



OHIO CONSTITUTIONAL MODERNIZATION COMMISSION

REPORT AND RECOMMENDATION

OHIO CONSTITUTION ARTICLE VIII SECTIONS 1, 2, AND 3

STATE DEBT

The Ohio Constitutional Modernization Commission adopts this report and recommendation regarding Sections 1, 2, and 3 of Article VIII of the Ohio Constitution concerning state debt. It is issued pursuant to Rule 10.3 of the Ohio Constitutional Modernization Commission's Rules of Procedure and Conduct.

Recommendation

The Commission recommends that Article VIII, Sections 1 and 3 be retained in their current form, and that Section 2 be revised to eliminate an outdated reference.

Specifically, the Commission recommends retaining the \$750,000 debt limit in Section 1 because it is important to public perception of state spending, and because the limit has not created an obstacle to state fiscal planning or growth in the years since its adoption in 1851.

The Commission further recommends a revision to Section 2 that would remove a reference to the Sinking Fund based on the Commission's separate recommendation that sections of Article VIII creating the Sinking Fund and the Sinking Fund Commission be repealed.

Finally, the Commission recommends Section 3 be retained in its current form for the reason that it emphasizes a public policy encouraging debt avoidance and sound financial practice.

Background

Article VIII deals with public debt and public works, and was adopted as part of the 1851 constitution. As proposed by delegates to the 1851 Constitutional Convention, Article VIII, Sections 1, 2, and 3 bar the state from incurring debt except in limited circumstances, primarily involving cash flow and military invasions and other emergencies.

Section 1 sets a strict limit on the dollar amount of debt the state may incur, providing:

The state may contract debts to supply casual deficits or failures in revenues, or to meet expenses not otherwise provided for; but the aggregate amount of such debts, direct and contingent, whether contracted by virtue of one or more acts of the General Assembly, or at different periods of time, shall never exceed seven hundred and fifty thousand dollars; and the money, arising from the creation of such debts, shall be applied to the purpose for which it was obtained, or to repay the debts so contracted, and to no other purpose whatever.

Section 2 recognizes that civil unrest could necessitate exceeding the \$750,000 debt limit created in Section 1, and so provides:

In addition to the above limited power, the state may contract debts to repel invasion, suppress insurrection, defend the state in war, or to redeem the present outstanding indebtedness of the state; but the money, arising from the contracting of such debts, shall be applied to the purpose for which it was raised, or to repay such debts, and to no other purpose whatever; and all debts, incurred to redeem the present outstanding indebtedness of the state, shall be so contracted as to be payable by the sinking fund, hereinafter provided for, as the same shall accumulate.

Emphasizing the importance of the limits set in Sections 1 and 2, Section 3 provides:

Except the debts above specified in sections one and two of this article, no debt whatever shall hereafter be created by or on behalf of the state.

Amendments, Proposed Amendments, and Other Review

The Ohio Constitutional Revision Commission (1970s Commission) studied Article VIII in depth and made extensive recommendations concerning how the state incurs debt.¹ The 1970s Commission recommended the repeal of the \$750,000 debt limitation in Article VIII, Section 1, replacing it with a limit based on six percent of the average annual revenue of the state.² In its December 31, 1972 report, the 1970s Commission proposed the following changes in relation to Article VIII, Sections 1 through 3:

- Established “a constitutional debt formula, based on a moving average of state revenues, by which the state, by a three fifths (3/5) vote of the General Assembly, could incur debt for capital improvement purposes. The proposed formula would in effect limit the amount of money which could be spent to repay such debt to six per cent (6%) of the base, which is the average of the revenues of the state, as defined in the Constitution, for the then preceding two fiscal years. The proposed formula would also limit the amount of the principal of new debt which could be issued in any fiscal year to eight per cent (8%) of the base, and require that a specific part of the total be repaid every fiscal year.”

- Continued “the authority of the state to contract debt outside the debt limit to repel invasion, suppress insurrection, and defend the state in war.”
- Authorized “short-term borrowing by the state to meet appropriations and require[d] that money borrowed for this purpose be repaid within the fiscal year in which it is borrowed.”
- Required “voter approval in a referendum for incurring debt outside the debt limit or for purposes other than capital improvements.”
- Required “the General Assembly to prescribe the methods and procedures for evidencing, refunding, and retiring state debt, and to provide for its full and timely payment.”
- Required “the General Assembly to perform certain functions of a technical nature in connection with the state’s bonded debt, and impose certain duties on the Treasurer of State in regard to it.”
- Permitted “that state debt be contracted, and the credit of the state be extended, only for a public purpose declared by the General Assembly in the law authorizing such debt or use of credit.” * * *³

Some of these recommendations were the subject of the General Assembly’s 1977 ballot proposal that, among other actions, would have eliminated the \$750,000 debt limitation in Section 1, as well as the debt restrictions contained in Sections 2 and 3. As presented on the November 8, 1977 ballot, Issue 4 stated:

“PROPOSED CONSTITUTIONAL AMENDMENT

To adopt Section 1 of Article VIII and repeal Sections 1, 2, 2b, 2c, 2d, 2e, 2f, 2g, 2h, 3, 7, 9, and 10 of Article VIII and Section 6 of Article XII of the Constitution of Ohio

1. To repeal the general state constitutional debt limit of \$750,000 and replace it with authority to incur debt for capital improvements by a two-thirds majority vote of each house of the general assembly within specified limitations directly related to state revenues.
2. To permit the state to contract debt without limitation on amount of purpose, in addition to the authority specified above, if that debt is submitted to a vote of the electors by a three-fifths majority vote of each house of the general assembly and approved by a majority of the electors voting on the question.
3. To require the general assembly to retire at least 4% of the state’s indebtedness each year.

4. To permit the state to borrow funds to meet a current year's appropriations if any such loan is repaid out of that year's revenues.
5. To repeal part of the constitutional requirements relating to a sinking fund and to require that the general assembly provide for the repayment of state debt.
6. To enumerate purposes and amounts for which the first \$640 million of capital improvement debt would have to be appropriated.

(Proposed by Resolution of the General Assembly of Ohio)⁴

Issue 4 was overwhelmingly defeated by a margin of 72.5 percent to 27.5 percent, and there has been no effort since to revise Article VIII, Sections 1, 2, or 3.⁵

Litigation Involving the Provisions

The Supreme Court of Ohio has issued two influential decisions regarding these sections of Article VIII.

In *State ex rel. Shkurti v. Withrow*, 32 Ohio St.3d 424, 513 N.E.2d 1332 (1987), the Court concluded Section 2's reference to the "present outstanding indebtedness of the state" was meant to address the state's fiscal status in 1851. In *Shkurti*, the General Assembly had enacted legislation directing the treasurer of state to issue bonds to repay outstanding advances by the federal government to the Ohio unemployment compensation program. When the treasurer refused to issue the bonds because doing so was not constitutionally authorized, the director of the Office of Budget and Management (OBM), brought an action in mandamus to compel the issuance of the bonds. Rejecting the argument that Section 2 authorized the bond issuance because the intent was to relieve the "present outstanding indebtedness of the state," the Court found the sole purpose of Section 2's exception to the Article VIII debt restrictions was to pay down the debt that existed in 1851:

First, the precise modification of "outstanding indebtedness" by the definite article "the," and the adjective "present," virtually compels this conclusion. Second, examination of the relevant constitutional debates convinces us that the then outstanding debt concerned the framers. They debated the wisdom of the sinking fund procedure for the retirement of that debt, the equity and practicality of relatively early retirement of the debt versus more extended retirement periods and, consequently, the amount that should be committed annually to the sinking fund to retire the principal and interest on the debt. The debates do not indicate any broader purpose for this exception.

Id., 32 Ohio St.3d at 426, 513 N.E.2d at 1334.

State ex rel. Ohio Funds Mgmt. Bd. v. Walker, 55 Ohio St.3d 1, 561 N.E.2d 927 (1990), presented another opportunity for the Court to consider Sections 1, 2, and 3 of Article VIII. In that case, the General Assembly sought to address General Revenue Fund cash flow issues by

enacting R.C. 113.31 *et seq.*, legislation that created the Ohio Funds Management Board (“the Board”) and authorized the state treasurer, at the recommendation of the Board, to issue “revenue anticipation notes.” As part of this procedure, the statute required the director of OBM to provide relevant financial data to the Board and the treasurer, and the OBM director refused, arguing that doing so would allow the issuance of the “revenue anticipation notes,” which are a form of state debt prohibited by Article VIII, Sections 1 and 3. The Board then pursued an action in mandamus, arguing the notes were not debt because they would not be designated as a debt, would not be guaranteed by the faith and credit of the state, and would be paid only from a special repayment fund. The Board further asserted that future taxes would not be levied to pay the notes, that taxes had already been levied, and that the issuance of the notes and the appropriation of monies to pay the notes would occur in the same fiscal year. The Court disagreed, holding that the statutory scheme that created the Board and authorized the issuance of the notes was unconstitutional:

This court, in its history of reviewing Sections 1, 2, and 3 of Article VIII of the Ohio Constitution, has been a watchful guardian of the concern of the framers of these constitutional prohibitions against the creation of state debt not authorized by the Constitution, and we feel constrained to again give heed to such concerns. There have been few exceptions to the constitutional constraints of Sections 1 and 3 of Article VIII allowed by this court. In essence such exceptions have been those financial transactions involving the erection or construction of a revenue-producing public building or facility, whose proceeds were placed in a “special fund.” [Citations omitted.]

* * *

However, both parties agree that a “special fund” obligation is not involved in the instant case. No bonds are to be issued pursuant to this new law, no facilities will be provided or constructed with the note proceeds, and no income will be generated by any facility to retire the obligations. The notes will be retired by tax revenues.

Id., 55 Ohio St.3d at 9, 561 N.E.2d at 934.

Observing that pre-existing statutes afforded the necessary devices for addressing cash flow issues, the Court held the procedure set out in R.C. 113.31 *et seq.* was unconstitutional because the scheme authorized state debt in derogation of Article VIII, Sections 1 and 2. *Id.*, 55 Ohio St.3d at 7, 11; 561 N.E.2d at 932, 935-36.

Presentations and Resources Considered

Metcalf Presentation

Seth Metcalf, deputy treasurer and executive counsel for the Ohio Treasurer of State, presented to the Finance, Taxation, and Economic Development Committee on May 8, 2014, March 12, 2015, and March 10, 2016. Mr. Metcalf pointed out that Section 1’s \$750,000 debt limitation,

representing 46 percent of the state’s general revenue expenditures at the time the limit was set, is no longer meaningful and could be raised. He did not suggest a specific figure, but pointed out that today’s debt of \$10.93 billion, as constitutionally authorized by the electors of the state, represents approximately 38 percent of the state’s general revenue expenditures.

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.

Prof. Briffault indicated that debt provisions began to be placed in state constitutions in the 1840s as a result of economic distress caused by excessive state borrowing to finance the construction of canals, turnpikes, and railroads. He described how states adopted provisions limiting state governments in their financial transactions, including limiting their ability to invest, to take an equity share in private enterprises, to lend credit, and to act as a surety. Limitations were also placed on the amount of debt that could be accumulated, as well as the procedures for entering into that debt. Prof. Briffault noted that many states, including Ohio, still have dollar caps on debt that are the same as they were in the 1840s or 1850s.

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. To get around the low limits, state constitutions may allow exceptions for invasion, wartime, or emergencies. He said these limitations generally apply to long-term debt, which doesn’t have to be paid within the year in which it was issued, but exempt short-term debt, revenue bonds, and other nonguaranteed debt. 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.

Describing other approaches states have taken, Prof. Briffault said it is possible to have a constitution with no debt limit, with the state legislative body amending the debt limit, rather than the voters doing so through an amendment process. He said another approach to debt issuance involves legislative approval followed by voter approval by a simple majority. Prof. Briffault said in this model, the procedure is for classic guaranteed debt, and doesn’t cover short-term debt, revenue bonds, or non-guaranteed debt. He described another approach, in which states impose a flexible limit, or “carrying capacity,” on debt. In that model, the constitution makers think the state can carry a certain amount of debt and that voter approval is not needed. He said one way states calculate this “carrying capacity” is by considering debt service as a

percentage of state revenues based upon a rolling three- or five-year average. A final approach identified by Prof. Briffault is where a state calculates the acceptable amount of debt or debt service based upon a percentage of state revenues, and then requires voter approval to go beyond that limit.

Summarizing these approaches, Prof. Briffault identified two “big pictures.” One approach is where the legislature proposes and voters decide, based on the notion that debt is long term and the decision to borrow requires a constitutional amendment. He said the other, “carrying capacity,” approach is binding, but recognizes that some financial arrangements are technical, and should not be decided by voters on a ballot proposition basis but left to the legislature to determine how much debt to devote to state enterprises. Prof. Briffault noted that some states have combined these two models.

Keen Presentation

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

Mr. Keen said Ohio’s earliest debt was issued by the Ohio Canal Commission in 1825 to finance the canal system, with the General Assembly in 1837 passing the Ohio Loan Law intended to assist in the building of additional canals by loaning up to one-third of the cost of construction to Ohio businesses that were able to raise the remaining costs. In practice, however, most of the loans went to railroad companies, spurring railroad growth in the state that competed with the canal business. Mr. Keen indicated that the end result of the debt issuance was an improved transportation system, but the debt also over-extended the treasury and the state had to borrow money to meet its expenses. Mr. Keen noted that, by 1839, Ohio had a deficit of more than one quarter of a million dollars and the Ohio Loan Law was repealed the next year. After reforms of the state’s taxation and tax collection system in 1846, the debt was refinanced and Ohio was able to service the debt, but the concern over debt was a subject of discussion at the Constitutional Convention of 1850-1851. Mr. Keen pointed out that this concern is the source of the \$750,000 debt limit in Article VIII, Section 1.

Mr. Keen continued that Section 2, as well as select other sections of Article VIII, expressly authorizes the purposes and amounts for which state debt may be issued, while Section 3 prohibits any other debt except that which has been expressly authorized. Further, he said, Section 4 prohibits the state from lending its aid and credit, and Section 5 prohibits the state from assuming the debts of any political subdivision or corporation. Mr. Keen concluded that the state’s challenging financial history at the time of enactment of Article VIII explains Ohio’s conservative approach to debt, debt authorization, and debt repayment.

Turning to the present-day approach to state debt, 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.

He said non-general obligation lease-appropriation debt is authorized to provide facilities for housing branches and agencies of state government and their functions, including state office buildings, correctional and juvenile detention facilities, and cultural, historical and sports facilities; mental health and developmental disability facilities; and parks and recreational facilities.

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. As a result, Mr. Keen said he would not recommend wholesale reform to Article VIII, and advocated retaining the \$750,000 debt limit in Section 1 because it forms the basis of Ohio's balanced budget requirement.

Azoff Presentation

On April 14, 2016, the committee heard a presentation by Jonathan Azoff, director of the Office of Debt Management and senior counsel to the Ohio Treasurer of State, on the role of his office in relation to state debt.

Mr. Azoff indicated the treasurer's office supports changing the reference to the sinking fund in Section 2 to the word "state." He said this recommendation is based on the fact that a true "sinking fund" no longer exists, further noting that Sections 7 through 11 of Article VIII are recommended for repeal because the state no longer utilizes a sinking fund, with the duties of the Sinking Fund Commission now being performed by the treasurer's office.

Kauffman Presentation

Kurt Kauffman, acting assistant director of the Office of Budget and Management (OBM), appeared before the committee on April 14, 2016 to provide comment related to Article VIII.

In addition to his other comments, 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.

Additional Presentations

In addition to the major presentations by Mr. Metcalf, Prof. Briffault, Mr. Keen, Mr. Azoff, and Mr. Kauffman, as recounted above, the committee benefited from comments by Gregory W. Stype of Squire Patton Boggs (US) LLP, who serves as bond counsel to the Ohio Public

Facilities Commission; and Steven H. Steinglass, senior policy advisor to the Ohio Constitutional Modernization Commission.

On December 10, 2015, Mr. Steinglass pointed out that the framers of the 1851 constitution did not see the \$750,000 limit as a ceiling on borrowing, but rather as part of a constitutional framework that sought to bar incurring debt. He noted that the practice of incurring debt through specific constitutional authorizations did not begin until the 20th century. At the same meeting, Mr. Stype clarified that the \$750,000 limitation set out in Article VIII, Section 1, is not so much a limit on capital financing, as it is a limit on borrowing to contract debts to supply “casual deficits or failures in revenue, or to meet expenses not otherwise provided for.” Mr. Stype also noted that, in contrast to some other states, Ohio has long managed its cash flow needs in each fiscal year by using a “total operating fund” approach, rather than borrowing to meet cash flow needs.⁶

Discussion and Consideration

In reviewing Article VIII, Section 1, the Finance, Taxation, and Economic Development Committee discussed whether to recommend retaining or modernizing the \$750,000 debt limit, which dates from 1851. Although the dollar amount of the debt limit is outdated, the committee concluded the limit is not an obstacle to state economic growth because voters have approved amendments to Article VIII authorizing the issuance of debt in excess of that amount. Thus, the committee decided to recommend retention of the \$750,000 debt limit in Section 1.

With regard to Section 2, the committee recognized the need to retain the state’s ability to contract debt in the event of a calamity such as war or insurrection. However, based on the committee’s decision to recommend repeal of sections relating to the Sinking Fund and the Sinking Fund Commission, the committee agreed the Sinking Fund reference should be removed from Section 2.

Regarding Section 3, the committee agreed that it was important to maintain that section’s emphasis on avoiding debt, recognizing that all state debt ultimately must be approved by the voters. Thus, the committee concluded it would be appropriate to retain Section 3 in its current form.

Action by the Finance, Taxation, and Economic Development Committee

After formal consideration by the Finance, Taxation, and Economic Development Committee on April 14, 2016 and May 12, 2016, the committee voted on May 12, 2016 to issue a report and recommendation recommending that Article VIII, Sections 1, and 3 be retained in their current form, but that Section 2 be revised to remove the reference to the Sinking Fund, replacing it with a reference to “the state.”

Presentation to the Commission

On June 9, 2016, on behalf of the Finance, Taxation, and Economic Development Committee, committee Chair Doug Cole appeared before the Commission to present the committee’s report

and recommendation, by which it recommended retention of Article VIII, Sections 1 and 3 in their current form, and an alteration to Section 2 to remove reference to the Sinking Fund.

Chair Cole explained the history and purpose of the provisions, emphasizing that, although the debt limit is outdated, proposing a higher limit is problematic, and expression of a debt limit is important to the public's perception of state spending. He said the low debt limit has not been an obstacle to the achievement of state financial goals because other provisions in the constitution allow the state to incur debt to meet its needs. Chair Cole also noted the committee's conclusion that Section 2's specific reference to the Sinking Fund as a source for paying down state debt is outdated and should be replaced with the more generic word "state." Finally, he expressed the committee's observation that Section 3 expresses and emphasizes a laudable policy of debt avoidance.

On September 8, 2016, on behalf of the Finance, Taxation, and Economic Development Committee, Executive Director Steven C. Hollon appeared before the Commission to provide a second presentation of the committee's report and recommendation. Mr. Hollon noted the report and recommendation's expression that Sections 1, 2, and 3 were intended to encourage careful stewardship of state financial resources, reiterating the committee's view that the sections remain relevant for this reason. Mr. Hollon again noted that Section 2's reference to the Sinking Fund was being recommended for removal due to the fact that the state no longer uses the Sinking Fund to pay down state debt.

Action by the Commission

At the Commission meeting held September 8, 2016, Commission member Herb Asher moved to adopt the report and recommendation for Article VIII, Sections 1, 2, and 3, a motion that was seconded by Commission member Jo Ann Davidson.

A roll call vote was taken, and the motion passed unanimously by a vote of 25 to zero.

Conclusion

The Ohio Constitutional Modernization Commission concludes that Article VIII, Sections 1 and 3 should be retained, and that Section 2 should be altered in order to remove reference to the Sinking Fund, replacing it with a generic reference to "the state."

Date Adopted

After formal consideration by the Ohio Constitutional Modernization Commission on June 9, 2016, and September 8, 2016, the Commission voted to adopt the report and recommendation on September 8, 2016.

/s/ Charleta B. Tavares
Senator Charleta B. Tavares, Co-Chair

/s/ Ron Amstutz
Representative Ron Amstutz, Co-Chair

Endnotes

¹ Ohio Constitutional Revision Commission Recommendations for Amendments to the Ohio Constitution, Part 2, State Debt (Dec. 31, 1972), <http://www.lsc.ohio.gov/ocrc/recommendations%20pt2%20state%20debt.pdf> (last visited Feb. 5, 2016).

² *Id.* at 23-31.

³ *Id.* at 12-13.

⁴ Source: Youngstown *Vindicator*, Nov. 6, 1977. Available at: <https://news.google.com/newspapers?id=zfRJAAAAIIBAJ&sjid=sYQMAAAAIBAJ&pg=2945,1851669&hl=en> (last visited March 28, 2016).

⁵ See <http://www.sos.state.oh.us/sos/elections/Research/electResultsMain/1970-1979OfficialElectionResults/GenElect110877.aspx> (last visited March 28, 2016); and <http://www.sos.state.oh.us/sos/upload/elections/historical/issuehist.pdf> (last visited March 28, 2016).

Meanwhile, voters have approved multiple constitutional amendments authorizing the issuance of state debt for the purposes of subsidizing low cost housing (Section 14, approved Nov. 2, 1982; Section 16, approved Nov. 6, 1990); financing coal research (Section 15, approved Nov. 5, 1985); financing local government efforts to improve roads, water, sewer, and other infrastructure (Section 2k, approved Nov. 3, 1987); improving parks, conservation and natural resources (Section 2l, approved Nov. 2, 1993); funding public works and highways (Section 2m, approved Nov. 7, 1995); funding school facilities (Section 2n, Section 17, approved Nov. 2, 1999); funding environmental conservation projects (Section 2o, approved Nov. 7, 2000; Section 2q, approved Nov. 4, 2008); creating jobs and stimulating economic growth (Section 2p, approved Nov. 8, 2005; amendment approved May 4, 2010); compensating veterans of the Persian Gulf, Afghanistan and Iraq Conflicts (Section 2r, approved Nov. 3, 2009); and for capital improvements (Section 2s, approved May 6, 2014). Source: Ohio Constitution Law and History Table of Proposed Amendments, Cleveland-Marshall College of Law Library, available at: <http://guides.law.csuohio.edu/ohioconstitution/ohioconstitutionamendmentstable> (last visited March 28, 2016).

⁶ R.C. 126.06 describes this process, providing:

The total operating fund consists of all funds in the state treasury except the auto registration distribution fund, local motor vehicle license tax fund, development bond retirement fund, facilities establishment fund, gasoline excise tax fund, higher education improvement fund, highway improvement bond retirement fund, highway capital improvement fund, improvements bond retirement fund, mental health facilities improvement fund, parks and recreation improvement fund, public improvements bond retirement fund, school district income tax fund, state agency facilities improvement fund, state and local government highway distribution fund, state highway safety fund, Vietnam conflict compensation fund, any other fund determined by the director of budget and management to be a bond fund or bond retirement fund, and such portion of the highway operating fund as is determined by the director of budget and management and the director of transportation to be restricted by Section 5a of Article XII, Ohio Constitution.

When determining the availability of money in the total operating fund to pay claims chargeable to a fund contained within the total operating fund, the director of budget and management shall use the same procedures and criteria the director employs in determining the availability of money in a fund contained within the total operating fund. The director may establish limits on the negative cash balance of the general revenue fund within the total operating fund, but in no case shall the negative cash balance of the general revenue fund exceed ten per cent of the total revenue of the general revenue fund in the preceding fiscal year.