



OHIO CONSTITUTIONAL MODERNIZATION COMMISSION

MINUTES OF THE FINANCE, TAXATION, AND ECONOMIC DEVELOPMENT COMMITTEE

FOR THE MEETING HELD
THURSDAY, MARCH 12, 2015

Call to Order:

Chairman Cole called the meeting of the Finance, Taxation, and Economic Development Committee to order at 1:40 p.m.

Members Present:

A quorum was present with committee members Cole, Amstutz, Asher, Clyde, Davidson, Mills, Peterson, and Trafford in attendance.

Approval of Minutes:

The minutes of the January 15, 2015 meeting of the committee were approved.

Presentation:

“Financial Transparency and Modernizing Article VIII”

*Seth Metcalf
Deputy Treasurer and General Counsel
Ohio Treasurer of State*

Seth Metcalf, Deputy Treasurer and General Counsel of Ohio’s Treasurer of State, presented testimony before the committee regarding the modernization of Article VIII (Public Debt and Public Works), relating to the public debt provisions of the Ohio Constitution. He stated that Article VIII serves two main functions: (1) authorizes Ohio to incur debt with certain limitations, and (2) sets forth the platform by which Ohio issues and pays its debt.

Mr. Metcalf explained that Article VIII authorizes debt and sets forth mechanisms for paying debt. He said that the sheer length of the article causes a reduction in the transparency that was adopted as part of the constitution in 1851.

Mr. Metcalf continued by discussing two fundamental defects of Article VIII:

- 1) The \$750,000 debt limitation as set forth in Section 1 has existed since its adoption. He compares the state's general revenue expenditures in 1851 (\$1.6 million) to 2014 (\$28.9 million).

He believes the state needs to borrow more than \$750,000.

- 2) Section 2 has been amended 18 times, which creates a complicated addition to Article VIII for the general public to comprehend.

Mr. Metcalf noted, as of June 30, 2014, the state's total indebtedness was approximately \$10.93 billion. He claims this amount demonstrates how insignificant the \$750,000 debt limitation has become.

Mr. Metcalf again touched on the point of how Article VIII has become nearly incomprehensible which has created a transparency and accessibility problem. He said the voluminous language obfuscates the meaning of the article.

According to Mr. Metcalf, in 1851, Article VIII's \$750,000 cap represented 46 percent of the state's general revenue expenditures. Today, the debt is \$10.93 billion, represents roughly 38 percent of the state's general revenue expenditures. Members of the committee questioned Mr. Metcalf if transportation bonds and the turnpike appropriations were included in the \$10.93 billion. He indicated those fiscal items were not a part of the general revenue expenditures. Mr. Metcalf also explained that there is currently no constitutional provision on how much debt in the aggregate the state can borrow or for how long the state can borrow it.

Chair Cole asked whether Mr. Metcalf has compared state debt to the size of the economy, and whether there are any figures he can cite about that relationship. Mr. Metcalf said he doesn't have those statistics, but can get them.

Committee member Rep. Ron Amstutz asked whether Mr. Metcalf is differentiating between types of debt, for example does the 5 percent limit include highway debt? A member of the Office of Budget and Management, present at the meeting, said that highway debt is not included in that limit.

Committee member Kathleen Trafford asked whether these numbers include revenue bonds as opposed to true debt.

Mr. Metcalf stated that lease appropriation debt is a revenue debt; it is inside the number given. He said other bonds such as the conduit issue debt are not included. He also said the Ohio Turnpike is not included.

Chair Cole asked whether these items would have been included in 1851. Mr. Metcalf said that would have been a point of interpretation, as there was no distinction then between direct and indirect obligations.

Mr. Metcalf clarified he is only advocating for overall debt cap and overall debt obligations to be provided for. He said that if something is paid for from the general revenue fund, it has been treated as a direct obligation of the state for purposes of the 5 percent cap.

Chair Cole asked whether this could be accomplished by using average maturities. Mr. Metcalf said there are a variety of ways to get to that.

Mr. Metcalf explained why some items are appropriately excluded; stating that, to the extent the state is not obligating taxpayers to pay back a debt with taxes, there isn't a constitutional obligation.

Chair Cole asked why Mr. Metcalf advocates keeping the war veterans provisions. Mr. Metcalf said the state must retain its commitment to veterans. He said the committee could state in new language that it is okay to issue debt to compensate veterans to thank them for their service.

Mr. Metcalf added that the growth of Article VIII has undercut another piece of the Ohio Constitution: the Commission of the Sinking Fund. Article VIII creates a Sinking Fund Commission meant to oversee the debt status of the state, but the amendments currently in Section 2, have delegated the responsibilities of the Commission to either the General Assembly or the Public Facilities Commission. This has transferred the accountability of the statewide executive officeholders from the constitution to statute. He claims that a constitutional check has been 'eroded' and that the Commission of the Sinking Fund has been circumvented by these amendments. Now, essentially, there is no requirement that a majority of the sinking fund commissioners agree to debt, with the result that that commission hasn't met since 2008.

With regard to conduit issuances, Mr. Metcalf observed that it is a function of federal tax law that to get a benefit, you have to have a government issuer.

Mr. Metcalf proposed that Sections 13, 14, and 16 of Article VIII be condensed into one. He concluded that Ohio needs a meaningful limitation in a percentage form.

Chair Cole asked what would be a meaningful debt limit? Mr. Metcalf said he does not have a specific proposal, but agrees that it would be something that is indexed to another standard, and would be built in.

Committee member Sen. Charleta Tavares asked whether other states have percentages and what their experience might be. Mr. Metcalf did not know but offered to find out.

Committee member Herb Asher asked if the limit were adjusted it might suggest that all debt up to that point could be incurred by the General Assembly without going to the ballot. Mr. Metcalf agreed with this statement. Mr. Asher pointed out that while this might be rational, a proposal that says voter approval isn't necessary and wouldn't be popular. Mr. Metcalf said the change would mean restoring a limit that currently isn't there.

Rep. Amstutz asked how the committee would limit this; what would it be a percentage of? Would there be yearly limits or have an outside timeline?

Mr. Metcalf said that, with some exceptions, there are limitations on final maturity. It is not infinite. At some level there is an overall debt limitation, but it is not straightforward.

Ms. Trafford asked how the conduit issuance issue could affect the state's credit if there is a default. Mr. Metcalf gave an example of the Ohio Water Development Authority, saying if that organization defaults there is no direct obligation to the state. He said that should not directly impact the ability of the state to borrow money. He said it is all interrelated, and that default is suggestive of a larger economic problem in Ohio.

Committee member Jo Ann Davidson asked what the state's bond rating does, and what the impact of lowering the bond rating is. If we make a change would it impact our bond rating? Mr. Metcalf said there are some positives but there could be some negatives as well if we put Ohio in too restrictive a position.

Ms. Davidson asked whether the General Assembly needs the ability to override the debt limitation if there is a catastrophe. Mr. Metcalf said yes, but that is currently available.

Ms. Davidson asked whether, if exceptions aren't broad enough to deal with unusual circumstances, changing the debt limit would make any sense. Mr. Metcalf said the essential proposal would do away with things that prevent the General Assembly from having discretion. Chair Cole asked if there is a resource the committee could consult that would give it the ability to project the impact of a change. Mr. Metcalf said the committee could see how other states deal with it, and that the committee could have conversations with the rating agencies, even though they probably wouldn't give any assurances but would only react to a proposal.

Chair Cole observed that bond rating involves risk. He asked whether a fundamental structural change to Article VIII would potentially increase borrowing costs to the state. Mr. Metcalf said that if the committee just changes the \$750,000 limit it doesn't solve the problem. He said there may be old interpretive guidance that could help the committee.

Mr. Asher asked if there are any states in which the issuance of debt, either by the legislature or the people, requires a supermajority. Mr. Metcalf said he doesn't know but can get back to the committee.

Mr. Metcalf offered the following suggestions for the committee to consider in modernizing Article VIII: first, the extent to which the constitution permits the General Assembly to incur debt for generic purposes – and limit it for the purpose of “permanent improvements.” He believes this would increase transparency and prevent the General Assembly from simply appropriating funds for generic purposes. Second, in simplifying Article VIII, a single section should be dedicated to generally permit conduit issuances that are not direct obligations to the state. Lastly, the constitution should formally recognize the Treasurer's office as the administrator of the Sinking Fund Commission.

Mr. Metcalf concluded in requesting that the \$750,000 debt limitation should be done away with; and instead, a percentage should be used to level out with Ohio's economy.

Mr. Metcalf then shared with the committee the progress the Treasurer’s office is making to instill transparency within the state. Starting in 2011, their office launched the *Treasurer’s Transparency Project*, which has now led to OhioCheckbook.com. According to Mr. Metcalf, this website takes all state spending, from multi-million dollar road expenditures to a two dollar office supply expense, and places it all online for the first time in Ohio history.

“State Debt Recommendations by the 1970s Ohio Constitutional Revision Commission”

*Steven H. Steinglass
Senior Policy Advisor
Constitutional Modernization Commission*

Senior Policy Advisor Steven H. Steinglass presented a brief overview of the Article VIII State Debt Recommendations of the 1970s Ohio Constitutional Revision Commission (OCRC). Mr. Steinglass said it is unclear why the recommendations of the 1970s didn’t meet with voter approval, and indicated that his comments will assist the committee in transitioning to the topics that will be covered at the next meeting.

Mr. Steinglass informed the committee that Professor Richard Briffault, of the Columbia University law school, will attend the May meeting of the committee. Prof. Briffault is an expert who can address many of the questions the committee has raised. Mr. Steinglass encouraged members of the committee to advise Commission staff of any questions they may have, in advance of the meeting, so that Professor Briffault will be prepared to answer them.

Adjournment:

With no further business to come before the committee, the meeting was adjourned at 3:00 p.m.

Attachments:

- Notice
- Agenda
- Roll call sheet
- Biographical sketch of Seth Metcalf
- Prepared remarks of Seth Metcalf

Approval:

The minutes of the March 12, 2015 meeting of the Finance, Taxation, and Economic Development Committee were approved at the June 4, 2015 meeting of the committee.

/s/ Douglas R. Cole

Excused

Douglas R. Cole, Chair

Karla L. Bell, Vice-Chair