



OHIO CONSTITUTIONAL MODERNIZATION COMMISSION

Coordinating Committee

Kathleen M. Trafford, Chair
Jo Ann Davidson, Vice-chair

December 15, 2016

Ohio Statehouse
Room 017

OCMC Coordinating Committee

Chair Ms. Kathleen Trafford
Vice-chair Ms. Jo Ann Davidson
Ms. Janet Abaray
Sen. Bill Coley
Judge Patrick Fischer
Sen. Kris Jordan
Mr. Dennis Mulvihill
Rep. Emilia Sykes

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OHIO CONSTITUTIONAL MODERNIZATION COMMISSION

COORDINATING COMMITTEE

THURSDAY, DECEMBER 15, 2016

12:30 P.M.

OHIO STATEHOUSE ROOM 017

AGENDA

I. Call to Order

II. Roll Call

III. Approval of Minutes

- Meeting of October 13, 2016

[Draft Minutes – attached]

IV. Reports and Recommendations

- Article VI, Section 5 (Loans for Higher Education)
 - Presentation
 - Discussion
 - **Action Item: Consideration and Approval**

[Report and Recommendation – attached]

- Article VI, Section 6 (Tuition Credits Program)
 - Presentation
 - Discussion
 - **Action Item: Consideration and Approval**

[Report and Recommendation – attached]

- Article VIII, Sections 2l, 2m, 2n, 2o, 2p, 2q, 2r, and 2s (Additional Authorization of Debt Obligations)
 - Presentation
 - Discussion
 - **Action Item: Consideration and Approval**

[Report and Recommendation – attached]

V. Presentations

- “2015-2016 Biennial Report”
 - Presentation
 - Discussion
 - **Action Item: Consideration and Approval**

Steven C. Hollon
Executive Director

[2015-2016 Biennial Report - attached]

VI. Old Business

VII. New Business

VIII. Public Comment

IX. Adjourn



OHIO CONSTITUTIONAL MODERNIZATION COMMISSION

MINUTES OF THE COORDINATING COMMITTEE

FOR THE MEETING HELD
THURSDAY, OCTOBER 13, 2016

Call to Order:

Vice-chair Jo Ann Davidson called the meeting of the Coordinating Committee to order at 12:09 p.m.

Members Present:

A quorum was present with Vice-chair Davidson and committee members Abaray, Coley, Jordan, Mulvihill, and Sykes in attendance.

Approval of Minutes:

The minutes of the June 9, 2016 meeting of the committee were approved.

Presentation and Discussion:

Vice-chair Davidson recognized Senior Policy Advisor Steven H. Steinglass for the purposes of introducing the topic of addressing gender-specific language in the constitution.

Mr. Steinglass began by noting the assumption that it is inappropriate to have gender-specific pronouns in the constitution when it is not necessary. He said, in preparing his memorandum on the subject, he was surprised to find there are only 19 sections in which gender-specific language appears, which seems to be a low number. He said he expected the bill of rights to be full of gender-specific language, but there was only one instance. He said gender-based language is sprinkled throughout the constitution, with some references having been adopted years ago, and some being more recent. He said the question is whether the Commission wants to address the issue, and if so, how.

Mr. Steinglass noted two levels to the question. First, he said there is an organizational issue, meaning where the discussion should occur. He observed that none of the six subject matter committees expressly have charge of this topic and none are a logical fit. So, he said, it is the Coordinating Committee that makes that decision.

As far as the method of changing the language, Mr. Steinglass said there are two ways of doing it. He said one way is to propose an amendment that identifies all 19 sections and changes the wording. He said, in that instance, the ballot does not have to go on for many pages, but can just identify the sections being amended. He said the one amendment separate vote problem is not a problem because there is only one thing being proposed. He said it may be necessary to publish all of the sections proposed to be changed in the newspaper, which could be burdensome.

Mr. Steinglass said the other method of implementing the change would be to delegate the responsibility to someone else. He said some states have elevated to the state supreme court the responsibility for cleaning up their constitutions, with Vermont being one example. He said his advice would be that a delegation on an issue like that would be overkill. Instead, he suggested that the Commission consider a recommendation to remove the gender specific language.

Committee member Janet Abaray asked whether Mr. Steinglass considered nouns as well as pronouns, such as the phrase “all men” in Article I, Section 1 [Inalienable Rights] for example.

Mr. Steinglass said he focused on pronouns. Mr. Abaray followed, asking whether a constitutional amendment to fix gender pronouns could be accomplished in one resolution. Mr. Steinglass answered that the one amendment separate vote requirement would be met if the only purpose of the proposed amendment was to remove pronouns or nouns with single gender reference.

Senator Bill Coley asked, mechanically, how this could be accomplished. He wondered whether the change could be accomplished in one amendment and whether the entire constitution would have to be published in the newspaper prior to the election. Mr. Steinglass answered that it would be possible to publish just the section that is being recommended for change. Mr. Steinglass suggested staff could produce a draft of the sections that would be affected. He said it would be useful to continue to look for more gender-based language in order to be certain all were located.

Vice-chair Davidson recognized Commission member Richard Saphire in the audience, who asked whether the proposal is to use the phrase “he or she” every time there is currently a masculine pronoun. He said if the idea is to remove all gender-specific pronouns, he is wondering whether that can be done.

Mr. Steinglass said he is not sure what the best approach would be. He said he would like to avoid “he/she” but he is not sure if that would work in each instance.

Steven C. Hollon, executive director, commented that when he was administrative director with the Supreme Court of Ohio they worked on changes to rules that had included gender-specific pronouns. He said at times they had to get creative, but, on the whole, the revision is doable.

Vice-chair Davidson suggested asking someone from the Legislative Service Commission (LSC) to meet with the committee to talk about how similar decisions were made with regard to gender neutralizing the revised code. She said that would be the right way to go because LSC ultimately would have to prepare the draft legislation at the direction of the General Assembly.

Mr. Sapphire, speaking as chair of the Bill of Rights and Voting Committee, suggested his committee would be willing to take on this task, and that he would not object if it were assigned to his committee.

Representative Emilia Sykes, looking at a chart provided in Mr. Steinglass's memo, asked why some provisions used the phrase "he or she." Mr. Steinglass suggested the drafters were becoming a little more aware but were not quite there yet in terms of working out the best way to provide gender neutral pronouns.

Peg Rosenfield, elections specialist with the League of Women Voters of Ohio, speaking from the audience, said there was an Equal Rights Amendment taskforce in the late 1970s that addressed this issue, ultimately suggesting that LSC should just take care of it on an ad hoc basis when redrafting legislation. She wondered if the changes could be recommended without taking a Commission vote, such as by saying whenever amending the constitution the drafters could fix the gender.

Vice-chair Davidson said the Commission will have to do something officially because the language is currently in the constitution. She continued, saying because the committee has had an offer from the Bill of Rights and Voting Committee to take up the issue, she wondered if the committee is in favor of allowing Mr. Sapphire's committee to address it.

Mr. Hollon said that is one option, but that the Coordinating Committee also could decide to review the issue and make a recommendation directly to the Commission.

Vice-chair Davidson indicated that, in the absence of Coordinating Committee Chair Kathleen Trafford, the committee would wait to decide what the next step should be, and that she would defer to the chair as to whether the committee should keep the topic or assign it elsewhere.

Adjournment:

With no further business to come before the committee, the meeting adjourned at 12:35 p.m.

Approval:

The minutes of the October 13, 2016 meeting of the Coordinating Committee were approved at the December 15, 2016 meeting of the committee.

Kathleen M. Trafford, Chair

Jo Ann Davidson, Vice-chair

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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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OHIO CONSTITUTIONAL MODERNIZATION COMMISSION

2015-2016
BIENNIAL REPORT

Issued December 15, 2016

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I. INTRODUCTION

This 2016 Biennial Report (“Report”) of the Ohio Constitutional Modernization Commission (“Commission”) is issued pursuant to R.C. 103.66. Previously, two biennial reports on the work of the Commission were issued in December 2012 and December 2014.

The Commission was established in 2011 by enactment of Am. House Bill 188 by the Ohio General Assembly.

Under R.C. 103.61, the Commission is charged with:

- Studying the Ohio Constitution;
- Promoting an exchange of experiences and suggestions respecting desired changes in the constitution;
- Considering the problems pertaining to the amendment of the constitution;
- Making recommendations from time to time to the General Assembly for the amendment of the constitution.

Under Rule 10.3 of the Rules of Procedure and Conduct, a Commission recommendation to retain an existing section of the Ohio Constitution, without change, requires the affirmative vote of 17 Commission members. A Commission recommendation to amend an existing section or adopt a new section requires the affirmative vote of 22 Commission members.

Under Amended Substitute House Bill 64, consisting of the Main Operating Budget for Fiscal Years 2016-2017, with an effective date of July 1, 2015, the Commission shall complete its work on or before January 1, 2018 and shall cease to exist at that time.

The statutory language governing the Commission is available here:

<http://ocmc.ohio.gov/ocmc/about>.

II. MEMBERSHIP

Under R.C. 103.63 there are to be 32 members of the Commission. Twelve members of the Commission are to be appointed from the General Assembly, with three members appointed by the president of the Senate, three members appointed by the minority leader of the Senate, three members appointed by the speaker of the House of Representatives, and three members appointed by the minority leader of the House of Representatives.

In early 2015, the Commission welcomed three new legislative members to its rolls. Rep. Robert R. Cupp, Rep. Nathan H. Manning, and Rep. Emilia Strong Sykes were selected by their legislative caucuses to serve on the Commission. They were selected to replace House Speaker William G. Batchelder, Rep. Matt Huffman, and Rep. Vernon Sykes, who left the General Assembly at the end of 2014 due to term limitations. In November, Rep. Robert McColley was named to replace Rep. Manning on the Commission.

In early 2016, Sen. Kris Jordan was named to replace Sen. Larry Obhof.

R.C. 103.63 requires that, at the beginning of each even numbered year, the twelve members shall meet, elect a co-chair from each house of the General Assembly, and appoint 20 members who are not members of the General Assembly. Due to the departure of Speaker Batchelder at the end of 2014, in January 2015 the members of the General Assembly elected Speaker Pro Tempore Ron Amstutz to serve as one of the Commission's co-chairs. Sen. Charleta B. Tavares continued her service as the other co-chair. In January 2016, the legislative members of the Commission voted to maintain Rep. Amstutz and Sen. Tavares as co-chairs of the Commission.

The following individuals served on the Commission during 2015 and 2016:

Janet Gilligan Abaray	Larry L. Macon
Rep. Ron Amstutz	Rep. Nathan H. Manning
Herb Asher	Rep. Robert McColley
Roger L. Beckett	Frederick E. Mills
Karla L. Bell	Dennis P. Mulvihill
Paula Brooks	Sen. Larry Obhof
Rep. Kathleen Clyde	Sen. Bob Peterson
Douglas R. Cole	Chad A. Readler
Sen. Bill Coley	Richard B. Sapphire
Rep. Robert R. Cupp	Sen. Tom Sawyer
Rep. Michael F. Curtin	Sen. Michael Skindell
Jo Ann Davidson	Rep. Emilia Strong Sykes
Patrick F. Fischer	Bob Taft
Edward L. Gilbert	Pierrette Talley
Jeff Jacobson	Sen. Charleta B. Tavares
Sen. Kris Jordan	Kathleen M. Trafford
Charles F. Kurfess	Mark Wagoner

III. STAFF

The summer of 2015 concluded the first full year that Executive Director Steven C. Hollon, Counsel to the Commission Shari L. O'Neill, Communications Director Shaunte S. Russell, and Administrative Assistant Jennie Long, assisted the Commission in its work. In addition, the Commission continued to rely on the guidance of Steven H. Steinglass, dean emeritus and professor emeritus at the Cleveland-Marshall College of Law, who served as the senior policy advisor to the Commission.

The Commission also received assistance in 2015 and 2016 from Frank Strigari, legal counsel for the Senate Majority Caucus, Bethany E. Sanders, deputy legal counsel and policy advisor for the Senate Minority Caucus, and Sarah A. Cherry, legal counsel for the House Minority Caucus. In addition, the Commission was assisted by legislative aides during committee meetings including Jenna Beadle, Joe Bizjak, Antwan Booker, Rachael Carl, James Carmean, Lauren DeCamp, Nick Derksen, Maria Haberman, Abe Jacob, Timothy Johnson, Stephanie Megas, Brianna Miller, Jenna Saponaro, Ali Simon, Chris Smith, Justin Stanek, and Sheila Willamowski.

The Commission benefited by legal research from interns Hailey Akah, Stacia Rapp, Elizabeth Erin Oehler, Nicholas Adair, Lee R. Matheson, and Sara Paz Leigh from the Legislation Clinic at the Ohio State University Moritz College of Law, as well as Moritz College of Law summer interns Alex Benson, Bryan Becker, and Joyce Gray. The Commission also benefited from historical research provided by undergraduate intern Andrew Weaver through Kent State University's Columbus Program for Intergovernmental Issues.

IV. AMENDMENTS TO RULES OF PROCEDURE AND CONDUCT

After formally adopting Rules of Procedure and Conduct at its meeting on September 11, 2014, the Organization and Administration Committee determined in 2015 that the Commission could benefit from some slight revisions to the procedure for approving reports and recommendations. Specifically, the committee recommended that, in the instance where no change to a constitutional provision is being recommended by a committee, a vote could be taken in the committee on whether to issue a report and recommendation after only one reading. The Commission adopted this recommendation, further voting that, where an additional reading might be necessary, the reading need not occur at the next consecutive meeting, but could take place at a subsequent meeting, whenever that might take place.

In the fall of 2016, the Commission adopted a proposal by the Organization and Administration Committee to amend Rule 3.9 of the Rules of Procedure and Conduct, relating to the number of members constituting a quorum. The revision reduced to 17 from 21 the number of members required to be present in order to approve minutes and take other official action. The revision did not affect the number of affirmative votes required to recommend no change to an existing constitutional provision (17), amendment of an existing constitutional provision (22), or the adoption of a new constitutional provision (22), as set forth in Section 10, Rule 10.3.

Additionally, in the fall of 2016, the Commission adopted a proposal to reduce the number of standing committees, as provided for in Section 5, and to reorganize the standing committees to better facilitate their functions. Specifically, the change combined the Public Education and Information Committee with the Liaisons with Public Offices Committee, renaming it the Public Information and Liaisons with Public Offices Committee. These changes affected Rules 5.4 and 5.5.

A complete copy of the amended Rules is available at: <http://ocmc.ohio.gov/ocmc/rules>.

V. SUBJECT MATTER COMMITTEES

Following the structure adopted by the Commission in the last biennium, and following the Rules of Procedure and Conduct adopted by the Commission in September 2014, the Commission uses six subject matter committees for the purpose of completing its work. The six subject matter committees have been divided into two groups which are informally known as the gray committees and the green committees.

The gray committees are the Education, Public Institutions, and Local Government Committee; the Finance, Taxation, and Economic Development Committee; and the Judicial Branch and Administration of Justice Committee. The green committees are the Bill of Rights and Voting Committee; the Constitutional Revision and Updating Committee; and the Legislative Branch and Executive Branch Committee.

Education, Public Institutions, and Local Government Committee

Charge

The Education, Public Institutions, and Local Government Committee is charged generally with reviewing Article VI (Education), Article VII (Public Institutions), Article X (County and Township Organization), Article XV (Miscellaneous), and Article XVIII (Municipal Corporations), and in particular with topics related to school funding, home rule, and adjoining regionalization and economic development.

Committee Members

Chad A. Readler chaired the committee in 2015 and 2016, with Edward L. Gilbert serving as vice-chair.

Committee members who served at various times during the biennium included Roger L. Beckett, Paula Brooks, Rep. Kathleen Clyde, Sen. Bill Coley, Rep. Robert R. Cupp, Rep. Michael F. Curtin, Larry L. Macon, Sen. Tom Sawyer, Bob Taft, and Pierrette Talley.

Topics Reviewed

In 2015, the committee concluded its consideration of Article VI, Section 2, relating to the requirement that the General Assembly “secure a thorough and efficient system of common

schools throughout the state.” Two speakers appeared before the committee to describe their experiences and views relating to the maintenance of a thorough and efficient public school system: Stephanie Morales, a member of the Cleveland Municipal School District, and Dr. Renee Middleton, dean of the Patton College of Education and Human Services at Ohio University. The committee also heard from Darold Johnson, legislative director for the Ohio Federation of Teachers, who discussed with the committee his view that Article VI, Section 2 should be retained in its current form because a body of law has been build up around the provision such that the public has an understanding of the meaning of the words “thorough and efficient.”

After considering the views of these speakers, as well as the opinions expressed by the other speakers who had appeared before the committee prior to 2015, the committee voted to retain Article VI, Section 2 in its current form.

After a presentation in 2014 by Robert R. Cupp, in his prior position as chief legal counsel for the Ohio Auditor of State, on the topic of Article VI, Section 1, dealing with funds for religious and educational purposes, the committee determined in 2015 that the provision still served a useful purpose and should be retained in its current form.

In May 2015, the committee began a review of Article VI, Section 3, relating to local boards of education. Wishing to consider the experiences of board members from both a large city school district and a smaller rural district, the committee heard presentations by Gary L. Baker, II, president of the Columbus Board of Education, as well as Eric Germann, member of the board of education of Lincolnview Local Schools. The committee also heard presentations by vocational school board member Sue Steele of the Great Oaks Institute of Technology and Career Development, and by Al Haberstroh, a board member from the Trumbull County Educational Service Center. Although the committee reached a preliminary consensus that Article VI, Section 3 should be retained in its current form, upon further reflection, the committee determined that additional information would assist the committee’s deliberation of the issue, and so, in September 2016, the committee postponed proceeding with a report and recommendation on Article VI, Section 3.

In October 2015, the committee began a review of Article VI, Section 4, providing for a state board of education as well as a superintendent of public instruction. William Phillis, executive director of the Ohio Coalition for Equity and Adequacy of School Funding, presented to the committee on the “Evolution of the State Board of Education,” advocating that the state board return to an all-elected membership instead of the current format in which some board members are elected and some are appointed by the governor. The committee also heard from Tom Gunlock, president of the State Board of Education, on his views regarding the governance structure of the board as it relates to other state entities involved in education policy. The committee received additional presentations relating to Section 4 from Senator Peggy Lehner, Representative Teresa Fedor, Representative Andrew Brenner, and Senator Tom Sawyer. The committee also heard from school board members Stephanie Dodd and Michael L. Collins, former board member Robin C. Hovis, and Jeff Krabill, who is president of the board of education for Sandusky City Schools. Also providing insight was Russell Harris, education research development consultant for the Ohio Education Association, who said his organization supports the creation of an all-appointed state board of education. Considering the constitutional

provision in the context of larger issues involving state educational policy, the committee concluded that further consideration of the topic would be needed before it would be prepared to issue a report and recommendation on Section 4, and so postponed issuing a report and recommendation on Article VI, Section 4.

In April 2016, the committee turned to a review of Article VI, Section 6, providing for the Ohio Tuition Trust Authority. The committee heard a presentation by Timothy Gorrell, executive director of the trust authority, who described the history of the federal tax-advantaged college savings plan. In discussing the provision, the committee concluded that Section 6 should be retained in its current form, and planned to review a report and recommendation reflecting that determination.

In June 2016, the committee heard from David H. Harmon, former executive director of the Ohio Student Loan Commission, and from Rae Ann Estep, former executive director of the Ohio Student Aid Commission, who presented on Article VI, Section 5, relating to loans for higher education. The committee considered whether the provision is still necessary, given that both Mr. Harmon and Ms. Estep confirmed that the state no longer directly administers student loans and that their agencies are no longer in existence. However, it was the consensus of the committee that the policy underpinnings of the section could be important to future efforts to encourage the state's support of funding for higher education, and so concluded the provision should be retained.

In September 2016, the committee heard a presentation by Sen. Bill Coley, who advocated revising Article XV, Section 6 relating to lotteries, charitable bingo, and casino gaming. The committee also began its review of public institutions as provided for in Article VII. In relation to Article VII, Section 1, governing state institutions for the “insane, blind, deaf and dumb,” the committee heard from Michael Kirkman, executive director of Disability Rights Ohio, who provided background on the history of state public institutions for the mentally ill as well as for the blind and deaf, and advocated for repeal or modification of the language in Article VII, Section 1.

As 2016 came to a close, the committee continued its review of Article VII, relating to public institutions. The committee particularly considered whether Article VII, Section 1, relating to institutions for the “insane, blind, deaf and dumb,” is obsolete, and, if the section is retained, how to modernize its outdated references. The committee plans to hear from additional experts and advocates about the purpose and function of Article VII, Section 1, as well as Section 2 (Directors of Penitentiary, Trustees of Benevolent and Other State institutions; How Appointed), and Section 3 (Filling Vacancies in Directorships of State Institutions), before issuing a report and recommendation on Article VII.

Reports and Recommendations

By December 2015, the Education, Public Institutions, and Local Government Committee had issued reports and recommendations for no change to Article VI, Section 1 (Funds for Religious and Educational Purposes), and Section 2 (School Funds). These two reports and recommendations were adopted by the full Commission at its December 10, 2015 meeting.

In November 2016, the committee issued reports and recommendations for Article VI, Section 5 (Loans for Higher Education), and for Section 6 (Tuition Credits Program). With regard to Section 5, the committee heard presentations by former directors of the state agencies responsible for administering student loans before determining that the creation of a federal student loan program has resulted in the section's disuse. Nevertheless, the committee recognized that future changes to the federal student loan program may render Section 5 necessary in the future. The committee also saw the section as a way of expressing support for programs that forgive student loan debt for graduates who provide necessary services in underserved areas of the state. Thus, the report and recommendation concludes that Section 5 should be retained in its present form.

The report and recommendation for Article VI, Section 6 addresses a state program to encourage saving for higher education. After hearing a presentation by the executive director of the Tuition Trust Authority and considering the history of the creation and growth of college savings plans in Ohio and throughout the country, the committee discussed whether the section was still necessary. The committee concluded that retaining the section would acknowledge the state's obligation to back tuition savings plans with its full faith and credit, as well as protecting holders of any outstanding savings plans. Thus, the report and recommendation recommends that the section be retained in its present form.

Finance, Taxation, and Economic Development Committee

Charge

The Finance, Taxation, and Economic Development Committee is charged with reviewing Article VIII (Public Debt and Public Works), Article XII (Finance and Taxation), and Article XIII (Corporations), and with topics related to tax reform, and statewide economic development.

Committee Members

Douglas R. Cole chaired the committee in 2015 and 2016, with Karla L. Bell serving as vice-chair.

Individuals who served on the committee during the biennium included Rep. Ron Amstutz, Herb Asher, Rep. Kathleen Clyde, Jo Ann Davidson, Frederick E. Mills, Sen. Bob Peterson, Sen. Tom Sawyer, Sen. Charleta B. Tavares, and Kathleen M. Trafford.

Topics Reviewed

During 2015 and 2016, the committee continued its consideration of how the state addresses debt. The committee heard from Seth Metcalf, deputy treasurer and general counsel to the Ohio Treasurer, as well as from Professor Richard Briffault of the Columbia University Law School, both of whom presented ideas for modernizing Article VIII to eliminate obsolete provisions and to prevent the need for provisions that might become obsolete in the future. The committee also heard a presentation by Timothy S. Keen, director of the Ohio Office of Budget and

Management, who suggested several ways in which the state's debt provisions in Article VIII could be modernized. The committee benefited from presentations by Jonathan Azoff, director of the office of debt management and senior counsel to the Office of the Ohio Treasurer; Kurt Kauffman, acting assistant director of the Office of Budget and Management; and Attorney Gregory W. Stype of Squire Patton Boggs (US) LLP, who is bond counsel to the Ohio Public Facilities Commission.

Reports and Recommendations

The Finance, Taxation, and Economic Development Committee did not forward any reports and recommendations to the Commission in 2015.

In 2016, the committee issued four reports and recommendations.

First, in April 2016, the committee issued a report and recommendation addressing Article VIII, Sections 2b, 2c, 2d, 2e, 2f, 2g, 2h, 2i, 2j, and 2k, additionally proposing two new related sections, Section 2t and Section 18. In its report and recommendation, the committee indicated that Sections 2b through 2h, as well as Sections 2j and 2k, were obsolete because the bonds referenced by the sections have been paid off, or the bonding authority has lapsed. In connection with the elimination of these obsolete provisions, the report and recommendation proposed a new constitutional provision, Section 18, in order to protect the interests of anyone who may be holding an outstanding bond issued under the sections recommended for repeal. Finally, the report and recommendation discussed the function of Section 2i, which authorizes the issuance of lease-appropriation revenue bonds for certain purposes, noting testimony before the committee establishing that a reauthorization of those bonds as general obligation debt would save the state money. In response, the committee recommended the adoption of a new provision, Section 2t, that would allow the General Assembly to reauthorize all lease-appropriation bonds as general obligation debt.

In May 2016, the committee issued a report and recommendation that recommended retaining Article VIII, Sections 1 and 3 in their current form, and revising Article VIII, Section 2 to remove reference to the Sinking Fund based on the committee's conclusion that the Sinking Fund provisions found in Article VIII, Sections 7 through 11 are obsolete. Article VIII, Sections 1, 2, and 3 impose limitations on the state incurring debt, and express a policy of fiscal restraint.

The committee issued a report and recommendation in May 2016 relating to Sections 7, 8, 9, 10, and 11 of Article VIII. Those sections, which had their origin in 1851, provide for a Sinking Fund to pay down state debt and provide for a "Sinking Fund Commission" to supervise the management of the fund. Testimony before the committee established that the Sinking Fund is no longer used for this purpose, and that the functions of the Sinking Fund Commission have been assumed by other state officials and agencies. Thus, the committee recommended that Sections 7 through 11 be repealed.

The three reports and recommendations of the Finance, Taxation, and Economic Development Committee were presented at two meetings of the full Commission, and were adopted by the Commission on September 8, 2016.

In November 2016, the committee issued a report and recommendation relating to Article VIII, Sections 2l, 2m, 2n, 2o, 2p, 2q, 2r, and 2s, all sections approving the issuance of general obligation debt but which, unlike Sections 2b, 2c, 2d, 2e, 2f, 2h, 2j, and 2k, do not involve bonds that have been fully issued and paid off, or for which bonding authority has lapsed. For this reason, the report and recommendation indicates that Sections 2l, 2m, 2n, 2o, 2p, 2q, 2r, and 2s should be retained in their current form.

Judicial Branch and Administration of Justice Committee

Charge

The Judicial Branch and Administration of Justice Committee is charged with reviewing Article IV (Judicial); Article I, Sections 5, 8-10a, 12, 14, 15, 16, and 19a (sections relating to Rights Under Justice); and topics related to judicial organization, the criminal and civil justice system, and the rights of the criminally accused.

Committee Members

Janet Gilligan Abaray chaired the committee during 2015 and 2016, with Patrick F. Fischer serving as vice-chair.

Members of the committee during the biennium included Rep. Michael F. Curtin, Jeff Jacobson, Sen. Kris Jordan, Charles F. Kurfess, Rep. Nathan H. Manning, Rep. Robert McColley, Dennis P. Mulvihill, Sen. Larry Obhof, Richard B. Saphire, Sen. Michael Skindell, Rep. Emilia Strong Sykes, and Mark Wagoner.

Topics Reviewed

After concluding that Article IV, Section 19 (Courts of Conciliation) and Section 22 (Supreme Court Commission) were obsolete provisions and should be repealed, the Judicial Branch and Administration of Justice Committee considered a proposal by Ohio Supreme Court Justice Paul E. Pfeifer to allow the Ohio Supreme Court to take original jurisdiction over actions for declaratory judgment in cases of public or great general interest. In July 2015, the committee took up the question of whether Ohio's grand jury system for procuring criminal indictments was in need of revision.

Presentations to the committee in 2015 included Ohio Supreme Court Chief Justice Maureen O'Connor's presentation regarding the evaluation of judicial elections and candidates, and a review of the legal concepts of standing and justiciability by Professor Michael E. Solimine of the University of Cincinnati College of Law.

Addressing the topic of the grand jury procedure in 2015 and 2016, the committee heard from Sen. Sandra Williams, a member of the Governor's Task Force on Community-Police Relations, on recommending changes to Ohio's grand jury process. The committee also heard from prosecutors Michael T. Gmoser of Butler County, and Morris J. Murray of Defiance County, as

well as from state public defender Timothy Young. The committee benefited from scholarly presentations about grand juries by Professor Gregory M. Gilchrist of the University of Toledo College of Law, who provided a historical overview; and Professor Thaddeus Hoffmeister of the University of Dayton School of Law, who specifically addressed the use of a grand jury legal advisor as provided under the Hawaii Constitution. Providing additional information on the grand jury process in Hawaii was Attorney Ken Shimozone, a grand jury legal advisor who presented his perspective on the Hawaii grand jury system via telephonic conference.

As 2016 closed, the committee continued its discussion of potential changes to Article I, Section 10, specifically in relation to the grand jury system in Ohio, as well as beginning consideration of the Modern Courts Amendment provisions contained in Article IV, including the Supreme Court's rulemaking authority as provided in Section 5(B).

Reports and Recommendations

In 2015, the Judicial Branch and the Administration of Justice Committee issued a report and recommendation that recommended repeal of Article IV, Section 19 (Courts of Conciliation), and Section 22 (Supreme Court Commission). These recommendations were forwarded to the Commission, which adopted both reports and recommendations for presentation to the General Assembly.

Bill of Rights and Voting Committee

Charge

The Bill of Rights and Voting Committee is charged with reviewing those sections of Article I involving the rights of all, including Sections 1 (Inalienable Rights); 2 (Right to Alter, Reform, or Abolish Government); 3 (Right to Assemble); 4 (Bearing Arms, Standing Armies, and Military Power); 6 (Slavery and Involuntary Servitude); 7 (Rights of Conscience, Education, the Necessity of Religion and Knowledge); 11 (Freedom of Speech, of the Press, of Libels); 13 (Quartermen Troops); 17 (No Hereditary Privileges); 18 (Suspension of Laws); 19 (Eminent Domain); 19b (Protect Private Property Rights in Ground Water, Lakes and Other Watercourses); 20 (Powers Reserved to the People); and 21 (Preservation of the Freedom to Choose Health Care and Health Care Coverage). In addition, the committee is charged with reviewing the provisions of the Ohio Constitution dealing with voting rights, including all sections of Article V (Elective Franchise) and Article XVII (Elections).

Committee Members

Richard B. Saphire chaired the committee in 2015 and 2016, with Jeff Jacobson serving as vice-chair.

Individuals who served on the committee during 2015-2016 were Rep. Ron Amstutz, Karla L. Bell, Rep. Kathleen Clyde, Douglas R. Cole, Judge Patrick F. Fischer, Edward L. Gilbert, Sen. Bob Peterson, and Sen. Michael Skindell.

Topics Reviewed

The Bill of Rights and Voting Committee spent much of 2015 considering what changes to recommend to Article V, Section 6, which addresses the disenfranchisement of mentally incapacitated individuals. While members of the committee agreed that the provision's current description of such persons as being "idiots and insane persons" was outdated and derogatory, the committee debated what would be the appropriate substitute phrasing, as well as whether a new provision should include a requirement of an adjudication, a mandate for action by the General Assembly in enacting statutory law relating to the issue, and language that would appropriately describe voting as a right, a privilege, or both.

Related to this issue, the committee heard on several occasions from Michael Kirkman, executive director of the advocacy group Disability Rights Ohio, who discussed with the committee the considerations and problems inherent in evaluating mental incapacity for the purposes of voting, and suggested approaches the committee might use in changing the objectionable language. The committee also heard a presentation by Wilson R. Huhn, professor emeritus at the University of Akron School of Law, on behalf of the American Civil Liberties Union of Ohio, who advocated removal or revision of Article V, Section 6.

Addressing Article I, Section 6 (Slavery and Involuntary Servitude) in March 2016, the committee heard from Veronica Scherbauer, criminal justice initiatives coordinator from the Office of Attorney General, who spoke regarding human trafficking; as well as from Representative Emilia Strong Sykes, who expressed concerns relating to the section's allowance of "involuntary servitude" for "punishment of crime."

Turning to Article V, Section 1, relating to the qualifications of an elector, in May 2016 the committee heard a presentation by Carrie L. Davis, executive director of the League of Women Voters of Ohio, who, among other recommendations, advocated a change to Article V, Section 1 that would emphasize voting as a fundamental right. The committee also heard an update from Representative Alicia Reece on her proposal for a Voter Bill of Rights.

As 2016 drew to a close, the committee continued its review of voting issues under Article V.

Reports and Recommendations

Based on its previous decisions to recommend retention of several constitutional provisions in their current form, the committee issued reports and recommendations for Article I, Section 2 (Right to Alter, Reform, or Abolish Government, and Repeal Special Privileges); Section 3 (Right to Assemble); Section 4 (Bearing Arms, Standing Armies, and Military Power); Section 13 (Quartering Troops); Section 17 (No Hereditary Privileges); and Section 20 (Powers Reserved to the People). The committee also issued a report and recommendation by which it recommended retaining Article V, Section 4 (Exclusion from Franchise for Felony Conviction) in its present form.

With regard to Article V, Section 6 (Mental Capacity to Vote), the committee deliberated an amendment that would remove the outdated language referring to persons of diminished mental

capacity. A divided committee ultimately issued a report and recommendation proposing the following language to replace the section’s disenfranchisement of “idiots and insane persons:”

The General Assembly shall provide that no person who has been determined under law to lack the mental capacity to vote shall have the rights and privileges of an elector during the time of incapacity.

After being approved by the Coordinating Committee, the report and recommendation was considered by the full Commission at its meetings in April and May 2016; however, the proposal failed to gain the requisite 22 votes in favor of adoption, and so the Commission did not adopt the report and recommendation of the Bill of Rights and Voting Committee as it relates to Article V, Section 6.

Constitutional Revision and Updating Committee

Charge

The Constitutional Revision and Updating Committee is charged with reviewing Article II, Section 1, which provides the initiative process, by which citizens may propose to the General Assembly laws and amendments to the Ohio Constitution, and the referendum process, by which citizens may adopt or reject laws and amendments adopted by the General Assembly. The committee also is charged with reviewing Article XVI, Sections 1, 2, and 3, governing the process by which the General Assembly proposes amendments to the Ohio Constitution as well as the process for holding a constitutional convention in order to revise, amend, or change the Ohio Constitution. Under R.C. 103.61(C), the committee’s express purpose is to carry out the statutory directive that the Commission consider “the problems pertaining to the amendment of the constitution.”

Committee Members

Dennis P. Mulvihill chaired the committee in 2015 and 2016, with Charles F. Kurfess serving as vice-chair.

Individuals who served on the committee during the biennium included Janet Gilligan Abaray, Roger L. Beckett, Rep. Robert R. Cupp, Rep. Michael F. Curtin, Sen. Kris Jordan, Larry L. Macon, Sen. Larry Obhof, Chad A. Readler, Sen. Tom Sawyer, Rep. Emilia Strong Sykes, and Mark Wagoner.

Topics Reviewed

The Constitutional Revision and Updating Committee continued its consideration of whether the existing constitutional provisions regarding initiative and referendum should be retained, or whether they should be modified in favor of a system that would encourage members of the public wishing to effect change to pursue the enactment of statutory law rather than the adoption of constitutional amendments.

Significantly, in 2015 the committee focused on ways to prevent persons seeking an economic advantage from using the initiative process to create a monopoly under the constitution. These discussions were beneficial to a General Assembly effort to place an issue on the ballot asking voters to approve a constitutional provision preventing the initiative process from being used in this manner. Thus, “Issue 2” was approved by voters on November 3, 2015, resulting in an amendment to Article II, Section 1e.

In November 2015, the committee continued its ongoing consideration of potential changes to the indirect statutory initiative. As a preliminary step toward issuing a report and recommendation addressing the statutory initiative process, the committee considered whether a revision of the relevant sections should include language eliminating the supplemental petition requirement, keeping the statutory initiative, and indicating that, if the General Assembly passes something different or refuses to act, the proponents of the initiative can go directly to the voters. The committee also considered a “safe harbor” provision preventing the General Assembly from acting on an initiated statute for five years absent a two-thirds vote, and raising the petition signature requirement from three percent to five percent.

The committee continued its consideration of potential changes to the initiative and referendum process throughout 2016. Its discussion culminated in the preparation of a draft that reorganized Article II, Sections 1 through 1g. The draft primarily rearranged the existing constitutional provisions, streamlining the process and making it easier to understand the various steps involved in seeking an amendment to the constitution, a new statutory law, or the repeal of an existing law. In the process, the draft also moved parts of existing sections to several new sections. The first of these, Section 1h, limits the use of the initiative and referendum to pass a law authorizing property classifications for tax purposes, as well as limiting the use of the initiative to amend the constitution to create or grant a monopoly or other commercial benefit not available to others. The draft also adds Section 1i, which applies the powers of the initiative and referendum to municipalities; Section 15 (E), which allows for the enactment of an emergency law; and Section 17, providing an effective date of a law as being 90 days after the governor files it with the secretary of state.

The draft also creates a safe harbor for initiated statutes, eliminates the supplementary petition for initiated statutes, and proposes that the General Assembly be permitted to enact law to modernize the signature gathering and publication processes. As 2016 drew to a close, the committee continued to discuss the draft, and anticipated receiving testimony from interested parties as to editing suggestions.

Reports and Recommendations

The committee will continue to discuss potential changes to the existing constitutional provisions governing the initiative and referendum process, and expects to issue a report and recommendation sometime in 2017.

Legislative Branch and Executive Branch Committee

Charge

The Legislative Branch and Executive Branch Committee is charged with reviewing Article II (Legislative), Article III (Executive), Article IX (Militia), Article XI (Apportionment), Article XIV (Livestock Care Standards Board), as well as all provisions relating to term limits, redistricting and apportionment, and global, interstate, and regional economic development.

Committee Members

Frederick E. Mills chaired the committee in 2015 and 2016, while Paula Brooks served as vice-chair.

Committee members during the biennium included Herb Asher, Sen. Bill Coley, Rep. Michael F. Curtin, Jo Ann Davidson, Rep. Nathan H. Manning, Larry L. Macon, Rep. Robert McColley, Bob Taft, Pierrette Talley, Sen. Charleta B. Tavares, and Kathleen M. Trafford.

Topics Reviewed

In 2015, the committee considered whether to recommend a change to Article II, Section 2, relating to term limits for state legislators. The committee concluded that term limits for state representatives should be lengthened from the current limit of four two-year terms to six two-year terms, with term limits for state senators to be extended from the current limit of two four-year terms to three four-year terms. The committee decided to allow the full Commission to decide whether the extension should apply to sitting legislators.

Speakers who appeared before the committee to discuss term limits included Tony Seegers, director of state policy for the Ohio Farm Bureau Federation, Ray Warrick, who heads “Eight is Enough,” an organization lobbying to keep term limits at eight years, and Phillip Blumel of U.S. Term Limits, a national organization advocating the use of term limits.

In February, the committee considered a proposal to create a public official pay commission, and on this topic heard from Frank Strigari, legal counsel to the Senate Majority Caucus.

With the assistance of discussions in the Legislative Branch and Executive Branch Committee, at the conclusion of 2014, the 130th General Assembly adopted a resolution to create a redistricting commission to draw the state legislative districts. The resolution appeared as Issue 1 on the November 2015 ballot, and was approved by voters by a wide margin. As a result, Article XI was amended, with Sections 1 through 15 being repealed, and new Sections 1 through 10 being enacted. The effective date of the new sections is January 1, 2021.

In the fall of 2015 the committee reviewed and discussed two pending General Assembly resolutions that, if adopted, would ask voters to approve the use of a commission to draw Congressional districts. The committee heard presentations by Rep. Kathleen Clyde and Rep. Michael F. Curtin, who presented on their sponsored resolution, H.J.R. 2, as well as from Sen.

Frank LaRose and Sen. Tom Sawyer, who presented on their sponsored resolution, S.J.R. 2. In November 2015, Rep. Clyde and Rep. Curtin returned to the podium to discuss with the committee a draft of a new proposed resolution combining features of both the House and Senate resolutions. Throughout its review and discussion of the topic of legislative and Congressional redistricting, the committee heard presentations by Richard Gunther, professor emeritus of The Ohio State University, Ann Henkener of the League of Women Voters of Ohio, Catherine Turcer of Common Cause Ohio, and Carrie Wimbish of the Ohio Voter Rights Coalition, all of whom advocated for redistricting reform.

The fall of 2015 also saw the committee begin its review of Article II, Section 15(D), the “one subject rule” that restricts legislative enactments to a single subject. After hearing a summary of Ohio Supreme Court decisions interpreting the rule by Commission Counsel O’Neill, the committee also heard a presentation on the history of the one-subject rule by Attorney John Kulewicz.

In 2016, the committee continued its discussion of Congressional redistricting reform, forming a subcommittee to address specific components of a possible recommendation. The committee also received a memorandum and presentation from Executive Director Hollon in which the various sections of Article II were grouped into categories to facilitate committee discussion as well as to streamline the preparation of reports and recommendations. Based on the recognition that Article II, Section 31 addresses compensation of members of the General Assembly, in the fall of 2016 the committee renewed its consideration of a concept first discussed in early 2015 relating to the creation of a public official pay commission that would be charged with determining salaries for legislators and other public officials. In addition, in November 2016, the committee heard a presentation by Ohio State University Moritz College of Law Professor Steven F. Huefner on the subject of legislative privilege, a concept memorialized in the constitution at Article II, Section 12, containing the “speech or debate” clause.

Reports and Recommendations

The committee issued a report and recommendation with two separate options for addressing Article II, Section 2 (Election and Term of State Legislators). One option recommends extending term limits from eight years to 12 years, but only allowing newly-elected legislators to take advantage of the extension. The other option recommends extending the limits for all legislators.

In addition, in **December** 2016, the committee heard a first presentation of two reports and recommendations. The first report and recommendation, addressing Article II, Sections 3, 4, 5, and 11, describes that these sections relate to the qualifications of members of the General Assembly, as well as providing for filling vacancies in legislative seats. The second report and recommendation, covering Article II, Sections 6, 7, 8, 9, 13, and 14, indicates that these sections concern the organization of the General Assembly and the basic standards for conducting the business of the body. Both reports and recommendations conclude that no change is needed for the sections, which were reviewed and, in some cases, revised in the 1970s as a result of work performed by the Ohio Constitutional Revision Commission.

VI. STANDING COMMITTEES

The Commission also has four standing committees including the Organization and Administration Committee, the Coordinating Committee, the Public Education and Information Committee, and the Liaisons with Public Offices Committee.

Organization and Administration Committee

Charge

Under Rule 5.3 of the Rules of Procedure and Conduct, the Organization and Administration Committee is charged with making recommendations to the Commission and staff regarding budget, staffing, ethics, and rules.

Committee Members

Mark Wagoner served as chair in 2015 and 2016, with Edward L. Gilbert serving as vice-chair.

Individuals who served on the committee during the year were Paula Brooks, Rep. Kathleen Clyde, Douglas R. Cole, Rep. Robert R. Cupp, Charles F. Kurfess, and Sen. Michael Skindell.

Topics Reviewed

In July 2015, the Organization and Administration Committee met to receive an update on the budget for the 2015 fiscal year, as well as to consider recommended changes to the Rules of Procedure and Conduct for the Commission. In September, the committee issued revisions to the rules that allow the committees to issue a recommendation for no change after only one presentation, rather than two presentations as the rules previously required. This revision was then presented to the Commission, which adopted it by a unanimous roll call vote. The Commission additionally adopted a modification to the rules that removed the requirement that the meetings at which a change is considered be consecutively held.

In 2016, the committee approved a change that would alter Rule 3.9 of the Commission's Rules of Procedure and Conduct to reduce from 21 to 17 the number of Commission members needed to form a quorum for the purpose of conducting business. The recommended change in the rules was presented to the full Commission for two consecutive meetings, and was approved by the Commission at its October 2016 meeting.

Also in 2016, the committee considered a proposal to revise Rules 5.4 and 5.5 of the Rules of Procedure and Conduct in order to reorganize the standing committees to better facilitate their functions. The change would combine two committees that meet jointly, the Public Education and Information Committee with the Liaisons with Public Offices committee, renaming the new committee the "Public Information and Liaisons with Public Offices Committee." This proposed change was approved by the Organization and Administration Committee at its November 2016 meeting, and adopted by the Commission at its December 2016 meeting.

Coordinating Committee

Charge

Under Rule 5.6 of the Rules of Procedure and Conduct, the Coordinating Committee is charged with coordinating the study of the Ohio Constitution by each subject matter committee.

Committee Members

Kathleen M. Trafford served as chair in 2015 and 2016, with Jo Ann Davidson serving as vice-chair.

Committee members during the year included Janet Gilligan Abaray, Sen. Bill Coley, Patrick F. Fischer, Sen. Kris Jordan, Dennis P. Mulvihill, Sen. Larry Obhof, and Rep. Emilia Strong Sykes.

Topics Reviewed

In 2015, The Coordinating Committee approved 11 reports and recommendations for presentation to the full Commission. These included:

Article IV, Section 19	Courts of Conciliation
Article IV, Section 22	Supreme Court Commission
Article I, Section 2	Right to Alter, Reform, or Abolish Government, and Repeal Special Privileges
Article I, Section 3	Right to Assemble
Article I, Section 4	Bearing Arms, Standing Armies, and Military Power
Article I, Section 13	Quartering Troops
Article I, Section 17	No Hereditary Privileges
Article VI, Section 1	Funds for Religious and Educational Purposes
Article VI, Section 2	School Funds
Article I, Section 20	Powers Reserved to the People
Article V, Section 4	Exclusion from Franchise for Felony Conviction

The committee also was responsible for working with staff in preparing the 2015 Annual Report.

In addition, in November, the Coordinating Committee took on the role of reviewing the progress of the subject matter committees, and, in that capacity, began the process of hearing status reports from the chairs of the subject matter committees. In November, the committee heard updates from Chad A. Readler, chair of the Education, Public Institutions, and Local Government Committee, and from Frederick E. Mills, chair of the Legislative Branch and Executive Branch Committee. In December, the committee heard updates from Douglas R. Cole, chair of the Finance, Taxation, and Economic Development Committee, and from Richard B. Sapphire, chair of the Bill of Rights and Voting Committee.

In 2016, the Coordinating Committee approved **eight** reports and recommendations for presentation to the full Commission:

Article II, Section 2	Election and Term of State Legislators
Article V, Section 6	Mental Capacity to Vote
Article VIII, Sections 1, 2, and 3	State Debt
Article VIII, Sections 2b, 2c, 2d, 2e, 2f, 2g, 2h, 2i, 2j, 2k, and Proposed Sections 2t and 18	Authorization of Debt Obligations
Article VIII, Sections 7, 8, 9, 10, and 11	Sinking Fund and Sinking Fund Commission
Article VI, Section 5	Loans for Higher Education
Article VI, Section 6	Tuition Credits Program
Article VIII, Sections 2l, 2m, 2n, 2o, 2p, 2q, 2r, and 2s	Additional Authorization of Debt Obligations

In October 2016, the committee heard a presentation by Steven H. Steinglass, senior policy advisor, relating to the use of gender-specific language in the constitution. The committee considered whether the duty of reviewing and recommending changes to this language should fall to the Coordinating Committee, or whether another committee of the Commission should be charged with this task.

The committee also was responsible for working with staff in preparing the 2015-16 Biennial Report.

Public Education and Information Committee

Charge

Under Rule 5.4 of the Rules of Procedure and Conduct, the Public Education and Information Committee is charged with 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.

Committee Members

Roger L. Beckett chaired this committee in 2015 and 2016, with Larry L. Macon serving as vice-chair.

Committee members included Rep. Michael F. Curtin, Jeff Jacobson, Sen. Bob Peterson, Chad A. Readler, Richard B. Saphire, and Sen. Tom Sawyer.

Topics Reviewed

The Public Education and Information Committee worked with Communications Director Russell in formulating and reviewing a communications plan for publicizing the work of the

Commission. As a part of the plan, in 2015 the Commission's website was redesigned and updated to provide a more attractive look, to include more information, and to better facilitate public use. The website was modified in November 2015 to include a page facilitating access to reports and recommendations that have been adopted by the Commission.

The committee's meetings were held in joint sessions with the Liaisons with Public Offices Committee.

Liaisons with Public Offices Committee

Charge

Under Rule 5.5 of the Rules of Procedure and Conduct, the Liaisons with Public Offices Committee is charged with providing information and maintaining relations with all public offices reasonably affected by any proposal or action of the committee.

Committee Members

Herb Asher served as chair in 2015 and 2016, with Governor Bob Taft serving as vice-chair.

Committee members were: Rep. Ron Amstutz, Karla L. Bell, Rep. Nathan H. Manning, Rep. Robert McColley, Frederick E. Mills, Pierrette Talley, and Sen. Charleta B. Tavares.

Topics Reviewed

The Liaisons with Public Offices Committee worked and met jointly with the Public Education and Information Committee in developing a communications plan for the Commission.

VII. PROCEEDINGS OF THE FULL COMMISSION

Several topics discussed by the various committees were subject to additional consideration by the full Commission. One of these topics, originally discussed in the Legislative Branch and Executive Branch Committee, was what, if any, role the Commission should play with regard to ballot issues embracing topics that had been the subject of Commission review. The question arose specifically with regard to House Joint Resolution 12 (state legislative redistricting) from the 130th General Assembly, which was placed on the November 2015 ballot as "Issue 1." Commission members expressed that, even where a ballot issue directly derives from a recommendation of the Commission, it could be problematic for the Commission to take an official position or to recommend how individuals should vote, as this might exceed the statutory charge of the Commission.

The Commission also discussed the topic of the use of the initiative and referendum process to create a monopoly or cartel in favor of persons or groups seeking an economic advantage. The problems suggested by this use of the constitution had been discussed by the Constitutional Revision and Updating Committee in several meetings. Ultimately, House Joint Resolution 4, passed by the 131st General Assembly and placed on the November 2015 ballot as "Issue 2,"

asked voters to approve an amendment that would prohibit the use of the constitution to create a monopoly. Although some members expressed the view that it was unnecessary or unwise to limit the initiative and referendum process, others commented that the protection provided in the proposed amendment was necessary in order to prevent special interests from gaining an advantage through the use of the state's foundational document.

In January 2016, the Commission considered a report and recommendation from the Bill of Rights and Voting Committee that recommended retaining Article V, Section 4 (Exclusion from Franchise for Felony Conviction) in its present form. Commission members were divided on whether to adopt the committee's recommendation. Some members emphasized that the provision does not preclude post-incarceration voting by persons convicted of a crime, and so should be retained. Other members, however, expressed concern that voting for released felons derives from statute, and may not always be protected unless it is expressly enshrined in the constitution. Upon a roll call vote, the motion to adopt the report and recommendation to retain the current provision passed by a vote of 20 in favor, two opposed, with ten absent.

In April 2016, the Commission had a first presentation of a report and recommendation by the Bill of Rights and Voting Committee relating to Article V, Section 6 (Mental Capacity to Vote). The committee had recommended a change that would remove the reference to "idiots and insane persons" as being derogatory, while retaining the section's prohibition on voting for persons who have been "determined under law to lack the mental capacity to vote." The committee's recommended change also was to add a reference to the "rights and privileges of an elector." At the first presentation on this report and recommendation, as well as at the second presentation, that occurred at the Commission meeting in May 2016, some Commission members expressed strong objection to the constitution continuing to have a provision disenfranchising persons with diminished mental capacity, as well as concerns related to how the provision should reference the determination of incapacity and what, precisely, is meant by the phrase "rights and privileges of an elector." Upon a roll call vote, the motion to adopt the report and recommendation to repeal Article V, Section 6, and replace it with the recommended language, failed to obtain the requisite 22 votes to pass. The final vote on the motion was 18 in favor, eight opposed, with six absent.

In June 2016, the Commission heard the first of two presentations on three reports and recommendations by the Finance, Taxation, and Economic Development Committee. The first report and recommendation, addressing Article VIII, Sections 1, 2, and 3, recommends that the sections remain intact with the exception of a reference to the sinking fund in Section 2. Sections 1 through 3 create the state's basic structure for dealing with state debt, prescribing, among other things, a debt limit of \$750,000 that has been in place since its adoption as part of the 1851 constitution. The second report and recommendation recommends repeal of numerous sections of Article VIII related to general debt obligations on the grounds that those obligations have expired because the debt issuance authority is used up and the debt has been repaid. To address any debt outstanding after the repeal of Sections 2b, 2c, 2d, 2e, 2f, 2g, 2h, and 2k, the report and recommendation proposes the addition of Section 18 to allow repayment in that situation. The report and recommendation also recommends the adoption of a new Section 2t that would allow the lease appropriation debt described in Section 2i to be reissued as general obligation bonds. The third report and recommendation addresses Article VIII, Sections 7

through 11, which create a state “Sinking Fund,” as well as a “Sinking Fund Commission.” The report and recommendation recommends these sections for repeal because the state no longer utilizes a sinking fund, and the Sinking Fund Commission has not been active for many years. The Commission heard a second presentation of these three reports and recommendations at its September 2016 meeting, at which a motion to adopt the reports and recommendations passed unanimously.

At its October 2016 meeting, the Commission considered for a second time a proposal to amend Section 3, Rule 3.9 of the Commission’s Rules of Procedure and Conduct. The amendment changes the definition of a quorum as being 17, rather than 21 members, a change that would allow the Commission to pass on minutes or otherwise conduct business if 17 or more members are present, but does not alter the requirement that 22 members must vote to pass on a proposal to change an existing constitutional provision. The Commission adopted the change by a unanimous vote of the 24 members who were present.

Also at the October 2016 meeting, the Commission discussed a proposal to enlist the assistance of the Legislative Service Commission in drafting joint resolutions that reflect the recommendations adopted by the Commission in 2015 with regard to the repeal of Article IV, Sections 19 and 22 (Courts of Conciliation and Supreme Court Commission); the recommendations adopted in 2016 addressing Article VIII, Sections 1, 2, 3, 2b, 2c, 2d, 2e, 2f, 2g, 2h, 2i, 2j, 2k, 7, 8, 9, 10, and 11 (State Debt, General Obligation Debt, and the Sinking Fund); and the related 2016 adoption of recommendations to create new Sections 2t and 18 in Article VIII. The Commission discussed that the goal of moving forward with drafting the joint resolutions would be to schedule their consideration in the General Assembly for possible referral on the 2017 fall ballot. On motion to pursue this course of action, the Commission voted unanimously to obtain draft language and to have the Commission co-chairs follow up with legislative leadership in order to bring the joint resolutions to the attention of the General Assembly.

Commission Membership

In accordance with the Commission’s statutory charge, the terms of all public members of the Commission concluded at the end of 2015, subject to reappointment for another term by the legislative members of the Commission. To facilitate this process, at the request of Director Hollon, in November 2015 public members completed a survey designed to gauge their interest in continuing on the Commission, and to determine whether they would like to be reassigned to a different committee.

On January 6, 2016, the legislative members of the Commission met for the purpose of determining the co-chairs for the coming biennium, as well as appointing the 20 public, or non-legislative, members of the Commission. Legislative members voted to continue the co-chairmanship of Rep. Ron Amstutz and Sen. Charleta Tavares, as well as voting to reappoint all 20 public members.

At the end of 2016, the Commission was slated to lose three legislative members. Rep. Mike Curtin announced his intention to leave legislative service, while Rep. Ron Amstutz and Sen.

Tom Sawyer were term limited. Legislative members of the Commission plan to meet in January 2017 to approve replacements for these departing members, as well as to elect a new co-chair due to the departure of Rep. Amstutz.

VIII. RECOMMENDATIONS TO THE GENERAL ASSEMBLY

During 2015 and 2016, the Commission made the following recommendations to the General Assembly.

The Commission recommended that the following sections of the Ohio Constitution be repealed as obsolete:

Article IV, Section 19	Courts of Conciliation
Article IV, Section 22	Supreme Court Commission

The Commission recommended that the following sections of the Ohio Constitution be retained in their current form:

Article I, Section 2	Right to Alter, Reform, or Abolish Government, and Repeal Special Privileges
Article I, Section 3	Right to Assemble
Article I, Section 4	Bearing Arms, Standing Armies, and Military Power
Article I, Section 13	Quartering Troops
Article I, Section 17	No Hereditary Privileges
Article I, Section 20	Powers Reserved to the People
Article V, Section 4	Exclusion from Franchise for Felony Conviction
Article VI, Section 1	Funds for Religious and Educational Purposes
Article VI, Section 2	School Funds
Article VIII, Section 2i	Capital Improvement Bonds
Article VI, Section 5	Loans for Higher Education
Article VI, Section 6	Tuition Credits Program
Article II, Section 3	Residence Requirements for State Legislators
Article II, Section 4	Dual Office and Conflict of Interest Prohibited
Article II, Section 5	Who Shall Not Hold Office
Article II, Section 11	Filling Vacancy in House or Senate Seat
Article II, Section 6	Powers of Each House
Article II, Section 7	Organization of Each House of the General Assembly
Article II, Section 8	Sessions of the General Assembly
Article II, Section 9	House and Senate Journals
Article II, Section 13	Legislative Sessions to be Public
Article II, Section 14	Power of Adjournment
Article VIII, Section 2l	Parks, Recreation, and Natural Resources Project Capital Improvements
Article VIII, Section 2m	Issuance of General Obligations
Article VIII, Section 2n	Facilities for System of Common Schools and Facilities for State-Supported and State-Assisted Institutions of Higher Education

Article VIII, Section 2o	Issuance of Bonds and Other Obligations for Environmental Conservation and Revitalization Purposes
Article VIII, Section 2p	Issuance of Bonds for Economic and Educational Purposes and Local Government Projects
Article VIII, Section 2q	Issuance of Bonds for Continuation of Environmental Revitalization and Conservation
Article VIII, Section 2r	Persian Gulf, Afghanistan, and Iraq Conflicts Compensation Fund
Article VIII, Section 2s	Issuance of Additional General Obligation Bonds to Fund Public Infrastructure Capital Improvements

The Commission recommended that the following existing sections of the Ohio Constitution be amended:

Article VIII, Section 2	Incurring Debt for Defense or to Retire Outstanding Debts
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The Commission recommended that the following sections of the Ohio Constitution be repealed as obsolete:

Article VIII, Section 2b	World War II Veterans' Compensation Fund
Article VIII, Section 2c	Construction of State Highway System
Article VIII, Section 2d	Korean Conflict Veterans' Compensation Fund
Article VIII, Section 2e	Funds for Highway and Public Building Construction
Article VIII, Section 2f	Bond Issue for Schools, Universities, Conservation, etc.
Article VIII, Section 2g	Bond Issue for Highway Construction
Article VIII, Section 2h	Bond Issue for State Development
Article VIII, Section 2j	Vietnam Conflict Veterans' Compensation Fund
Article VIII, Section 2k	Bonds for Local Government Public Infrastructure
Article VIII, Section 7	Sinking Fund
Article VIII, Section 8	Commissioners of the Sinking Fund
Article VIII, Section 9	Biennial Report of the Sinking Fund Commissioners
Article VIII, Section 10	Application of the Sinking Fund
Article VIII, Section 11	Semiannual Report of the Sinking Fund Commissioners

The Commission recommended that the Ohio Constitution be amended to add the following sections:

Article VIII, Section 2t	General Obligation Bonds for Mental Health Facilities, etc.
Article VIII, Section 18	Securing Outstanding Debt Issued Under Prior Authority

IX. JOINT RESOLUTIONS BY THE GENERAL ASSEMBLY

Based on the Commission's vote taken at the October 2016 meeting, by which the Commission expressed its support for having legislative members introduce Commission recommendations as joint resolutions in the General Assembly, Rep. Mike Curtin and Rep. Ron Amstutz worked with the Legislative Service Commission to prepare four joint resolutions. The following joint resolutions were introduced in the House of Representatives in November 2016:

- HJR 9, proposing to enact Section 2t of Article VIII relative to the issuance of general obligation bonds to pay the costs of facilities for mental health and developmental disabilities, parks and recreation, and housing of agencies of state government;
- HJR 10, proposing to enact Section 18 and to repeal Sections 2b, 2c, 2d, 2e, 2f, 2g, 2h, 2j, and 2k, of Article VIII in order eliminate obsolete general obligation debt sections and to protect the holders of bonds that have not yet expired;
- HRJ 11, proposing to amend Section 2 of Article VIII to eliminate reference to the sinking fund, and to repeal Sections 7 through 11 of Article VIII concerning the sinking fund and the Sinking Fund Commission; and
- HJR 12, proposing to repeal Sections 19 and 22 of Article IV, eliminating the authority of the General Assembly to establish courts of conciliation and eliminating the authority of the governor to appoint a supreme court commission.

At the November 2016 Commission meeting, Commission Co-chair Rep. Amstutz announced that companion legislation would be introduced in the Senate by Sen. Bob Peterson and Sen. Charleta Tavares. On December 1, 2016, HJR 9, HJR 10, and HJR 11 were consolidated and introduced as HJR 13.

X. NEXT STEPS

In the two years staff has been providing assistance, the Commission has made significant progress in addressing the many sections of the Ohio Constitution. However, additional work is needed to complete the review process, with the following topics expected to be taken up in the coming year.

Bill of Rights and Voting Committee

The Bill of Rights and Voting Committee anticipates completing its review of Article V, relating to the elective franchise, and may consider recommending an update to Article V, Section 1 defining who is an elector, and Section 7, governing primary elections. The committee also plans to study sections of Article I, the Bill of Rights, specifically addressing whether modernization may be needed for Article I, Section 6 (Slavery and Involuntary Servitude) and Section 19 (Eminent Domain).

Constitutional Revision and Updating Committee

The Constitutional Revision and Updating Committee plans to continue its comprehensive review of Ohio's Initiative and Referendum process, recognizing the interrelationship between all sections that have been assigned to it. The committee expects its final work product to be a recommendation for a complete redraft of the relevant sections in order to clarify and simplify a process that has not been significantly altered since its adoption in 1912. The committee also will consider Article XVI, which relates to the General Assembly's ability to propose

constitutional amendments, and the process for recommending amendments by constitutional convention.

Education, Public Institutions, and Local Government Committee

The Education, Public Institutions, and Local Government Committee expects to complete its review of Article VII, relating to Public Institutions, in early 2017, before moving on to discuss whether changes may be in order for Article XV, Section 6, relating to casino gaming. The committee also will review important aspects of county, township, and municipal organization as provided in Article X and Article XVIII.

Finance, Taxation, and Economic Development Committee

The Finance, Taxation, and Economic Development Committee expects to complete its review of Article VIII in early 2017 by issuing reports and recommendations for Sections 4 through 6, relating to joint enterprises between government and private corporations and state assumption of local government debt; and Sections 13 through 17, relating to the state's fostering of economic development. The committee also will consider whether to recommend a provision that would prescribe the duties of the treasurer of state. The committee expects to turn to a review of finance and tax-related provisions in Article XII, as well as considering whether and how to modernize sections related to corporations in Article XIII, most of which are unchanged since their adoption in 1851.

Judicial Branch and Administration of Justice Committee

The Judicial Branch and Administration of Justice Committee expects to wrap up its consideration of Article I, Section 10, specifically the grand jury, before turning to other sections of the Bill of Rights related to the criminal and civil justice systems. Specific topics the committee may consider include sections prohibiting transportation out of the state for in-state crime, imprisonment for debt, suspension of the writ of habeas corpus, restrictions on excessive bail, the right to jury trial, and the right to redress for injury. In recognition of new technological surveillance capabilities, the committee also may address whether to modernize Article I, Section 14, relating to the right to be secure against unreasonable searches and seizures. In relation to Article IV, governing the judicial branch, the committee will consider possible revisions to sections originally adopted as part of the Modern Courts Amendment.

Legislative Branch and Executive Branch Committee

The Legislative Branch and Executive Branch Committee will complete its review of the sections of Article II related to the practices and procedures of the General Assembly, and may recommend the adoption of a provision that would create a public official compensation commission. The committee also will continue to consider whether to recommend a provision regarding Congressional redistricting. In addition to reviewing sections of Article II related to employment, such as Section 34 regarding the welfare of employees, Section 34a, regarding minimum wage, and Section 35, regarding workers' compensation, the committee also expects to consider the duties and functions of the executive branch as set out in Article III.



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