



OHIO CONSTITUTIONAL MODERNIZATION COMMISSION

MINUTES OF THE FINANCE, TAXATION, AND ECONOMIC DEVELOPMENT COMMITTEE

FOR THE MEETING HELD THURSDAY, DECEMBER 10, 2015

Call to Order:

Chair Douglas Cole called the meeting of the Finance, Taxation, and Economic Development Committee to order at 11:12 a.m.

Members Present:

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

Approval of Minutes:

The minutes of the October 8, 2015 meeting of the committee were approved.

Committee Discussion:

“Article VIII (Public Debt)”

Chair Doug Cole began by directing committee members to a proposed amendment that had been presented by Office of Budget and Management Director Timothy S. Keen at the committee’s last meeting, as well as a memorandum prepared by Senior Policy Advisor Steven H. Steinglass. He said, as he understands it, the proposed amendment (creating new Section 2t) would accomplish everything the committee had been talking about, but that staff felt that more direction was needed from the committee as to the committee’s consensus on how to address the elements of the proposal.

Chair Cole said that Item 3 in the memorandum outlines the committee’s discussion of the \$750,000 debt limitation that appears in Article VIII, Section 1, as well as the remarks of Deputy Treasurer Seth Metcalf, who wanted to return to the original vision and modernize that number, while Mr. Keen wanted to leave it untouched. So the action that is required is to have a discussion and vote on the question of whether the committee wants to retain Section 1 as it is, or to modernize and increase that debt number. He suggested that the committee have a discussion about what direction to take.

Committee member Kathleen Trafford said she thought there was a third alternative in which one would keep the existing debt limit but, instead of amending the constitution, authorize the debt limit to be exceeded upon a vote of the people. Chair Cole responded that the concept she described is part of a discussion of the various Section 2 provisions. But, he said, a proposal that would retain the limit as it is and provide for future additional issuances is a proposal he would like to disaggregate from the first question, regarding whether to increase that number. Chair Cole added it is a separate question whether the committee would prefer leaving Section 1 alone but authorizing additional expenditures so that the actual debt-issuance authority comes from some other source.

Senator Charleta Tavares said she would like to hear the advantages and disadvantages of increasing the \$750,000 debt limit, wondering if anyone has recommendations for that. She said it “looks silly to have \$750,000 as a limit; it is confusing to the public.” She asked what advantages are there in keeping that number.

Chair Cole offered to summarize the testimony on that issue from Mr. Metcalf as well as from Mr. Keen. He said Mr. Metcalf talked about the history of Article VIII, and the fact that Section 1 originally funded public works with a general authorization of \$750,000, which represented a large percentage of the state’s budget. According to Chair Cole, Mr. Metcalf said that a revision could go back to having a general debt limit that would not be tied to specific purposes, because every time the constitution is amended for specific purposes, the state’s hands are tied with respect to how the public debt can be used.

Chair Cole summarized Mr. Keen’s presentation as expressing the view that the current system, which has a low general debt limit with express authorizations, works well, and that the capital markets could view a change as possibly creating some interest grade consequences. Chair Cole said that changing the debt limit to a larger number could take away the benefit of the legislature having limitations, adding that the limit prevents an overconcentration of the debt on one or another set of uses. Chair Cole then welcomed Attorney Greg W. Stype, who was present in the audience, to comment on that view.

Mr. Stype responded that the debt limit is not so much a limit on capital financing, but rather allows the state to contract debts to supply “casual deficits or failures in revenue,” and that a way to think of it is as cash flow or general operating borrowing. But, he said, that contracting is limited to \$750,000, so the committee could look at the limit as one that has been upheld as a limitation on cash flow borrowing for “casual operating deficits,” rather than a limit on capital borrowing, which has things like the five percent debt service limitation under Section 17.

Chair Cole said he does not recall any testimony that the \$750,000 is not suitable for casual borrowing for operating expenses. Mr. Stype said the state has long managed cash flow in its operating funds using the total funds operating concept. Unlike California, a state that borrows billions for operating expenses, Ohio does not have to do that.

Representative Ron Amstutz asked, with that in mind, whether the committee might want to consider removing the \$750,000 limit and then referring to operating debt, basically prohibiting

going into debt for operating expenses. He suggested that method would incorporate Sections 2a, 2b, and the other “number 2” sections. Rep. Amstutz continued that his idea is to remove the words “\$750,000” and replace the number with some clarifying language that would parallel the concept expressed by Mr. Stype relating to operating expenses. He said this would modernize, but not really change, the effect of what is going on. He said, basically, the section would say the state cannot borrow for operating expenses except for what Article VIII, Section 2 says. He commented that “\$750,000 does not do us any good anyway so why not get rid of it?”

Sen. Tavares asked Mr. Steinglass his opinion of the matter under discussion. Mr. Steinglass said the \$750,000 limit is a function of the time in which it was adopted. He said no one contemplated in 1851 that the state would have to have a new process if the amount were to be exceeded, adding there was not even an attempt to borrow money outside the \$750,000 until the 1920s. Mr. Steinglass said he thinks there is a serious danger that if the \$750,000 limit is removed, the action would be misconstrued. He said the policy benefits from removing that limit are “minimal at best.” He continued that trying to increase the \$750,000 limit to some current number completely changes the way the number was originally used and would constitute a fairly significant change in how these issues are approached.

Chair Cole said, as he understands Rep. Amstutz, the idea would be to take the \$750,000 to zero, and then to say the state may not contract for casual debts. He added, if there is support in the committee for that idea, Chair Cole would want to contact the Office of Budget and Management to be sure that office does not have an issue with doing so.

Committee member Herb Asher commented that the \$750,000 has been misconstrued for a long time and constitutes Ohio’s balance budget restriction. He said, if the committee were to recommend getting rid of that limit, the narrative needs to be clear that the change would not weaken the balanced budget requirement. He would want it to be communicated that this is not a change in direction.

Chair Cole said it was Director Keen’s testimony that the \$750,000 limit acts as part of the balanced budget requirement, and if that number is reduced to zero, it would create an even more balanced budget requirement than Ohio currently has. But, Chair Cole said, his question is whether there is some function that would be affected if the \$750,000 is taken out, adding, otherwise, he would go along with Rep. Amstutz’s proposal.

Rep. Amstutz said the issue is not critical for him; rather, he was trying to suggest an alternative method for dealing with the issue.

Ms. Trafford commented that the limit is almost zero now, for all practical purposes, wondering why the committee would want to open the door to a change that would possibly create controversy and misunderstanding by voters.

Chair Cole asked for a motion regarding the \$750,000 limit. Ms. Trafford moved to retain the limit, with Sen. Tavares seconding the motion. Chair Cole then opened the floor for discussion.

Representative Kathleen Clyde asked, regarding the pending motion, whether the vote would constitute an official action by the committee. Executive Director Steven C. Hollon answered that this would be considered a preliminary vote, clarifying that the one thing the committee takes formal action on is a report and recommendation. He said the difficult conversation in this committee is the length of that report and recommendation, for example, will all of Article VIII be covered in one report and recommendation, or will the various topics and sections be addressed in separate reports and recommendations. Mr. Hollon said the committee's decision on how to document its conclusions will take into account the proposed amendment language prepared by Director Keen because there has been a lot of thought given to that. Mr. Hollon added that having separate reports and recommendations is difficult if the committee wants a big picture plan, and it will take time for staff to draft that. He concluded, saying the motion on the floor is for a preliminary vote.

Chair Cole said he wished to clarify his plan of how to move these changes through. He said he believes any change has to be done as a package because of the interaction of the parts of the article, noting that Director Keen's proposal encompasses all of the changes in one amendment. Chair Cole said the way he plans to proceed is to be certain that the committee has consensus on all of the sub issues, and then to propose a single amendment that will address all the items on which there is consensus. He added that the committee would then have the required two readings of the report and recommendation containing the proposed amendment before voting whether to issue the report and recommendation. He said the motion on the floor is not for a final vote because the committee does not have language before it yet.

Rep. Clyde said she would be more comfortable having a discussion rather than a roll call vote because the committee does not have written text in front of it. She said a roll call vote would formalize the decision, but for consensus purposes a discussion is more appropriate.

Chair Cole noted that committee members are not bound by their votes; rather, staff wanted to make sure of the committee's views because, although some discussions appeared to result in consensus, without a formal vote it was unclear. He said he wants to be sure where the committee is on these topics, and that, if there is a lack of consensus, he would like to know.

Chair Cole then asked the committee, as to the first issue regarding Article VIII, Section 1, whether there is consensus that the committee does not want to change the \$750,000 limit. Committee members acknowledged that this is their preference.

Chair Cole then directed the committee to the memorandum provided by Mr. Steinglass, specifically, Item 1 that identifies obsolete provisions. Mr. Steinglass commented that the amendment that is likely to come out of this process will be relatively short, but its component parts will lend themselves to separate reports and recommendations. He said the goal of the memorandum was to accommodate more focused discussions and a more focused ability to prepare reports and recommendations. Mr. Steinglass acknowledged important contributions by Mr. Metcalf, Mr. Keen, and Mr. Stype.

Mr. Steinglass directed the committee to the first five numbered parts of the memorandum, but putting aside the third part relating to the \$750,000 debt limit. He said the first part, relating to

obsolete provisions, is an area in which the chair has indicated there is consensus, but that staff needs specific instructions as to what the consensus is on. He noted that Section 2i should not be in that enumeration of obsolete provisions but Section 2k should be because Section 2i creates explicit authority for revenue bonds but also includes authority for certain kinds of general obligation bonds. Much of that authority has been moved to other provisions, but he has been persuaded that there is some residual impact such that Section 2i is not obsolete. He said he believes the consensus is that obsolete provisions should be removed.

Chair Cole said, to clarify, current Sections 2i and 2k are addressed in Director Keen's proposed new Section 2t(G), so that is why there is a mismatch between the memorandum and the proposed amendment. He said he believes it is inappropriate to characterize Section 2i as obsolete, and appropriate to add Section 2k to the list of obsolete provisions. So, he said, based on conversation from committee he thinks the goal should be to make the constitution more readable, and to give some useful civic purpose to remind voters of the purposes and reasons for past authorization of debt issuance, as well as informing the public of appropriate reasons for debt issuance.

Ms. Trafford said she agrees that the committee had consensus on the issue of obsolete provisions.

Rep. Clyde said she will want to think about removing obsolete provisions. She said a concern she has is ballot length, specifically whether the length of the proposed amendment would create confusion at the polls. She said she also wonders whether the Commission's work properly includes removing obsolete provisions. She said she is not sure where she is on that question.

Sen. Tavares said she understands Rep. Clyde's question, but that "our role as a Commission is to just look at the constitution and whether the provisions need to be changed." She added that some other committees of the Commission are looking at the topic of public engagement and might address that concern, but that this committee's role is to look at what needs to change in the existing document, rather than to consider what happens next. She said, issues such as whether the question is posed in a primary or general election, or whether the proposal increases or decreases the length of the ballot language only come up if the General Assembly passes a joint resolution, or if the public decides to put an initiative on the ballot.

Rep. Clyde said she understands that, but also thinks that these are some of the longest provisions, so she is trying to think them through, as well as considering the cost. She said she does not know where the Commission comes down so far on obsolete provisions. She said while she understands Sen. Tavares' point, she wants to think it over.

Mr. Asher agreed with Chair Cole that one goal is to make the constitution more readable, but that some people may be concerned about the historical context. He said he thought there had been a discussion previously in the committee about whether, if obsolete provisions are eliminated, they might be placed in the back of the constitution as footnotes or addenda. Chair Cole said the committee did have that conversation; but that his thought was that the committee is not responsible for how repealed amendments are published. With regard to Rep. Clyde's comments, Chair Cole said he is not sure the committee can get too far into the question of the

timing/political/ballot issue. He said the committee should move forward on the substantive questions and let others work out the timing issues.

Ms. Trafford said that the Coordinating Committee had engaged in a general discussion of obsolete provisions, and that her recollection was that there was an understanding that all committees would be looking to identify obsolete provisions. She noted there was an ad hoc committee, or “working group,” formed to consider obsolete provisions, but that Senator Larry Obhof had explained that that because this is such a big issue that has arisen in multiple committees, the working group is deferring to the individual committee to define obsolete provisions in its assigned articles. She said there is a consensus across all of the subject matter committees to look at the obsolete provisions as they come up across the committees.

Mr. Steinglass clarified that there is a working group that is tasked with identifying the topic of obsolete provisions and looking at common themes and issues, but the group was never intended to supplant the work assigned to the subject matter committees. Rather, he said, it was just a way of sharing ideas.

Chair Cole said the Finance, Taxation, and Economic Development Committee needs to provide some mechanism for the ongoing payment of bonds that still are in effect. He asked, regarding proposed Section 2t(G), whether there is consensus that obsolete provisions should be removed, but that sections containing remaining obligations retain their validity. He also noted that the proposed amendment also deals with Sections 7, 8, 9, 10, and 11, a separate issue that the committee will not address at this time.

Rep. Clyde said she is “on hold” with regard to that issue, but all other committee members agreed that removing obsolete provisions could be recommended for removal.

Mr. Asher asked whether Mr. Steinglass is familiar with how other states have handled the removal of obsolete provisions in their constitutions. Mr. Steinglass said some states never repeal anything but have an amendment afterward. He said, the committee could address the topic of assuring public access to the otherwise repealed provisions. He said there are schedules at the end of the constitution that are like uncodified law; they are binding but do not add to the bulk of the constitution. He said this is such a huge document; the best way is not to leave it in the constitution in terms of footnotes or schedules. He suggested the secretary of state might make repealed constitutional provisions on the website.

Mr. Steinglass said he is unsure how other states handle obsolete provisions, but that question can be researched. He added that repealed sections could be put on a website or otherwise publicized, with Sen. Tavares agreeing that online resources for researching repealed provisions could maintain that information, specifically mentioning the Ohio History Connection’s website. Mr. Steinglass said lawyers can always find this information, but the question is whether and how to provide it in a way that would allow the public to access it.

Chair Cole continued the discussion, referencing the other half of proposed Section 2t(G) in relation to Item 4 of Mr. Steinglass’ memorandum, which addresses the Sinking Fund. Chair Cole asked the committee whether it wants to keep the Sinking Fund. Mr. Steinglass noted the

Sinking Fund is a vestige of an earlier era. Today, the function is delegated to the state treasurer. He said no one has come up with a modern rationale for keeping it in place, noting there are a few other places in the constitution where the fund is referenced so that cleanup work may be needed, but that the Sinking Fund is not functional and has not been so for a while. Committee member Fred Mills added there may be revised code references to the Sinking Fund that the General Assembly may take up. Chair Cole asked the committee whether it thought the Sinking Fund provisions should be removed. Chair Cole noted there were no objections to this concept.

Chair Cole then directed the committee's attention to Item 5 in Mr. Steinglass' memorandum, referencing two kinds of bonds authorized under Article VIII. Mr. Steinglass explained that Section 2i is not in need of changes.

Chair Cole clarified he is referring to lease appropriation bonds. The lease appropriation bonds issue is that those bonds, once issued are subject to legislative approval to pay the outstanding indebtedness as opposed to full faith and credit bonds, and there is a certain interest rate penalty that the state pays for using lease appropriation bonds as opposed to general obligation bonds, despite the fact that never in the state's history has Ohio failed to pay its lease appropriation bonds. He said the question that was raised is whether it is appropriate or necessary for the state to preserve an option that it has no intention of ever exercising, especially since the forward looking interest rate is greater than the current one. He said the general idea of the proposed amendment is to convert lease appropriation bonds into general obligation bonds. He said he understood there to be a consensus that this was a good idea, and wondered if any committee members are opposed to an amendment that would accomplish this goal.

Sen. Tavares asked whether, under Item 6 of Mr. Steinglass' memo, there are any concerns about taking this action, whether it might affect future authorizations. Chair Cole noted that issue can be considered as parallel and separate from this issue. He said this issue is whether the existing authorization under Section 2i should be a lease appropriation obligation authorization or a general obligation authorization. He asked whether committee members were opposed to that proposal, and no committee members objected. Director Keen's proposed amendment seeks to accomplish that objective, said Chair Cole, noting that is one topic that Director Keen intended to encompass within proposed Section 2t.

With regard to Item 2 in Mr. Steinglass' memorandum, relating to the other general obligation authorizations, including Section 2k, Chair Cole noted these provisions have no sunsets but have a total debt outstanding mechanism that allows for new issuance based on retirement of existing debt. He said, in any event, these are provisions that still are current and active. He said the question raised is whether the committee wants to deal with these by putting in some kind of automatic sunset. He said his only comment is whether doing so is worth the effort; specifically, whether the committee wants to draft what would be a somewhat difficult-to-write provision.

Mr. Steinglass said he came up with the sunset idea. He said Mr. Stype recommended that the next time Ohio borrows more general obligation funds, the state could consider whether more sections are obsolete and deal with them at that time. He said he is not sure how a sunset would work, so that now he is backtracking on that suggestion.

Chair Cole said there is no consensus needed because the committee would not address that issue right now. He continued that a formal report and recommendation would leave those provisions unchanged. He said, as the committee considers a package deal, the report and recommendation would include a recommendation that those provisions remain unchanged.

Mr. Steinglass asked, rather than have one lengthy report and recommendation, could the committee issue a shorter report and recommendation concluding no change is necessary for the relevant sections. He said, organizationally, that makes it easier. Chair Cole said he has no issue with that.

The only remaining issue, said Chair Cole, involves the debt service limit in Section 17, which is Item 9 in the Steinglass memorandum. Chair Cole said Section 17 imposes a debt service limit, acting as an additional check on the state's ability to borrow. Ms. Trafford asked when Section 17 was adopted, to which Mr. Mills answered 1999. Ms. Trafford said that is another reason to leave it as it is.

Mr. Mills asked whether the numbers will have to be adjusted if sections are repealed. Chair Cole answered that, when sections are removed, the constitution states that they have been repealed.

Chair Cole then asked the committee's view on how to approach the future issuance of general obligation bonds. He said he sees two possible methods: (1) A *status quo* approach that would ask the voters each time for new authorizations; or, (2) A constitutional provision stating that additional issuances have to be presented to and approved by voters, but do not need to be reflected in the text of the constitution. He said the proposal keeps the *status quo* on that question. He wondered about the committee's consensus on that question.

Ms. Trafford said the committee needs a better way, and that so long as there is voter approval and there is a record of the voter's preferences, for instance if the treasurer keeps a record, it should not be necessary to add the text to the constitution. Ms. Trafford, along with Mr. Steinglass, noted that Professor Richard Briffault, who presented to the committee in June 2015, said Michigan has this kind of provision as do other states, so that there are models out there for doing that.

Chair Cole cautioned that there is a problem in just importing the Michigan approach into the Ohio constitution, and that the approach would have to be researched. He said, in any case future debt would have to be subject to Section 17.

Chair Cole asked Mr. Stype whether he saw a problem in changing the constitution so that future authorizations are not reflected in constitutional amendments. Mr. Stype answered that many amendments have done more than simply authorize general obligation bonds, but have provided legal authority for programmatic implementation. He suggested a situation in which there could be a referendum on general obligation bonds but if the subject that those bonds were to finance needed separate programmatic authorization, there would still be a need to have a constitutional provision for that authorization. Mr. Stype gave as an example the Third Frontier amendment, in which the state authorized the issuance of bonds to fund research and development, but because

the money was flowing to private entities, the amendment overcame the lending of aid and credit restrictions in the constitution. He said just authorizing general obligation bonds doesn't necessarily address some of the other constitutional hurdles that must be addressed to make that bond issuance fully effective in the future.

Ms. Trafford asked, if the committee is going to require voter approval, could not those conditions be part of it. Chair Cole said that would create a constitutional problem, and he is not sure a referendum would overcome that constitutional limitation.

Chair Cole described his plan for moving forward, saying he would like to be in a position at the next meeting to consider Director Keen's proposed amendment (Section 2t) in the materials. He said it is a lengthy proposed amendment that accomplishes the objectives on which the committee has consensus. He said he would like committee members to be in a position to move forward on a first reading with regard to the proposal in the materials, with a view to having a second reading and getting it to the Coordinating Committee sometime early next year.

Mr. Steinglass said there was a reference to amending Section 2i, but he is not sure that is what the proposal will be. He said the consensus is that Section 2i should be left alone, but proposed Section 2t accomplishes the goal of having a lease appropriation to general obligation change that Chair Cole had identified as a Section 2i change. Mr. Steinglass also noted he has a 50 state survey of how different states borrow money, and that it is a long document indicating that states have been moving away from constitutional amendments. He cautioned that it is difficult to look at other states in an area like this because so much of what goes on is tied to the state's history, economics, social life, and other factors. He agreed it is necessary to look at Michigan more closely.

Adjournment:

With no further business to come before the committee, the meeting was adjourned at 12:34 p.m.

Approval:

The minutes of the December 10, 2015 meeting of the Finance, Taxation, and Economic Development Committee were approved at the March 10, 2016 meeting of the committee.

/s/ Douglas Cole

Douglas R. Cole, Chair

/s/ Karla Bell

Karla L. Bell, Vice-chair