



OHIO CONSTITUTIONAL MODERNIZATION COMMISSION

MINUTES OF THE FINANCE, TAXATION, AND ECONOMIC DEVELOPMENT COMMITTEE

FOR THE MEETING HELD
THURSDAY, APRIL 14, 2016

Call to Order:

Chair Douglas Cole called the meeting of the Finance, Taxation, and Economic Development Committee to order at 11:06 a.m.

Members Present:

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

Approval of Minutes:

The minutes of the March 10, 2016 meeting of the committee were approved.

Reports and Recommendations:

Chair Cole announced that, prior to hearing presentations, the committee would hear a second presentation of a report and recommendation relating to a repeal of obsolete provisions in Article VIII and proposed new Sections 2t and 18.

Article VIII, Sections 2b, 2c, 2d, 2e, 2f, 2g, 2h, 2i, 2j, 2k, and Proposed Sections 2t and 18

Steven C. Hollon, executive director, then summarized the report and recommendation, describing the background of the sections relating to state debt, and explaining that Sections 2b, 2c, 2d, 2e, 2f, 2g, 2h, 2j, and 2k are now perceived as being obsolete because they have been fully issued and paid off, or because their bonding authority has lapsed due to the passage of time. Mr. Hollon indicated the report and recommendation describes the history of the constitution's treatment of state debt, as well as litigation relating to state debt provisions. He said the report and recommendation notes the various speakers who have presented to the

committee during its review of Article VIII. Mr. Hollon said the report and recommendation, in addition to proposing the repeal of provisions identified as obsolete, also recommends the adoption of new Section 18, which would require that any obligation entered into by the state under the authority of any section of Article VIII that is later repealed remains in full force and effect and continues to be secured in accordance with the original terms of the obligation. Mr. Hollon noted that the report and recommendation encourages the General Assembly to periodically propose to voters the repeal of debt authorization sections of the constitution that have become obsolete. Mr. Hollon described that the report and recommendation finally expresses the committee's proposal for adoption of a new Section 2t, in order to authorize the issuance of general obligation bonds that could be used to refund obligations previously issued under the authority of Section 2i, and to issue new general obligation bonds for purposes related to facilities for mental health and developmental disabilities, parks and recreation, and housing branches and agencies of state government, as set forth in Section 2i.

Chair Cole recognized Representative Kathleen Clyde, who asked whether there was information available about how repeal of the obsolete provisions might appear on the ballot.

Mr. Hollon said it may be helpful to refer to reports and recommendations by the Judicial Branch and Administration of Justice Committee, in which that committee recommended repeal of two different sections. In that instance, the committee did not propose any particular language because the entire section was being recommended for repeal. He added staff would continue to research this question and report back to the committee.

Rep. Clyde asked whether there is any insight as to why a 1977 attempt to repeal these provisions was unsuccessful when it was placed on the ballot. She also wondered when the repeal of Section 2a occurred.

Mr. Hollon answered that he is not certain why the 1977 attempt failed, and identified 1953 as the year in which Section 2a was repealed.

Representative Ron Amstutz suggested that one reason for the failure of the 1977 attempt was that the 1970s Commission was concerned about the bonds that were outstanding at that time.

Committee member Herb Asher agreed with Rep. Amstutz that this may be an explanation, adding that some people may have opposed repeal because, in removing those provisions, it would have erased history or failed to recognize the contributions of veterans. He said it might help, when eliminating provisions, to place an annotation that would explain what the repealed provision did. Mr. Asher asked if staff would provide research based on media coverage from 1977. Mr. Hollon agreed staff would look into the question.

Concluding that the remarks and discussion on all three reports and recommendations might be aided by the two presenters who were appearing before the committee, Chair Cole told the committee he would suspend further review of the reports and recommendations until after the presentations.

Presentations:

Chair Cole then deviated from the agenda and turned the committee's attention to two speakers, one from the Office of the Ohio Treasurer, and the other from the Office of Budget and Management, who sought to provide remarks on the reports and recommendations under consideration by the committee.

Jonathan Azoff
Director of Office of Debt Management and Senior Counsel
Office of the Ohio Treasurer

Chair Cole introduced Jonathan Azoff, director of the Office of Debt Management and senior counsel to the Ohio Treasurer of State, who presented to the committee on the role of his office in relation to state debt.

Mr. Azoff began by describing that the state treasurer has three debt-related functions: (1) to oversee the debt issuance process for programs for which the treasurer serves as issuer; (2) to ensure the timely payment on the state's outstanding debt; and (3) to produce several legally-required reports, including the Commissioners of the Sinking Fund Semi-Annual Report.

Mr. Azoff indicated the treasurer's office is recommending several changes to Article VIII. First, he proposed the reference to the sinking fund in Section 2 should be changed to the word "state." He said this recommendation is based on the fact that a true "sinking fund" no longer exists.

He said his office also recommends the repeal of Sections 7 through 11 of Article VIII for the reason that the state no longer utilizes a sinking fund, with the duties of the Sinking Fund Commission now being performed by the treasurer's office. However, Mr. Azoff expressed the concern that removal of Sections 7 through 11 without replacement language clarifying who should perform those same duties would be detrimental to the interests of public accountability. He expressed that the committee's review provides the opportunity to recommend constitutional amendments that would reflect current statutory procedures.

In this regard, Mr. Azoff described that his office performs the ongoing roles and responsibilities of the Sinking Fund Commission, including paying debt service on the state's general obligation debt from the Commissioners of the Sinking Fund's designated bond service funds, and fulfilling the treasurer's reporting role as a member of the Commission of the Sinking Fund. He noted that the Office of Debt Management's operating expenses are funded through the Commissioners of the Sinking Fund GRF line item in the Treasurer of State's operating budget. As a result, Mr. Azoff urged the committee to recommend the retention of constitutional authorization for the performance of the Sinking Fund Commissioners' duties.

Mr. Azoff also commented regarding the committee's recommendation for a constitutional amendment that would allow the issuance of general obligation debt instead of lease-appropriation debt, suggesting that a factor that was not considered was the relative costs of the proposed amendment.

Explaining the difference between general obligation debt and lease-appropriation debt, Mr. Azoff said if the state were to default on a general obligation bond, bond holders would have the ability to bring an action to force the state to increase revenues, but lease-appropriation debt does not provide that remedy. Instead, he said, with lease-appropriation debt, the state's obligation to pay bondholders is entirely contingent on the General Assembly appropriating the funds needed to pay the debt service in its biennial budget.

He said, while there would be consequences to not paying the debt, lease-appropriation debt provides the state flexibility in the event of a fiscal emergency. He said the state pays only slightly more interest when it borrows on a lease-appropriation basis, and that investors are "familiar and comfortable with the state's lease-appropriation credit, and are willing to loan money on that basis for a similar rate, even though they lose the ability to force the state to raise revenue to repay the debt." He noted that Indiana uses more lease-appropriation debt than Ohio, yet its credit rating is the same.

Mr. Azoff asserted that the utility of lease-appropriation debt offsets other concerns, including that general obligation debt places more of a burden on taxpayers. He advocated exploring decreasing the state's general obligation debt and increasing use of the lease-appropriation debt.

Chair Cole asked whether the treasurer's authority for issuing debt under certain programs derives from statute. Mr. Azoff confirmed that this is the case.

Chair Cole additionally asked about the annual savings for the state if current lease-appropriation bonds were changed to general obligation bonds. Mr. Azoff said he does not know the amount offhand but it would be significant. Chair Cole indicated that the proposal before the committee does not require the bonds to be a particular type, but creates new issuance authority for the purposes in Section 2i and allows the General Assembly to choose between lease-appropriation and general obligation debt. Mr. Azoff said the concern of the treasurer with this proposal is that, when there is an option to borrow on a general obligation basis, the proposal supports its use and discourages lease-appropriation debt.

Rep. Amstutz asked why Indiana's use of lease-appropriation debt has not affected its credit rating. Mr. Azoff answered that Indiana has a similar constitutional structure, including a strict cap on state debt. He said, unlike Ohio that has repeatedly amended its constitution to authorize additional debt for specific purposes, Indiana has not amended its constitution other than to allow debt to be incurred on a lease-appropriation basis.

Chair Cole observed that Ohio's general obligation debt is more expensive than Indiana's general obligation debt, and Mr. Azoff agreed.

Senator Bob Peterson commented that he has no expectation that Ohio is not going to repay general debt obligations, saying he would rather have the money in the treasury because he expects Ohio will repay its debts. Mr. Azoff agreed that is reasonable analysis, saying he is not suggesting Ohio should not repay debts.

Chair Cole noted the state might want the option to default but will never exercise it, wondering why the state should pay for the option. Mr. Azoff said the state would be in dire fiscal circumstances in a scenario in which it did not repay its debt.

Committee member Kathleen Trafford asked whether there is a concern that giving alternative authority to issue general obligation bonds to the General Assembly would change the legislature's perspective on how much debt to take on, for the reason that general obligation debt is long term while the legislature has a short-term perspective.

Mr. Azoff suggested the rationale instead might be that, if it is possible to borrow more cheaply now, rather than later, the legislature would take the less-expensive route.

Mr. Asher expressed concern about the public perception of the rationale for using lease-appropriation debt, specifically because the state could save money now by using general obligation debt

Mr. Azoff said he is not sure the public discussion would be all that different, adding that the concepts should be in constitution even if the Sinking Fund is removed.

Mr. Asher rephrased his concern, stating that Mr. Azoff's message is that lease-appropriation debt renders the state less obligated on its borrowing. He said the message that will be received is that the state does not have to repay its debt. He said he is not sure that is a positive statement to make. Mr. Azoff said there is marginal increase in terms of cost, but the taxpayers are not responsible. Mr. Asher noted the flip side is that there is no binding commitment, in other words, the debt is not very well secured. Mr. Azoff noted that the bond market is still able to accommodate this type of debt.

Mr. Azoff having concluded his presentation, Chair Cole thanked him for his remarks.

Kurt Kauffman
Acting Assistant Director
Office of Budget and Management

Chair Cole introduced Kurt Kauffman, acting assistant director of the Office of Budget and Management (OBM), to provide comment related to Article VIII.

Mr. Kauffman began by recalling for the committee two other presentations his office provided on previous occasions, one in June 2013 on the subject of state debt authorizations and limitations and, again, in October 2015, when OBM Director Timothy S. Keen provided comprehensive testimony on the history of Article VIII and Ohio's current debt position, and offered recommendations for potential modifications to Article VIII.

As background, Mr. Kauffman reviewed the framework within which state debt is authorized and issued. He said the debt authorization and issuance hierarchy includes, at the top, constitutional provisions that are approved by voters and that authorize the purpose and programs for which debt may be issued, set limitations on the amount of debt, establish the

pledged security, provide for a state tax exemption in some cases, and authorize the General Assembly to pass laws providing for the issuance of debt.

Mr. Kauffman said the next level in the hierarchy involves statutory law, which is enacted by the General Assembly and implements the debt issuance authority in accordance with the constitutional authorizations and limitations, establishes programmatic requirements, and identifies other requirements and funds.

Mr. Kauffman also described capital appropriations, which are enacted by the General Assembly in accordance with constitutional and statutory parameters, and which are intended to provide the needed amount of bond issuance authority to the bond issuer for a particular bond funded program.

Mr. Kauffman said the hierarchy finally includes the bond issuer, which is established by state law, and approves the issuance of a specific series of bonds to fund enacted capital project appropriations and establishes bond issuance terms and conditions.

Mr. Kauffman noted that the constitutional debt authorizations, with the exception of debt for veterans' bonus programs, provide that the General Assembly provide by law for the issuance of debt, including designation of the bond issuer, thus empowering the General Assembly to modernize debt issuance functions as deemed necessary.

According to Mr. Kauffman, this approach has allowed the state to consolidate bonds that share the same security and source of payment within a particular state bond issuer, thus saving money. He provided an example from 2000, when the General Assembly eliminated the Sinking Fund Commission as a bond issuer and consolidated the issuance of state general obligation bonds paid from the General Revenue Fund (GRF) under the Ohio Public Facilities Commission (PFC).

Mr. Kauffman explained that the PFC, comprised of the governor, treasurer, auditor, secretary of state, attorney general, and director of OBM, has served as the state's most active debt issuer since its creation in 1969. Mr. Kauffman described how, in 2012, the General Assembly eliminated the Ohio Building Authority (OBA), transferring OBA's lease-appropriation bond issuance responsibility to the state treasurer who issues similar types of subject-to-appropriation debt.

Mr. Kauffman said, currently, two entities perform debt issuance functions as provided for by law, the PFC and the state treasurer. He explained that PFC issues the state's general obligation debt backed by the GRF for K-12 and higher education, local public works infrastructure, natural resources, clean Ohio conservation, third frontier, and coal research and development. He said the treasurer has the responsibility for issuing highway general obligation debt and lease-appropriation debt for the departments of transportation and public safety, all payable from highway user receipts, as well as major new transportation infrastructure debt that is secured by and payable from federal highway grant receipts. In addition, Mr. Kauffman said the treasurer also issues lease-appropriation debt payable from the GRF for state office buildings, correctional and juvenile detention facilities, cultural and sports facilities, mental health and developmental

disability facilities, and parks and recreational facilities. He added that the treasurer serves as a conduit issuer for a number of bond programs that are not directly secured by state revenue.

Mr. Kauffman described the debt management and administration role of OBM is to serve as staff of the PFC, and to coordinate the scheduling of state bond issuances, review or approve debt service payment schedules, and act as lead agency for communication with credit rating agencies. He said the role of the treasurer's office is to pay state debt and fulfill certain reporting requirements related to state debt.

Addressing the draft reports and recommendations before the committee, Mr. Kauffman said OBM supports the proposal to repeal the identified inactive bond issuance sections and to protect the holders of any outstanding bonds issued under those sections by confirming the bonds continue to be secured pursuant to their original terms. He said OBM also strongly supports modernizing the lease-appropriation debt authorizations of Section 2i by replacing them with a general obligation debt authorization. He noted this change would be consistent with all GRF-backed debt authorizations passed by the voters since 1973, and would save taxpayer dollars by improving the credit rating and thus lowering the interest cost on all future issuances of debt for these purposes.

Mr. Kauffman said OBM also supports the repeal of Sections 7 through 11 of Article VIII, dealing with the Sinking Fund, because all of the functions historically performed by the Commissioners of the Sinking Fund are now defunct or, in the case of the Sinking Fund report required under Section 11, performed by other state entities. Mr. Kauffman reiterated Mr. Keen's suggestion that the debt reporting requirement be replaced by a new provision that would assign necessary debt reporting functions to the state treasurer.

Addressing a suggestion by Seth Metcalf, deputy treasurer, that removing the Sinking Fund would compromise public accountability in the debt issuance process, Mr. Kauffman said OBM does not share that concern, instead acknowledging that the interests of the public are protected by the fact that citizens always must approve debt authorization by voting for constitutional amendments. He noted multiple steps that protect public participation, among them that voters must approve a ballot issue, that the General Assembly's legislative process welcomes public comment, and that the PFC holds open meetings for the purpose of passing bond issuance resolutions.

Mr. Kauffman said these multiple opportunities for consideration of public comment protect the interests of public accountability, adding that unnecessary changes would risk creating uncertainty and confusion in the municipal bond market.

Finally, Mr. Kauffman said OBM supports the proposal to retain Article VIII, Sections 1 and 3 in their current form, and to revise Section 2 only to eliminate what would be an outdated reference to the Commissioners of the Sinking Fund.

Mr. Kauffman having concluded his remarks, Chair Cole asked him about the savings for the state if general obligation debt were issued instead of lease-appropriation bonds. Mr. Kauffman

said that for each \$100 million of bonds, the savings would be from \$1.5 to \$4 million, a savings he said would repeat each year, with there being a cumulative effect.

Reports and Recommendations (Cont'd.):

Having received the testimony of the two presenters, the committee returned to its consideration of the reports and recommendations.

Article VIII, Sections 2b, 2c, 2d, 2e, 2f, 2g, 2h, 2i, 2j, 2k, and Proposed Sections 2t and 18

The committee having had a second presentation of the report and recommendation at the beginning of the meeting, Chair Cole said the committee now would proceed to a vote on the report and recommendation, adding that the final version would include the discussion of presentations that occurred at both the March and April 2016 meetings of the committee.

Chair Cole noted that when Mr. Metcalf presented to the committee in March, he proposed additional amendment that would constitutionalize the functions of the state treasurer. He asked Mr. Azoff whether the committee could consider that question separately.

Mr. Azoff answered that the proposed amendment provided by Mr. Metcalf is intricately tied to the recommendation to repeal Sections 7 through 11. Regarding proposed Section 2t, Mr. Azoff said there is overlap because Section 2t does not express which state actor is performing the issuance function.

Chair Cole asked how the role of issuer has developed. Mr. Azoff said it seems to have been an evolution over time, with the Sinking Fund Commissioners initially performing that duty, with the PFC following. He said he is not sure there was a coherent approach, but confirmed that it is now controlled by statute.

Responding to this issue, Mr. Kauffman said there are exceptions for the veteran's bonus payments, which are designed to be self-implementing. He said those sections are longer and include implementation provisions.

Chair Cole then asked for a motion to issue the report and recommendation for Article VIII, Sections 2b, 2c, 2d, 2e, 2f, 2g, 2h, 2i, 2j, 2k, and Proposed Sections 2t and 18. Committee member Fred Mills so moved, and Sen. Peterson seconded the motion.

A roll call vote was taken, with the following members in favor:

Doug Cole
Rep. Amstutz
Herb Asher
Jo Ann Davidson
Fred Mills
Sen. Peterson
Kathleen Trafford

Chair Cole announced that the vote passed unanimously.

Article VIII, Sections 1, 2, and 3

Chair Cole then recognized Mr. Hollon for the purposes of providing a first presentation of a report and recommendation on Article VIII, Sections 1, 2, and 3.

Mr. Hollon provided a summary of the report and recommendation, which expresses the committee's view that Sections 1 and 3 be retained in their current form, with Section 2 being revised to remove a reference to the Sinking Fund. Mr. Hollon described the history and purpose of the three sections, noting that Section 1 provides the \$750,000 debt limit that has been in effect since the adoption of the 1851 Ohio Constitution, with Section 2 allowing an exception to that debt limit in the case of civil unrest, and Section 3 emphasizing the state's strong interest in debt avoidance. Mr. Hollon also noted the report and recommendation provides information regarding the activities of the Ohio Constitutional Revision Commission in the 1970s (1970s Commission), as well as litigation related to these sections. He said the report and recommendation also summarizes the presentations to the committee on the topic. He then summarized the conclusions of the committee as expressed in the report and recommendation, noting that the committee was recommending a change to Section 2 to reflect that the Sinking Fund and Sinking Fund Commission sections of the constitution (Sections 7 through 11) were being recommended for repeal, as described in a separate report and recommendation. Thus, the report and recommendation recommends the reference to the Sinking Fund be removed from Section 2.

Chair Cole asked for public comment on the report and recommendation, and there was none.

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

Chair Cole then asked Mr. Hollon to provide a first presentation on a report and recommendation for Article VIII, Sections 7, 8, 9, 10, and 11.

Mr. Hollon indicated the report and recommendation expresses the committee's view that sections of Article VIII related to the Sinking Fund be repealed for the reason that those functions are being performed by other state officers and agencies. Mr. Hollon described that the report and recommendation explains the background of Sections 7 through 11, as well as noting an unsuccessful recommendation by the 1970s Commission to eliminate these sections. Mr. Hollon said the report and recommendation also outlines the presentations to the committee on the topic. He said the report and recommendation expresses the conclusion of the committee that the provisions are obsolete because the purpose of the Sinking Fund and the duties of the Sinking Fund Commission have been replaced by other state entities primarily through authorizations contained in constitutional amendments approved by the electors of the state; and by statutory enactment made pursuant to the authorizations contained in these subsequent constitutional amendments.

Chair Cole noted that the next meeting will include a discussion of the two reports and recommendations that had been subject to a first presentation. He said he would hold the report and recommendation related to authorization of debt obligations until the committee has the

opportunity to discuss and vote on whether to issue the other two reports and recommendations, with all three reports and recommendations then being forwarded to the full Commission as a package.

Mr. Mills asked whether the next meeting of the committee would occur in May or June.

Mr. Hollon noted that the committee could meet in May, and that, if this occurs and the committee votes out the remaining two reports and recommendations, the package might be taken to the Coordinating Committee that same day and possibly to the full Commission in June.

Chair Cole said he is open to meeting in May if committee members are available. He said the committee would tentatively plan on May meeting, asking members to be prepared to discuss the reports and recommendations. He invited the presenters to attend the May meeting in order to support the committee's discussion.

Adjournment:

With no further business to come before the committee, the meeting was adjourned at 12:33 p.m.

Approval:

The minutes of the April 14, 2016 meeting of the Finance, Taxation, and Economic Development Committee were approved at the May 12, 2016 meeting of the committee.

/s/ Douglas Cole

Douglas R. Cole, Chair

/s/ Karla Bell

Karla L. Bell, Vice-chair