



OHIO CONSTITUTIONAL MODERNIZATION COMMISSION

MINUTES OF THE FINANCE, TAXATION, AND ECONOMIC DEVELOPMENT COMMITTEE

FOR THE MEETING HELD
THURSDAY, JANUARY 15, 2015

Call to Order:

Chairman Cole called the meeting of the Finance, Taxation, and Economic Development Committee to order at 9:30 a.m.

Members Present:

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

Approval of Minutes:

The minutes of the September 11, 2014 meeting of the committee were approved.

Presentation:

Steven H. Steinglass
Senior Policy Advisor
Constitutional Modernization Commission

Senior Policy Advisor Steven Steinglass presented an overview of Article VIII, relating to the public debt provisions of the Ohio Constitution. He stated that revisions may be necessary with respect to some of the provisions, but he was not sure if the committee had identified the policy direction it wanted to go, and he hoped that this overview would help the committee.

Mr. Steinglass continued, saying that the committee has the benefit of the record of proceedings of the 1970s Commission, the chapter from the Steinglass & Scarselli book *The Ohio State Constitution*, and information from the website of the Office of Budget and Management. One topic is whether the committee should recommend that the state continue its approach to public debt under which authority for incurring public debt, are presented to the voters for approval. The recommendations on public debt made by the 1970s Commission were rejected in 1977; these recommendations would have eliminated the debt limit while retaining a role for the voters.

Mr. Steinglass noted there are at least nine obsolete provisions in which the bonds have all been retired. He said the committee should decide whether it wants to repeal obsolete provisions. If so, he asked if there are obligations under those provisions, such as matured bonds and interest coupons, which need to be taken into consideration. He said the committee needs to determine if there are any important provisions buried in otherwise obsolete provisions that should be retained even though the bonding authority under them may no longer be viable. Another issue to consider is the sinking fund which is covered in five sections of Article VIII. He also asked whether Ohio needs to review how other states may be using public debt to spur infrastructure improvement and economic development.

Mr. Steinglass said Ohio operates under the 1851 Constitution, which has been amended 121 times. Article VIII, public debt, is the longest of the articles, with approximately 26,500 words. This article has about half the words in the Constitution and has been amended more frequently than any other article in the Constitution. There have been many proposals and many rejections by voters.

According to Mr. Steinglass, the 1802 Constitution had no provision on public debt in its approximately 6,000 words. In 1851, the convention approached state debt in light of a financial crisis that had resulted from heavy spending on canals and other transportation structure projects and bad economic times. He noted a previous presentation to the committee in May 2014 on this topic, by Seth Metcalf, Deputy Treasurer & Executive Counsel for Ohio Treasurer's office, and a 1985 University of Toledo Law Review article written by David Gold, an attorney with Ohio's Legislative Services Commission, about the 1837 act called the Loan Law, which went so far as to require the state to help bankroll railroads, canals and highways, which were private-sector undertakings.

The 1851 Constitution addressed public debt by adopting a \$750,000 limitation on debt, by limiting the use of state funds, and by requiring prudent management of state debt through the sinking fund. Between 1851 and 1911, Mr. Steinglass said there were no amendments to Article VIII, though there was one proposal that was defeated.

The 1912 Constitutional Convention proposed two amendments to Article VIII that the voters approved, but they did not relate to today's theme.

In 1921, the first post-1912 amendment to Article VIII was proposed and adopted. Section 2a created an exception to the \$750,000 debt limit. It provided bonuses to World War I veterans. Other states had done this as had England, France, and Canada. Section 2a was approved by voters by wide margin. This set the stage structurally for how the Constitution would approach the debt limitation.

Mr. Steinglass said that in 1953, the General Assembly proposed, and voters approved, a repeal of a constitutional provision, repealing section 2a that authorized World War I bonds, because the funds were fully expended and there was no longer a need to have this provision.

In 1968 Article VIII, Section 2i was approved. This was an important amendment that in addition to authorizing general obligation bonds, authorized revenue bonds not supported by the

full faith and credit of the state. The amendment also referred to Article XII, Section 5a, making clear that highway user receipts are available to pay off general obligation bonds for highways issued under this and earlier sections.

Mr. Steinglass observed that Article VIII has been amended 27 times since 1851, but nine of the original 13 sections have never been amended. Two of the original sections that were amended deal with public works. Another two relatively minor amendments deal with insurance and who may serve as commissioners of the sinking fund. This leaves 23 additional amendments involving the use of bonds for public purposes.

He identified nine sections of Article VIII that no longer authorize issuance of general obligation bonds because all bonds had been issued or the time for issuing them had passed. These sections had been identified in a memorandum on obsolete provisions prepared by the Legislative Service Commission. He said more detail is found in the semiannual reports issued by the Commissioners of the Sinking Fund.

Assuming the committee does identify obsolete provisions and is inclined to recommend repeal, he suggested that the committee also recommend a provision to protect those individuals having a remaining outstanding interest coupons or outstanding bonds. The 1970s Commission recommended adoption of a schedule to protect those who had an interest in these bonds. The simple conclusion is that if obsolete provisions are identified and if there is an inclination to repeal them, there is a mechanism protecting those having a financial interest in the bonds. Thus, there would be no adverse effect.

Mr. Steinglass said the more difficult issue is the need to go through any potentially-repealed provisions with great care to see if the committee was inadvertently throwing out something that should be retained. He said some would argue that the committee should not take this chance, but, on the other hand, the committee could use great care to look at these provisions to see if they have a continuing impact and are still needed.

Mr. Steinglass said that Greg Stype, a Columbus attorney with the firm of Squire Sanders, who spoke to the committee at the June 2013 meeting, identified Section 2i as an obvious example. The 1970s Commission recognized that as well, recommending that it be moved verbatim to its own stand-alone section. Are there other elements of 2b through 2j that should be preserved, and does the committee want to proceed in identifying those provisions that are obsolete, and thus should be removed and those that should be preserved? Mr. Steinglass said, "We must be sure we aren't removing muscle or bone."

Chair Cole said there has been a sense of the committee that there is a desire to move forward on removing obsolete provisions, so a concrete step would be to come up with what that proposal would look like. Mr. Stype explained in his presentation that just excising may have unintended consequences and this becomes complicated. Chair Cole said the committee needs to work toward having a concrete proposal that it can vote up or down. However Chair Cole is not sure if it is in the Commission's interest to have this be an early thing to go to the voters, as it is just housekeeping.

Mr. Steinglass observed that this involves a lot of staff work, so we need a real charge to move forward on obsolete provisions. The timing can be worked out with Executive Director Steven Hollon. At some point a joint resolution will be necessary. Mr. Steinglass noted the staff may need to engage additional volunteer help on these questions.

Chair Cole said the larger question is what we can accomplish as a committee. For example - capital improvement bonds, water management, water controls, and state supported higher education. What is permissible capital improvement infrastructure spending? Do categories need to be expanded for modern technology and modern needs? Is this inherent in the constitution or do we need specific provisions? Is the constitutional language standing in the way of progress on this type of thing?

Mr. Steinglass said these are good questions and there may be other things. If there is a little ambiguity it will be litigated, but maybe there is a need to try to eliminate ambiguity. If we put on our futuristic hats, there may be some new provisions that need to be proposed.

Committee member Trafford asked whether there should be an adjustment to prevent this problem in the future. She said the reason we have a lengthy Section 2 is because of Section 3. She asked whether the committee should look at Section 3 and find a way to preserve voters' right to approve public debt without amending the Constitution every time. She continued by noting if we take out language about debt having to be specified in Section 2 and provide that debts have to be approved by voters above a certain amount, this would remove the bulky problem from the constitution. Section 1 contains the \$750,000 limit and this requires a specific provision such as 2a through 2s each time the state goes over the limit.

Chair Cole said the committee did talk about this at a previous meeting, saying that the committee may need to create a framework for deciding how to get to a final resolution about how to resolve the problems.

Mr. Steinglass observed that the 1970s Commission addressed these issues because the problem is that every 30 years you could repeal the last bond authorizations, but this would not change the process. Mr. Steinglass said he will provide the committee with a copy of that portion of the 1970s Commission's discussion of the larger issues so the committee can understand their approach. He noted that the earlier commission identified five different alternatives; including maintaining the \$750,000 debt limit and having a referendum to approve borrowing. This approval was not recommended because of concerns that it would not be a sufficient restraint on borrowing. Other options were to do nothing, to increase the debt limit to a higher level, omit any debt limit, or to create a flexible debt limit.

Ultimately, the 1970s Commission recommended repealing the \$750,000 debt limit in favor of a flexible debt limit and using a referendum to approve future public debt. The voters rejected this proposal by a substantial vote in 1977. He stated that the history of this proposal and what led up to it is contained in the early part of the final report of the 1970s Commission. He said he will share that with the committee, but he does not know why it was not successful. He also said he does not know what the committee wants to do about this topic, which is the larger question of how we do business in regard to public debt. Is a referendum a better alternative than simply a

constitutional amendment? There may be significant discussion that the committee will want to have on this. We could slim down this article in a way that does not have a significant impact on the right of voters to weigh in on public spending.

With regard to the sinking fund, the 1970s Commission recommended repeal of the five provisions on the sinking fund because this approach is no longer used to issue debt. The General Assembly did not fully embrace the 1970s Commission's recommendations, and the joint resolution that went to the voters (but was rejected) proposing keeping in the constitution the existence of the sinking fund commission and its duty to issue semiannual reports. Mr. Steinglass surmised that the General Assembly wanted to get the state officials to sign their names and thus stand behind the reports regarding public debt. No one who has presented to the committee has identified any need to keep sinking fund provisions. If the committee decides to recommend repeal of the sinking fund, it will be necessary to review other provisions of Article VIII that refer to the sinking fund and update them.

Chair Cole said the state has adopted a model of public debt, and has set limits. He wondered if the committee should look at a comparison of what other states do about public debt. Chair Cole asked whether there is any consensus on how other states approach public debt and whether the committee can have a comparative pro and con discussion. He said gains from any changes would need to be significant because complete revision of the article is risky. He would like the committee to consider other basic models for public debt issuance by states.

Mr. Steinglass said we could learn more about other states by background readings or presentations. A third alternative would be to bring in a speaker who knows about this area, rather than just having a paper comparison. He identified Richard Briffault, a professor at Columbia Law School who could make a presentation, and he recommended inviting Professor Briffault to make a presentation to the committee.

Chair Cole said he would like to start with the questions, and that he doesn't think he has enough information to think about this. He remarked that unless someone identifies serious and significant problems with the current system he would be reluctant to support change. He is risk averse, and says he is not sure he understands it well enough.

Sen. Sawyer noted that, in 1977, this conversation was swirling around but no real change occurred. He said he would welcome the chance to have the ability to read on this topic prior to a conversation, and to read about the environment in which we were making decisions at that time and compare it with today. These are big decisions, but he said he believes we currently do not have a smooth running system and it would benefit the state to make it work more smoothly. He said he views this review as an opportunity.

Mr. Mills commented that the National Council of State Legislatures ("NCSL") has a wealth of information on this topic and may already have a document comparing models from various states. He would like staff to see what NCSL has on this topic, even contacting NCSL for direct help.

Mr. Steinglass suggested the committee bring in Professor Briffault, who is someone with a good national perspective, possibly in May 2015. Mr. Steinglass asked whether the committee would like work to be done on the smaller issues even though we would not get to them for some time, asking, specifically, whether the committee will be looking at other provisions to make sure they would not be affected by removal of obsolete provisions.

Sen. Sawyer commented that the committee needs to be sure of what is meant by the word “obsolete.”

Committee member Asher said that one goal should be to streamline Section VIII so that future generations don’t give up in despair. He said the committee could still move forward on the obsolescence question, but it can also focus on the broader problem and make recommendations so that future problems won’t occur.

Chair Cole asked whether other state constitutions dedicate this much attention to public debt. He wondered whether Ohio would be benefited by removing all of this and replacing it. He said he shares everyone’s frustration with this Article; it is hard to read and understand. He said he is seeking transparency and right now it isn’t there. Chair Cole thanked Mr. Steinglass for his presentation, and looks forward to trying to focus in on these questions over the next year. He observed that this is going to be a long process about which the committee will be thinking long and hard.

Adjournment:

With no further business to come before the committee, the meeting was adjourned at 10:47a.m.

Attachments:

- Notice
- Agenda
- Roll call sheet

Approval:

The minutes of the January 15, 2015 meeting of the Finance, Taxation, and Economic Development Committee were approved at the March 12, 2015 meeting of the committee.

/s/ Douglas R. Cole

Douglas R. Cole, Chair

/s/ Karla L. Bell

Karla L. Bell, Vice-Chair