OHIO CONSTITUTIONAL MODERNIZATION COMMISSION

REPORT AND RECOMMENDATION

OHIO CONSTITUTION
ARTICLE VIII
SECTIONS 2b, 2c, 2d, 2e, 2f, 2g, 2h, 2i, 2j, 2k
AND PROPOSED SECTIONS 2t AND 18

AUTHORIZATION OF DEBT OBLIGATIONS

The Ohio Constitutional Modernization Commission issues this report and recommendation regarding Article VIII of the Ohio Constitution concerning the authorization of debt obligations. 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recommends that Sections 2b, 2c, 2d, 2e, 2f, 2g, 2h, 2j, and 2k, dealing with authorization of debt obligations, be repealed for the reason that all involve bonds that have been fully issued and paid off, or for which bonding authority has lapsed due to the passage of time.

Further, in order to protect the holders of any outstanding bonds or obligations issued under the authority of Sections 2b, 2c, 2d, 2e, 2f, 2g, 2h, 2j, or 2k, the Commission recommends the adoption of new Section 18, either through language proposed in Attachment A, or through substantially similar language. The new provision 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require that any obligation entered into by the state under the authority of any section of Article VIII that is later repealed remains in full force and effect and continues to be secured in accordance with the original terms of the obligation.

Finally, the Commission recommends the adoption of a new Section 2t, either through language proposed in Attachment B, or through substantially similar language, 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.

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 except in limited circumstances, primarily involving cash flow and military invasions and other emergencies. *See* Article VIII, Sections 1, 2, and 3.

For nearly one hundred years, 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, a provision that authorized debt for establishing a system of adjusted compensation for Ohio veterans of World War I.[2] Section 2a was later repealed in 1953.

Then, over a forty year period, from 1947 through 1987, voters approved ten constitutional provisions within Article VIII authorizing the creation of additional debt. The ten sections, as discussed herein, include Sections 2b, 2c, 2d, 2e, 2f, 2g, 2h, 2i, 2j, and 2k.

Section 2b concerns the authorization of debt relating to adjusted compensation for service in World War II. It was adopted in 1947 and established a system of compensation for World War II veterans and their survivors by allowing the state to issue up to $300 million in state bonds. To receive benefits, veterans had to be residents of the state for at least one year before entering service. Qualifying veterans or their survivors could receive up to $400 in benefits. Veterans who served in the Merchant Marine, who were confined in penal institutions, or who were dishonorably discharged were ineligible. This provision required applications for payment to veterans or their survivors to be made before July 1, 1950.

Section 2c concerns the authorization of debt to construct the state highway system. It was adopted in 1953 and allowed the state to incur debt of up to $500 million through the sale of bonds for the building and improvement of the state highway system. Section 2c was the first amendment to allow the state to incur debt for internal improvements, and is one of six amendments in Article VIII specifically providing funds for highways and roads.[3] No debt could be incurred under this section past March 1962, and all debt incurred under this authority had to be retired by 1972.

Section 2d concerns the authorization of debt for the payment of Korean Conflict bonuses. It was adopted in 1956 for the purpose of compensating Ohio veterans of the Korean Conflict who served on active duty from June 25, 1950 through July 19, 1953. The provision authorized the creation of the Korean Conflict Compensation Fund, funded through the sale of up to $90 million in bonds and an initial transfer of $4 million from the World War II fund established under Section 2b. The provision also created the Korean Conflict Compensation Bond Retirement

Fund to retire the debt on the bonds. As with the World War II fund, veterans or their survivors were eligible; however, veterans who served in the Merchant Marines, were confined in penal institutions, or were dishonorably discharged were not. All applications for compensation under this provision had to be made prior to January 1, 1959.

Section 2e relates to securing funds for public buildings. The section was adopted in 1955 to create a capital improvements bond retirement fund that would allocate up to $150 million for building and improving structures at state penal, mental health, and welfare institutions, and at public schools and state-supported colleges and universities. The bonds and other obligations issued under this section had to be issued by December 1964. In addition, this section provided for the establishment of a state excise tax on cigarettes to pay any deficit in the fund.[4]

Section 2f authorizes the issuance of debt for school classrooms, support for universities, for recreation and conservation, and for state buildings. This section, adopted in 1963, funded many of the same projects referred to in Section 2e, including capital improvement projects for state-supported colleges and universities, as well as state penal, mental health, and welfare institutions. The section also permitted funds to be used for the establishment of parks and recreational areas and for the conservation of natural resources. Obligations issued under the authority of this section could not exceed $250 million and had to mature in thirty years or less. The debt incurred under this section was to be retired through funds raised by the state's license, fuel, income, and property taxes, as well as through the excise tax on cigarettes established under section 2e, which could be collected through December 31, 1972, or until all the debt was retired.

Section 2g, approved by voters in 1964, allowed the state to issue debt up to $500 million for highway and road construction. The revenues raised were to be used for the construction and repair of major state thoroughfares and urban extensions in the state's highway system. Retirement of the debt to finance these projects was to be made through fees and taxes, such as vehicle license and registration fees, and fuel and excise taxes. This section requires the entire debt to be discharged no later than 1989.

Section 2h authorizes the issuance of debt for development, specifically permitting the state to raise revenue in an amount up to $290 million from the sale of bonds and other obligations to pay for state development projects. This section, adopted in 1965, allowed the state to spend funds on state-supported institutions of higher learning, with an emphasis on research and development, and for state projects dealing with flood control, state parks, and natural resource conservation. Funds also could be used to assist political subdivisions in building and extending water and sewage lines. The cutoff date for issuing obligations under this section was December 31, 1970, and all obligations issued under this section had to mature in thirty years or less.

Section 2i, approved by voters in 1968, relates to the state's ability to issue revenue bonds, sometimes referred to as lease-appropriation bonds, which are not supported by the full faith and credit of the state.[5] Specifically, the fifth paragraph of Article VIII, Section 2i authorizes the issuance of "revenue obligations and other obligations, *the owners or holders of which are not given the right to have excises or taxes levied by the general assembly for the payment of principal thereof or interest thereon*, for * * * capital improvements for mental hygiene and retardation, parks and recreation, and housing of branches and agencies of state government, which obligations * * * shall not be deemed to be debts or bonded indebtedness of the state under other provisions of this Constitution." [Emphasis added.] In lieu of a pledge of the state's taxing power, payment of debt service on these obligations is legally "secured by a pledge under law, without necessity for further appropriation, of all or such portion as the general assembly authorizes of" any charges or other revenues or receipts that the state generates through the facilities that were financed with the debt. Notwithstanding this language, the actual source of payment of debt service on all obligations that have been issued for these purposes under Section 2i has been two-year lease-rental appropriations made by the General Assembly in each biennial state budget.[6]

Section 2j authorizes the creation of a compensation fund for Vietnam Conflict veterans and their survivors. It was adopted in 1973. To be eligible for compensation, veterans had to have served on active duty between August 5, 1964 and July 1, 1973, in the Republic of Vietnam or in hostile areas of Southeast Asia. The initial administrative costs of the fund were to be covered from the remaining balance of the Korean Conflict funds created by Section 2d, with the remaining revenues to be raised through the sale of up to $300 million in bonds and other obligations. No bonds were to be issued after April 1977, and all applications for compensation had to be filed by January 1, 1978. As with the other amendments creating funds for war veterans and their survivors, compensation was not available for veterans who served in the Merchant Marine, were confined in penal institutions, or were dishonorably discharged.

Section 2k, adopted in 1987, was another amendment used to raise revenue for capital improvements to local public infrastructure. Section 2k provides that not more than $120 million could be raised per calendar year, and that the total debt could not exceed $1.2 billion with the condition that all obligations must mature within thirty years.

Amendments, Proposed Amendments, and Other Review

The nine bond-authorizing sections recommended for repeal have never been amended.

The Ohio Constitutional Revision Commission (1970s Commission) studied Article VIII in depth and made extensive recommendations concerning how the state incurs debt.[7] 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.[8] It also recommended the repeal of seven obsolete debt-authorizing sections of Article VIII, Sections 2b, 2c, 2d, 2e, 2f, 2g, and 2h.[9]

The 1970s Commission recognized that the repeal of Sections 2b through 2h could adversely affect persons who held interest coupons or unredeemed bonds.[10] Therefore, the 1970s Commission included in its proposal a provision that would protect those who had vested interests in the bonds issued under the provisions being repealed.[11]

In November 1977, the General Assembly presented to voters a ballot issue that, if approved, would have repealed Sections 2b, 2c, 2d, 2e, 2f, 2g, and 2h, among other sections. However, Issue 4 was overwhelmingly defeated by a margin of 72.5 percent to 27.5 percent, and there has been no effort since to repeal those sections of Article VIII.[12]

Litigation Involving the Provisions

No significant litigation has centered on the nine obsolete provisions being recommended for repeal. However, there has been some litigation involving Article VIII that is worthy of note.

An early recognition of the 1851 constitution's restriction on the state's ability to incur debt is set forth in *State v. Medbery*, 7 Ohio St. 522 (1857), in which the Ohio Supreme Court determined a five-year state public works contract, in the absence of revenue or appropriations by the General Assembly to fund the contract, created a debt obligation in violation of Article VIII, Sections 1 and 3.

The 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).

The Court also has recognized the status of revenue bonds. In *State ex rel. Pub. Institutional Bldg. Auth. v. Griffith*, 135 Ohio St. 604, 22 N.E.2d 200 (1939), at syllabus paragraph 1, the Court held that the $750,000 debt limitation only applies to debt for which the state assumes the risk of default; thus, it is not applicable to revenue bonds. More recently, in *State ex rel. Ohio Funds Mgmt. Bd. v. Walker*, 55 Ohio St.3d 1, 561 N.E.2d 927 (1990), the court reviewed the limitations on borrowing in Article VIII, holding that borrowing for short-term cash flow is state debt within the meaning of the limitations in Article VIII, Sections 1 and 3, and further rejecting the use of revenue bonds to finance short-term deficiencies in tax revenue. *Id.*, 55 Ohio St. 3d at 7, 561 N.E.2d at 932. *Accord State ex rel. Shkurti v. Withrow,* 32 Ohio St.3d 424, 513 N.E.2d 1332.

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. In addition to reviewing the history of Article VIII, including the $750,000 limitation in Section 1, with 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.

Mr. Metcalf pointed out that the $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 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 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. He noted the credit agencies' ratings emphasize Ohio's conservative debt practice, with Ohio's credit rating being in the second highest possible category, known as "AA+," which keeps the interest rates paid on state bonds very low. Mr. Keen added that, since 1973, constitutional amendments authorizing new state debt have generally provided for general obligation security, but that the state still issues several categories of lease-appropriation debt under Section 2i, a section approved by the voters in 1968. He said that while this debt is functionally no different from the state's perspective, the subject-to-appropriation requirement lowers its credit rating to "AA" and, as a result, the state pays a higher rate of interest, typically ranging from 0.1 percent to 0.3 percent, versus its general obligation counterpart. Because of this, Mr. Keen suggested that the lease-appropriation debt authorization provisions of Section 2i for housing branches and agencies of state government, and for mental health, developmental disability, and parks and recreation facilities, be replaced with a general obligation authorization for those purposes. He estimated that, for each $100 million of debt issued over 20 years, this change to general obligation security would save state taxpayers $1.5 to $4 million over the life of the debt.

In relation to the question of whether to recommend repeal or removal of inactive bond authorization sections, Mr. Keen said while he has no concern with allowing those provisions to remain, elimination of inactive sections could be viewed as helpful cleanup, noting this last occurred when Section 2a, authorizing compensation payments to World War I veterans, was repealed in 1953. He further observed that the 1970s Commission recommended the repeal or modification of additional sections within Article VIII, although only Section 12, providing for a superintendent of public works, was later repealed. Mr. Keen identified current sections for possible repeal as including 2b, 2c, 2d, 2e, 2f, 2g, 2h, 2j, and 2k.

As part of his presentation, Mr. Keen proposed the committee recommend the repeal of the nine obsolete bond-authorizing provisions, plus five other provisions concerning the Commissioners of the Sinking Fund.[13] In addition, Mr. Keen proposed authorizing the conversion of lease authorization/revenue bonds authorized by Section 2i to general obligation bonds in order to obtain more favorable interest rates.

Azoff Presentation

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

In advocating that the committee recommend the use of the lease-appropriation debt rather than general obligation 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.

Mr. Azoff noted that 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."

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.

Kauffman Presentation

Kurt Kauffman, acting assistant director of the Office of Budget and Management (OBM), spoke to the committee on April 14, 2016 regarding Article VIII.

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.

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 June 13, 2013, Mr. Kauffman presented an introduction to the topic of state debt, including limitation on debt, debt authorizations, and the sinking fund provisions. Mr. Kauffman was supported in his presentation by Mr. Stype.

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.[14]

Discussion and Consideration

In reviewing Article VIII, Sections 2b, 2c, 2d, 2e, 2f, 2g, 2h, 2j, and 2k, the Finance, Taxation, and Economic Development Committee discussed whether it should recommend that the state follow the precedent established in 1953, when it repealed Article VIII, Section 2a (dealing with authorization for the issuance of bonds for the benefit of Ohio veterans who served in World War I). The committee also considered whether it is appropriate to leave these provisions in the constitution primarily as a historical reference, even if they are now obsolete, or whether it is better to clear out these provisions that are no longer of any force or effect, so as to make the constitution more readable, and by extension, more transparent.

The committee also discussed whether to recommend adoption of a new section that would recognize the state's duty to fulfill any obligations issued under the authority of Sections 2b, 2c, 2d, 2e, 2f, 2g, 2h, 2j, and 2k that remain outstanding at the time of the repeal of those sections. This proposed new section also would acknowledge the duty to fulfill obligations issued under the authority of future debt authorization provisions. Such an amendment would prevent adverse consequences to persons holding unredeemed interest coupons and unredeemed bonds, both currently and in the future.

In addition, the committee discussed whether to recommend a new constitutional provision that would allow the General Assembly to authorize the issuance of general obligation bonds for the purposes described in the fifth paragraph of Article VIII, Section 2i. During its discussion, the committee considered whether including a new provision for this purpose would enable the state to obtain more favorable interest rates on the debt.

Finally, the committee considered the potential effect of the repeal of the noted provisions on the length of the constitution. The Ohio Constitution contains approximately 54,000 words, making it the tenth longest state constitution in the nation. The nine provisions at Article VIII, Sections 2b, 2c, 2d, 2e, 2f, 2g, 2h, 2j, and 2k contain approximately 12,000 words. The inclusion of new provisions addressing continuing obligations to bondholders would add no more than 1,000 words. Thus, the committee considered that these changes would shorten the constitution by more than 11,000 words, or approximately 20 percent of its current length.

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 2b, 2c, 2d, 2e, 2f, 2g, 2h, 2j, and 2k be repealed, that a new Section 18 be adopted to protect the holders of any outstanding bonds or obligations issued under the authority of Sections 2b through 2h, 2k, and 2j, and that a new Section 2t be adopted 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 set out in Section 2i.

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 repeal of Article VIII, Sections 2b, 2c, 2d, 2e, 2f, 2g, 2h, 2j, and 2k, and the adoption of a new Section 18 and Section 2t. Chair Cole explained the history and purpose of the provisions, indicating that the committee determined it would be appropriate to repeal Article VIII, Sections 2b, 2c, 2d, 2e, 2f, 2g, 2h, 2j, and 2k, to adopt new Section 18 to address any outstanding bonds or obligations, and adopt new Section 2t to permit general obligation bonds to be issued for purposes described in Section 2i.

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 indicated the report and recommendation outlines the purpose of the sections, noting that the lapse of the bonding authority and the passage of time have rendered Sections 2b, 2c, 2d, 2e, 2f, 2g, 2h, 2j, and 2k obsolete. Mr. Hollon further noted that the report and recommendation supports the adoption of a new Section 2t and a new Section 18 to address concerns related to Section 2i and to protect potential holders of outstanding bonds from any adverse consequences related to the repeal of the obsolete sections.

Action by the Commission

At the Commission meeting held September 8, 2016, Commission member Kathleen Trafford moved to adopt the report and recommendation for Article VIII, Sections 2b, 2c, 2d, 2e, 2f, 2g, 2h, 2i, 2j, 2k, and proposed Sections 18 and 2t, a motion that was seconded by Commission member Bob Taft.

After general discussion, a roll call vote was taken, and the motion passed unanimously by a vote of 26 to zero.

Conclusion

The Ohio Constitutional Modernization Commission concludes that Article VIII, Sections 2b, 2c, 2d, 2e, 2f, 2g, 2h, 2j, and 2k should be repealed, and that proposed Sections 18 and 2t should be adopted.

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	*/s/ Ron Amstutz*
Senator Charleta B. Tavares, Co-Chair	Representative Ron Amstutz, Co-Chair

---

Endnotes

[1] Steven H. Steinglass & Gino J. Scarselli, *The Ohio State Constitution* 233 (2nd prtg. 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] 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] Steinglass & Scarselli, *supra* at 242.

[4] *Id.* at 248: "Despite the title given to this section by the secretary of state, this section has nothing to do with securing funds for highway construction. In fact, section 2e specifically excludes 'highways' from the projects that can be funded."

[5] For an example of a provision pledging the "full faith and credit" of the state, *see* Oh. Const. art. VIII § 2n(C) ("Obligations issued under this section are general obligations of the state. The full faith and credit, revenue, and taxing power of the state shall be pledged to the payment of debt service on those outstanding obligations as it

becomes due."); *See also State ex. rel. Pub. Institutional Bldg. Auth. v. Griffith*, 135 Ohio St. 604, 22 N.E.2d 200 (1939).

[6] *See, e.g.*, Legislative Service Commission, *A Guidebook for Ohio Legislators*, Ch. 8, *"The Ohio Budget Process,"* (14th ed. 2015-16), http://www.lsc.ohio.gov/guidebook/ (last visited Feb. 8, 2016).

[7] 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).

[8] *Id.* at 23-31.

[9] *Id.* at 11, 13.

[10] Ohio Constitutional Revision Commission Recommendations for Amendments to the Ohio Constitution, Part 2, State Debt, 42-43 (Dec. 31, 1972), http://www.lsc.ohio.gov/ocrc/recommendations%20pt2%20state%20debt.pdf (last visited Feb. 5, 2016).

[11] *Id.* That provision reads as follows:

> All obligations of the state issued under authority of any section of Article VIII of the Constitution of Ohio repealed by this amendment, or under authority of any law enacted pursuant to or validated by any such section, which obligations are outstanding on the date of the adoption of this amendment, shall remain valid and enforceable obligations of the state according to their terms and conditions. Any law enacted pursuant to or validated by any section of Article VIII of this Constitution repealed by this amendment shall remain valid and enforceable as if such section had not been repealed. The repeal of such sections and the adoption of this amendment shall not be deemed to impair, diminish, or restrict the rights or benefits of any holder or owner of any such obligations, nor any liability, covenant, or pledge of the state with respect thereto, including those for the levy and collection of taxes, the maintenance of funds, and the appropriation and application of money.

[12] See http://www.sos.state.oh.us/sos/elections/Research/electResultsMain/1970-1979OfficialElectionResults/GenElect110877.aspx (lasted 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).

[13] Although Mr. Keen proposed a repeal of sections of Article VIII related to the Sinking Fund, this report and recommendation does not address the Sinking Fund provisions. The committee is issuing a separate report and recommendation addressing constitutional provisions related to the Sinking Fund.

[14] R.C. 126.06 provides:

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.

<u>ATTACHMENT A</u>

ARTICLE VIII

<u>Section 18. If any section of Article VIII that authorizes the issuance of debt or other obligation is repealed, any outstanding debt or other obligation issued under authority of the section prior to its repeal shall remain in full force and effect and continue to be secured in accordance with its original terms.</u>

ATTACHMENT B

ARTICLE VIII

Section 2t. (A) The General Assembly may provide by law, subject to the limitations of and in accordance with this section, for the issuance of bonds and other obligations of the state for the purpose of paying costs for facilities for mental health and developmental disabilities, parks and recreation, and housing of branches and agencies of state government, and to refund obligations previously issued under the authority of the fifth paragraph of Section 2i of Article VIII for these purposes (which Section 2i referred to "mental health and developmental disabilities" as "mental hygiene and retardation").

(B) Each obligation issued under division (A) of section shall mature no later than the thirty-first day of December of the twenty-fifth calendar year after its issuance, except that obligations issued to refund other obligations shall mature not later than the thirty-first day of December of the twenty-fifth calendar year after the year in which the original obligation to pay was issued or entered into.

(C) Obligations issued under division (A) of this section shall be general obligations of the state. The full faith and credit, revenue, and taxing power of the state shall be pledged to the payment of debt service on those outstanding obligations as it becomes due, and bond retirement fund provisions shall be made for payment of that debt service. Provision shall be made by law for the sufficiency and appropriation, for purposes of paying debt service, of excises, taxes, and revenues so pledged or committed to debt service, and for covenants to continue the levy, collection, and application of sufficient excises, taxes, and revenues to the extent needed for that purpose. Notwithstanding section 22 of Article II of this constitution, no further act of appropriation shall be necessary for that purpose. The obligations and provisions for the payment of debt service on them are not subject to Sections 5, 6, and 11 of Article XII of this constitution. Moneys referred to in Section 5a of Article XII of this constitution may not be pledged or used for the payment of that debt service.

(D) In the case of the issuance of any of those obligations as bond anticipation notes, provision shall be made by law or in the bond or note proceedings for the establishment and maintenance, during the period the notes are outstanding, of special funds into which there shall be paid, from the sources authorized for payment of the bonds anticipated, the amount that would have been sufficient to pay the principal that would have been payable on those bonds during that period if bonds maturing serially in each year over the maximum period of maturity referred to in division (B) of this section had been issued without the prior issuance of the notes. The special funds and investment income on them shall be used solely for the payment of principal of those notes or of the bonds anticipated.

(E) Obligations issued under, or pursuant to, this section, their transfer, and the principal, interest, interest equivalent, and other income or accreted amounts on them, including any profit made on their sale, exchange, or other disposition, shall at all times be free from taxation within the state.

(F) This section shall be implemented in the manner and to the extent provided by the General Assembly by law, including provision for the procedure for incurring, refunding, retiring, and evidencing obligations referred to in this section. The total principal amount of obligations issued under division (A) shall be determined by the General Assembly, subject to the limitation provided for in section 17 of this article.

(G) The authorizations in this section are in addition to, cumulative with, and not a limitation on, authorizations contained in other sections of this article; are in addition to, cumulative with, and not a limitation on, the authority of the General Assembly under other provisions of this constitution; and do not impair any law previously enacted by the General Assembly.

(H) As used in this section:

(1) "Costs" includes, without limitation, the costs of acquisition, construction, improvement, expansion, planning, and equipping.

(2) "Debt service" means the principal and interest and other accreted amounts payable on the obligations referred to.