



## OHIO CONSTITUTIONAL MODERNIZATION COMMISSION

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### MINUTES OF THE FINANCE, TAXATION, AND ECONOMIC DEVELOPMENT COMMITTEE FOR THE MEETING HELD THURSDAY, NOVEMBER 10, 2016

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

Chair Douglas Cole called the meeting of the Finance, Taxation, and Economic Development Committee to order at 11:38 a.m.

#### **Members Present:**

A quorum was present with Chair Cole, Vice-chair Bell, and committee members Amstutz, Davidson, Mills, Peterson, and Trafford in attendance.

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

The minutes of the June 9, 2016 meeting of the committee were approved.

#### **Presentations:**

*Steven C. Hollon, Executive Director*  
*Update on Draft Joint Resolutions*

Chair Cole recognized Steven C. Hollon, executive director, for purposes of updating the committee on the preparation and introduction in the General Assembly of joint resolutions relating to reports and recommendations issued by the committee.

Mr. Hollon directed committee members to a copy of the joint resolution language prepared by the Legislative Service Commission.

He described House Joint Resolution number 11 as proposing to amend Article VIII Section 2, and repeal Sections 7, 8, 9, 10, and 11, and to adopt the recommendation of the Commission related to the Sinking Fund. Mr. Hollon said the joint resolution is being sponsored by Commission members Representative Ron Amstutz and Representative Michael Curtin.

Mr. Hollon said House Joint Resolution number 10 proposes to enact Article VIII, Section 18, repeal Sections 2b, 2c, 2d, 2e, 2f, 2g, 2h, 2j, and 2k, and adopt the Commission's recommendation regarding obsolete bonding authority.

Mr. Hollon continued that House Joint Resolution number 9 proposes to enact Article VIII, Section 2t, and to adopt the Commission's recommendation relative to the creation of general obligation debt.

Mr. Hollon said the effort to bring forward joint resolutions related to these reports and recommendations was raised and discussed at the full Commission meeting in October 2016. He said Rep. Curtin and Rep. Amstutz had advocated in favor of introducing joint resolutions, and so had the drafts prepared and will sponsor the joint resolutions in the House. Mr. Hollon noted he would be announcing this development to the full Commission as well.

Chair Cole then invited the committee to ask any questions. Senator Charleta Tavares asked whether companion joint resolutions should be introduced in the Senate.

Rep. Amstutz said the view from the House is that it was important to get the discussion started because there are not very many session days left in the current General Assembly. He said he would like the Senate to begin a review of the recommendations as well, but it will be up to the Senate to introduce joint resolutions. He said he is not sure how much attention the legislation will get because of other business, but that he and Rep. Curtin are resolved to do their best to bring attention to the joint resolutions.

Chair Cole said he thought the term "joint resolution" meant both houses were proposing the amendment. Rep. Amstutz said, ultimately, the proposal will be joint if both houses act on it, but that a joint resolution is not automatically introduced in both houses.

Chair Cole clarified that there is no current Senate sponsor, to which Sen. Tavares said she would like to move forward on this in the Senate but needs a co-sponsor. Sen. Bob Peterson volunteered to co-sponsor the joint resolution with Sen. Tavares.

There being no further comments or questions, Chair Cole thanked Mr. Hollon for his presentation.

*Steven H. Steinglass, Senior Policy Advisor  
Review of State Policies on General Obligation Debt*

Chair Cole then recognized Senior Policy Advisor Steven H. Steinglass for the purpose of presenting a memorandum on the topic of state policies on general obligation debt. Mr. Steinglass said the memorandum provides a national overview as to how other states deal with general obligation debt, if at all. He said the topic arose indirectly when Professor Richard Briffault presented to the committee at a previous meeting. Mr. Steinglass acknowledged the work of intern Alex Benson, 2016 graduate of the Ohio State University Moritz College of Law, who prepared research materials in aid of the project.

Mr. Steinglass said the memorandum is organized to identify four different approaches that states have. He said some, like Ohio, only allow general obligation debt if there is an amendment to the constitution, either because the constitution has a prohibition on debt or because it has a low debt limit. He said some states have legislative approval before presenting the question to voters, some states only require legislative approval, and some states have no constitutional debt limit and leave it to the legislature.

He said the most interesting thing involves changes that have occurred since 1970. At that time, the Constitutional Revision Commission finance committee proposed to take the constitutional amendment out of the debt raising business and let the legislature do it, subject to the floating limitation on principal and interest. But, he said, this proposal was rejected by voters. He continued that, for the last 40 years, there has been an interesting movement around the country. He said, in the beginning, 16 states required amendments to their constitutions to incur general obligation debt, by a variety of ways. Now there are only 9 states that do so, including Ohio. He said the movement is that states have been saying they do not want to encumber their constitutions with 1,000 word amendments incurring general obligation debt. He noted that no states have moved in the other direction.

Mr. Steinglass said the largest split among the states that do not require the involvement of the constitution is how far they will go without voter participation. Eighteen states require legislative action and voter approval. Two additional states require legislative supermajority action. Nine require legislative action without any voter approval. Six states require a legislative supermajority without voter approval. And, he said, six have no constitutional debt limitations. Nearly 15 states do not require either supermajority or a vote of the people, according to Mr. Steinglass.

Mr. Steinglass commented that Ohio has a prohibition on general obligation debt. Beginning with World War I bonds, which ignored the limitation, that state of affairs has been the trend ever since. He said Article VIII is the most frequently amended article of the constitution.

He said the committee, having now confronted the problem of large numbers of obsolete provisions that need removal, may wish to decide whether to continue with that model and in another 20 years take out more obsolete provisions. He said another way is to say these provisions do not need to be in the constitution. He said there is a threshold decision of whether to maintain the status quo or find a way to raise general obligation debt without employing an amendment to the constitution. He noted the Office of Budget and Management Director Timothy Keen expressed disfavor with making that kind of change.

Mr. Steinglass having concluded his remarks, Chair Cole asked committee members if they had questions or comments.

Vice-chair Karla Bell asked whether the 1970s Commission had recommended eliminating the requirement for voter approval. Mr. Steinglass answered there was no specific approval of general obligation debt called for in the 1970s Commission proposal. Instead, he said, the proposal was for a debt repayment limitation of six percent of the average revenues of the state, so the goal was to keep the legislature in line.

Chair Cole noted a previous suggestion by Commission member Charles Kurfess that it might be useful to explore whether there could be some ongoing fix in the form of not requiring constitutional amendments. Chair Cole said he discussed that idea with Gregory Stype, bond counsel with Squire Patton Boggs (US) LLP, who said there are considerations that support leaving some amendments in place. Chair Cole asked Mr. Stype, who was present in the audience, to explain that concern.

Mr. Stype said many general obligation debt amendments do more than authorize the debt; they also provide program implementation and credit restrictions, and empower activities of local governments. He said it is important to see the amendments for more than simply an authorization of debt.

Mr. Stype added that it is possible to add a line to a constitutional amendment enacting a new section that would repeal an obsolete section. He said that is one way of cleaning up obsolete amendments. He described that there have been many amendments to Article VIII, and at the beginning the practice was to authorize a set amount of debt that may be issued, after which the provision is no longer effective. He said the more modern practice is to have the amendment authorize debt for a specific purpose, either in an amount authorized by the General Assembly or as a rolling limit. He said he would guess that the frequency of amendments through bond issues has tapered off over time because the state has taken an approach that does not have an absolute dollar limit.

Chair Cole said this may be a historical artifact, so that the state is not likely to see the problem continue. Thanking Mr. Steinglass for his presentation, Chair Cole asked to pass along the committee's thanks to Alex Benson for providing the research materials.

### **Report and Recommendation:**

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

Chair Cole called on Mr. Hollon to provide a presentation on a report and recommendation for retaining Article VIII, Sections 2l through 2s in their present form.

Mr. Hollon said the report and recommendation indicates that Article VIII deals with public debt and public works. He said the report and recommendation provides the background of the sections, describing how the state adopted additional constitutional amendments in Section 2. He noted that Sections 2l through 2s involve bonds that have not been fully issued and paid off. Mr. Hollon then described the purpose and function of each of the sections.

Mr. Hollon said one paragraph would be added to the final draft, relating to Section 2p. He explained that Section 2p, adopted in 2005, authorizes the issuance of bonds for education and local government projects, specifically capital improvements to infrastructure, research and development, and, as amended in 2010, support for Third Frontier projects. He said because the committee will not be recommending a change to that section it needs to be a part of the report and recommendation and will be included.

After describing the report and recommendation's discussion of litigation related to the sections, as well as presentations and resources considered, Mr. Hollon indicated the report and recommendation concludes that the sections should remain in their present form. Finally, he noted that, because the committee is recommending no change, it has the option to issue the report and recommendation after only one presentation.

Mr. Hollon additionally commented that the proposed language for 2p has been vetted by some experts who have been assisting the committee, and they have approved the report and recommendation's treatment of that issue.

Chair Cole then asked for comment from the committee. Sen. Tavares asked, regarding Mr. Stype's suggestion for language that could be added to automatically retire obsolete debt provisions, if the committee is interested in adding that language.

Chair Cole said the committee would need to look at those provisions, and that it may be a situation where the section would not be obsolete because other provisions rely on keeping the section.

Mr. Stype clarified his previous statement, saying most sections are ongoing. He said his suggestion was not that there be standing language in the constitution, but rather that each time the General Assembly considers putting another authorization on the ballot it could consider if something is obsolete and add a sentence to repeal at the same time.

There being no further questions, Chair Cole said he would recommend to the committee that the report and recommendation be approved as amended to include Section 2p, without a second presentation.

Committee member Kathleen Trafford so moved, with committee member Jo Ann Davidson seconding the motion. A roll call vote was taken, and the motion passed by unanimous vote.

Chair Cole said he will leave it to Mr. Hollon to make the change to the report and recommendation to include Section 2p, and then forward it to the Coordinating Committee and then to the Commission.

### **Discussion:**

Chair Cole then directed the committee's attention to a memorandum relating to the question of whether there should be a new constitutional provision that would describe the duties of the state treasurer.

Mr. Hollon said this was an idea raised by Director Keen, and would involve a constitutional provision that would give the treasurer specific duties regarding reporting debt. He said one question is whether the issue is one for this committee or whether it would be better placed with the Legislative Branch and Executive Branch Committee to consider in the course of addressing Article III (The Executive Branch).

Committee member Fred Mills, who is chair of the Legislative Branch and Executive Branch Committee, expressed that this committee ought to review it in depth, and, if there is a recommendation to adopt a provision of this nature, the question could be sent to the Legislative Branch and Executive Branch Committee.

Chair Cole said he would like to give the treasurer's office the opportunity to comment, asking whether the memorandum on the question has been provided to the treasurer.

Mr. Hollon explained this concept was discussed at previous committee meetings, and the memorandum was prepared in anticipation of a meeting two months ago that was canceled. Thus, he said, it has not yet been provided to the treasurer.

Chair Cole said the question is whether, if the committee is striking the Sinking Fund and eliminating the Sinking Fund Commission, it should replace that with a constitutional reporting obligation regarding state debt.

Chair Cole recognized Larry Scurlock, assistant debt manager for the Office of Budget and Management, who was in the audience. Mr. Scurlock indicated that the treasurer of state issues a report on behalf of the Sinking Fund as set out in Article VIII, Section 11.

Chair Cole continued that, to the extent that the committee believes that the reporting function has value, it should determine whether to leave it to the legislature to create that function by statute. He said the committee may think action by the General Assembly should not be discretionary.

Ms. Trafford said it would be worthwhile to share this memorandum with the treasurer's office and hear from them. She said if the voters will be asked to repeal the Sinking Fund, constitutionalizing the treasurer's duty might be a good addition to give the public the comfort that the debt reporting duty would continue.

Chair Cole said the memorandum should be sent to the treasurer's office, requesting the treasurer's view on whether reporting obligations should be assigned to the treasurer and whether that should occur through statute or through the constitution. He said it would be useful to invite someone from the treasurer's office to appear and comment at the next meeting.

Ms. Trafford suggested that, if the sinking fund is being eliminated, the committee should offer other members of the Sinking Fund Commission to consider the question and provide comment.

Chair Cole agreed, saying it would be nice to have a view as to the desirability of the idea from the Office of Budget and Management. He requested that Mr. Hollon extend invitations to that office, as well as to the governor, attorney general, and auditor.

Chair Cole then turned to the topic of Article VIII, Sections 4, 5, and 6. He disclosed that, in his role as a private attorney, he represents JobsOhio. He said these are provisions that deal with limitations on the government's ability to engage in joint enterprise with private entities.

He continued that the committee has heard from Mr. Stype about those sections, and about some exceptions that exist in other constitutional provisions. He said there is some recent jurisprudence regarding Sections 4 through 6. He emphasized that, unlike some of the other sections where the committee was mostly dealing with obsolete provisions, there is an ongoing debate with various viewpoints regarding the understanding of Sections 4, 5, and 6. He said the committee may want to consider the extent to which it wants to clarify this language. Chair Cole encouraged the committee to invite persons with viewpoints to share to come forward. He said the committee does not want to foreclose anyone from presenting their views on this topic.

Ms. Bell suggested to Chair Cole that, because he is actively involved in the JobsOhio representation, he might be in a position to identify potential speakers. Chair Cole agreed and said he would work with Mr. Hollon on that effort. He also encouraged the legislative members on the committee to suggest persons who have been witnesses in the General Assembly legislative process and may wish to present to the committee.

Chair Cole said the committee would be taking up that question at its next meeting in the new year.

**Adjournment:**

With no further business to come before the committee, the meeting was adjourned at 12:31 p.m.

**Approval:**

The minutes of the November 10, 2016 meeting of the Finance, Taxation, and Economic Development Committee were approved at the April 13, 2017 meeting of the committee.

/s/ Douglas R. Cole  
Douglas R. Cole, Chair

/s/ Karla L. Bell  
Karla L. Bell, Vice-chair