



OHIO CONSTITUTIONAL MODERNIZATION COMMISSION

Ohio Constitutional Modernization Commission

Co-Chair

Sen. Charleta B. Tavares
Assistant Minority Leader

Co-Chair

Rep. Ron Amstutz
Speaker Pro Tempore

December 15, 2016

Ohio Statehouse
Room 313

Ohio Constitutional Modernization Commission

Co-chair Sen. Charleta Tavares

Co-chair Rep. Ron Amstutz

Ms. Janet Abaray

Mr. Herb Asher

Mr. Roger Beckett

Ms. Karla Bell

Ms. Paula Brooks

Rep. Kathleen Clyde

Mr. Douglas Cole

Sen. Bill Coley

Rep. Robert Cupp

Rep. Mike Curtin

Ms. Jo Ann Davidson

Judge Patrick Fischer

Mr. Edward Gilbert

Mr. Jeff Jacobson

Sen. Kris Jordan

Mr. Charles Kurfess

Rep. Robert McColley

Mr. Fred Mills

Mr. Dennis Mulvihill

Sen. Bob Peterson

Mr. Chad Readler

Mr. Richard Saphire

Sen. Tom Sawyer

Sen. Michael Skindell

Rep. Emilia Sykes

Governor Bob Taft

Ms. Petee Talley

Ms. Kathleen Trafford

Mr. Mark Wagoner

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OHIO CONSTITUTIONAL MODERNIZATION COMMISSION

COMMISSION MEETING

THURSDAY, DECEMBER 15, 2016

1:30 P.M.

OHIO STATEHOUSE ROOM 313

AGENDA

- I. Call to Order
- II. Roll Call
- III. Approval of Minutes
 - Meeting of November 10, 2016

[Draft Minutes – attached]
- IV. Standing Committee Reports
 - Coordinating Committee (Trafford)
- V. Subject Matter Committee Reports
 - Bill of Rights and Voting Committee (Saphire)
 - Constitutional Revision and Updating Committee (Mulvihill)
 - Legislative Branch and Executive Branch Committee (Mills)

VI. Reports and Recommendations

First Presentation

- Article VI, Section 5 (Loans for Higher Education) (Readler)
 - Review of Report and Recommendation
 - Public Comment
 - Discussion

[Report and Recommendation – attached]

- Article VI, Section 6 (Tuition Credits Program) (Readler)
 - Review of Report and Recommendation
 - Public Comment
 - Discussion

[Report and Recommendation – attached]

- Article VIII, Sections 2l, 2m, 2n, 2o, 2p, 2q, 2r, and 2s (Additional Authorization of Debt Obligations) (Cole)
 - Review of Report and Recommendation
 - Public Comment
 - Discussion

[Report and Recommendation – attached]

VII. Rules of Procedure and Conduct (Wagoner)

Second Presentation

- Proposed change to Rule 5.4, 5.5, and 5.6 of the Rules of Procedure and Conduct dealing with the number and title of standing committees.
 - Review of proposed changes
 - Public Comment
 - Discussion
 - **Possible Action Item: Consideration and Adoption**

[Proposed Revised Rules 5.3, 5.4, and 5.5 – attached]

[Memorandum by Steven C. Hollon titled “OCMC Standing Committees,” dated July 7, 2016 – attached]

VIII. 2015-2016 Biennial Report (Hollon)

- Staff will review a draft of the proposed 2015-2016 Biennial Report to be issued by the Commission to the Ohio General Assembly.
 - Review of draft report
 - Discussion
 - **Possible Action Item: Consideration and Adoption**

[Draft 2015-2016 Biennial Report – attached]

IX. Old Business

- Update on Joint Resolutions by Legislative Service Commission Based on Reports and Recommendations Issued by the Ohio Constitutional Modernization Commission (Amstutz)

[H.J.R. 13 Introduced by Representatives Amstutz and Curtin - attached]

X. New Business

XI. Public Comment

XII. Adjourn

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Co-Chair
Charleta B. Tavares
Assistant Minority Leader
15th Senate District



Co-Chair
Ron Amstutz
Speaker Pro Tempore
1st House District

OHIO CONSTITUTIONAL MODERNIZATION COMMISSION

MINUTES FOR THE MEETING HELD THURSDAY, NOVEMBER 10, 2016

Call to Order:

Co-chair Ron Amstutz called the meeting of the Ohio Constitutional Modernization Commission ("Commission") to order at 1:39 p.m.

Members Present:

A quorum was present with Commission Co-chairs Amstutz and Tavares, and Commission members Abaray, Beckett, Bell, Clyde, Cole, Cupp, Curtin, Davidson, Gilbert, Jacobson, Jordan, Kurfess, McColley, Mills, Mulvihill, Peterson, Readler, Sawyer, Skindell, Sykes, Taft, Trafford, and Wagoner in attendance.

Approval of Minutes:

The minutes of the October 13, 2016 meeting of the Commission were reviewed and approved.

Rules of Procedure and Conduct:

Co-chair Amstutz recognized Mark Wagoner, chair of the Organization and Administration Committee, to provide a first presentation of a proposal to change the Ohio Constitutional Modernization Commission Rules of Procedure and Conduct. Mr. Wagoner reported that the committee unanimously voted in favor of a proposal to change Rules 5.4 and 5.5 to combine the Public Education and Information Committee with the Liaisons with Public Offices Committee, renaming it the Public Information and Liaisons with Public Offices Committee. He said the reason for the recommended change is that the two committees largely meet together, so that combining them is more efficient.

Co-chair Amstutz asked for comments or questions from Commission members and the public, and there were none. He said the Commission is required to have two presentations on the proposal, so it will be addressed again at the next Commission meeting.

Subject Matter Committee Reports:

Judicial Branch and Administration of Justice Committee

Janet Abaray, chair of the Judicial Branch and Administration of Justice Committee, reported that, at its meeting earlier, Morris Murray, Defiance County prosecutor, appearing on behalf of the Ohio Prosecuting Attorneys Association, advocated for retaining the grand jury procedure in its current form. Ms. Abaray said Mr. Murray agreed that, to the extent a grand jury witness is later called to testify at trial, the grand jury transcript should be available to defense counsel as to that witness. She said the committee thought that was an important point. Ms. Abaray said the committee continued to consider the concept of a grand jury legal advisor as it is used in Hawaii, as well as other ways to improve public confidence in the process and to provide transparency. Ms. Abaray said the remainder of the meeting included a presentation by Richard Walinski and Commission member Mark Wagoner on their proposal to modify the Modern Courts Amendment. She said Mr. Walinski and Mr. Wagoner have a proposal that would clarify the roles of the Supreme Court of Ohio and the General Assembly as to rulemaking authority.

Legislative Branch and Executive Branch Committee

Fred Mills, chair of the Legislative Branch and Executive Branch Committee, reported that his committee would be meeting later to hear a presentation by Steven Huefner, law professor at the Ohio State University Moritz College of Law, as the committee continues its review of Article II relating to the Legislative Branch.

Finance, Taxation, and Economic Development Committee

Doug Cole, chair of the Finance, Taxation, and Economic Development Committee, reported that the committee has voted to issue a report and recommendation for no change to Article VIII, Sections 2l, 2m, 2n, 2o, 2q, 2r, and 2s, related to public debt, and that this report and recommendation will be presented to the Commission at its next meeting.

Education, Public Institutions, and Local Government Committee

Chad Readler, Chair of the Education, Public Institutions, and Local Government Committee, reported that the committee voted to keep in place Article VI, Section 5 (Loans for Higher Education) and Section 6 (Tuition Credits Program), and would be presenting those reports and recommendations at the next Commission meeting. He said the committee is now turning to Article VII, relating to public institutions, discussing sections in that article that may be obsolete as well as Section 1, which contains outdated references. Mr. Readler invited Commission members share with the committee any views on how the committee might address the concerns raised by Article VII.

Old Business:

Co-chair Amstutz recognized Steven C. Hollon, executive director, to provide an update on the process of creating joint resolutions related to the Commission's recommendations, as the Commission had voted to pursue at its October 2016 meeting.

Mr. Hollon said, under the direction of Co-chair Amstutz and Commission member Representative Michael Curtin, staff worked with the Legislative Service Commission to draft four joint resolutions relating to reports and recommendations adopted by the Commission.

He identified three joint resolutions sponsored by Reps. Curtin and Amstutz, that relate to Article VIII and were the result of review by the Finance, Taxation, and Economic Development Committee. He said House Joint Resolution 11 would repeal sections of Article VIII relating to the Sinking Fund and the Sinking Fund Commission. Mr. Hollon said House Joint Resolution 10 would enact a new Section 18 and repeal Sections 2b, 2c, 2d, 2e, 2f, 2g, 2h, 2j, and 2k of Article VIII. Mr. Hollon added that House Joint Resolution 9 would enact a new Section 2t in Article VIII to re-authorize lease appropriation bonds as general obligation debt.

In relation to Article VI, the Judicial Branch, Mr. Hollon reported that House Joint Resolution 12 would repeal Sections 19 and 22 in order to eliminate obsolete provisions for courts of conciliation and a supreme court commission. He said that joint resolution resulted from reports and recommendations adopted by the Commission and originally issued by the Judicial Branch and Administration of Justice Committee.

Co-chair Amstutz indicated that an effort is under way by Co-chair Tavares and Commission member Senator Bob Peterson to introduce companion resolutions in the Senate.

New Business:

Co-chair Amstutz announced a conflict regarding the next scheduled meeting of the Commission on December 8, 2016. He suggested that the Commission meet the following week, on Thursday, December 15, 2016, asking about the availability of Commission members at that alternate time. He said to expect correspondence regarding changing the meeting date, expressing hope that a suitable alternative could be arranged.

Adjournment:

There being no further business to come before the Commission, the meeting adjourned at 1:55 p.m.

Approval:

The minutes of the November 10, 2016 meeting of the Commission were approved at the December 15, 2016 meeting of the Commission.

Co-chair
Senator Charleta B. Tavares
Assistant Minority Leader

Co-chair
Representative Ron Amstutz
Speaker Pro Tempore

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OHIO CONSTITUTIONAL MODERNIZATION COMMISSION

REPORT AND RECOMMENDATION OF THE EDUCATION, PUBLIC INSTITUTIONS, AND LOCAL GOVERNMENT COMMITTEE

OHIO CONSTITUTION ARTICLE VI, SECTION 5

LOANS FOR HIGHER EDUCATION

The Education, Public Institutions, and Local Government Committee of the Ohio Constitutional Modernization Commission issues this report and recommendation regarding Article VI, Section 5 of the Ohio Constitution concerning loans for higher education. It is issued pursuant to Rule 8.2 of the Ohio Constitutional Modernization Commission's Rules of Procedure and Conduct.

Recommendation

The committee recommends that no change be made to Article VI, Section 5 of the Ohio Constitution and that the provision be retained in its current form.

Background

Article VI, Section 5 reads as follows:

To increase opportunities to the residents of this state for higher education, it is hereby determined to be in the public interest and a proper public purpose for the state to guarantee the repayment of loans made to residents of this state to assist them in meeting the expenses of attending an institution of higher education. Laws may be passed to carry into effect such purpose including the payment, when required, of any such guarantee from moneys available for such payment after first providing the moneys necessary to meet the requirements of any bonds or other obligations heretofore or hereafter authorized by any section of the Constitution. Such laws and guarantees shall not be subject to the limitations or requirements of Article VIII or of Section 11 of Article XII of the Constitution. Amended Substitute House Bill No.618 enacted by the General Assembly on July 11, 1961, and Amended Senate Bill No.284 enacted by the General Assembly on May 23, 1963, and all appropriations of moneys made for the purpose of such enactments, are hereby validated, ratified, confirmed, and approved in all

respects, and they shall be in full force and effect from and after the effective date of this section, as laws of this state until amended or repealed by law.

Article VI of the Ohio Constitution concerns education, and Section 5 provides for a program to guarantee the repayment of student loans for state residents as a way of promoting the pursuit of higher education.

Adopted by voters upon being presented as Issue 1 on the May 1965 ballot, the provision expresses a public policy of increasing opportunities for state residents to pursue higher education by guaranteeing higher education loans and allowing laws to be passed to effectuate that purpose. The section also exempts state expenditures for student loan guarantees from the limitations on state spending contained in Article VIII (relating to state debt), and Article XII, Section 11 (preventing the state from issuing debt unless corresponding provision is made for levying and collecting taxes to pay the interest on the debt).

The provision was effectuated by statutes that first created the Ohio Student Loan Commission (OSLC), and, later, in 1993, by statutory revisions that created the Ohio Student Aid Commission (OSAC). The name change was prompted by the addition of state grant and scholarship programs to the administrative duties of OSLC, programs that previously had been under the auspices of the Ohio Board of Regents (now the Ohio Board of Higher Education).

As outlined in a 1993 Attorney General Opinion, the OSAC consisted of nine members appointed by the governor with the advice and consent of the Senate, with powers and duties that included the authority:

“ * * * [T]o guarantee the loan of money for educational purposes; to acquire property or money for its purposes by the acceptance of gifts, grants, bequests, devises, or loans; to contract with approved eligible educational institutions for the administration of any loan or loan plan guaranteed by the OSAC; to contract with “approved lenders,” as defined in R.C. 3351.07(C), for the administration of a loan or loan plan guaranteed by the OSAC and “to establish the conditions for payment by the commission to the approved lender of the guarantee on any loan,” R.C. 3351.07(A)(4); to sue and be sued; to collect loans guaranteed by the OSAC on which the commission has met its guarantee obligations; and to “[p]erform such other acts as may be necessary or appropriate to carry out effectively the objects and purposes of the commission,” R.C. 3351.07(A)(10). Further, pursuant to R.C. 3351.13, the Ohio Student Aid Commission “is the state agency authorized to enter into contracts concerning the programs established” by those federal educational loan programs specified in that statute. The OSAC also has authority to “accept any contributions, grants, advances, or subsidies made to it from state or federal funds and shall use the funds to meet administrative expenses and provide a reserve fund to guarantee loans made pursuant to [R.C. 3351.05-.14].” R.C. 3351.13.¹

In relation to its duties, the OSAC was empowered to collect loan insurance premiums, depositing them into a fund in the custody of the state treasurer to be used solely to guarantee

loans and to make payments into the OSAC operating fund. Such moneys were reserved solely to pay expenses of the OSAC. Asked whether language in Article VI, Section 5 indicating the state would guarantee the repayment of educational loans meant that the full faith and credit of the state had been pledged to cover that debt, the attorney general opined that the obligations incurred by OSAC are not backed by the full faith and credit of the state and, therefore, that the obligee would not have recourse to other funds of the state.

By 1995, the changing landscape of the student loan market rendered the utility of OSAC obsolete, partly due to the success of a federal direct-lending program, and partly because private companies were offering the same service.² Thus, OSAC commissioners voted to dissolve the agency at the conclusion of the biennial budget cycle in June 1997.³ OSAC was eliminated by the 121st General Assembly with the passage of Am. Sub. H.B. 627, effective January 3, 1997, and any remaining functions and duties of OSAC were transferred to the Ohio Board of Regents. Finally, with the passage of H.B. 562 in the 122nd General Assembly, all references to the duties and authority of OSAC were eliminated from the Revised Code.⁴

Amendments, Proposed Amendments, and Other Review

Section 5 has not been amended or reviewed since its adoption in 1965.

Litigation Involving the Provision

Although the Ohio Supreme Court has not reviewed Section 5, a federal court case addressed whether federal law changes requiring states to return excess funds in their student loan guarantee accounts to the federal government violated the United States Constitution.

In *Ohio Student Loan Comm. v. Cavazos*, 709 F.Supp. 1411 (S.D. Ohio 1988), the court described the history of the hybrid federal-state arrangement regarding student loan guarantees:

The Ohio Higher Education Assistance Commission (“OHEAC”) was created by the Ohio General Assembly in 1961 and began operations in 1962. The OHEAC was originally funded solely with state appropriations and was designed to administer state programs to assist Ohio residents attending institutions of post-secondary education. In particular, the OHEAC guaranteed loans made by private lenders to certain eligible students.

Three years later, the United States Congress created the Guaranteed Student Loan Program pursuant to the Higher Education Act of 1965, as amended, 20 U.S.C. 1071 et seq. The purpose of this program was to encourage states and nonprofit organizations and institutions to establish student loan guaranty programs, to provide a federal guaranty program for those students not having reasonable access to state or private guaranty programs, to subsidize interest payments on student loans, and to reinsure state and private guaranty programs. 20 U.S.C. 1071(a). In response to this federal program, the Ohio General Assembly created the OSLC, pursuant to Chapter 3351 of the Ohio Revised Code,

as a successor to the OHEAC. The creation of such a commission was authorized by Article VI, Section 5 of the Constitution of the State of Ohio.

The OSLC is a state agency created for the administration of Ohio's student loan guaranty program. The OSLC is authorized to enter into contracts and to sue and be sued in its own name. R.C. 3351.07. In addition, R.C. 3351.07(A)(2) expressly states “that no obligation of the commission shall be a debt of the state, and the commission shall have no power to make its debts payable out of moneys except those of the commission.” The OSLC is also expressly authorized to accept federal funds and to enter into contracts pursuant to the Higher Education Act of 1965, as amended, 20 U.S.C. 1071 et seq. R.C. 3351.13.

As described in the facts of the case, OSLC’s funding sources derived partially from federal government reimbursements for losses sustained due to student loan defaults, and federal payment of administrative cost allowances, but OSLC also received money from non-federal sources in the form of private lender fees, and interest and investment income from moneys held in a reserve fund. The program was subject to a federal-state reinsurance agreement providing that OSLC would administer the guaranteed student loan program in Ohio in exchange for which the secretary of the U.S. Department of Education would reinsure the state’s guarantees.

In 1987, the relevant law was amended to limit the amount of state cash reserves, requiring any excess to be transferred to the secretary. A dispute arose when OSLC refused to transfer its excess reserves, which amounted to over \$26 million, on the grounds that the transfer would violate the terms of the contractual agreement between the secretary and OSLC. In response, the secretary withheld the reinsurance funds, and OSLC sued, and won, in federal district court.

However, the United States Court of Appeals for the Sixth Circuit reversed, concluding the secretary was transferring the funds from a federal program with a state administrator, rather than appropriating funds from a state program, and that none of the facts supported a conclusion that the federal government had breached a contract, misappropriated funds, or violated due process or other constitutional rights. *Ohio Student Loan Comm. v. Cavazos*, 900 F.2d 894 (6th Cir. 1990).

Presentations and Resources Considered

Harmon Presentation

On June 9, 2016, David H. Harmon, former executive director of OSLC, presented to the committee. Mr. Harmon was employed with OSLC from 1977 to 1988, and was executive director from 1984-88. According to Mr. Harmon, Ohio was one of the earliest states to recognize a need for the support and encouragement of the provision of credit for the financing of higher education. He noted the General Assembly acted in July of 1961 to create the Ohio Higher Education Commission, whose purpose was to guarantee repayment of student loans made by banks, savings and loan companies, and credit unions. The Higher Education Commission collected an insurance premium on each loan as it was made, covering

administrative expenses and creating an insurance fund from which lender guaranty payments could be made.

Following the model established in Ohio and several other states, Mr. Harmon said the federal government moved in 1965 to create a federal program operating on the same principles. Mr. Harmon said the point of the constitutional section in 1965 was to allow OSLC to become the guaranteed agency under the federal loan program. He said the federal Guaranteed Student Loan Program was a part of the Higher Education Act of 1965. In response, in 1967, Ohio designated the Ohio Higher Education Commission as the state's guaranty agency, renaming it OSLC.

Mr. Harmon said the federal program provided for the "re-insurance" of all loans – meaning whenever the states paid off an insured loan, the federal government would reimburse the agency for each payment. He said OSLC continued collecting insurance premiums as loans were approved, providing the necessary revenue for agency operations.

During his time with the agency, Mr. Harmon said the annual loan volume grew from \$21.1 million in 1970 to \$120.3 million in 1978 – a 570 percent increase. He said the volume of loans guaranteed in 1979 was nearly double the 1978 loan volume. Mr. Harmon said OSLC began with only three employees in 1962, but grew to over 50 in 1970, and reached nearly 250 by the early 1990s.

Mr. Harmon said the 1980s saw the beginning of competition for loan volume, as several multi-state guaranty agencies began offering services to Ohio students, schools, and lenders. He said, although these competitors were non-profits, as required by federal law, increased loan volume brought increased revenue – thereby enhancing the ability of these agencies to offer enhanced support and automation.

Mr. Harmon said OSLC lacked the resources and spending authority to match these competitors on a feature-by-feature basis, but did respond to competitive developments. He said in 1992, the General Assembly authorized a move of the Ohio Instructional Grant Program from the Ohio Board of Regents to OSLC, resulting in the agency being renamed the Ohio Student Aid Commission (OSAC).

He noted that, despite the fact that the agency provided schools and students with enhanced service levels and streamlined processes, schools, lenders and student borrowers all found the competitive offerings from the out-of-state guarantors to be compelling, and the OSAC's market share, expressed as loan volume, plummeted.

Mr. Harmon said the creation of the Federal Direct Loan Program in the early 1990s resulted in a vote by the OSAC in 1995 to abolish the agency. He said, by that time, the OSAC's share of Ohio's loan volume had fallen to below 50 percent and revenues declined along with the loan volume. Thus, the OSAC ended its 36-year run at the end of the state's biennial budget cycle in 1997. As a result, the state's guaranty agency designation was awarded by the U.S. Department of Education to an out-of-state competitor, and the grant and scholarship programs were transferred to another state agency.

Asked whether there is any need to retain Article VI, Section 5, Mr. Harmon said, with the move to the federal direct loan program, no states have a guaranteed program any longer. Thus, he said, the section is no longer necessary. Mr. Harmon said unless new legislation is a precise mirror of previous legislation, it is unlikely that Section 5 could be repurposed for the new legislation. He said he is not sure a change in the constitution was ever necessary to allow OSLC, but any need for new law could be done by statute rather than by constitutional amendment.

Mr. Harmon was asked whether eliminating Section 5 could prevent the state from promulgating programs that would forgive loan indebtedness for graduates who accept certain types of employment, such as teaching or medical jobs in underserved communities. Mr. Harmon said those types of programs are unrelated to the constitutional provision, were never part of OSLC, and could be created legislatively.

Estep Presentation

Rae Ann Estep, currently deputy director of operations at the Office of Budget and Management (OBM), testified before the committee on June 9, 2016 to provide her perspective as a former executive director of OSAC from 1995-1997. Ms. Estep said the mission of the OSAC was to administer the federal-guaranteed student loan program, and to provide loan information to students and their families. She said the OSAC also administered a state grant and scholarship program. According to Ms. Estep, the OSAC consisted of nine persons serving three-year terms, with two members representing higher education institutions, one representing secondary schools, and the three remaining members representing approved lenders. Ms. Estep said, during her tenure, the OSAC staff consisted of an executive director and 225 employees.

Ms. Estep continued that, in the summer of 1995, the OSAC began proceedings to dissolve itself due to changes in financial aid policy on the federal and state levels in the 1990s. She said a primary factor was competition from private companies and the OSAC's subsequent declining market share of student loans. She noted that, in 1989, the OSAC guaranteed 99 percent of the state's higher education loans, but that number fell below 50 percent in 1995. She commented that the OSAC administered a federal program with federal money, and was in direct competition with private companies offering the same service. In addition, the OSAC faced the threat of federal funding cuts due to the federal government's rapidly-changing financial aid policy. According to Ms. Estep, when the new federal direct lending program was established, it took away the OSAC's market share, ultimately leading to the vote to dissolve the agency.

Ms. Estep concluded by saying because the OSAC was financed by the federal government, its closing did not have a direct cost-saving measure for Ohioans. She said the grant and scholarship program, which was the only part of the OSAC's operations financed by the state, was transferred to the Ohio Board of Regents. She said the OSAC's final closure occurred on June 30, 1997. Ms. Estep noted that her tenure at the agency was focused on closing the OSAC and assisting its employees in transitioning to new positions.

Discussion and Consideration

In considering whether to recommend a change to Article VI, Section 5, the committee acknowledged that, as matters currently stand, Article VI, Section 5 would appear to be non-functional because it is not necessary to facilitate activities of the Ohio Department of Higher Education in relation to student loans, grants, and scholarships, to accommodate the federal student loan program, or to support private lender activity related to student loans.

Nevertheless, the committee was concerned that future changes to the federal government's student loan programs and policies could result in Ohio and other states taking on additional responsibilities related to student loan guarantees. Further, although the committee was uncertain whether the provision is necessary to support programs that forgive student loan debt in order to foster the provision of needed services in underserved areas of the state, the committee was reluctant to recommend its elimination in case it could be implemented in that manner. The consensus of the committee was that, in any event, the section expresses an important state public policy of encouraging higher education and helping students afford it.

For these reasons, the committee determined Article VI, Section 5 may continue to play a useful role in encouraging the state's support of funding for higher education, and so concluded the provision should be retained.

Conclusion

The Education, Public Institutions, and Local Government Committee concludes that Article VI, Section 5 should be retained in its current form.

Date Issued

After formal consideration by the Education, Public Institutions, and Local Government Committee on November 10, 2016, the committee unanimously voted to issue this report and recommendation on November 10, 2016.

Endnotes

¹ Ohio Atty. Gen. Opinion No. 93-058 (Dec. 20, 1993). Available at: <http://www.ohioattorneygeneral.gov/getattachment/110d0ab1-1ac3-46c3-9d07-838260f371f2/1993-058.aspx> (last visited June 3, 2016).

² Jeanne Ponessa, "Ohio Student-Aid Agency to Dissolve Itself," Education Week (Nov. 8, 1995) <http://www.edweek.org/ew/articles/1995/11/08/10oh.h15.html> (last visited June 3, 2016).

³ *Id.*

⁴ See, http://archives.legislature.state.oh.us/bills.cfm?ID=122_HB_562 (last visited June 3, 2016).

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OHIO CONSTITUTIONAL MODERNIZATION COMMISSION

REPORT AND RECOMMENDATION OF THE EDUCATION, PUBLIC INSTITUTIONS, AND LOCAL GOVERNMENT COMMITTEE

OHIO CONSTITUTION ARTICLE VI, SECTION 6

TUITION CREDITS PROGRAM

The Education, Public Institutions, and Local Government Committee of the Ohio Constitutional Modernization Commission issues this report and recommendation regarding Article VI, Section 6 of the Ohio Constitution concerning the tuition credits program. It is issued pursuant to Rule 8.2 of the Ohio Constitutional Modernization Commission's Rules of Procedure and Conduct.

Recommendation

The committee recommends that no change be made to Article VI, Section 6 of the Ohio Constitution and that the provision be retained in its current form.

Background

Article VI, Section 6 reads as follows:

(A) To increase opportunities to the residents of this state for higher education, it is hereby determined to be in the public interest and a proper public purpose for the state to maintain a program for the sale of tuition credits such that the proceeds of such credits purchased for the benefit of a person then a resident of this state shall be guaranteed to cover a specified amount when applied to the cost of tuition at any state institution of higher education, and the same or a different amount when applied to the cost of tuition at any other institution of higher education, as may be provided by law.

(B) The tuition credits program and the Ohio tuition trust fund previously created by law, which terms include any successor to that program or fund, shall be continued subject to the same laws, except as may hereafter be amended. To secure the guarantees required by division (A) of this section, the general assembly shall appropriate money sufficient to offset any deficiency that occurs in the Ohio tuition trust fund, at any time necessary to make payment of the full

amount of any tuition payment or refund that would have been required by a tuition payment contract, except for the contract's limit of payment to money available in the trust fund. Notwithstanding Section 29 of Article II of this Constitution, or the limitation of a tuition payment contract executed before the effective date of this section, such appropriations may be made by a majority of the members elected to each house of the general assembly, and the full amount of any such enhanced tuition payment or refund may be disbursed to and accepted by the beneficiary or purchaser. To these ends there is hereby pledged the full faith and credit and taxing power of the state.

All assets that are maintained in the Ohio tuition trust fund shall be used solely for the purposes of that fund. However, if the program is terminated or the fund is liquidated, the remaining assets after the obligations of the fund have been satisfied in accordance with law shall be transferred to the general revenue fund of the state.

Laws shall be passed, which may precede and be made contingent upon the adoption of this amendment by the electors, to provide that future conduct of the tuition credits program shall be consistent with this amendment. Nothing in this amendment shall be construed to prohibit or restrict any amendments to the laws governing the tuition credits program or the Ohio tuition trust fund that are not inconsistent with this amendment.

Article VI of the Ohio Constitution concerns education, and Section 6 is designed to promote the pursuit of higher education by establishing in the constitution a government-sponsored program to encourage saving for post-secondary education.

Beginning in 1989, the General Assembly enacted Revised Code Chapter 3334, establishing a college savings program and creating the Ohio Tuition Trust Authority (OTTA), an office within the Ohio Board of Regents (now the Department of Higher Education). The OTTA was designed to operate as a qualified state tuition program within the meaning of section 529 of the federal Internal Revenue Code. *See*, R.C. 3334.02, 3334.03.

Additional statutes authorize the OTTA to develop a plan for the sale of tuition units through tuition payment contracts that specify the beneficiary of the tuition units, as well as creating a tuition trust fund that is to be expended to pay beneficiaries, or to pay higher education institutions on behalf of beneficiaries, for certain higher education-related expenses. R.C. 3334.09, 3334.11. Those expenses include tuition, room and board, and books, supplies, equipment, and other expenses that meet the definition of "qualified higher education expenses" under section 529 of the Internal Revenue Code. R.C. 3334.01(H) and (P).

Both Section 6 and the related Revised Code sections work in conjunction with the so-called "529 plans," named for the Internal Revenue Code section providing tax benefits for college savings plans. As described by an analyst for the Congressional Research Service:

529 plans, named for the section of the tax code which dictates their tax treatment, are tax advantaged investment trusts used to pay for higher-education expenses. The specific tax advantage of a 529 plan is that distributions (i.e., withdrawals) from this savings plan are tax-free if they are used to pay for qualified higher education expenses. If some or all of the distribution is used to pay for nonqualified expenses, then a portion of the distribution is taxable, and may also be subject to a 10 percent penalty tax.

Generally, a contributor, often a parent, establishes an account in a 529 plan for a designated beneficiary, often their child. Upon establishment of a 529 account, an account owner, who maintains ownership and control of the account, must also be designated. In many cases the parent who establishes the account for their child also names [him or herself] as the account owner.

According to federal law, payments to 529 accounts must be made in cash using after-tax dollars. Hence, contributions to 529 plans are not tax-deductible to the contributor. The contributor and designated beneficiary cannot direct the investments of the account, and the assets in the account cannot be used as a security for a loan. A contributor can establish multiple accounts in different states for the same beneficiary. Contributors are not limited to how much they can contribute based on their income. Similarly, beneficiaries are not limited to how much they can receive based on their income. However, each 529 plan has established an overall lifetime limit on the amount that can be contributed to an account, with contribution limits ranging from \$250,000 to nearly \$400,000 per beneficiary. [Citations omitted.]¹

Since their implementation in the early 1990s, 529 plans have grown to represent \$253.2 billion in investments nationwide, with the average account size now hovering at \$20,000.² Ohio plan data indicate that, as of December 2015, over a half million accounts are open, with over \$9 billion in assets:³

Plan	Assets Under Management	Open Accounts
CollegeAdvantage 529 Savings Plan (guaranteed) ⁴	\$340,966,665	34,275
CollegeAdvantage 529 Savings Plan (direct) ⁵	\$4,318,805,309	266,370
CollegeAdvantage 529 (advisor) ⁶	\$4,631,704,946	339,962
Total	\$9,291,476,920	640,607

Section 6 was successfully proposed to voters as Issue 3 on the November 1994 ballot. Its purpose, as described on the ballot, was to “increase opportunities to the residents of the State of Ohio for higher education and to encourage Ohio families to save ahead to better afford higher education.” The proposed amendment was projected to:

1. Allow the state to maintain a program for the sale of tuition credits whereby the proceeds of such credits purchased for the benefit of state residents are guaranteed by the state to cover a specified amount when applied to the cost of tuition at any state institution of higher education and the same or a different amount when applied to the cost of tuition at any other higher education institution as may be provided by law.
2. * * * [R]equire that tuition credits paid from the tuition credits program and the Ohio tuition trust fund be supported by the full faith and credit of the state of Ohio and require the passage of laws for the conduct of the tuition credits program consistent with this amendment.
3. Require the General Assembly to appropriate money to offset any deficiency in the Ohio tuition trust fund to guarantee the payment of the full amount of any tuition payment or refund required by a tuition payment contract, and allow a majority of the members of each house of the General Assembly to appropriate funds for the payment of any tuition payment contract previously entered into.
4. Require that all Ohio tuition trust fund assets be used for the purpose of the fund, and if the fund is liquidated, require that any remaining assets be transferred to the general revenue fund of the state.⁷

Amendments, Proposed Amendments, and Other Review

Section 6 has not been amended or reviewed since its adoption in 1994.

Litigation Involving the Provision

There has been no litigation concerning Article VI, Section 6.

Presentations and Resources Considered

Gorrell Presentation

On April 14, 2016, Timothy Gorrell, executive director of the Ohio Tuition Trust Authority (OTTA), presented to the committee on Ohio's tuition savings program. Mr. Gorrell said his agency is part of the Department of Higher Education and is charged with responsibility for administering the tuition credits program set forth in Article VI, Section 6.

According to Mr. Gorrell, the OTTA originally was created in 1989 under R.C. Chapter 3334, with the purpose of helping families save for higher education expenses. He described that, in November 1994, Ohio voters approved State Issue 3, a constitutional amendment that provided the state's full faith and credit backing for the Ohio Prepaid Tuition Program (now known as the Guaranteed Savings Plan), and to clarify the federal tax treatment of that plan.

Mr. Gorrell said in 1996, section 529 was added to the Federal Internal Revenue Code to provide a federal tax-advantaged way to save for college education expenses. Then, in 2000, the Ohio General Assembly authorized Ohio to offer variable savings plans, as well as allowing a state tax benefit by which Ohio residents can deduct up to \$2,000 a year, per beneficiary, from their Ohio taxable income.

In December 2003 the Guaranteed Savings Plan was closed to contributions and new enrollments in response to rapidly rising tuition costs and investment pressures due to the market environment, said Mr. Gorrell.⁸ Then, in 2009, existing legislation was changed to place OTTA under the Department of Higher Education, with the role of OTTA's 11-member board being limited to a fiduciary duty over the investments in OTTA's college savings plans.

Mr. Gorrell described OTTA as a "non-General Revenue Fund, self-funded agency," with all of its operating expenses being funded through account fees paid by CollegeAdvantage Program account owners.

Mr. Gorrell said OTTA currently sponsors three plans under the CollegeAdvantage 529 College Savings Program: the CollegeAdvantage Direct 529 Savings Plan, the CollegeAdvantage Advisor 529 Savings Plan offered through BlackRock, and the CollegeAdvantage Guaranteed 529 Savings Plan, which is closed to new investments. He said funds invested in these plans may be used at any accredited college or university in the country, as well as at trade schools and for other education programs that are eligible to participate in federal financial aid programs. According to Mr. Gorrell, across the three plans, OTTA directly manages or oversees over 641,000 accounts and \$9.4 billion in assets as of March 31, 2016.

Mr. Gorrell further explained that, in November 1994, by adopting Article VI, Section 6, Ohio voters approved providing the Guaranteed Savings Plan with the full faith and credit backing of the state, meaning that, if assets are not sufficient to cover Guaranteed Savings Plan liabilities, the Ohio General Assembly will appropriate money to offset the deficiency.

Mr. Gorrell also indicated that OTTA has the responsibility to generate investment returns on assets to match any growth in tuition obligations, noting that, currently, OTTA has sufficient assets on a cash basis to meet the payout obligations of the existing tuition units and credits held by account owners.

Mr. Gorrell said OTTA does not recommend any changes to Article VI, Section 6. He noted that a federal tax goal of the section was intended to address a period of unsettled case law that created uncertainty as to whether similar prepaid tuition programs were exempt from federal taxation. He said that uncertainty has been resolved by the codification of Internal Revenue Code section 529, rendering the constitutional provision unnecessary to clarify the federal tax treatment of such plans.

Discussion and Consideration

In considering whether to recommend a change to Article VI, Section 6, the committee was persuaded by Mr. Gorrell's testimony indicating that, while one goal of the provision was to

clarify federal tax treatment of the Guaranteed Savings Plan, a purpose that became obsolete with the federal enactment of Internal Revenue Code section 529, the constitutional provision's other purpose, to establish the full faith and credit backing of the state for the Guaranteed Savings Plan, remains viable. The committee agreed with Mr. Gorrell that, although no new Guaranteed Savings Plan account holders have been added since 2003, the fact that some accounts are still active may require the constitutional provision to be retained in its current form.

Thus, the committee was reluctant to alter or repeal Article VI, Section 6, although a future constitutional review panel may conclude there is no justification for retaining the section because all accounts have been paid out.

Conclusion

The Education, Public Institutions, and Local Government Committee concludes that Article VI, Section 6 should be retained in its current form.

Date Issued

After formal consideration by the Education, Public Institutions, and Local Government Committee on November 10, 2016, the committee unanimously voted to issue this report and recommendation on November 10, 2016.

Endnotes

¹ Margot L. Crandall-Hollick, *Tax-Preferred College Savings Plans: An Introduction to 529 Plans*, (Washington, D.C.: Congressional Research Serv. 2015), <http://fas.org/sgp/crs/misc/R42807.pdf> (last visited June 14, 2016).

² "529 Plan Data," College Savings Plans Network, available at: <http://www.collegesavings.org/529-plan-data/> (last visited June 15, 2016).

³ 529 Plan Data, Reporting Date Dec. 31, 2015, College Savings Plans Network. Available at: <http://www.collegesavings.org/wp-content/uploads/2015/09/Dec-2015.pdf> (last visited June 15, 2016).

⁴ A "guaranteed savings fund" is defined in the Ohio Administrative Code as: "those accounts in the Ohio college savings program, whether containing tuition credits and/or tuition units, which have the financial backing through the full faith and credit of the state of Ohio as more specifically set forth in Section 6 of Article VI, Ohio Constitution." Ohio Admin.Code 3334-1-01(G).

⁵ A direct plan is defined as one in which the investor directly contracts with the company managing the plan. *See*, [https://www.collegeadvantage.com/docs/default-source/stand-alone-documents/otta_decisiontree_02_cr\(1\).pdf?sfvrsn=4](https://www.collegeadvantage.com/docs/default-source/stand-alone-documents/otta_decisiontree_02_cr(1).pdf?sfvrsn=4) (last visited June 24, 2016).

⁶ An "advisor" plan is one in which the investor has purchased the plan through a financial advisor or broker-dealer who, in turn, facilitates the investment with the company managing the plan. *See, id.*

⁷ Toledo *Blade*, Oct. 25, 1994, at p. 7, <https://news.google.com/newspapers?id=qUYxAAAIBAJ&sjid=fQMEAAAIBAJ&pg=6086.7819623&hl=en> (last visited June 14, 2016).

⁸ According to the Legislative Service Commission, the suspension of the Guaranteed Savings Plan resulted from an actuarial deficit that was “initially caused largely by the combination of the downturn in the economy and the stock market, and the large increases in tuitions at Ohio’s public colleges and universities after the removal of the tuition caps in FY 2002 and FY 2003.” LSC Greenbook, Analysis of the Enacted Budget, Department of Higher Education (August 2015), p. 42. Available at: <http://www.lsc.ohio.gov/fiscal/greenbooks131/bor.pdf> (last visited June 24, 2016).

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OHIO CONSTITUTIONAL MODERNIZATION COMMISSION

REPORT AND RECOMMENDATION OF THE FINANCE, TAXATION, AND ECONOMIC DEVELOPMENT COMMITTEE

OHIO CONSTITUTION ARTICLE VIII SECTIONS 2l, 2m, 2n, 2o, 2p, 2q, 2r, AND 2s

ADDITIONAL AUTHORIZATION OF DEBT OBLIGATIONS

The Finance, Taxation, and Economic Development Committee of the Ohio Constitutional Modernization Commission issues this report and recommendation regarding Sections 2l, 2m, 2n, 2o, 2p, 2q, 2r, and 2s of Article VIII of the Ohio Constitution concerning public debt and public works. It is issued pursuant to Rule 8.2 of the Ohio Constitutional Modernization Commission's Rules of Procedure and Conduct.

Recommendation

The committee recommends that Sections 2l, 2m, 2n, 2o, 2p, 2q, 2r, and 2s of Article VIII dealing with authorization of debt obligations be retained in their present form.

Background

Article VIII deals with public debt and public works, and was adopted as part of the 1851 constitution.

Delegates to the 1851 Constitutional Convention sought to limit the actions of the General Assembly in obligating the financial interests of the state so as to avoid problems that had arisen when the state extended its credit to private interests and to prevent another debt crisis, such as the one resulting from the construction of the state's transportation system.¹ As proposed by delegates to the 1851 Constitutional Convention, Article VIII initially barred the state from incurring debt in excess of \$750,000, except in limited circumstances, primarily involving cash flow and military invasions and other emergencies. *See* Article VIII, Sections 1, 2, and 3.

From the adoption of the 1851 Constitution through 1947, the voters of the state approved just one constitutional provision authorizing the issuance of additional debt. That occurred in 1921, when the voters approved section 2a authorizing debt for establishing a system of adjusted compensation for Ohio veterans of World War I.² From 1947 through 1987, voters subsequently adopted other constitutional provisions authorizing the issuance of state debt for purposes that

included compensation to veterans of World War II and the Korean and Vietnam Conflicts; construction of the state highway system, public buildings, and local public infrastructure; and the preservation and conservation of natural resources and the establishment of state recreational areas. These sections, enumerated as Sections 2b, 2c, 2d, 2e, 2f, 2g, 2h, 2j, and 2k, through a separate report and recommendation, have been recommended for repeal based on their obsolescence.

Beginning with Section 2l in 1993, voters approved eight additional constitutional provisions within Article VIII authorizing the creation of debt, which are Sections 2l, 2m, 2n, 2o, 2p, 2q, 2r, and 2s. In contrast to Sections 2b, 2c, 2d, 2e, 2f, 2h, 2j, and 2k, the sections covered in this report and recommendation do not involve bonds that have been fully issued and paid off, or their bonding authority has not yet lapsed.³

Section 2l authorizes the issuance of bonds and other obligations to finance the costs of capital improvements to state and local parks, land and water recreation facilities, soil and water restoration and protection, land and water management, fish and wildlife resource management, and other projects that enhance the use and enjoyment of natural resources. Adopted in 1993, the provision contains a statement of purpose that the capital improvements are necessary and appropriate to improve the quality of life of the people of Ohio, to ensure public health, safety and welfare, and to enhance employment opportunities. The section permits the state to support, by grants or contributions, capital improvements of this nature that are undertaken by local government entities. Significantly, the section exempts the bonds issued pursuant to its authority from operation of other constitutional provisions that strictly limit debt, or that limit the state's ability to enter into cooperative financial arrangements with private enterprise or local government.

Section 2m similarly provides for the issuance of bonds and other obligations to finance public infrastructure capital improvements of municipal corporations, counties, townships, and other governmental entities, and for highway capital improvements. The section defines "public infrastructure capital improvements" as being limited to roads and bridges, wastewater treatment and water supply systems, solid waste disposal facilities, and storm water and sanitary collection, storage, and treatment facilities, including costs related to real property, facilities, and equipment. Adopted in 1995, the section updates and modifies Section 2k, which had limited debt for public infrastructure to not more than \$120 million per calendar year, with the total debt not to exceed \$1.2 billion and a requirement that all obligations must mature within thirty years. Under Section 2m, the state is authorized to issue an additional \$1.2 billion, with no infrastructure obligations to be issued under Section 2m until at least \$1.2 billion aggregate principal amount of obligations have been issued pursuant to Section 2k. The provision also requires the use, where practicable, of Ohio products, materials, services, and labor for projects financed under Section 2m.

Section 2n authorizes debt issuance for the purpose of funding public school facilities for both K-12 and for state-supported and state-assisted institutions of higher education. Adopted in 1999, Section 2n also provides that net state lottery proceeds may be pledged or used to pay the debt service on bonds issued under the provision for K-12 educational purposes. As acknowledged by the Ohio Supreme Court in *DeRolph v. State*, 93 Ohio St.3d 309, 2001-Ohio-

1343, 754 N.E.2d 1184 (*DeRolph III*), Section 2n enhanced the state’s ability to issue bonds to fund schools, and was proposed and adopted subsequent to Court’s decision in *DeRolph v. State*, 78 Ohio St.3d 193, 208, 1997-Ohio-84, 677 N.E.2d 733, 744 (*DeRolph I*).⁴ In *DeRolph I*, a majority of the Court concluded that state funding of schools is not adequate if school districts lack sufficient funds to provide a safe and healthy learning environment. Division (F) of Section 2n limits the total principal amount of obligations issued to an amount determined by the General Assembly, subject to the limitation provided in Section 17, which was adopted by voters on the same ballot. Article VIII, Section 17 provides, in part, that direct obligations of the state may not be issued if the amount needed in a future fiscal year to service the direct obligation debt exceeds five percent of the total estimated state revenue for the issuing year. Thus, the amount of debt issued under Section 2n for a given year is limited to five percent of the total estimated revenues of the state from the General Revenue Fund and from net state lottery proceeds for that year.

Section 2o, adopted in 2000, authorizes bonds for environmental, conservation, preservation, and revitalization projects in order to protect water and natural resources, preserve natural areas and farmlands, improve urban areas, clean up pollution, and enhance the use and enjoyment of natural areas and resources. Under the provision, while the full faith and credit of the state is pledged to conservation projects, it is not pledged to revitalization projects, the bonds for which are designated to be repaid from “all or such portion of designated revenues and receipts of the state as the General Assembly authorizes.” Section 2o(B)(2). The section requires the General Assembly to provide by law for limitations on the granting or lending of proceeds of these obligations to parties to pay costs of cleanup or remediation of contamination for which they are determined to be responsible. The section allows the state to provide grants, loans, or other support to finance projects undertaken by local government, or by non-profit organizations at the direction of local government, exempting such obligations from application of constitutional sections that limit or prohibit such arrangements. As with Section 2n, Section 17’s five percent limitation on the amount of debt issued applies.

Section 2p relates to bonds for economic and educational purposes and local government projects, specifically for the purpose of capital improvements to infrastructure, and for research and development in support of Ohio industry, commerce, and business. Adopted in 2005, the section was amended in 2010 to expand the Third Frontier program, an initiative designed to encourage state economic growth through grants and loans to private industry and educational institutions. The 2010 amendment continued the funding approved in 2005. The section allows the General Assembly to provide by law for the issuance of general obligation bonds and other obligations for the purpose of financing related projects, with prescribed limitations on the dollar amount to be issued in fulfillment of the purposes of the provision.

Section 2q, adopted in 2008 and titled the “Clean Ohio Fund Amendment,” authorizes the General Assembly to issue up to \$200 million in bonds for conservation and preservation of natural areas, farmlands, park and recreation facilities, and to support other natural areas and natural resource management projects. The provision also authorizes the issuance of bonds up to \$200 million for environmental revitalization and cleanup projects. Section 2q limits the amount borrowed in any one fiscal year to \$50 million, plus the principal amount of obligations that, in any prior fiscal year, could have been issued but were not.

Section 2r was adopted in 2009 to provide compensation to the veterans of the Persian Gulf, Afghanistan, and Iraq Conflicts, and their survivors. To be eligible for compensation, veterans had to have served on active duty in one or more of those locations during the specified time periods. Unlike previous war veteran compensation amendments, Section 2r authorizes the Public Facilities Commission, rather than the Sinking Fund Commission, to issue and sell bonds and other obligations to fund payment, pledging the state's full faith and credit, revenue, and taxing power to pay the debt service. Additionally, the section gives responsibility to the Ohio Department of Veterans Services for paying compensation and adopting rules regarding amounts, residency, or other relevant factors, in accordance with Revised Code Chapter 119.

Section 2s, adopted in 2014, authorized the General Assembly to issue bonds to finance public infrastructure capital improvements of municipal corporations, counties, townships, and other governmental entities, with the improvements being limited to roads and bridges, wastewater treatment and water supply systems, solid waste disposal facilities, and storm water and sanitary collection, storage, and treatment facilities. With broad, nearly unanimous bipartisan support in the General Assembly, the ballot measure was submitted to voters on May 6, 2014, and was approved by a margin of 65.11 percent to 34.89 percent.⁵

Amendments, Proposed Amendments, and Other Review

Sections 2l, 2m, 2n, 2o, 2p, 2q, 2r, and 2s, are of relatively recent adoption and have not been amended.

Litigation Involving the Provisions

There has been no litigation involving Article VIII, Sections 2l, 2m, 2n, 2o, 2p, 2q, 2r, or 2s.

The Ohio Supreme Court generally has upheld the adoption of constitutionally-based exceptions to the limitations on incurring debt. *See, e.g., Kasch v. Miller*, 104 Ohio St. 281, 135 N.E. 813 (1922), at syllabus (where statute provides that an improvement is to be paid for by the issue and sale of state bonds, with the principal and interest to be paid by revenues derived from the improvement, a state debt is not incurred within the purview of the state constitution).

Presentations and Resources Considered

Metcalf Presentation

Seth Metcalf, deputy treasurer and executive counsel for the Ohio Treasurer of State, presented to the committee on May 8, 2014, March 12, 2015, and March 10, 2016. In addition to reviewing the history of Article VIII, including the \$750,000 limitation in Section 1, Mr. Metcalf noted the difficulties inherent in needing to go to the ballot for approval of additional borrowing. Although he identified areas of possible reform, Mr. Metcalf expressed that the state framework for authorizing debt has served the state exceptionally well.

As a supplement to an increased overall debt limitation, Mr. Metcalf pointed to the adoption in 1999 of Article VIII, Section 17, which contains a sliding scale under which the total debt service of the state is limited to five percent of the total estimated revenues of the state for the general revenue fund. He also pointed out that this approach would not tie borrowing to specific purposes, thus giving the General Assembly flexibility as to how to use the public debt.

Briffault Presentation

On June 4, 2015, Professor Richard Briffault of the Columbia University Law School, provided ideas for modernizing Article VIII to eliminate obsolete provisions and to prevent the need for provisions that might become obsolete in the future.

Describing the different ways states have dealt with the subject of state debt, Prof. Briffault recognized some states' approach of using a constitutional ban on debt. While those limits are considered low today, they were not necessarily low at the time of adoption. Prof. Briffault noted that no state has learned to live without debt, with the result that, if the state constitution prohibits debt, states will amend their constitutions to allow it. The real debt limit then becomes the complicated nature of enacting a constitutional amendment, according to Prof. Briffault.

Keen Presentation

On October 8, 2015, Timothy S. Keen, director of the Ohio Office of Budget and Management, provided an in-depth analysis of the history and purpose of Article VIII, as well as suggestions for modernizing its debt provisions.

Mr. Keen noted that, by 22 constitutional amendments approved from 1921 to the present, Ohio voters have expressly authorized the incurrence of state debt for specific categories of capital facilities, to support research and development activities, and provide bonuses for Ohio's war veterans. He said, currently, general obligation debt is authorized to be incurred for highways, K-12 and higher education facilities, local public works infrastructure, natural resources, parks and conservation, and third frontier and coal research and development.

Mr. Keen emphasized that Article VIII's framework for authorizing debt has served the state exceptionally well for more than 150 years. He said the process of asking voters to review and approve bond authorizations sets an appropriately high bar for committing the tax resources of the state over the long term, adding that Ohio's long tradition of requiring voter approval ensures that debt is proposed only for essential needs, and those needs must be explained and presented to voters for their careful consideration. He complimented voters, calling them "worthy arbiters," based on their having approved 26 and rejected 17 Article VIII debt-related ballot issues since 1900.

Discussion and Consideration

In reviewing Article VIII, Sections 2l, 2m, 2n, 2o, 2p, 2q, 2r, and 2s, the committee discussed whether the provisions should be retained because their bonding authority remains current, and for the reason that the bonds issued pursuant to their authority have not been paid off. The

committee also considered, but left for future resolution, the concept of a constitutional amendment allowing for the automatic retirement of bond authority provisions once they become obsolete, so as to relieve the need to go to the ballot to repeal expired provisions.

Conclusion

Upon consideration of the foregoing, the Finance, Taxation, and Economic Development Committee concludes that Article VIII, Sections 2l, 2m, 2n, 2o, 2p, 2q, 2r, and 2s do not involve bonds that have been fully issued and paid off, and their bonding authority has not lapsed due to the passage of time. Therefore, it is necessary to retain them in their present form, and so the committee recommends no change to these provisions.

Date Issued

After formal consideration by the Finance, Taxation, and Economic Development Committee on November 10, 2016, the committee unanimously voted to issue this report and recommendation on November 10, 2016.

Endnotes

¹ Steven H. Steinglass & Gino J. Scarselli, *The Ohio State Constitution* 233 (2nd prt. 2011). Ohio was not unique in facing the economic consequences of overspending on transportation infrastructure, nor in adopting constitutional limitations on state debt as a result. By 1860, 19 states had constitutional debt limitations, and by the early 20th Century, nearly all state constitutions contained such limitations. Richard Briffault, *Foreword: The Disfavored Constitution: State Fiscal Limits and State Constitutional Law*, 34 Rutgers L.J. 907, 917, citing B. U. Ratchford, *American State Debts* (1941); Alberta M. Sbragia, *Debt Wish, Entrepreneurial Cities, U.S. Federalism, and Economic Development* (1996). See also Richard Briffault, "State and Local Finance," in *State Constitutions for the Twenty-first Century* (G. Alan Tarr & Robert F. Williams, eds. New York: SUNY Press. 2006); Stewart E. Sterk & Elizabeth S. Goldman, *Controlling Legislative Shortsightedness: The Effectiveness of Constitutional Debt Limitations*, 1991 Wis. L.Rev. 1301 (1991).

For more on the history of the 1850-51 Constitutional Convention in relation to the state debt provisions in Article VIII, see David M. Gold, *Public Aid to Private Enterprise Under the Ohio Constitution: Sections 4, 6, and 13 of Article VIII in Historical Perspective*, 16 U. Tol. L.Rev. 405 (1984-85).

² Section 2a was later repealed in 1953. The text of repealed Section 2a may be found at: Page's Ohio Rev. Code Ann., 518 (Carl L. Meier & John L. Mason, eds. 1953).

³ The committee's review of Section 2p is not included in this report and recommendation, but will be included in the committee's consideration of Article VIII, Sections 4, 5, and 6.

⁴ In *DeRolph III*, the Court observed:

One recent development with significant potential is that the state has enhanced its ability to issue bonds to pay part of the state share of the costs of local projects. In *DeRolph II*, 89 Ohio St. 3d at 14, 728 N.E.2d at 1004, this court noted that Senate Joint Resolution No. 1 placed on the November 2, 1999 ballot a proposal, approved by Ohio voters, to amend the Ohio Constitution "to

allow the state to issue general obligation bonds to pay for school facilities." See, principally, Section 2n, Article VIII, Ohio Constitution; see, also, 1997 Am.Sub.S.B. No. 102, Section 8, 147 Ohio Laws, Part IV, 7417. The deposition of Randall A. Fischer, executive director of the Ohio School Facilities Commission, reveals that these bonds are being issued. However, it is unclear from the record before us how effectively the bonds are being utilized and whether the state has fully taken advantage of the opportunities presented by bond issuance. Our state could benefit greatly if our legislators were able to exercise additional vision to put in place plans that would make bonds a more efficacious method of paying for school facilities.

DeRolph III, 93 Ohio St.3d at 368, 754 N.E.2d at 1235.

⁵ See <http://www.sos.state.oh.us/SOS/elections/Research/electResultsMain/2014Results.aspx> (last visited May 25, 2016).

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OCMC Rules of Procedure and Conduct

Section 5.0 Standing Committees

Rule 5.1 Creation

The Commission shall maintain ~~four~~ three standing committees as set forth in Rules 5.3, 5.4, 5.5, and 5.6. The Commission may form additional standing committees as required.

Rule 5.2 Membership

Each member of the Commission shall be assigned to sit on one standing committee.

Rule 5.3 Organization and Administration Committee

The Organization and Administration Committee shall serve as a standing committee for the purpose of making recommendations to the Commission and staff regarding budget, staffing, ethics, and rules.

Rule 5.4 ~~Public Education and Information~~ and Liaisons with Public Offices Committee

The ~~Public Education and Information~~ and Liaisons with Public Offices Committee shall serve as a standing committee for the purpose of making recommendations to the Commission and staff on how best to disseminate information to the public regarding the Commission and its operation, educate the citizens of Ohio regarding the Commission's proposals, ~~and~~ receive input from the public, and provide information and maintain relations with all public offices reasonably affected, if at all, by any proposal or action of the Commission.

Rule 5.5 ~~Liaisons with Public Offices~~ Committee

~~The Liaisons with Public Offices Committee shall serve as a standing committee for the purpose of providing information and maintaining relations with all public offices reasonably affected, if at all, by any proposal or action of the Commission.~~

Rule 5.6 Coordinating Committee

The Coordinating Committee shall serve as a standing committee for the purpose of coordinating the study of the Ohio Constitution by each subject matter committee. In addition to the provisions of the Ohio Constitution assigned to each subject matter committee for review under Rules 6.3, 6.4, 6.5, 6.6, 6.7, and 6.8, the Coordinating Committee may assign additional provisions or topics for a subject matter committee to review and consider. The Coordinating Committee may provide input to the co-chairs of the Commission for the purpose of developing the agenda for full Commission meetings.

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OHIO CONSTITUTIONAL MODERNIZATION COMMISSION

MEMORANDUM

TO: Chair Mark Wagoner, Vice-chair Ed Gilbert, and
Members of the Organization and Administration Committee

FROM: Steven C. Hollon, Executive Director

DATE: July 7, 2016

RE: OCMC Standing Committees

The purpose of this memorandum is to explore how the four standing committees of the Ohio Constitutional Modernization Commission (Commission) might be restructured to provide for greater efficiency in their operation.

Coordinating Committee

The Coordinating Committee has perhaps the most important role of the standing committees. It operates in many ways as the executive committee for the Commission. One of its duties is to review the reports and recommendations issued by each of the subject matter committees for form and completeness. In addition, pursuant to Rule 5.6 of the Commission's Rules of Procedure and Conduct, the committee concerns itself with coordinating the study of the constitution by each subject matter committee, assigning additional provisions or topics of study, and providing input to the Commission co-chairs for the purpose of developing agendas for Commission meetings. Because of these duties, this committee has met more often than any of the other standing committees.

Current Members

There are eight members of the Coordinating Committee, as follows:

- Trafford(D) Chair
- Davidson(R) Vice-chair
- Coley(R) Senate
- Jordan(R) Senate
- Sykes(D) House

- Abaray(D) Committee chair (Judicial Branch and Administration of Justice)
- Mulvihill(D) Committee chair (Constitutional Revision and Updating)
- Fischer(R) Committee vice-chair (Judicial Branch and Administration of Justice)

The committee has equal representation from each political party, including two senators and one representative, two subject matter committee chairs, and one subject matter committee vice-chair.

Possible New Membership

After reviewing the operation of this and the other standing committees, the Organization and Administration Committee may wish to consider recommending that the Coordinating Committee be restructured to increase its membership from eight to 12, and include the following members:

- Trafford(D) Chair
- Davidson(R) Vice-chair
- Commission co-chair
- Commission co-chair
- Member of the Senate
- Member of the House
- Abaray(D) Committee chair (Judicial Branch and Administration of Justice)
- Mulvihill(D) Committee chair (Constitutional Revision and Updating)
- Cole(R) Committee chair (Finance, Taxation, and Economic Development)
- Mills(R) Committee chair (Legislative Branch and Executive Branch)
- Readler(R) Committee chair (Education, Public Institutions, and Local Government)
- Sapphire(D) Committee chair (Bill of Rights and Voting)

If this structure is approved, the Coordinating Committee would retain its current chair and vice-chair (Trafford and Davidson) and add the Commission co-chairs (Tavares and Amstutz) to the committee. If the Organization and Administration Committee recommends adding the Commission co-chairs to the Coordinating Committee, then the Organization and Administration Committee may also wish to recommend that one Senator and one Representative from the opposite political parties of the Commission co-chairs be added to the committee for political and chamber balance.

In addition, the Organization and Administration Committee may also wish to add as members the four chairs of the other subject matter committees who are currently not members of the committee.

In total, this new structure would add six new members and would drop off two members. There would be an equal number of representatives from each political party and there would be four legislative members.

Since this committee concerns itself with the tasks of coordinating the study of the constitution by each subject matter committee, plus the assignment of additional provisions or topics for

study, and the provision of input to the Commission co-chairs for the purpose of developing the agenda for Commission meetings, it seems the Commission co-chairs and the committee chairs should be at the same table to discuss these issues. Also, by increasing the committee membership total from eight to 12, it will increase the possibility of achieving a quorum for each meeting since the Commission co-chairs and committee chairs have an increased likelihood of attending meetings due to their responsibilities as Commission and committee leaders.

Organization and Administration Committee

The Organization and Administration Committee is responsible for making recommendations to the Commission regarding budget, staffing, ethics, and rules.

Current Members

The committee consists of the following eight members:

- Wagoner(R) Chair
- Gilbert(D) Vice-chair
- Skindell(D) Senate
- Clyde(D) House
- Cupp(R) House
- Brooks(D) Public Member
- Cole(R) Public Member
- Kurfess(R) Public Member

The committee currently consists of an even number of members from each political party, with four from each party. It also has one senator as a member and two representatives as members, with three members from the public.

Potential New Membership

If the Organization and Administration Committee recommends reducing the number of standing committees from four to three, then, as part of the restructuring, it may also wish to consider increasing the membership of its own committee from eight to ten and include the following members:

- Wagoner(R) Chair
- Gilbert(D) Vice-chair
- Member of the Senate
- Member of the Senate
- Member of the House
- Member of the House
- Public Member
- Public Member
- Public Member
- Public Member

If this idea is looked upon with favor, the Organization and Administration Committee could recommend retaining its current chair and vice-chair (Wagoner and Gilbert). It could then add one senator to the existing senator already on the committee, retain both House members, and have four members of the public.

Public Information and Liaisons with Public Offices Committee

The Organization and Administration Committee may also wish to recommend that the Public Education and Information Committee and the Liaisons with Public Offices Committee be combined into one committee known as the Public Information and Liaisons with Public Offices Committee.

Pursuant to Rule 5.4, the current Public Education and Information Committee, is charged with making recommendations to the Commission on how best to disseminate information to the public regarding the Commission and its operation, educating the citizens of Ohio regarding the Commission's proposals, and receiving input from the public. According to Rule 5.5, the Liaisons with Public Offices Committee is responsible for providing information to and maintaining relations with public offices reasonably affected by any proposal of the Commission.

Current Members

The Public Education and Information Committee consists of the following eight members:

- Beckett(R) Chair
- Macon(D) Vice-chair
- Peterson(R) Member of the Senate
- Sawyer(D) Member of the Senate
- Curtin(D) Member of the House
- Jacobson(R) Public Member
- Readler(R) Public Member
- Sapphire(D) Public Member

The Liaisons with Public Offices Committee consists of the following eight members:

- Asher(D) Chair
- Taft(R) Vice-chair
- Tavares(D) Senate (Commission Co-chair)
- Amstutz(R) House (Commission Co-chair)
- McColley(R) Member of the House
- Bell(D) Public Member
- Mills(R) Public Member
- Talley(D) Public Member

The breakdown of committee members on each of these committees is consistent with the other standing committees. There are an equal number of members from each political party on each of the two committees, and each committee has an equal number of public members. There are also three legislative members on each committee, with one committee having two senators and one representative, and the other committee having one senator and two representatives.

Since January 2014, these two committees have met jointly seven times. They have not met independent of one another in that time period. For all intents and purposes, the two committees operate as one. For that reason, the Organization and Administration Committee may wish to recommend to the full Commission that the two committees be combined into one committee to be known as the Public Information and Liaisons with Public Offices Committee.

Potential New Membership

The newly formed committee could consist of the following ten members:

- Asher(D) Co-chair
- Beckett(R) Co-chair
- Member of the Senate
- Member of the Senate
- Member of the House
- Member of the House
- Public Member
- Public Member
- Public Member
- Public Member

The combined membership of the current two separate committees totals sixteen, while the membership of the proposed new committee would consist of ten. The potential new membership of the new combined committee is listed above. The new membership shows a reduction of six members.

If the Organization and Administration Committee recommends that the total number of standing committees be reduced from four to three, this would create an odd number of chair opportunities, which would create an imbalance between the parties. To resolve that difficulty, the committee may wish to propose that the chairmanship of a new Public Information and Liaisons with Public Offices Committee be exercised as a co-chairmanship. This is how the combined meetings of the committees have been conducted in the past, so to adopt this would merely take the past practice and adopt it into formal status.

Conclusion

The Organization and Administration Committee may wish to make a formal recommendation to the full Commission to revise the Commission's Rules of Procedure and Conduct to reflect these changes.

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OHIO CONSTITUTIONAL MODERNIZATION COMMISSION

2017 Meeting Dates

January 12

February 9

March 9

April 13

May 11

June 8

July 13

August 10

September 14

October 12

November 9

December 14