

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, JUNE 9, 2016

Call to Order:

Co-chair Charleta Tavares called the meeting of the Ohio Constitutional Modernization Commission ("Commission") to order at 1:54 p.m.

Members Present:

A quorum was present with Commission Co-chairs Tavares and Amstutz, and Commission members Abaray, Asher, Brooks, Clyde, Cole, Curtin, Davidson, Fischer, Jacobson, Jordan, Kurfess, McColley, Mills, Peterson, Sapphire, Sawyer, Skindell, Sykes, and Taft in attendance.

Approval of Minutes:

The minutes of the May 12, 2016 meeting of the Commission were reviewed and approved.

Subject Matter Committee Reports:

Education, Public Institutions, and Local Government Committee

Executive Director Steven C. Hollon, on behalf of Ed Gilbert, vice-chair of the Education, Public Institutions, and Local Government Committee, reported that the committee met earlier to hear presentations on Article VI, Section 5, relating to loans for higher education. Director Hollon reported that Rae Ann Estep, former director of the Ohio Student Aid Commission, and David Harmon, former director of the Ohio Student Loan Commission, suggested Section 5 has been supplanted by federal student loan programs. He said the committee would be hearing from more speakers on that topic at its next meeting, as well as having a presentation and possible vote on a report and recommendation for Article VI, Section 3, public school system and boards of education.

Finance, Taxation, and Economic Development Committee

Doug Cole, chair of the Finance, Taxation, and Economic Development Committee, reported that the committee has issued three reports and recommendations that he will be presenting to the

Commission. He said the committee moved on to Article VIII, Sections 4, 5, and 6, regarding lending aid and credit, noting that those provisions involve the JobsOhio litigation for which he is counsel of record representing JobsOhio. He said the committee heard a presentation by bond counsel Gregory W. Stype regarding the history of those sections, noting that Mr. Stype is also representing JobsOhio in the ongoing litigation. Mr. Cole said the committee's plan is to hear from a variety of stakeholders regarding those sections to see if changes are warranted. He said the committee also heard a presentation from the state treasurer's office regarding whether to consider a constitutional provision that would assign debt issuance, reporting, and payment obligations to the treasurer. He said that topic is in relation to the recommendation to remove the sinking fund provisions, which is the subject of one of the reports and recommendations he will be presenting to the Commission.

Judicial Branch and Administration of Justice Committee

Janet Abaray, chair of the Judicial Branch and Administration of Justice Committee, reported that the committee will meet immediately after the Commission meeting to hear a presentation by Professor Thaddeus Hoffmeister from the University of Dayton School of Law. She said Prof. Hoffmeister will discuss possibilities for improving the grand jury process in Ohio, specifically focusing on a Hawaiian model that uses a grand jury legal advisor to assist the grand jury.

Constitutional Revision and Updating Committee

Co-chair Tavares indicated there would be no report from the Constitutional Revision and Updating Committee.

Bill of Rights and Voting Committee

Richard Saphire, chair of the Bill of Rights and Voting Committee, reported that the committee would meet again in July to further discuss Article V, Section 1 regarding the qualifications of an elector, and would also discuss whether to recommend a right to privacy in the Ohio Constitution.

Legislative Branch and Executive Branch Committee

Fred Mills, chair of the Legislative Branch and Executive Branch Committee, said the committee did not meet this month, but intends to continue its discussion of various subjects, including a thorough review of Article II relating to the legislative branch.

Reports and Recommendations:

Co-chair Tavares recognized Doug Cole, chair of the Finance, Taxation, and Economic Development Committee, to provide a first presentation of three reports and recommendations relating to debt provisions contained in Article VIII.

Mr. Cole began by noting that the three reports and recommendations are interrelated. He said one difficulty the committee faced was that the sections of Article VIII tend to work together, requiring the committee to address the entire article together. He said, at the same time, there is a need to break down the reports and recommendations as to subject matter in order to make the topics more digestible for the reader.

Article VIII, Sections 1, 2, and 3 (State Debt)

Mr. Cole said the first report and recommendation was for Article VIII, Sections 1, 2, and 3, dealing with state debt. He described that those sections provide the basic structure regarding the issuance of state debt. He said the committee's recommendation is that Sections 1 and 3 be retained in their current form and that Section 2 be adjusted to remove reference to the sinking fund. Mr. Cole indicated the committee's plan is to leave the general framework the same regarding these three provisions. He said the sections arose out of the state's disastrous financial experience with canals and railways in the early 1800s.

Noting Section 1's debt limit of \$750,000, Mr. Cole said the committee did not want to increase the debt limit, but rather wished to keep the current system whereby the state goes to voters to obtain authorization for additional debt. He said the committee was hesitant to interfere with the status quo because it could affect the bond rating and the interest rates the state has to pay on debt. He said the idea was to "do no harm" unless there was some gain to be made by suggesting a change. Mr. Cole noted the report and recommendation describes speakers the committee heard from, including representatives from the treasurer's office, from the Office of Budget and Management (OBM), and from Professor Richard Briffault of Columbia University. He said the treasurer was in favor of modernizing the \$750,000 debt limit, but that the committee's consensus was that the current system was adequate and so wanted to stay the course.

Commission member Richard Saphire asked whether, if Article VIII, Section 1 were repealed, it would affect the state's ability to borrow money. Mr. Cole answered the issuance authority would go away, but that is the only general obligation other than the exceptions provided in Sections 2b, 2c, 2d, etc. Mr. Saphire asked what would be the argument for keeping the limit. Mr. Cole said he would want to confirm that because it was not a question that was posed. He said he does not believe it would have an impact. He said, to the extent the Commission wants the committee to consider the question, the committee could do so, but he would want more information.

Co-chair Ron Amstutz said it would be necessary to amend all the long list of Section 2 sections that hang on Section 1 if Section 1 were repealed.

Article VIII, Sections 2b, 2c, 2d, 2e, 2f, 2g, 2h, 2i, 2j, 2k, and Proposed Sections 2t and 18 (Authorization of Debt Obligations)

Mr. Cole then introduced the committee's report and recommendation for Article VIII, Sections 2b, 2c, 2d, 2e, 2f, 2g, 2h, 2i, 2j, 2k, and proposed Sections 2t and 18.

Mr. Cole said Sections 2b, 2c, 2d, 2e, 2f, 2g, 2h, and 2k are recommended for repeal because the debt issuance authority is used up, and the debt has been repaid. He said the committee recommends the addition of Section 18 to allow repayment despite the repeal if any debt is still outstanding. Mr. Cole indicated the committee is recommending that Section 2t be added to allow lease appropriation debt to be issued as general obligation debt. He said the goal was to remove the option not to repay that accompanies lease appropriation debt because the state will never exercise that option.

Mr. Cole then briefly described the purpose of each of the sections being recommended for repeal. He said all the sections, except for Section 2i, provide bonding authority that is fully used and all debt repaid. He noted removing these sections would greatly reduce the size of the Ohio Constitution, estimating that more than half the words in the constitution are in Article VIII. He said the committee wanted to have voters be able to understand the constitution, and that cluttering it up with inoperative provisions interferes with that goal.

Regarding preventing a future need for a similar clean up, Mr. Cole noted that in some states the framework requires going to the voters but the debt issuance authority does not end up being specified in the constitution. He said that system eliminates the need for clean up later, and said the committee may consider recommending an anti-obsolescence provision.

With regard to Section 2i, Mr. Cole indicated that section authorizes lease appropriation debt, but the committee wanted to switch to general obligation bonds. He explained lease appropriation debt is not backed by the state's full faith and credit. He said lease appropriation debt has an interest rate penalty in the market. Mr. Cole said Ohio has never defaulted on its loans, so having this option is not necessary. Thus, he said, the committee is recommending a new Section 2t allowing the General Assembly to authorize issuance of general obligation bonds instead of lease appropriation debt. He said this method would allow Ohio to capture the lowest interest rate. He said the committee was also recommending a new Section 18 that would allow old bonds to be redeemed if they should surface.

Mr. Sapphire asked if the General Assembly has inherent authority to authorize the issuance of debt or if it requires a constitutional provision. Mr. Cole said a constitutional provision is required. He noted there is some cash flow debt power, but it does not extend across a biennium.

Article VIII, Sections 7, 8, 9, 10, and 11 (Sinking Fund and the Sinking Fund Commission)

Mr. Cole then presented the report and recommendation for Article VIII, Sections 7, 8, 9, 10, and 11, relating to the sinking fund and the sinking fund commission. He said the sinking fund commission consists of the five statewide officeholders, the governor, the secretary of state, the attorney general, the auditor, and the treasurer. He said the sinking fund commission has not met since 2008, although the treasurer still prepares a report. Mr. Cole said the state treasurer does all the tracking and correctly reports payment of debt. But, he said, the issuance obligation has been undertaken by the Ohio Public Facilities Commission (OPFC), which consists of the five statewide officers and the director of the Office of Budget and Management. He said the committee's recommendation is that because things have been working well with these functions

and the sinking fund commission is not meeting, the OPFC is doing what the sinking fund commission was doing, so the sinking fund provisions could go.

Mr. Cole continued that, as a general matter, all of the issuance authority is left to the General Assembly and is dealt with in statute. He said the committee did hear from the treasurer's office, which suggested that if the sinking fund provisions are removed, they should be replaced with a new constitutional provision that would assign issuance, reporting, and payment obligations in the constitution to the treasurer. He said this proposal is on the table for the committee to consider. He also noted there are various statutes that refer to the sinking fund as a constitutional construct; those statutes would need to be tweaked.

Commission member Charles Kurfess asked about the process for debt issuance, wondering if consideration was given to having the constitution provide for that same process but outside of amending the constitution. Mr. Cole said the committee discussed that topic and heard about that option from Professor Briffault. Mr. Cole said, however, there was some concern that making a change could harm the state's debt rating, and the committee expressed some sentiment that it is not altogether bad that the will of the voters is expressed in a formal final document. He noted some more-recent constitutional amendments do not include a sunset clause, but have ongoing debt issuance according to a final outstanding amount, thus eliminating an ongoing obsolescence problem. However, Mr. Cole said, there is nothing in these recommendations that would prevent considering that possibility in the future.

Mr. Cole concluded by thanking the staff, explaining the committee's review had been a difficult project for which staff had provided excellent support.

Co-chair Tavares asked if there were further questions or comments regarding the reports and recommendations. There being none, she thanked Mr. Cole for his presentation.

Adjournment:

There being no further business to come before the Commission, the meeting adjourned at 2:40 p.m.

Approval:

The minutes of the June 9, 2016 meeting of the Commission were approved at the July 14, 2016 meeting of the Commission.

/s/ Charleta B. Tavares
Co-chair
Senator Charleta B. Tavares
Assistant Minority Leader

/s/ Ron Amstutz
Co-chair
Representative Ron Amstutz
Speaker Pro Tempore