mandated that citizens must vote on any revisions or amendments promulgated under the constitution at “the next general election held more than ninety days after the [amendments or report of revision] is filed with the secretary of state.”¹⁸ That meant that the revisions would appear on the November 7, 1978 ballot, and therefore must be submitted to the Secretary of State no later than August 5, 1978. This would give the commission not more than two months to do its work. But the section specifically addressing the commission process further required the commission to file any revisions with the Secretary of State at least 180 days prior to the next general election, which would have meant on or before May 11, 1978. It was a logistical impossibility if the earliest the commission could meet was June 3 of the same year.

Recognizing the constitutional quagmire, Governor Askew sought an advisory opinion from the Florida Supreme Court in November 1976. In his request he outlined the dilemma and asked the court to rule on whether he had the authority to appoint members to the commission not later than thirty days after the adjournment of the 1977 (rather than the 1978) legislative session with the view that the revisions would appear on the 1978 general election ballot. Alternatively, if advancing the process was not an option, the governor asked the Court to provide him guidance as to when he should appoint commissioners and when revision proposals must be filed.¹⁹ Options were suggested that included appointing the commission following the 1978 legislative session and balloting any revisions in 1980. The governor also suggested that perhaps he could appoint the commissioners in advance of the 1978 legislative session, but recognized the implications for individual commissioners who might also be legislators.

In a decision that would unsettle judicial conservatives, the Florida Supreme Court recognized that they were “being asked to rewrite one or

more of the provisions in order to make the document work.”²⁰ Acknowledging that the difficulty stemmed from the original timing of the 1968 revision process itself (it had been anticipated by the drafters that the electorate would vote on the revision in 1967), the court determined that there was

absolutely no way to reconcile without judicial gloss the disharmonious provisions which appear in that section. Under these circumstances, we must abandon as fruitless any notion that we can “interpret” or “construe” particular language within the Constitution to achieve a result which is not only workable but reasonably consistent with the intent of the people.²¹

A majority of the justices (5–2) agreed that it would be better to allow the electorate to vote on constitutional revisions earlier rather than waiting until the 1980 general election. In addition to holding as close to the intent of the drafters as possible in meeting the ten-year review, the justices also recognized that an intervening election of state legislators and key executive offices would cloud a later revision process. “Elective political activity is antithetical to this constitutional review process, unlike the other two reserved in Article XI.”²²

The final order of the court issued on February 15, 1977, directed the governor to appoint his commissioners within thirty days of the 1977 legislative session’s adjournment and direct that they submit their revisions to the Secretary of State not later than May 11, 1978, for appearance on the November 1978 ballot. The Court went further by establishing a standard timetable for future commissions. The second commission would assemble after the completion of the 1997 legislative session with its revisions, if any, appearing on the 1998 ballot.²³

The court order cleared the constitutional confusion and provided a reasonable timetable for the commission’s work to be conducted, but it left little time for planning. State officials tasked with appointing members had about four months to solicit volunteers to serve and the governor had to identify a chair to manage a process that had virtually no form other than the sketchy constitutional mandate “to adopt rules, review the constitution, hold public hearings and submit revisions, if any.” There were no provisions for a staff (paid or unpaid), no budget or method to request one although public funds would clearly be needed in order to provide travel to the public hearings and the resources necessary to man-

age meetings of thirty-seven commissioners, and no way to determine where these meetings would be held. Add to this lack of framework the fact that between the issuance of the court's order and the appointment of commissioners, the 1977 legislative session was preparing to meet. Attention—by politicians, the media and the public—was focused on the annual legislative session and not on constitutional reform.

The 1977 legislative session managed to direct some attention to the forthcoming exercise in constitutional revision, but not all of it was positive. One unsuccessful measure initiated in the House was a joint resolution to amend the Florida constitution such that the upcoming CRC would be required to submit its proposals to the legislature for review before taking them to the voters.²⁴ On the other hand, the session did provide an opportunity to lay some groundwork for the upcoming commission. Legislators authorized the chair of the commission to “employ personnel and to incur expenses related to the official operation of the commission or its committees, to sign vouchers, and to otherwise expend funds appropriated to the commission for carrying out its official duties.”²⁵ The forthcoming commission also received a special appropriation of about \$300,000 in operating funds with which to do its work.²⁶ With these authorizations, the chair of the commission could hire an executive director who would begin the organizational work necessary to support a 37-member commission.

At the two state university law schools, Florida State University and University of Florida, grants were issued to prepare research material and develop background analyses on the constitution that would be useful to the incoming commission.²⁷ Robert Shevin, the Attorney General who by nature of his office was the only constitutionally named member of the 1977–78 CRC, also had his staff prepare a report on issues that merited the CRC's attention.²⁸ These meager efforts at advance work saw little use, however, given the hectic pace at which the commission was forced to work.²⁹

Late in June 1977, Governor Askew announced his appointments to the commission followed shortly by the announcements of the other appointing authorities. Because this was the state's first experience in naming commissioners to the CRC and in light of the timetable imposed by the court's decision, there was little, if any, coordination between the chief justice, governor, senate president, and house speaker in selecting the citizens who would serve on this historic commission. While potential commissioners were being identified by the appointing authorities,

the legislative session consumed most of the state's attention. Conversations between the executive and legislative branches were likely to be about lawmaking and each political leader probably viewed their selection of commissioners to be an autonomous decision made without consultation or consideration of the other branches' selections. On July 6, 1977, this lack of coordination in appointments was visible. The thirty-seven commissioners who arrived in Tallahassee to review the state's constitution were predominately white, mostly male and very connected to "old" Florida both in terms of the historical bias toward rural and northern interests as well as their connections to ebbing dynasties of power. It was not a good omen for a state that was experiencing rapid social change and grappling with issues like women's rights, gay rights, crime and violence in its growing urban areas, increasing environmental concerns, and a burgeoning influx of immigrants from the Caribbean and Latin America.

Governor Askew, a Democrat from North Florida, named Talbot D'Alemberte as the chair. D'Alemberte brought to the commission the invaluable experience of having directed the 1972 legislatively produced revision of article V, the state's judicial article. He was a seasoned politician (Fl. House, 1966–72), well connected to the state's bar, and an attorney who had earned a reputation as one of the state's foremost constitutional scholars. D'Alemberte was from South Florida (Dade County) and his appointment may have been an effort to visibly minimize the regional differences that regularly injected themselves into Florida state politics in those days.

As chair, D'Alemberte selected attorney Steven J. Uhlfelder, a 1971 graduate of the University of Florida's College of Law, to serve as executive director. Uhlfelder had not more than a month to lay the groundwork necessary to manage a thirty-seven-member commission that was constitutionally mandated to hold public hearings as part of its review process and to submit its product just ten months after its first meeting. To his credit, it was Uhlfelder's willingness to share his experiences and observations on the 1977–78 CRC that subsequently guided the second commission in its preparatory work.³⁰ And the lessons learned from those path-breaking days of 1977 paid off handsomely for the 1997–98 CRC in its planning stages.

The 1997–98 CRC process got a jumpstart on planning that its predecessor never enjoyed. In June 1996, nearly a full year before the second revision commission would meet for the first time, Governor Lawton Chiles signed an executive order establishing the "Governor's Constitution

Revision Steering Committee,” a committee created with the support of the legislative leadership.³¹ The idea for a steering committee seems to have started in the legislature, which had passed a bill calling for a similar committee. It was vetoed by Governor Chiles who was unhappy with the legislative bias of the proposed committee’s membership.³² The governor established instead an advance team for the constitution revision process that brought together all of the key players of state government. He appointed his General Counsel, W. Dexter Douglass, as his designee to the committee and the order called for Douglass to serve as chair of the steering committee. Douglass, Attorney General Bob Butterworth, Senate President Jim Scott, Speaker Peter Wallace, and Judge Thomas Barkdull (designated by the Chief Justice) first assembled on August 20, 1996, to begin planning the 1997–98 CRC that would first meet in June of the following year. They had a full ten months to lay the necessary groundwork for Florida’s second experiment with a constitution revision commission.

The steering committee was formally charged by the executive order to carry out a range of tasks that indicated careful reflection on the 1977–78 CRC experience. That reflection was not surprising in that General Counsel Douglass had served on the 1977–78 CRC and knew well the trials of a process that evolved as it occurred. But two more recent experiences also contributed to the identification of planning issues. First, the issue-specific Taxation and Budget Reform Commission had met in 1990, and successfully placed three measures before the voters in 1992. Second, the 1994 legislature had commissioned a 23-member Article V Task Force to examine and make recommendations regarding the judicial article of the Florida constitution. Both of these experiences contributed to a corpus of knowledge that, when combined with the events of the 1977–78 CRC, provided valuable planning information on everything from logistics to policy substance.

The governor’s order also called for the employment of an executive director who would be housed in the Office of the Governor. Chairperson Douglass looked to the most recent exercise in constitutional examination, the Article V Task Force, which just completed its work. With the steering committee’s unanimous support, he appointed the task force’s executive director, Billy Buzzett, as the 1997–98 CRC’s executive director. Buzzett previously served as attorney to the State House of Representatives and had built a reputation for efficient budget management and effective staff organization. Buzzett had also recognized the importance of his work on the Article V Task Force in anticipating the upcoming CRC,

calling the task force a “mini-constitutional revision commission” that could proffer policies for the CRC’s consideration and “test the electorate’s appetite for comprehensive change to the Constitution.”³³

Although the steering committee was advisory in nature, it was specifically directed to address organizational needs like budget proposals, develop drafts of meeting schedules and timetables for commission work, flesh out an organizational structure (committees), plan and launch a public information campaign, and identify potential research needs and issues for the commission. The committee was also charged with developing draft rules and procedures that could quickly be considered and adopted by the commission as one of its first orders of business. As Judge Barkdull noted at the first meeting of the committee, “the 1978 revision commission spent its first three months organizing.”³⁴

The steering committee benefited from the presence of Judge Barkdull who had served on both the 1965–66 SRC and the 1977–78 CRC, having been the chair of the rules committee at the earlier commission and a member of the rules committee at the latter. Given these experiences, Barkdull was tasked with developing a working document that would facilitate the early adoption of the commission rules in the following year when the commission convened. He would once again establish himself as the expert on procedural matters and was consulted repeatedly during commission meetings.

Having the Senate President and the House Speaker at the same table facilitated the budgeting process for the upcoming commission. During the 1996 legislative session, an early budget appropriation of \$100,000 was committed to the work of the steering committee through an unusual category called “administered funds.”³⁵ In the following year, a special appropriation was secured in April for an additional \$200,000. It was earmarked for staff, equipment, per diem and travel expenses and designed to be used immediately (Florida’s fiscal year begins on July 1).³⁶

The 1997 legislature, which met before the commission convened, also allocated \$1.6 million of its general appropriation for the commission’s work and allowed the balance of the funds to be carried over into 1998 rather than reverting to the general fund, as typical public practice requires.³⁷ Since 1997 would be the year in which the commission undertook its numerous public hearings across the state, significant spending was expected. The commission’s operating costs were supplemented in 1998 with an additional appropriation of \$200,000.³⁸ These appropria-

tions did not include the costs of fulfilling the constitution's requirement that all proposed amendments (not just the commission's) be published in one newspaper in each county of the state prior to the general election; those funds were a separate line item in the state budget. Even considering inflation, the fiscal resources enjoyed by the 1997–98 CRC far surpassed the shoestring budget that Executive Director Uhlfelder managed twenty years earlier. As Douglass noted in his review of the 1997–98 CRC, "This was unprecedented and laid the foundation for the Commission to begin its work immediately."³⁹

The Steering Committee was authorized to exist until the day the constitution revision commission first met. While it was strictly advisory in nature, its work was critical to the efficient operation of the commission and it relieved the commissioners from distractions not essential to their substantive work. As I discuss later, the planning process also formulated issue agendas for the commissioners that facilitated their work. Of all of the factors that I examined, the difference between the two commissions with respect to planning was the most glaring distinction. But even the best laid plans may fail, and this first steering committee knew well that it would take more than planning to guarantee a positive constitutional reform experience in Florida.

POLITICS AND PROCEDURES

Nowhere in the Florida constitution is it suggested that the revision commission should be divorced from politics. In fact, that its commissioners are chosen by the state's governmental leaders to examine a document that allocates political power virtually guarantees that issues of politics will be the subtext to all discussion. From the selection of commissioners to the adoption of the rules to the substance of the revisions, politics is the heart and soul of constitutional reform. In this section I examine some of the key differences between the two revision commissions, differences that stem from issues of political power and procedures.

When the 1977–78 CRC was assembled, all of its members were appointed by officials in the Democratic party save the judicial appointments (and even they necessarily fell at that end of the political spectrum). Many of the commissioners who served on the 1977–78 CRC were either sitting politicians, former politicians, or attorneys. While several commissioners came from fields like medicine or education, they