



OHIO CONSTITUTIONAL MODERNIZATION COMMISSION

MINUTES OF THE FINANCE, TAXATION, AND ECONOMIC DEVELOPMENT COMMITTEE FOR THE MEETING HELD THURSDAY, MAY 12, 2016

Call to Order:

Chair Douglas Cole called the meeting of the Finance, Taxation, and Economic Development Committee to order at 12:06 p.m.

Members Present:

A quorum was present with Chair Cole, Vice-chair Karla Bell, and committee members Amstutz, Asher, Clyde, Mills, Peterson, and Tavares in attendance.

Approval of Minutes:

The minutes of the April 14, 2016 meeting of the committee were approved.

Reports and Recommendations:

Article VIII, Sections 1, 2, and 3

Chair Cole recognized Steven C. Hollon, executive director, for the purposes of providing a second presentation of a report and recommendation on Article VIII, Sections 1, 2, and 3.

Mr. Hollon noted the recommendation is for Sections 1 and 3 to be retained in their current form, with Section 2 being revised to remove a reference to the Sinking Fund. Mr. Hollon described that Section 1 provides the state's \$750,000 debt limit, with Section 2 allowing an exception to that debt limit in the case of civil unrest, and Section 3 emphasizing the state's strong interest in debt avoidance. Mr. Hollon summarized the conclusions of the committee as expressed in the report and recommendation, which are that Section 2 should be revised to reflect that the Sinking Fund and Sinking Fund Commission sections of the constitution (Sections 7 through 11) were being recommended for repeal, as described in a separate report and recommendation. Thus, the

report and recommendation recommends the reference to the Sinking Fund be removed from Section 2, but that Sections 1 and 3 remain in their present form.

Article VIII, Sections 7, 8, 9, 10, and 11

Mr. Hollon provided a second presentation of a report and recommendation for Article VIII, Sections 7, 8, 9, 10, and 11.

Mr. Hollon indicated the report and recommendation expresses the committee's view that sections of Article VIII related to the Sinking Fund be repealed for the reason that those functions are being performed by other state officers and agencies. He said the committee's conclusion, as described in the report and recommendation, is that the provisions are obsolete because the purpose of the Sinking Fund and the duties of the Sinking Fund Commission have been replaced by other state entities primarily through authorizations contained in constitutional amendments approved by the electors of the state; and by statutory enactment made pursuant to the authorizations contained in these subsequent constitutional amendments.

Chair Cole then opened the floor for public comment regarding the two reports and recommendations. There being none, he entertained a motion by committee member Fred Mills to issue the report and recommendation, which was seconded by Senator Bob Peterson. Representative Kathleen Clyde clarified that the report and recommendation for Article VIII, Sections 1, 2, and 3 was the one being voted on, and a roll call vote was taken. The committee voted unanimously to issue the report and recommendation for Article VIII, Sections 1, 2, and 3.

Chair Cole then entertained a motion by Ms. Bell to issue the report and recommendation for Article VIII, Sections 7 through 11, a motion that was seconded by Representative Ron Amstutz. There being no discussion by the committee, a roll call vote was taken, and the motion passed unanimously.

Chair Cole expressed his appreciation to staff for their work on the reports and recommendations, and indicated that the two reports and recommendations, along with the report and recommendation voted on by the committee at its April 2016 meeting relating to Article VIII, Sections 2b through 2k, and Proposed Sections 2t and 18, would be forwarded to the Coordinating Committee for its approval and then to the full Commission in the coming months.

Next Steps:

Chair Cole then turned the committee's attention to the next steps it wished to take with regard to the remaining constitutional provisions assigned for its review. With regard to Article VIII, he said the committee had not yet addressed Sections 4, 5, and 6, nor had it looked at Sections 13 through 16, provisions that, like Sections 2l through 2s, authorize additional spending. He said that one question is whether the committee should finish Article VIII before turning to Article XII.

Chair Cole noted that Sections 13 through 16 probably would not be recommended for change. Kurt Kauffman, acting assistant director of the Office of Budget and Management (OBM), who was in the audience, indicated that his office had looked at Sections 13 through 16 and decided not to propose changes.

Chair Cole then called on Gregory W. Stype, who was present in the audience, for a summary of Sections 13 through 16, which deal with non-tax supported bond authorization for industrial development and housing, and for a tax-supported coal development program. Mr. Stype, an attorney with Squire Patton Boggs (US) LLP, serves as bond counsel to the Ohio Public Facilities Commission.

Mr. Stype indicated that Section 13 provides the authority for the state to issue industrial development bonds for economic development projects, relying on the credit of the private entity that is benefiting from the bond issue. Section 13 contains a specific prohibition against pledging tax dollars to pay these bonds, which once were more prevalent than today because they would confer federal tax exemption status. However, he said a change in federal tax law has constrained this kind of borrowing, so those bonds are not issued as frequently as they were. He said examples include the state's Air Quality Development Authority, or the Port Authority, which are agencies that issue bonds to support pollution control or economic vitality measures.

Mr. Stype said Section 14 was the first of two sections authorized by voters in connection with tax-exempt bond financing for housing. He said the first section enacted was a more limited program, a "loans to lenders" program, with bonds authorized by federal tax law to benefit a first-time homebuyer program in Ohio. Under that program, large numbers of bonds would be issued, with the savings passed through to home buyers, and being lent to home buyers through the banks. He said the authority to issue the bonds was not tax supported, and benefited multifamily housing projects. He said it is an active and vital program at this time.

Regarding Section 15, Mr. Stype said this is a program authorized for state coal development bonds, and is misplaced because it is not tax supported like Sections 13, 14, and 16. He said the bonds are issued by the state for the purpose of making loans and grants to support clean coal technology. He said this is an active program, with debt service paid out of the General Revenue Fund.

Mr. Stype described Section 16 as broadening the Section 14 housing authority to non-lenders. He added Section 16 also provides some authority for local governments to issue housing bonds that have some measure of tax support.

Mr. Mills asked Mr. Stype whether Section 15, because it does not belong with the other sections, should be renumbered, but Mr. Stype expressed that many statutes, regulations, and other documents refer to it, so that renumbering could cause confusion.

There being no further questions for Mr. Stype, Chair Cole thanked him for his assistance, and announced that staff could begin preparing a report and recommendation recommending no change to Sections 13 through 16.

Committee member Herb Asher suggested that the committee seek a response from the Office of the Ohio Treasurer, to be certain there would be no problem in retaining Sections 13 through 16 in their present form. Chair Cole requested that Jonathan Azoff, director of the Office of Debt Management and senior counsel to the Ohio Treasurer of State, who was present in the audience, look into the question and respond to Chair Cole with any concerns, and Mr. Azoff agreed.

With regard to Section 17, Chair Cole said the provision provides a cap on the debt service that may be paid out of the General Revenue Fund, which is generally equal to five percent. Mr. Kauffman commented the issue had been raised in an earlier presentation by Mr. Kauffman in 2013, as well as in a presentation by OBM Director Timothy S. Keen. Mr. Hollon asked that Mr. Kauffman locate and provide any written materials related to those presentations, so that the committee could be certain to have them as part of the record.

Senior Policy Advisor Steven H. Steinglass noted that the committee had not looked at Sections 2l through 2s, and that it may wish to do so for the same reason it is reviewing Sections 13 through 16. Chair Cole agreed, saying the committee would need staff to prepare a separate report and recommendation for no change to Sections 2l through 2s.

Chair Cole asked committee members for suggestions as to any presentations they might like related to Sections 4, 5, and 6. Ms. Bell said she would like more information about the JobsOhio litigation that is ongoing related to those sections.

Senator Charleta Tavares said the committee could have some testimony but would need advice as to who might have a background on this area of the constitution, and whether there are interested parties who might want to present.

Chair Cole asked Mr. Stype who he might recommend, and Mr. Stype agreed to suggest someone. Mr. Stype continued that the full scope of Sections 4 and 6 is worthy of the committee's understanding. He said a number of the sections of the debt issuance authority that have been approved by voters have created express exceptions to Sections 4 and 6 that the committee may want to note. Chair Cole said an example of this is Section 14, with Mr. Stype adding that Section 15 also requires an exception.

Sen. Tavares asked whether Mr. Stype was referring to an exception for housing as a public purpose, and Mr. Stype agreed.

Ms. Bell said she would like to see all the exceptions that have been put in place. She said she does not know the stage of the JobsOhio litigation, but if there are documents relating to each side's positions, she would be interested in reviewing them.

Chair Cole said three lawsuits involving JobsOhio have been decided on standing grounds rather than on the merits. He said he will work with Mr. Hollon to get the relevant materials. He said at the next meeting, Mr. Stype could testify on Sections 4, 5, and 6, and these materials could be provided in connection with that review. Sen. Tavares said she also would find some speakers to discuss Sections 4, 5, and 6.

Chair Cole requested that if members have ideas regarding additional provisions that could be added to Article VIII, this would be an appropriate time to consider those ideas, and to forward them to Mr. Hollon.

He said the committee's the two remaining articles for review are Article XII (Finance and Taxation), and XIII (Corporations), asking if committee members had any view as to the direction the committee should take.

Mr. Mills said there are at least two issues that have been litigated over the years and may engender discussion: the motor vehicle and fuel tax, and the tax on food.

Chair Cole suggested the committee consider the remaining parts of Article VIII at its next meeting and then move to taxation in Article XII, asking committee members to suggest persons who could testify.

Chair Cole said there is one remaining issue to address at the next meeting, which is the role of the treasurer and what might take the place of the Sinking Fund provisions. He said that topic will be on the agenda and that he will circulate a memorandum regarding it. Mr. Azoff noted his office has made a proposal in that regard, agreeing to have someone there to assist with the committee's review.

Mr. Steinglass said the committee may want to consider different methods for borrowing money, as suggested by Professor Richard Briffault in presentation to the committee in June 2015. Chair Cole explained that Professor Briffault had described constitutional models used in other states in which categories of state spending are presented to voters for their approval but that the actual authorization is not required to be memorialized by a constitutional provision. He said that method prevents the addition of multiple sections authorizing debt that later must be repealed so that the constitution does not grow to an unwieldy size.

Mr. Steinglass suggested that topic could be considered as a proposed Section 19, indicating he has research that could be presented to the committee later in the summer. Chair Cole agreed that this is a good plan.

Adjournment:

With no further business to come before the committee, the meeting was adjourned at 1:04 p.m.

Approval:

The minutes of the May 12, 2016 meeting of the Finance, Taxation, and Economic Development Committee were approved at the June 9, 2016 meeting of the committee.

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

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