



OHIO CONSTITUTIONAL MODERNIZATION COMMISSION

**MINUTES OF THE
EDUCATION, PUBLIC INSTITUTIONS, AND LOCAL GOVERNMENT COMMITTEE**

**FOR THE MEETING HELD
THURSDAY, JUNE 9, 2016**

Call to Order:

Vice-chair Edward Gilbert called the meeting of the Education, Public Institutions, and Local Government Committee to order 9:40 a.m.

Members Present:

A quorum was not present with Vice-chair Gilbert, and committee members Brooks, Curtin, Sawyer, and Taft in attendance.

Approval of Minutes:

There being no quorum, the minutes of the April 14, 2016 meeting were not approved.

Presentation:

Article VI, Section 5 (Loans for Higher Education)

*David H. Harmon
Former Executive Director
Ohio Student Loan Commission (1984-1988)*

Vice-chair Gilbert announced the committee would be considering Article VI, Section 5, relating to loans for higher education. He introduced David H. Harmon, former executive director of the Ohio Student Loan Commission (OSLC), who provided information about his agency's role in facilitating college loans for Ohio students.

Indicating that he was employed with OSLC from 1977 to 1988, and was executive director from 1984-88, Mr. Harmon testified that 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. The state seeded the new organization with start-up funds that were later repaid in full.

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. 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 the Ohio Student Loan Commission.

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.

Mr. Harmon said the OSLC had a board of nine commissioners appointed by the governor and confirmed by the Ohio Senate. He said the commissioners met monthly to review agency operations and reported to the governor. Daily operations were under the control of an executive director who staffed and administered the agency. Mr. Harmon said he was the fifth executive director, serving in that capacity until 1988.

Mr. Harmon said the OSLC was a self-sustaining entity, but operated like other state agencies in that its budget was approved in the state's biennial budgeting process and the commission's employees were state employees.

Prior to joining the OSLC in 1977, Mr. Harmon said he had been associate director of education lending at the Ohio State University. He said he was asked to take over as executive director at the OSLC when the previous director retired in 1984. 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 the commission 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 the 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 the OSLC, resulting in the agency being renamed to 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. An additional factor was the creation of the Federal Direct Loan Program, created by President Bush as a pilot program in 1992. In 1993, President Clinton moved the Direct Loan Program from a pilot to fully operational status, anticipating that it would ultimately grow to replace the Guaranteed Student Loan Program.

Mr. Harmon said these changes caused the OSAC to vote 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. He said the OSAC ended its 36-year run at the end of the state's biennial budget cycle in 1997. He said 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. He noted that from the perspective of Ohio's students, schools, and lenders, it was a seamless transition.

Mr. Harmon added that the Guaranteed Student Loan Program and the Federal Direct Student Loan Program operated in parallel until 2010, when President Obama directed that all new loans be made through the Direct Loan Program. He said the switch to 100 percent Direct Lending was effective July 1, 2010 was enacted by the Health Care and Education Reconciliation Act of 2010 – the same legislation that created the Patient Protection and Affordable Care Act (PPACA), now known popularly as “Obamacare.”

Mr. Harmon observed that this development ended a public/private partnership that helped students and families pay for higher education for 35 years. He said guaranty agencies, which once totaled 50, with an agency designated in each state, shrank to only six or seven, because guarantors either merged with other agencies, closed their doors, or struggled to repurpose themselves.

He said, as a result of this change, the Direct Loan Program has become the primary source of assistance to students to help pay for postsecondary education. He said it is estimated that over 60 percent of all college and university students have to borrow to pay their bills and the resulting levels of indebtedness have become a social issue. He remarked that, in Ohio, 69 percent of all college graduates have student loan debt, which averaged just over \$29,000.

He said under the current system, all new federal loans are made directly by the federal government, but are disbursed, serviced, and collected by private contractors. While some private loan programs are offered by a variety of lending institutions, they represent a small fraction of the annual total of new loans being made.

Mr. Harmon then answered the committee's questions.

Committee member Paula Brooks asked Mr. Harmon to describe his current employment, and he said he coordinates services nationwide for nonprofit and for profit companies that deal in federally-backed direct loans for higher education. Ms. Brooks asked whether a system

involving private sector loans was adequate to meet the needs of students who need loans to be affordable.

Mr. Harmon said the cost of the student loan program is a factor, and with the private loan market there is a need for profit. He said government programs emphasize helping students. He said, in his view, a balance of programs is the best approach.

Governor Taft noted that Ohio created the program in 1961, but the effective date of the section is 1965, wondering how Section 5 came to be in the constitution. Mr. Harmon said the point of the constitutional section in 1965 was to allow the Ohio Student Loan Commission to become the guaranteed agency under the federal loan program. He said that change allowed the state to have the federal agency housed within state government.

Gov. Taft asked whether that section is now needed. Mr. Harmon answered that, 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.

Gov. Taft asked whether Mr. Harmon knew of any adverse consequences if the section were repealed. Mr. Harmon answered that under the current circumstances it is not needed.

Vice-chair Gilbert commented on Mr. Harmon's testimony indicating the federal direct student loan program had been part of the same legislation that produced Obamacare, asking whether a potential future repeal of Obamacare might impact the student loan program and revive a need for Ohio to have a constitutional section relating to student loans.

Mr. Harmon said although the legislation was passed under same the omnibus act, the two programs are separate. Thus, he said, if Obamacare were repealed it would not affect the federal direct loan program. He said, however, that he anticipates other changes in the future that may shift some of the burden back to the states.

Vice-chair Gilbert asked whether such a development would affect Article VI, Section 5.

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 the OSLC, but any need for new law could be done by statute rather than by constitutional amendment.

Rae Ann Estep
Former Executive Director
Ohio Student Aid Commission (1995-97)

Vice-chair Gilbert then recognized Rae Ann Estep, who is currently deputy director of operations at the Office of Budget and Management (OBM). She testified that she was appearing before the committee to offer information about her experience in her former position as executive director of the Ohio Student Aid Commission (OSAC) from 1995-1997. Ms. Estep said the mission of the OSAC was to guarantee the loans to persons or the parents of persons attending or planning

to attend eligible academic institutions. She said OSAC's primary duty 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. She said the OSAC also faced the threat of cuts in funding from the federal government 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.

Vice-chair Gilbert said a major complaint about student loans is the high interest rates that accompany them, asking whether a repeal of Section 5 would affect interest rates.

Ms. Estep deferred to Mr. Harmon to answer the question. Mr. Harmon answered that interest rates reflect the cost of borrowing at the federal level. He said the rates are variable, but the real problem for students is not the rates but rather the level of indebtedness. He said, generally, rates have been at a level reflecting where the market is over the years.

Ms. Brooks asked Mr. Harmon about a program in Maryland designed to keep graduates in the state by forgiving student loans if students pursue work in needed fields. She asked whether Mr. Harmon thought the committee should review that type of program and whether removing Section 5 might interfere with an effort to create such programs in Ohio.

Mr. Harmon said an aspect of student lending is the selective forgiveness or repayment in exchange for students entering fields that are being promoted. He said such a program could be handled separately from the current constitutional provision. He noted that type of program was never part of the OSLC. He said, if the state wanted to create such a program, it could do so legislatively.

Elaborating further on the topic, Mr. Harmon said there are a lot of those types of programs around the country; some are private sector, while others originate with the local government. He noted that when he was with the OSLC, Vinton County put together a local program to attract doctors to the community. He noted other programs that encourage teachers to take employment in low-income communities.

Vice-chair Gilbert asked whether eliminating Section 5 could prevent such programs, and Mr. Harmon answered that kind of program was never part of Section 5, and could be done by legislation.

Report and Recommendation:

Article VI, Section 3 (Public School System, Boards of Education)

Vice-chair Gilbert recognized Shari L. O’Neill, counsel to the Commission, for the purpose of giving a presentation of a report and recommendation for Article VI, Section 3 (Public School System, Boards of Education).

Ms. O’Neill noted that the provision bears some relevance to ongoing litigation in the case of *Youngstown City Sch. Dist. Bd. of Edn. v. State of Ohio*, 10th Dist. App. No. 15AP-941, currently pending in the Franklin County Court of Appeals. She said, as an update, oral argument was held in that case on April 14, 2016. She added that the docket reflects that one judge on the panel, Judge William Klatt, recused, and Judge Lisa Sadler replaced him on the panel by court order on April 18, 2016. She said no further developments on that case are recorded, and the decision of the court remains pending.

Ms. O’Neill described that Article VI, Section 3 authorizes the enactment of laws for the organization, administration and control of the state’s public school system, reserving to city school districts the power by referendum to determine the number of members and the organization of their boards of education.

She indicated that the report and recommendation provides the history of the section, indicating it was adopted during the Progressive Era, and created, for the first time, a constitutional, statewide framework for school governance by mandating law that would organize, administer, and control a statewide public school system while allowing city school districts the power by referendum to organize their own school boards.

Ms. O’Neill described that the report and recommendation empowers the General Assembly to make laws governing the public school system and gives voters in some, but not all, school districts the power to determine by referendum the number of members and the organization of the district board of education. She said, under the provision, voter control of local school districts applies only to school districts “embraced wholly or in part within any city” and thus does not extend to “non-city” school districts. She further noted that the report and recommendation outlines activity of the 1970s Ohio Constitutional Revision Commission, which recommended no change to the section, as well as detailing presentations provided by several school board members who explained their roles to the committee. She said the report and

recommendation records the committee's conclusion that the current state of the law as it has developed around Article VI, Section 3 lends a meaning that could be lost if the section were changed. Thus, she said, the committee recommends Article VI, Section 3 be retained in its current form.

The committee briefly discussed the significance of having a second reading on Article VI, Section 3, wondering whether an additional reading, as well as discussion, was in order due to the lack of a quorum, and considering whether the *Youngstown City School District* case was an impediment to the committee moving forward on the report and recommendation. Steven C. Hollon, executive director, explained that the committee would be meeting again in September and could have an additional reading, with a potential vote, at that time.

Discussion:

The committee discussed what its next steps should be with regard to Article VI, Section 5. Gov. Taft suggested the Department of Higher Education might wish to opine on whether the section should be retained. Steven C. Hollon, executive director, said he had been in contact with counsel from the Department of Higher Education who had referred him to Ms. Estep, but that he would contact the department again to see if additional names could be provided.

Gov. Taft said the precise question is whether, if Section 5 were not in the constitution, the legislature could enact statutes related to or guaranteeing student loans in the future.

Ms. Brooks agreed, stating she would want to preserve authority for loan forgiveness programs, and if that authority derives from the constitutional provision it would be important to retain it.

Gov. Taft wondered if the attorney general could provide an opinion on that question.

Steven H. Steinglass, senior policy advisor, said, generally speaking, the General Assembly has broad plenary power to do what it wants in a range of areas. He added the precise question is whether, if the General Assembly acted, there would be other provisions of the constitution that might constrain it. He noted Section 5 has a "notwithstanding clause," indicating the drafters must have had some concerns that there were other constitutional provisions that might have inhibited the authority the General Assembly. He identified that as an area of research that could be pursued.

Mr. Steinglass further observed that in 1964-65 the Ohio Supreme Court threw out legislation that used state revenue bonds to fund economic development.¹ He said the following year Article VIII, Section 13 was approved, creating a constitutional basis for that kind of economic development. He hypothesized that the people who supported the student loan guarantees wanted to be careful and so went the amendment route and put in the "notwithstanding" language.

Senator Tom Sawyer asked Mr. Steinglass to look into that issue for the September meeting of the committee.

¹ *State ex rel. Saxbe v. Brand*, 176 Ohio St. 44, 197 N.E.2d 328 (1964).

Representative Mike Curtin asked whether the OCMC has the authority to request an attorney general opinion if it is considering eliminating a constitutional provision, noting that there is a concern about unintended consequences. Alternately he wondered whether the Legislative Service Commission could be consulted.

Mr. Hollon said staff would seek out all possibilities. He noted other committees have been addressing provisions which are obsolete. He said this section raises some interesting questions that would be explored.

Ms. Brooks said it would be important to get more data from an economic development viewpoint, suggesting maybe the section does not need to be eliminated but could be amended.

Mr. Hollon noted this is just the beginning of the committee's review of the section, and that further information, including other speakers, would be provided at a future meeting.

Vice-chair Gilbert noted the committee would not get to a discussion about Article VI, Section 6 (Tuition Trust Authority) due to a lack of a quorum, and said he expected that topic to come up at the next meeting.

Adjournment:

With no further business to come before the committee, the meeting adjourned at 10:33 a.m.

Approval:

The minutes of June 9, 2016 meeting of the Education, Public Institutions, and Local Government Committee were approved at the September 8, 2016 meeting of the committee.

/s/ Chad A. Readler

Chad A. Readler, Chair

/s/ Edward L. Gilbert

Edward L. Gilbert, Vice-chair