



OHIO CONSTITUTIONAL MODERNIZATION COMMISSION

FINANCE, TAXATION, AND ECONOMIC DEVELOPMENT COMMITTEE

THURSDAY, JUNE 4, 2015

1:30 P.M.

SOUTH MEETING ROOM A, 31ST FLOOR

RIFFE CENTER FOR GOVERNMENT AND THE ARTS

AGENDA

- I. Call to Order
- II. Roll Call
- III. Approval of Minutes
 - Meeting of March 12, 2015
- IV. Reports and Recommendations
 - None Scheduled
- V. Presentation
 - “State Debt and State Constitutions: Ohio and the Nation”

Professor Richard Briffault
Joseph P. Chamberlain Professor of Legislation
Columbia Law School
 - Public Comment
- VI. Committee Discussion
 - Briffault Presentation – Committee discussion regarding issues raised in the presentation by Professor Briffault.
 - Metcalf Presentation – Continuing discussion regarding presentation by Seth Metcalf, Deputy Treasurer and General Counsel, Ohio Treasurer of State, at the March 12, 2015 committee meeting.

VII. Next Steps

- Committee discussion regarding the next steps it wishes to take in preparation for upcoming meetings.

VIII. Old Business

IX. New Business

X. Public Comment

XI. Adjourn



OHIO CONSTITUTIONAL MODERNIZATION COMMISSION

MINUTES OF THE FINANCE, TAXATION, AND ECONOMIC DEVELOPMENT COMMITTEE

FOR THE MEETING HELD
THURSDAY, MARCH 12, 2015

Call to Order:

Chairman Cole called the meeting of the Finance, Taxation, and Economic Development Committee to order at 1:40 p.m.

Members Present:

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

Approval of Minutes:

The minutes of the January 15, 2015 meeting of the committee were approved.

Presentation:

“Financial Transparency and Modernizing Article VIII”

*Seth Metcalf
Deputy Treasurer and General Counsel
Ohio Treasurer of State*

Seth Metcalf, Deputy Treasurer and General Counsel of Ohio's Treasurer of State, presented testimony before the committee regarding the modernization of Article VIII (Public Debt and Public Works), relating to the public debt provisions of the Ohio Constitution. He stated that Article VIII serves two main functions: (1) authorizes Ohio to incur debt with certain limitations, and (2) sets forth the platform by which Ohio issues and pays its debt.

Mr. Metcalf explained that Article VIII authorizes debt and sets forth mechanisms for paying debt. He said that the sheer length of the article causes a reduction in the transparency that was adopted as part of the constitution in 1851.

Mr. Metcalf continued by discussing two fundamental defects of Article VIII:

- 1) The \$750,000 debt limitation as set forth in Section 1 has existed since its adoption. He compares the state's general revenue expenditures in 1851 (\$1.6 million) to 2014 (\$28.9 million).

He believes the state needs to borrow more than \$750,000.

- 2) Section 2 has been amended 18 times, which creates a complicated addition to Article VIII for the general public to comprehend.

Mr. Metcalf noted, as of June 30, 2014, the state's total indebtedness was approximately \$10.93 billion. He claims this amount demonstrates how insignificant the \$750,000 debt limitation has become.

Mr. Metcalf again touched on the point of how Article VIII has become nearly incomprehensible which has created a transparency and accessibility problem. He said the voluminous language obfuscates the meaning of the article.

According to Mr. Metcalf, in 1851, Article VIII's \$750,000 cap represented 46 percent of the state's general revenue expenditures. Today, the debt is \$10.93 billion, represents roughly 38 percent of the state's general revenue expenditures. Members of the committee questioned Mr. Metcalf if transportation bonds and the turnpike appropriations were included in the \$10.93 billion. He indicated those fiscal items were not a part of the general revenue expenditures. Mr. Metcalf also explained that there is currently no constitutional provision on how much debt in the aggregate the state can borrow or for how long the state can borrow it.

Chair Cole asked whether Mr. Metcalf has compared state debt to the size of the economy, and whether there are any figures he can cite about that relationship. Mr. Metcalf said he doesn't have those statistics, but can get them.

Committee member Rep. Ron Amstutz asked whether Mr. Metcalf is differentiating between types of debt, for example does the 5 percent limit include highway debt? A member of the Office of Budget and Management, present at the meeting, said that highway debt is not included in that limit.

Committee member Kathleen Trafford asked whether these numbers include revenue bonds as opposed to true debt.

Mr. Metcalf stated that lease appropriation debt is a revenue debt; it is inside the number given. He said other bonds such as the conduit issue debt are not included. He also said the Ohio Turnpike is not included.

Chair Cole asked whether these items would have been included in 1851. Mr. Metcalf said that would have been a point of interpretation, as there was no distinction then between direct and indirect obligations.

Mr. Metcalf clarified he is only advocating for overall debt cap and overall debt obligations to be provided for. He said that if something is paid for from the general revenue fund, it has been treated as a direct obligation of the state for purposes of the 5 percent cap.

Chair Cole asked whether this could be accomplished by using average maturities. Mr. Metcalf said there are a variety of ways to get to that.

Mr. Metcalf explained why some items are appropriately excluded; stating that, to the extent the state is not obligating taxpayers to pay back a debt with taxes, there isn't a constitutional obligation.

Chair Cole asked why Mr. Metcalf advocates keeping the war veterans provisions. Mr. Metcalf said the state must retain its commitment to veterans. He said the committee could state in new language that it is okay to issue debt to compensate veterans to thank them for their service.

Mr. Metcalf added that the growth of Article VIII has undercut another piece of the Ohio Constitution: the Commission of the Sinking Fund. Article VIII creates a Sinking Fund Commission meant to oversee the debt status of the state, but the amendments currently in Section 2, have delegated the responsibilities of the Commission to either the General Assembly or the Public Facilities Commission. This has transferred the accountability of the statewide executive officeholders from the constitution to statute. He claims that a constitutional check has been 'eroded' and that the Commission of the Sinking Fund has been circumvented by these amendments. Now, essentially, there is no requirement that a majority of the sinking fund commissioners agree to debt, with the result that that commission hasn't met since 2008.

With regard to conduit issuances, Mr. Metcalf observed that it is a function of federal tax law that to get a benefit, you have to have a government issuer.

Mr. Metcalf proposed that Sections 13, 14, and 16 of Article VIII be condensed into one. He concluded that Ohio needs a meaningful limitation in a percentage form.

Chair Cole asked what would be a meaningful debt limit? Mr. Metcalf said he does not have a specific proposal, but agrees that it would be something that is indexed to another standard, and would be built in.

Committee member Sen. Charleta Tavares asked whether other states have percentages and what their experience might be. Mr. Metcalf did not know but offered to find out.

Committee member Herb Asher asked if the limit were adjusted it might suggest that all debt up to that point could be incurred by the General Assembly without going to the ballot. Mr. Metcalf agreed with this statement. Mr. Asher pointed out that while this might be rational, a proposal that says voter approval isn't necessary and wouldn't be popular. Mr. Metcalf said the change would mean restoring a limit that currently isn't there.

Rep. Amstutz asked how the committee would limit this; what would it be a percentage of? Would there be yearly limits or have an outside timeline?

Mr. Metcalf said that, with some exceptions, there are limitations on final maturity. It is not infinite. At some level there is an overall debt limitation, but it is not straightforward.

Ms. Trafford asked how the conduit issuance issue could affect the state's credit if there is a default. Mr. Metcalf gave an example of the Ohio Water Development Authority, saying if that organization defaults there is no direct obligation to the state. He said that should not directly impact the ability of the state to borrow money. He said it is all interrelated, and that default is suggestive of a larger economic problem in Ohio.

Committee member Jo Ann Davidson asked what the state's bond rating does, and what the impact of lowering the bond rating is. If we make a change would it impact our bond rating? Mr. Metcalf said there are some positives but there could be some negatives as well if we put Ohio in too restrictive a position.

Ms. Davidson asked whether the General Assembly needs the ability to override the debt limitation if there is a catastrophe. Mr. Metcalf said yes, but that is currently available.

Ms. Davidson asked whether, if exceptions aren't broad enough to deal with unusual circumstances, changing the debt limit would make any sense. Mr. Metcalf said the essential proposal would do away with things that prevent the General Assembly from having discretion. Chair Cole asked if there is a resource the committee could consult that would give it the ability to project the impact of a change. Mr. Metcalf said the committee could see how other states deal with it, and that the committee could have conversations with the rating agencies, even though they probably wouldn't give any assurances but would only react to a proposal.

Chair Cole observed that bond rating involves risk. He asked whether a fundamental structural change to Article VIII would potentially increase borrowing costs to the state. Mr. Metcalf said that if the committee just changes the \$750,000 limit it doesn't solve the problem. He said there may be old interpretive guidance that could help the committee.

Mr. Asher asked if there are any states in which the issuance of debt, either by the legislature or the people, requires a supermajority. Mr. Metcalf said he doesn't know but can get back to the committee.

Mr. Metcalf offered the following suggestions for the committee to consider in modernizing Article VIII: first, the extent to which the constitution permits the General Assembly to incur debt for generic purposes – and limit it for the purpose of “permanent improvements.” He believes this would increase transparency and prevent the General Assembly from simply appropriating funds for generic purposes. Second, in simplifying Article VIII, a single section should be dedicated to generally permit conduit issuances that are not direct obligations to the state. Lastly, the constitution should formally recognize the Treasurer's office as the administrator of the Sinking Fund Commission.

Mr. Metcalf concluded in requesting that the \$750,000 debt limitation should be done away with; and instead, a percentage should be used to level out with Ohio's economy.

Mr. Metcalf then shared with the committee the progress the Treasurer's office is making to instill transparency within the state. Starting in 2011, their office launched the *Treasurer's Transparency Project*, which has now led to OhioCheckbook.com. According to Mr. Metcalf, this website takes all state spending, from multi-million dollar road expenditures to a two dollar office supply expense, and places it all online for the first time in Ohio history.

"State Debt Recommendations by the 1970s Ohio Constitutional Revision Commission"

*Steven H. Steinglass
Senior Policy Advisor
Constitutional Modernization Commission*

Senior Policy Advisor Steven H. Steinglass presented a brief overview of the Article VIII State Debt Recommendations of the 1970s Ohio Constitutional Revision Commission (OCRC). Mr. Steinglass said it is unclear why the recommendations of the 1970s didn't meet with voter approval, and indicated that his comments will assist the committee in transitioning to the topics that will be covered at the next meeting.

Mr. Steinglass informed the committee that Professor Richard Briffault, of the Columbia University law school, will attend the May meeting of the committee. Prof. Briffault is an expert who can address many of the questions the committee has raised. Mr. Steinglass encouraged members of the committee to advise Commission staff of any questions they may have, in advance of the meeting, so that Professor Briffault will be prepared to answer them.

Adjournment:

With no further business to come before the committee, the meeting was adjourned at 3:00 p.m.

Attachments:

- Notice
- Agenda
- Roll call sheet
- Biographical sketch of Seth Metcalf
- Prepared remarks of Seth Metcalf

Approval:

The minutes of the March 12, 2015 meeting of the Finance, Taxation, and Economic Development Committee were approved at the June 4, 2015 meeting of the committee.

Douglas R. Cole, Chair

Karla L. Bell, Vice-Chair



OHIO CONSTITUTIONAL MODERNIZATION COMMISSION

MINUTES OF THE FINANCE, TAXATION, AND ECONOMIC DEVELOPMENT COMMITTEE

FOR THE MEETING HELD
THURSDAY, JANUARY 15, 2015

Call to Order:

Chairman Cole called the meeting of the Finance, Taxation, and Economic Development Committee to order at 9:30 a.m.

Members Present:

A quorum was present with committee members Cole, Asher, Mills, Peterson, Sawyer, and Trafford in attendance.

Approval of Minutes:

The minutes of the September 11, 2014 meeting of the committee were approved.

Presentation:

Steven H. Steinglass
Senior Policy Advisor
Constitutional Modernization Commission

Senior Policy Advisor Steven Steinglass presented an overview of Article VIII, relating to the public debt provisions of the Ohio Constitution. He stated that revisions may be necessary with respect to some of the provisions, but he was not sure if the committee had identified the policy direction it wanted to go, and he hoped that this overview would help the committee.

Mr. Steinglass continued, saying that the committee has the benefit of the record of proceedings of the 1970s Commission, the chapter from the Steinglass & Scarselli book *The Ohio State Constitution*, and information from the website of the Office of Budget and Management. One topic is whether the committee should recommend that the state continue its approach to public debt under which authority for incurring public debt, are presented to the voters for approval. The recommendations on public debt made by the 1970s Commission were rejected in 1977; these recommendations would have eliminated the debt limit while retaining a role for the voters.

Mr. Steinglass noted there are at least nine obsolete provisions in which the bonds have all been retired. He said the committee should decide whether it wants to repeal obsolete provisions. If so, he asked if there are obligations under those provisions, such as matured bonds and interest coupons, which need to be taken into consideration. He said the committee needs to determine if there are any important provisions buried in otherwise obsolete provisions that should be retained even though the bonding authority under them may no longer be viable. Another issue to consider is the sinking fund which is covered in five sections of Article VIII. He also asked whether Ohio needs to review how other states may be using public debt to spur infrastructure improvement and economic development.

Mr. Steinglass said Ohio operates under the 1851 Constitution, which has been amended 121 times. Article VIII, public debt, is the longest of the articles, with approximately 26,500 words. This article has about half the words in the Constitution and has been amended more frequently than any other article in the Constitution. There have been many proposals and many rejections by voters.

According to Mr. Steinglass, the 1802 Constitution had no provision on public debt in its approximately 6,000 words. In 1851, the convention approached state debt in light of a financial crisis that had resulted from heavy spending on canals and other transportation structure projects and bad economic times. He noted a previous presentation to the committee in May 2014 on this topic, by Seth Metcalf, Deputy Treasurer & Executive Counsel for Ohio Treasurer's office, and a 1985 University of Toledo Law Review article written by David Gold, an attorney with Ohio's Legislative Services Commission, about the 1837 act called the Loan Law, which went so far as to require the state to help bankroll railroads, canals and highways, which were private-sector undertakings.

The 1851 Constitution addressed public debt by adopting a \$750,000 limitation on debt, by limiting the use of state funds, and by requiring prudent management of state debt through the sinking fund. Between 1851 and 1911, Mr. Steinglass said there were no amendments to Article VIII, though there was one proposal that was defeated.

The 1912 Constitutional Convention proposed two amendments to Article VIII that the voters approved, but they did not relate to today's theme.

In 1921, the first post-1912 amendment to Article VIII was proposed and adopted. Section 2a created an exception to the \$750,000 debt limit. It provided bonuses to World War I veterans. Other states had done this as had England, France, and Canada. Section 2a was approved by voters by wide margin. This set the stage structurally for how the Constitution would approach the debt limitation.

Mr. Steinglass said that in 1953, the General Assembly proposed, and voters approved, a repeal of a constitutional provision, repealing section 2a that authorized World War I bonds, because the funds were fully expended and there was no longer a need to have this provision.

In 1968 Article VIII, Section 2i was approved. This was an important amendment that in addition to authorizing general obligation bonds, authorized revenue bonds not supported by the

full faith and credit of the state. The amendment also referred to Article XII, Section 5a, making clear that highway user receipts are available to pay off general obligation bonds for highways issued under this and earlier sections.

Mr. Steinglass observed that Article VIII has been amended 27 times since 1851, but nine of the original 13 sections have never been amended. Two of the original sections that were amended deal with public works. Another two relatively minor amendments deal with insurance and who may serve as commissioners of the sinking fund. This leaves 23 additional amendments involving the use of bonds for public purposes.

He identified nine sections of Article VIII that no longer authorize issuance of general obligation bonds because all bonds had been issued or the time for issuing them had passed. These sections had been identified in a memorandum on obsolete provisions prepared by the Legislative Service Commission. He said more detail is found in the semiannual reports issued by the Commissioners of the Sinking Fund.

Assuming the committee does identify obsolete provisions and is inclined to recommend repeal, he suggested that the committee also recommend a provision to protect those individuals having a remaining outstanding interest coupons or outstanding bonds. The 1970s Commission recommended adoption of a schedule to protect those who had an interest in these bonds. The simple conclusion is that if obsolete provisions are identified and if there is an inclination to repeal them, there is a mechanism protecting those having a financial interest in the bonds. Thus, there would be no adverse effect.

Mr. Steinglass said the more difficult issue is the need to go through any potentially-repealed provisions with great care to see if the committee was inadvertently throwing out something that should be retained. He said some would argue that the committee should not take this chance, but, on the other hand, the committee could use great care to look at these provisions to see if they have a continuing impact and are still needed.

Mr. Steinglass said that Greg Stype, a Columbus attorney with the firm of Squire Sanders, who spoke to the committee at the June 2013 meeting, identified Section 2i as an obvious example. The 1970s Commission recognized that as well, recommending that it be moved verbatim to its own stand-alone section. Are there other elements of 2b through 2j that should be preserved, and does the committee want to proceed in identifying those provisions that are obsolete, and thus should be removed and those that should be preserved? Mr. Steinglass said, "We must be sure we aren't removing muscle or bone."

Chair Cole said there has been a sense of the committee that there is a desire to move forward on removing obsolete provisions, so a concrete step would be to come up with what that proposal would look like. Mr. Stype explained in his presentation that just excising may have unintended consequences and this becomes complicated. Chair Cole said the committee needs to work toward having a concrete proposal that it can vote up or down. However Chair Cole is not sure if it is in the Commission's interest to have this be an early thing to go to the voters, as it is just housekeeping.

Mr. Steinglass observed that this involves a lot of staff work, so we need a real charge to move forward on obsolete provisions. The timing can be worked out with Executive Director Steven Hollon. At some point a joint resolution will be necessary. Mr. Steinglass noted the staff may need to engage additional volunteer help on these questions.

Chair Cole said the larger question is what we can accomplish as a committee. For example - capital improvement bonds, water management, water controls, and state supported higher education. What is permissible capital improvement infrastructure spending? Do categories need to be expanded for modern technology and modern needs? Is this inherent in the constitution or do we need specific provisions? Is the constitutional language standing in the way of progress on this type of thing?

Mr. Steinglass said these are good questions and there may be other things. If there is a little ambiguity it will be litigated, but maybe there is a need to try to eliminate ambiguity. If we put on our futuristic hats, there may be some new provisions that need to be proposed.

Committee member Trafford asked whether there should be an adjustment to prevent this problem in the future. She said the reason we have a lengthy Section 2 is because of Section 3. She asked whether the committee should look at Section 3 and find a way to preserve voters' right to approve public debt without amending the Constitution every time. She continued by noting if we take out language about debt having to be specified in Section 2 and provide that debts have to be approved by voters above a certain amount, this would remove the bulky problem from the constitution. Section 1 contains the \$750,000 limit and this requires a specific provision such as 2a through 2s each time the state goes over the limit.

Chair Cole said the committee did talk about this at a previous meeting, saying that the committee may need to create a framework for deciding how to get to a final resolution about how to resolve the problems.

Mr. Steinglass observed that the 1970s Commission addressed these issues because the problem is that every 30 years you could repeal the last bond authorizations, but this would not change the process. Mr. Steinglass said he will provide the committee with a copy of that portion of the 1970s Commission's discussion of the larger issues so the committee can understand their approach. He noted that the earlier commission identified five different alternatives; including maintaining the \$750,000 debt limit and having a referendum to approve borrowing. This approval was not recommended because of concerns that it would not be a sufficient restraint on borrowing. Other options were to do nothing, to increase the debt limit to a higher level, omit any debt limit, or to create a flexible debt limit.

Ultimately, the 1970s Commission recommended repealing the \$750,000 debt limit in favor of a flexible debt limit and using a referendum to approve future public debt. The voters rejected this proposal by a substantial vote in 1977. He stated that the history of this proposal and what led up to it is contained in the early part of the final report of the 1970s Commission. He said he will share that with the committee, but he does not know why it was not successful. He also said he does not know what the committee wants to do about this topic, which is the larger question of how we do business in regard to public debt. Is a referendum a better alternative than simply a

constitutional amendment? There may be significant discussion that the committee will want to have on this. We could slim down this article in a way that does not have a significant impact on the right of voters to weigh in on public spending.

With regard to the sinking fund, the 1970s Commission recommended repeal of the five provisions on the sinking fund because this approach is no longer used to issue debt. The General Assembly did not fully embrace the 1970s Commission's recommendations, and the joint resolution that went to the voters (but was rejected) proposing keeping in the constitution the existence of the sinking fund commission and its duty to issue semiannual reports. Mr. Steinglass surmised that the General Assembly wanted to get the state officials to sign their names and thus stand behind the reports regarding public debt. No one who has presented to the committee has identified any need to keep sinking fund provisions. If the committee decides to recommend repeal of the sinking fund, it will be necessary to review other provisions of Article VIII that refer to the sinking fund and update them.

Chair Cole said the state has adopted a model of public debt, and has set limits. He wondered if the committee should look at a comparison of what other states do about public debt. Chair Cole asked whether there is any consensus on how other states approach public debt and whether the committee can have a comparative pro and con discussion. He said gains from any changes would need to be significant because complete revision of the article is risky. He would like the committee to consider other basic models for public debt issuance by states.

Mr. Steinglass said we could learn more about other states by background readings or presentations. A third alternative would be to bring in a speaker who knows about this area, rather than just having a paper comparison. He identified Richard Briffault, a professor at Columbia Law School who could make a presentation, and he recommended inviting Professor Briffault to make a presentation to the committee.

Chair Cole said he would like to start with the questions, and that he doesn't think he has enough information to think about this. He remarked that unless someone identifies serious and significant problems with the current system he would be reluctant to support change. He is risk averse, and says he is not sure he understands it well enough.

Sen. Sawyer noted that, in 1977, this conversation was swirling around but no real change occurred. He said he would welcome the chance to have the ability to read on this topic prior to a conversation, and to read about the environment in which we were making decisions at that time and compare it with today. These are big decisions, but he said he believes we currently do not have a smooth running system and it would benefit the state to make it work more smoothly. He said he views this review as an opportunity.

Mr. Mills commented that the National Council of State Legislatures ("NCSL") has a wealth of information on this topic and may already have a document comparing models from various states. He would like staff to see what NCSL has on this topic, even contacting NCSL for direct help.

Mr. Steinglass suggested the committee bring in Professor Briffault, who is someone with a good national perspective, possibly in May 2015. Mr. Steinglass asked whether the committee would like work to be done on the smaller issues even though we would not get to them for some time, asking, specifically, whether the committee will be looking at other provisions to make sure they would not be affected by removal of obsolete provisions.

Sen. Sawyer commented that the committee needs to be sure of what is meant by the word “obsolete.”

Committee member Asher said that one goal should be to streamline Section VIII so that future generations don’t give up in despair. He said the committee could still move forward on the obsolescence question, but it can also focus on the broader problem and make recommendations so that future problems won’t occur.

Chair Cole asked whether other state constitutions dedicate this much attention to public debt. He wondered whether Ohio would be benefited by removing all of this and replacing it. He said he shares everyone’s frustration with this Article; it is hard to read and understand. He said he is seeking transparency and right now it isn’t there. Chair Cole thanked Mr. Steinglass for his presentation, and looks forward to trying to focus in on these questions over the next year. He observed that this is going to be a long process about which the committee will be thinking long and hard.

Adjournment:

With no further business to come before the committee, the meeting was adjourned at 10:47a.m.

Attachments:

- Notice
- Agenda
- Roll call sheet

Approval:

The minutes of the January 15, 2015 meeting of the Finance, Taxation, and Economic Development Committee were approved at the March 12, 2015 meeting of the committee.

/s/ Douglas R. Cole

Douglas R. Cole, Chair

/s/ Karla L. Bell

Karla L. Bell, Vice-Chair



OHIO CONSTITUTIONAL MODERNIZATION COMMISSION

MEMORANDUM

TO: Chairman Douglas Cole and Members of the Finance, Taxation, and Economic Development Committee

CC: Steven C. Hollon, Executive Director

FROM: Steven H. Steinglass, Senior Policy Advisor

DATE: March 4, 2015

RE: Article VIII State Debt Recommendations of the 1970s Ohio Constitutional Revision Commission

Members of the committee have expressed interest in obtaining more information about the Article VIII recommendations of the 1970s Ohio Constitutional Revision Commission (OCRC) concerning state debt. This memorandum reviews the work of the 1970s Commission on state debt, the rationale for the OCRC's approach, and provides a possible explanation for its overwhelming rejection by the voters. Attached to this memorandum are portions of the 1970s OCRC's Final Report on State Debt.

The Recommendations of the 1970s Ohio Constitutional Revision Commission

Options Identified by the 1970s Commission

In its Final Report, the OCRC identified the following alternative approaches to the question of how the state incurred debt to support infrastructure and other public improvements.

1. Maintaining the present debt limit, and the present method for incurring additional debt.
2. Maintaining the present debt limit, and requiring only a referendum instead of a constitutional amendment to incur additional debt.
3. Increasing the present debt limit to some higher amount, and either permitting the legislature to incur debt within this limit or requiring referendum approval within this limit.
4. Omitting any constitutional debt limit.

5. Creating a flexible debt limit, within which the General Assembly may incur debt for capital improvement purposes without voter approval, and providing that debt outside the constitutional formula should be subject to referendum.

Ohio Constitutional Revision Commission, Recommendations for Amendments to the Ohio Constitution, Part 2, State Debt, December 31, 1972, pp. 15-21, and pp. 151-57 of Appendix B of the Final Report (provided as Attachment A).

OCRC Review and Recommendations

Looking at the period from 1953 to 1968, the OCRC concluded that Ohio's post-war debt had not been excessive, noting that Ohio ranked 23rd among the states in the amount of general obligation debt, 26th in the amount of non-guaranteed debt, and 25th in total debt. Nonetheless, the OCRC reached the following conclusion:

[T]he state's present \$750,000 debt limit is illusory, and . . . the present method of incurring additional debt, through referenda resulting in constitutional amendments, is certainly unnecessarily cumbersome and potentially ineffective as a device to control state debt.

at p. 17.

As the Final Report makes clear, the OCRC was willing to remove the voters from playing a direct role in the process of determining when the state could incur debt and how much debt it could incur. The OCRC considered and rejected the use of a higher debt limit, since it did not believe a higher limit would stand the test of time. It also considered maintaining the current \$750,000 debt limit and using referenda for approving particular bond issues; but it rejected this approach because of doubts about its effectiveness in limiting borrowing and concerns that it would encourage revenue bond financing in situations where such financing could be inappropriate. The OCRC was also reluctant to shift responsibility away from elected representatives.

Ultimately, the OCRC recommended the repeal of the \$750,000 debt limitation and the adoption of a formula-driven process, which (along with a super-majority voting requirement in the General Assembly) was designed to authorize appropriate debt while protecting the fiscal integrity of the state.

Specifically, the OCRC recommended the repeal of the \$750,000 debt ceiling in Article VIII, Section 1, and the delegation of that power to the General Assembly subject to a 3/5 required vote in each house. This, of course, is the same supermajority that is needed for the General Assembly to propose constitutional amendments. In place of the debt limitation, the OCRC recommended a *constitutional debt formula* based on a moving average of state revenues by which the state by a 3/5 vote of the General Assembly could incur debt for capital improvements. The formula would limit the amount of money that could be spent to repay such debt to 6 percent of the average of the revenues of the state for the then preceding two fiscal years.¹ For a

Summary of Recommendations on State Debt, see Ohio Constitutional Revision Commission, Recommendations for Amendments to the Ohio Constitution, Part 2, State Debt, December 31, 1972, pp. 11-13 (provided as Attachment B).

Rejection by the Voters

This proposal went to the voters in an omnibus proposal with other Article VIII revisions, including the repeal of eight obsolete provisions that authorized bonds that had been retired and the repeal of most of the provisions concerning the sinking fund. The voters overwhelmingly rejected these proposed changes in Article VIII in November 8, 1977, with only 27.5 percent of those voting approving the proposal. The vote was 1,129,165 in favor and 2,284,178 opposed.

The OCRC also recommended revisions of the indirect debt limitation applicable to political subdivisions, but these revisions to Article XII, Sections 7 and 11, were rejected by the voters on June 8, 1976 by a vote of 675,017 in favor and 890,896 opposed.

These two rejections were two of the four OCRC recommendations that made it to the ballot only to be rejected by the voters. [Note: 16 other OCRC recommendations were approved by the General Assembly and then by the voters.]

Why the Voters Rejected the 1970s Recommendations on State Debt

State Debt, Ohio Voters, and the Second Half of the 1970s

From 1913 to 2014, the voters approved 29 of 45 proposed amendments to Article VIII, but the pattern of approvals was not constant over the years.

The Mood of the Voters—A Partial Explanation

It is difficult to say precisely why the voters rejected the proposed amendment on state debt in November 1977, although the mood of the voters (as illustrated by their votes on other non-commission proposals to amend Article VIII) no doubt provides a partial explanation.

Attachments

Endnotes

¹ Interestingly, in 1999 the voters approved an amendment that uses a constitutional debt formula, *see* Article VIII, Section 17, but the new formula, which remains in effect, uses a 5 percent cap. This limitation on debt, which is in addition to others in Article VIII, is described on the website of the Ohio Office of Budget and Management and reads as follows:

Section 17 of Article VIII of the Ohio Constitution, approved by Ohio voters in November 1999, establishes an annual debt service "cap" applicable to future issuances of state direct obligations payable from the general revenue fund (GRF) or net State lottery proceeds. Generally, new obligations may not be issued if debt service for any future fiscal year on those new and the then outstanding bonds of those categories would exceed 5 percent of the total of estimated GRF revenues plus net state lottery proceeds for the fiscal year of issuance.

Those direct obligations of the state include general obligation and special obligation bonds that are paid from the state's GRF, but exclude (i) general obligation debt for Third Frontier Research and Development, development of sites and facilities, and veterans compensation, and (ii) general obligation debt payable from non-GRF funds (such as highway bonds that are paid from highway user receipts). Pursuant to the implementing legislation, the governor has designated the OBM Director as the State official responsible for making the 5 percent determinations and certifications. Application of the 5 percent cap may be waived in a particular instance by a three-fifths vote of each house of the Ohio General Assembly and may be changed by future constitutional amendments.

For items of interest include the following:

- Between 1913 and 1974, the voters approved 17 of 18 proposed amendments to Article VIII
- Between 1975 and 1980, the voters rejected all 11 of the proposed amendments to Article VIII
- In 1985, the voters approved one amendment to Article VIII and rejected one amendment.
- Between 1985 and 2014, the voters approved 12 of the 14 proposed amendments to Article VIII

Thus, for whatever reason, Ohio voters were not inclined to approve amendments to Article VIII during the last half of the 1970s, the period when the state debt recommendations of the 1970s OCRC went to the ballot.

Summary of Recommendations

PART 2 STATE DEBT

The Commission recommends to the General Assembly the following amendments to the Constitution of the State of Ohio:

Article VIII	Section 1	Repeal and Enact a New Section
	Section 2	Repeal and Enact a New Section
	Section 2b	Repeal
	Section 2c	Repeal
	Section 2d	Repeal
	Section 2e	Repeal
	Section 2f	Repeal
	Section 2g	Repeal
	Section 2h	Repeal
	Section 2i	Repeal
	Section 3	Repeal and Enact a New Section
	Section 4	Repeal and Enact a New Section
	Section 6	Repeal
Section 7	Repeal	
Section 8	Repeal	
Section 9	Repeal	
Section 10	Repeal	
Section 11	Repeal	
Section 12	Repeal	
Section 13	Amend, including changing the section number from 13 to 6	
Article XII	Section 6	Repeal

The recommendations in this report concern primarily the general obligation debt of the state, also called the guaranteed debt. General obligation debt, as defined in the Commission's proposal, is debt to the repayment of which the faith, credit, and taxing power of the state are pledged.

Mr. Nolan W. Carson, of Cincinnati, is chairman of the Commission's Committee on Finance and Taxation, which prepared these recommendations. The committee has been meeting on a monthly basis since April, 1971, and, in preparing the recommendations, consulted many experts familiar with Ohio's bonded debt, including its development and structure. The committee studied Ohio cases involving questions of state debt, and studied the evolution of the constitutional provisions presently governing Ohio's bonded indebtedness. In addition, the committee surveyed the constitutions of sister states and the works of leading writers on the theory of constitutional provisions on state debt. Attorneys who are noted for their expertise in the fields of state and local debt in Ohio contributed generously of their time during consideration of technical details.

Before its proposals were put into final form, the committee distributed them to interested individuals and groups, and held public hearings to receive their opinions. The committee's final proposals were then

presented to the Commission, which held public hearings on them and, after making minor changes, adopted them as its recommendations to the General Assembly on Article VIII of the Ohio Constitution.

In more detail, the recommendations would do the following:

- • • Establish 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.
- • • Continue the authority of the state to contract debt outside the debt limit to repel invasion, suppress insurrection, and defend the state in war.
- • • Authorize short-term borrowing by the state to meet appropriations and require that money borrowed for this purpose be repaid within the fiscal year in which it is borrowed.
- • • Require voter approval in a referendum for incurring debt outside the debt limit or for purposes other than capital improvements.
- • • Require 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.
- • • Require 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.
- • • Permit 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.
- • • Continue the authority of the state to issue revenue bonds in the manner and for the purposes enumerated in present Section 2i of Article VIII.
- • • Continue to prohibit local governmental entities in this state from becoming stockholders in, raise money for, or lending credit to, a joint stock company, corporation or association unless permitted to do so by law.
- • • Expand the purposes for which the state may issue industrial development bonds, to include situations in which the issuance of such bonds helps to *preserve existing jobs* in Ohio. Also, the present prohibition against the issuance of such bonds for public utilities would be modified to the extent of permitting issuance of such bonds for public utilities for the purpose of financing facilities used primarily for pollution control.
- • • Repeal unnecessary provisions relating to the Sinking Fund and the Commissioners of the Sinking Fund.

- • • Repeal the provision relating to the Superintendent of Public Works.
- • • Repeal specific debt-authorizing sections, many of which are now obsolete.
- • • Establish a schedule which would assure a smooth transition from present sections of Article VIII to those proposed in this report, including a provision which will assure the continued validity of all obligations of the state outstanding on the date of the adoption of this amendment, and a provision which will include all general obligation debt outstanding on the date of the adoption of this amendment for purposes of calculating the state's general obligation debt limit under the formula proposed in this report.

Finally, it must be noted that the Commission does not recommend any change in the present prohibition against the assumption by the state of the debts of local political subdivisions.

STATE DEBT INTRODUCTION

The questions of public debt are concerned with how much debt may be incurred, for what purposes, and how it should be repaid. These are not just questions of finance. Rather, the quantitative answers reflect important policy determinations that greatly affect all citizens of the State of Ohio.

In contrast to the federal government, the bonded debt of this state is not and cannot now be used for operating deficits, but is reserved primarily for capital improvements—roads, hospitals, schools and similar public facilities which benefit our citizens generally for many future decades. Clearly, there are occasions when it is not feasible to finance urgently needed facilities solely from current revenues. The structuring of debt thus becomes the decision-making process for determining how the burden of paying for these needed facilities should be allocated between present and future taxpayers who will benefit from them.

If the debt is too severely limited, our proper public purposes will have been jeopardized. If the debt becomes excessively great—or the repayment thereof is not completed within the useful life of the facilities financed thereby—future taxpayers will be unfairly burdened with paying for facilities benefiting earlier taxpayers who did not carry their fair share of the repayment burden.

Since these are complex matters and it is impossible to fully anticipate future needs, several knowledgeable observers have argued that the Constitution should not include any debt limit and that the responsibility for such matters should be left solely to the collective judgment of the Legislature—to our elected representatives in the General Assembly. ~~The~~ ^{Eleven} states have adopted this approach. The Commission has, however, concluded that, in view of its history and culture, Ohioans will not accept the principle of delegating this responsibility entirely to the General Assembly. The Commission has also concluded that constitutionally determined debt limits—however defined—may well be regarded as future authorizations to incur debt. The above observations thus have led to the recognition by the Commission that any constitutionally defined debt limit should receive the most careful consideration. It has further concluded that such a limit should have both flexibility and a direct relationship to ability to repay. Flexibility is an important concept since any fixed limit, however reasonable today, cannot anticipate the future; and “ability to repay” is a well-recognized principle of finance as a basic criterion for determining appropriate levels of borrowing.

These are the principles that have guided the Commission in the development of the debt limit proposed in this report—a limitation that is not so restrictive that it will thwart our proper purposes, and yet not so permissive as to lead to future excesses.

A notable by-product of the Commission’s recommendations—resulting principally from the removal of provisions authorizing the issuance of general obligation debt in specific amounts or to specific limits—is a reduction of approximately 85% in the length of Article VIII, from an estimated 11,200 words to 1,672 words.

The provisions of Article VIII of the Ohio Constitution of 1851, many of which have survived with little or no change since their adoption, are largely the result of an attempt by the Constitutional Convention of 1850-1851 to remedy by constitutional means the fiscal problems caused by the

involvement of the state and its political subdivisions in the building of canals, railroads, and turnpikes during the period 1820 to 1850. The principal reasons for calling the Convention were to forestall repudiation of the state debt and to work out a constitutional framework for its repayment.¹ The latter object was "the main principle" behind Article VIII.² The provisions of this article, and its companion Article XII, were legislative in character and were deliberately designed to severely restrict the power of the General Assembly in fiscal matters. These characteristics are a hallmark of state constitutions written during this era of American history, and the shortcomings of this approach to constitution-making became evident within a few years. As one observer remarked in 1875: "The spirit of these enactments, however harsh, may be justifiable in view of the recklessness and extravagance of the past; but let us understand that we are doing penance, and not pretend to say that such is a normal one for a healthy commonwealth,"³ and in what Benjamin U. Ratchford, the leading student of American state debts,⁴ was to call a pioneering work,⁵ Horace Secrist wrote in 1914:

"If the purpose of the restrictions on the financial powers of the states was to prohibit the use of credit, they have served it well. If the restrictions were intended to take the states out of the industrial field they have been as equally successful. That the purpose in mind was often of this double character, there can be no doubt, but that such was in every case a policy of wisdom may be questioned. State borrowing is in essence a question of political and financial expediency, and its use or non-use should be judged by political standards and by the rules of finance. At any time, given the needs for public revenues, there are two sources open for their acquisition, *viz.*, direct taxation and public borrowing. The method used will be governed largely by the purposes for which the money is to be expended. If the amount is large, and the expenditure of a non-recurrent nature, and such that taxation cannot or ought not to be adjusted to raise the money, then public credit should be utilized. The duration of loans should be determined by the benefits accruing from the expenditures, and the rule of equality between the present and the future become the guide. Even with the most restricted state policy public borrowing remains a valid instrument of public financing. Borrowing, far from always being an evil, is frequently a public good, providing it is not used as a cloak for perpetual debt."

* * *

"The state is an organism, and its essential nature like that of life in general is dynamic, and no cut-and-dried field of endeavor can be mapped out as good for this and all future times. If this is true, then the above limitations for the most part are inappropriate, when made a part of constitutions, since financial expedients cannot readily be adjusted to a changing political philosophy. The state should and does conserve the interests of the people in perpetuity, and a philosophy of a rigid character should never control its policy or hamper its use of borrowed funds if they are necessary for its operation."⁶

The Commission believes that, within reasonable constitutional limits, the determination of matters concerning the state debt and the extension of the credit of the state is, and should clearly be recognized as, a legislative responsibility. The people of Ohio, in a series of amendments to Article VIII proposed by the General Assembly and adopted by substantial margins during the last 25 years, have shown a willingness to accept

legislative recommendations in fiscal matters, including recommendations which have established the principle of borrowing as an instrument of public finance in the Constitution. At the end of fiscal 1972, the state's bonded indebtedness, incurred under this series of amendments, totaled \$1,237,090,000, broken down as follows:

Section of Art. VIII	Year Passed	Favorable Vote	Purpose	Amount Authorized ^(a)	Amount Issued ^(a)	Amount Outstanding 6/30/72 ^(b)
2(c)	1953	60%	Major Thoroughfare Construction	\$500	\$500	\$ 16.3
2(d)	1956	71%	Korean Conflict Bonus	90	60 (tot.)	2.4
2(e)	1955	56%	Capital Improvements Construction	150	150	13.9
2(f)	1963	60%	Public Works	250	250	248.1
2(g)	1964	65%	Highways	500	500	302.9
2(h)	1965	57%	Development	290	290	253.2
2(i)	1968	53%	Highway Obligations	500 ^(c)	225 ^(c)	220.6
2(i)			Public Improvements	259 ^(c)	185 ^(c)	179.6

During the 15-year period 1953-1968, the voters of Ohio approved capital improvement debt averaging \$163,000,000 per year in authorization. There is, to the knowledge of the Commission, no "ideal" or "proper" level of state debt. However, the Commission concludes that Ohio's post-war debt has not been excessive in comparison to the debt of other states. For example, according to statistics computed from information published by the Bureau of the Census, at the end of fiscal 1970, on a *per capita* basis, Ohio ranked 23rd among the states in the amount of general obligation debt, 26th in the amount of non-guaranteed debt, and 25th in total debt.⁷

However, the Commission concludes, considering Ohio's post-war borrowing pattern, that the state's present \$750,000 debt limit is illusory, and that the present method of incurring additional debt, through referenda resulting in constitutional amendments, is certainly unnecessarily cumbersome and potentially ineffective as a device to control state debt. For these reasons, the Commission recommends that both the \$750,000 unvoted general obligation debt limit and the method for incurring additional guaranteed debt be ~~changed~~ *changed*.

At the present time, Ohio is one of 16 states requiring constitutional amendment to incur guaranteed debt for capital improvement purposes.⁸ Twenty-one states require referenda for this purpose,⁹ and eleven states have no constitutional debt limit whatever.¹⁰ In addition, the Constitutions of Hawaii¹¹ and Pennsylvania¹² contain formulas fixing these states' general obligation debt limits at a multiple of general fund revenues or

(a) Dollar amounts in millions.

(b) Dollar amounts in millions, rounded to nearest tenth. Columns may not total due to rounding.

(c) As of June 30, 1972—and with the exception of the Korean Conflict Compensation Fund authorized by Section 2(d) of Article VIII, under which no more bonds will be issued—all remaining constitutional authority to issue general obligation bonds was under Section 2(i). This authority consisted of \$274 million for highways—if highway authority is looked upon as a "once only" authority, which it is not—and \$74 million for nonhighway public improvements. To the extent that such authority was not used prior to repeal, it would cease upon the repeal of Section 2(i) as proposed by the Commission.

Sources: Office of the Commissioners of the Sinking Fund.
Office of the Secretary of State.

annual tax revenues, respectively, while the Constitution of the Commonwealth of Puerto Rico limits debt service payments to a maximum percentage of the average of a two-year revenue base.¹³

In its study, the Commission considered the following constitutional alternatives on the question of a state debt limitation:

1. Maintaining the present debt limit, and the present method for incurring additional debt.
2. Maintaining the present debt limit, and requiring only a referendum instead of a constitutional amendment to incur additional debt.
3. Increasing the present debt limit to some higher amount, and either permitting the legislature to incur debt within this limit or requiring referendum approval within this limit.
4. Omitting any constitutional debt limit.
5. Creating a flexible debt limit, within which the General Assembly may incur debt for capital improvement purposes without voter approval, and providing that debt outside the constitutional formula should be subject to referendum.

The Commission rejected the possibility of recommending an increase in the present fixed dollar limit to a higher amount, because it concluded that any dollar amount fixed in the Constitution is as likely to be as inappropriate in the future as the present one is now, since it is impossible to make any reasonably accurate long-range economic forecast or to predict the demands by citizens for governmental services—demands which have been rapidly changing during the 20th century.

The Commission also rejected the possibility of recommending that the present debt limit be maintained, and that there be a change in the method of incurring debt from requiring a constitutional amendment to requiring a simple referendum, as was done in the Michigan Constitution of 1963.¹⁴ The Commission chose not to recommend such a proposal, first because there is doubt of the effectiveness of a referendum requirement as an instrument for limiting state debt and, more importantly, because it shares the view expressed by many informed observers that a referendum requirement has a tendency to encourage revenue bond financing in situations in which such financing may be inappropriate, and to shift responsibility for extremely complex fiscal decisions away from elected representatives. A. James Heins, a leading contemporary writer on state constitutional debt restrictions, writes:

“Others have proposed that states generally adopt the referendum requirement now present in twenty state constitutions. Such action would permit the assumption of present nonguaranteed debt in those states where a pledge of the state’s credit is now impossible without constitutional amendment. It would also permit future borrowing with general obligations, but keep the reins in the hands of the electorate, hopefully forestalling the possibility of a runaway state debt. While the proposal would improve the options available in some states, it would not change the position of states currently having referendum provisions in their constitutions. This latter group of states has relatively as large a debt as states currently unrestricted. A referendum provision does not forestall rapid increases in state debt, because nonguaranteed borrowing is available without resort to a referendum. In Kentucky, a referendum state, the Legislative Research Commission had this to say: ‘The constitutional arrangement for general obligation bonds ***, designed as a directive and safe-

guard, has served as an effective deterrent. Administrative officials do not relish a statewide drive to gain acceptance of a debt proposal. However, through its corporate agencies the state has employed revenue bonds, which are exempt from the constitutional provisions.' In other words, a referendum provision deters rapid increases in full-faith and credit debt because of the difficulty and cost of holding a referendum, but it does not prevent expensive increases in total debt of which nonguaranteed debt is a part. If a state legislature wishes to borrow without troubling with a referendum, it is generally free to do so through one of the nonguaranteed methods. The cost of referendum and legislative desire to avoid them should not be the deciding factors in the type of obligation selected for issuance by a state. The public should elect responsible officials. If it does not do so, a referendum requirement in a state constitution is not going to protect the public from improper management of state debt."¹⁵

The National Municipal League, in the sixth edition of its *Model State Constitution*, which is the result of the League's State Constitutional Studies Project, in progress since 1957, also questions the effectiveness of the referendum as an instrument for governing basic debt authority:

"Prior *Models*, and nearly half of existing state constitutions, require that debt authorized by law cannot take effect until approved by referendum of the state's voters. The popular referendum requirement has not proved to be much of a restriction upon the creation of debt, however, since voters are asked to pass judgment with limited or no knowledge of the complex fiscal and general policy issues that prompted the legislature and the governor to seek the new debt."

"Certainly the referendum is not consonant with the fixing of responsibility for policy development in the people's elected representatives. Many believe referenda on debt merely produce legislative irresponsibility, with law-making bodies 'passing the buck' to a bewildered electorate."¹⁶

Although there is no evidence that the voters of Ohio have ever been deliberately misled in regard to the content and intent of any constitutional amendment under which they have authorized the issuance of additional guaranteed state debt, the Commission believes that the mere scope and complexity of many such amendments make it nearly impossible, in the best of faith, to adequately inform the voters on the issues on which they are being asked to vote, or for the voters to comprehend the issues.

The most complex amendment of this nature now in the Ohio Constitution is Section 2i of Article VIII, adopted in 1968. It provides authority for general obligation debt of up to \$759,000,000, subject to certain limitations. These include:

1. That the purpose of the debt be for capital improvements for highways, water pollution control, water management, higher education, technical education, vocational education, juvenile correction, parks and recreation, research and development facilities for highway improvements, mental hygiene and retardation, police and fire training, airports, and other state buildings and structures.
2. That not more than \$100,000,000 principal amount be issued in any one year for highway improvements and related purposes, and that not more than \$500,000,000 be outstanding at any one time for these purposes.

3. That not more than \$259,000,000 be issued for the other purposes stated; of this amount \$120,000,000 must be used for water pollution control, \$100,000,000 for higher education, vocational education, and juvenile correction, \$20,000,000 for parks and recreation, and \$19,000,000 for airports, state buildings, and police and fire training facilities. (It is important to note that, unlike the provision for highway bonds, these amounts are limits on the authority to issue bonds. Thus, when any one of these purposes has reached its constitutional limit, the General Assembly has no more bonding authority. With highways, on the other hand, the General Assembly can authorize more than \$500,000,000, provided it does not have more than \$500,000,000 outstanding at any time.)
4. That any bond issue be repaid within 30 years.

Section 2i also contains general instructions concerning funding of payment of bonds. It also authorizes the issuance of "hybrid" revenue bonds for a number of purposes, without regard to the dollar limitation referred to above. The purposes for which Section 2i authorizes issuance of such bonds are mental hygiene and retardation, parks and recreation, state-supported and state-assisted institutions of higher education, including technical education, water pollution control and abatement and water management, and housing of branches and agencies of state government. One recent study of the Ohio Constitution concludes as follows in regard to this section:

"Thus, the voters have given the legislature virtually unlimited authority to issue bonds for highway improvements, and a substantial authority *** for other improvements. There is no termination date in this section for the cessation of the authority. The effect is to nullify the \$750,000 borrowing limitation of Article VIII, Section 1."¹⁷

This section is a prime example of the debt-authorizing constitutional amendment which, by its very scope, must be over-simplified in the manner in which it is presented to the voter in public information campaigns and on the ballot. Such complexity and over-simplification, combined with the fact that the individual voter must decide whether to accept or reject such an amendment as a "package," in the Commission's view, effectively deprives the electorate of much truly meaningful control over the size of the state's guaranteed and nonguaranteed debt, as well as the purposes for which such debt is incurred, the referendum notwithstanding. The Commission also views a requirement for more frequent and more limited referenda on "ordinary" capital expenditures of the state as impractical and likely to have an unfavorable effect on capital planning and budgeting.

Another alternative rejected by the Commission was that of recommending that the Constitution prescribe no state debt limit at all. As previously indicated, eleven states now have constitutions which fall in this category. Illinois recently adopted such a constitution, in 1970.¹⁸ However, it is the position of the Commission that the Ohio Constitution should contain a debt limit. Also, whatever the merits of the abolition of a state debt limit may be, in the view of the Commission such a proposal would represent too much of a departure from the present method of incurring debt to be acceptable to the people of this state.

The remaining alternative, a basic state general obligation debt limit expressed in a formula based on a moving average of state revenues, which is recommended in this report, seems to this Commission to offer the best solution to the need for modernizing the mechanism by which

the state incurs general obligation or guaranteed debt, while at the same time recognizing the historical preference of the people of Ohio for some amount of constitutional control in fiscal matters.

The concept of a constitutional state debt formula is not novel. Benjamin U. Ratchford advocated such an approach to debt limitation in *American State Debts*, a classic study on the subject published in 1941.¹⁹ Under his proposal, the basic state debt limit would be as follows: the legislature could authorize borrowing so long as the net debt incurred under such authorization did not exceed 100% of the average revenue receipts of the state for the preceding five years. The electorate could, by a referendum vote, authorize borrowing of a similar amount. The normal or basic limit for the debt would thus be an amount equal to twice the average revenue receipts, as defined above, for the preceding five years; it would be a moving limit to be computed each year. Ratchford advocated keeping the voted and nonvoted parts of the limit separate to show (1) the part of the debt authorized by the legislature and by the people and (2) the amount of additional indebtedness which each might authorize. Also, in his proposal, revenue receipts would be defined as (1) net collections from taxes and license and registration fees levied by law; (2) donations and grants from the federal government; and (3) net receipts from state investments and enterprises. While admonishing that "there is no magic in debt limitations, and we should not expect to solve all problems by writing a formula in the constitution,"²⁰ Ratchford nevertheless strongly advocated the adoption of the formula approach to the limitation of state debt, and evaluated his proposal as follows:

"The *** plan would allow a reasonable and prudent use of the state's credit but would prevent excessive borrowing. Borrowing could be authorized without undue delay, and the debt limit would rise with the increase of state revenues. If the state desired to make heavy outlays, it could, by increasing revenues, pay for a part of the outlays and at the same time raise the debt limit. Large revenues collected to retire a debt would increase the future margin of borrowing both by reducing the existing debt and by raising the debt limit. In emergencies the legislature could invoke additional borrowing power to a limited extent. These provisions would allow all the borrowing that is desirable under normal conditions. If an emergency should arise to make further borrowing necessary, the people always have the privilege of amending the constitution."²¹

In 1958, Ratchford commented that "there does not seem to have been any basic changes in the methods of limiting debts in recent years. Several proposals, originally advanced more than 20 years ago, have made little or no progress. One of these was to limit debts in terms of average revenue receipts. Apparently no state has tried any version of this idea."²¹ Two states and the Commonwealth of Puerto Rico have, since that time, adopted constitutional debt limit formulas. While these formulas are alike to the extent of being based on a moving average of revenues, they vary in their particular details, each reflecting the constitutional history and the fiscal situation of the jurisdiction in which each was adopted. The constitutional state debt formula proposed by the Commission in this report fits the same pattern. This formula, which is the cornerstone of the Commission's recommendations for a revised Article VIII, and the other recommendations of the Commission relating to this article, are examined in detail in the remainder of this report.

Finance, Taxation, and Economic Development Committee

Planning Worksheet (May 2015)

Article VIII – Public Debt and Public Works	
Sec. 1	Public debt; limit of deficit spending by state (1851)
Notes:	
Sec. 2	State may incur debts for defense or to retire outstanding debts (1851)
Notes:	
Sec. 2a	Repealed - referred to adjusted compensation for service in World War I (1921, rep. 1953)
Notes:	
Sec. 2b	Adjusted compensation for service in World War II; World War II veterans' bonuses (1947)
Notes:	
Sec. 2c	Construction of state highway system (1953)
Notes:	
Sec. 2d	Korean War veterans' bonus (1956)
Notes:	
Sec. 2e	Providing means for securing funds for highway and public building construction (1955)
Notes:	
Sec. 2f	Authorizing bond issue to provide school classrooms, support for universities, for recreation and conservation and for state buildings (1963)
Notes:	
Sec. 2g	Authorizing bond issue or other obligations for highway construction (1964)
Notes:	
Sec. 2h	Bond issue for state development (1965)
Notes:	
Sec. 2i	Capital improvement bonds (1968)
Notes:	
Sec. 2j	Vietnam conflict compensation fund (1973)
Notes:	
Sec. 2k	Issuance of bonds for local government public infrastructure capital improvements (1987)
Notes:	

Finance, Taxation, and Economic Development Committee

Planning Worksheet (May 2015)

Sec. 2l	Parks, recreation, and natural resources project capital improvements (1993)
Notes:	
Sec. 2m	Issuance of general obligations (1995)
Notes:	
Sec. 2n	Facilities for system of common schools and facilities for state-supported and state-assisted institutions of higher education (1999)
Notes:	
Sec. 2o	Issuance of bonds and other obligations for environmental conservation and revitalization purposes (2000)
Notes:	
Sec. 2p	Issuance of bonds for economic and educational purposes and local government projects ((2005, 2010)
Notes:	
Sec. 2q	Issuance of bonds for continuation of environmental revitalization and conservation (2008)
Notes:	
Sec. 2r	Persian Gulf, Afghanistan, and Iraq conflicts compensation fund (2009)
Notes:	
Sec. 3	The state to create no other debt; exceptions (1851)
Notes:	
Sec. 4	Credit of state; the state shall not become joint owner or stockholder (1851)
Notes:	
Sec. 5	No assumption of debts by the state (1851)
Notes:	
Sec. 6	Counties, cities, towns, or townships, not authorized to become stockholders, etc.; insurance, etc. (1851, am. 1912)
Notes:	
Sec. 7	Sinking fund (1851)
Notes:	
Sec. 8	The commissioners of the sinking fund (1851, am. 1947)
Notes:	

Finance, Taxation, and Economic Development Committee

Planning Worksheet (May 2015)

Sec. 9	Biennial report of the sinking fund commissioners (1851)
Notes:	
Sec. 10	Application of sinking fund (1851)
Notes:	
Sec. 11	Semiannual report of sinking fund commissioners (1851)
Notes:	
Sec. 12	Repealed – provided for a superintendent of public works (1851, am. 1912, rep. 1974)
Notes:	
Sec. 13	Economic development (1965, am. 1974)
Notes:	
Sec. 14	Financing for housing program (1982)
Notes:	
Sec. 15	State assistance to development of coal technology (1985)
Notes:	
Sec. 16	State and political subdivisions to provide housing for individuals (1990)
Notes:	
Sec. 17	Limitations on obligations state may issue (1999)
Notes:	

Finance, Taxation, and Economic Development Committee

Planning Worksheet (May 2015)

Article XII – Finance and Taxation	
Sec. 1	Poll taxes prohibited (1851, am. 1912)
Notes:	
Sec. 2	Limitation on tax rate; exemption (1851, am. 1906, 1912, 1918, 1929, 1933, 1970, 1974, 1990)
Notes:	
Sec. 2a	Authority to classify real estate for taxation; procedures (1980)
Notes:	
Sec. 3	Imposition of taxes (1976)
Notes:	
Sec. 4	Revenue to pay expenses and retire debts (1851, am. 1976)
Notes:	
Sec. 5	Levying of taxes (1851)
Notes:	
Sec. 5a	Use of motor vehicle license and fuel taxes restricted (1947)
Notes:	
Sec. 6	No debt for internal improvement (1851, am. 1912)
Notes:	
Sec. 7	Repealed – referred to taxation of inheritances (1911, rep. 1976)
Notes:	
Sec. 8	Repealed – referred to taxation of income (1912, am. 1973, rep. 1976)
Notes:	
Sec. 9	Apportionment of income, estate, and inheritance taxes (1912, am. 1930, 1976)
Notes:	
Sec. 10	Repealed – referred to taxation of franchises and production of minerals (1912, rep. 1976)
Notes:	
Sec. 11	Sinking fund (1912)
Notes:	

Finance, Taxation, and Economic Development Committee

Planning Worksheet (May 2015)

Sec. 12	Repealed – specified that no excise tax would be levied upon the sale or purchase of food for human consumption off the premises where sold (1936, rep. 1976)
Notes:	
Sec. 13	Wholesale taxes on foods (1994)
Notes:	

Finance, Taxation, and Economic Development Committee

Planning Worksheet (May 2015)

Article XIII - Corporations	
Sec. 1	Special acts conferring corporate powers; prohibited (1851)
Notes:	
Sec. 2	Corporations, how formed (1851, am. 1912)
Notes:	
Sec. 3	Liability of stockholders for unpaid subscriptions; dues from corporations; how secured; inspection of private banks (1851, am. 1903, 1912, 1937)
Notes:	
Sec. 4	Corporate property subject to taxation (1851)
Notes:	
Sec. 5	Corporate power of eminent domain to obtain rights of way; procedure; jury trial (1851)
Notes:	
Sec. 6	Organization of cities, etc. (1851)
Notes:	
Sec. 7	Acts authorizing associations with banking powers; referendum (1851)
Notes:	



OHIO CONSTITUTIONAL MODERNIZATION COMMISSION

MEMORANDUM

TO: Chair Douglas Cole, Vice Chair Karla Bell, and Members of the Finance, Taxation, and Economic Development Committee

CC: Steven C. Hollon, Executive Director

FROM: Steven H. Steinglass, Senior Policy Advisor

DATE: May 26, 2015

RE: Article VIII (Public Debt) Issues before the Committee

At its January 15, 2015 meeting, the Finance, Taxation, and Economic Development Committee identified a number of issues that it plans to consider as part of its review of Article VIII of the Ohio Constitution. This memorandum identifies and briefly describes these issues and provides additional information relevant to some of them. It also identifies possible next steps for addressing other Article VIII issues. For a fuller account of the January 12, 2015 meeting, please see the minutes from that meeting attached.

These issues include:

- Repeal of obsolete provisions
- Repeal of provisions on the Sinking Fund
- Review of the Ohio Constitutional Revision Commission approach to public debt
- Big Issues—Review of Ohio’s approach to public debt
 - A “30,000 Foot” Policy Review of Public Debt
 - The Modernization of Article VIII
- A comparative review of how other states address public debt issues

These issues all relate to Article VIII. It is important to keep in mind that there are other issues concerning public debt that arise in the context of Article XII (Finance and Taxation), which the committee has not yet reviewed.

Repeal of Obsolete Provisions

Members of the committee have expressed support for repealing the obsolete provisions of Article VIII.

To move this issue forward, the committee could direct staff to begin drafting a report and recommendation that would include the following:

- Recommending repeal of the nine obsolete sections of Article VIII that authorized the issuance of general obligation bonds that have been retired; these are Article VIII, Sections 2b to 2i;
- Including a constitutional provision or schedule that will fully protect the interests of those with outstanding interest coupons and outstanding bonds;
- Preserving important provisions that are in the repealed sections, including (but not necessarily limited to) the language in Section 2i authorizing the issuance of revenue bonds.

The draft report and recommendation on the repeal of obsolete provisions could be completed and available for consideration by the committee by the end of 2015. In the interim, with the committee's approval, staff could solicit further input on this issue from various stakeholders.

Repeal of Provisions on the Sinking Fund

The drafters of the 1851 constitution proposed the use of a sinking fund to incur debt and manage its repayment. The creation of the sinking fund was one way to respond to the financial abuses of the 1830s. There are five sections in Article VIII that directly involve the sinking fund, Sections 7 through 11, and there has only been one minor amendment to any of these sections. In addition, there are other sections in Article VIII that contain what appear to be non-essential references to the sinking fund. The state no longer uses the sinking fund (and the commissioners of the sinking fund) to incur, retire, or manage debt, and the question before the committee will be whether the five sections relating to the sinking fund should be repealed and whether other references to the sinking fund in Article VIII should be amended. Although the 1970s Ohio Constitutional Revision Commission ("1970s Commission") recommended the repeal of Sections 7 through 11, the General Assembly only recommended the repeals of Sections 7, 9, and 10, thus leaving the commissioners of the sinking fund only responsible for issuing semi-annual reports.

The sinking fund issue will be addressed in a separate memorandum that will be presented to the committee in the near future. In the interim, with the committee's approval, staff could solicit further input on this issue from various stakeholders.

Review of OCRC Approach to Public Debt

Members of the committee have expressed interest in better understanding the public debt recommendations of the 1970s Commission. For the March meeting I provided a memorandum summarizing the work of the 1970s Commission on the issue of public debt. This memorandum was titled “The Public Debt Recommendations of the 1970s Ohio Constitutional Revision Commission” and is dated March 4, 2015. A copy of that memorandum (including portions of the final report from the 1970s Commission that addressed the different approaches to public debt considered at that time) is attached. The memorandum includes the Commission’s rationale for its approach as well as a possible explanation for its rejection by the voters on November 8, 1977, by an overwhelming vote of 2,284,178 to 1,129,165.

The committee has not yet had a full discussion of the approach taken by the 1970s Commission to public debt.

Big Issues—Review of Ohio’s Approach to Public Debt – A “30,000 Foot” Policy Review of Public Debt and the Modernization of Article VIII

Members of the committee have expressed an interest in avoiding getting completely bogged down in the housekeeping aspects of Article VIII (*i.e.*, the elimination of obsolete provisions) and have urged a review of the larger issues implicated by Ohio’s approach to public debt. This review will also include the need to ask whether the current provisions of Article VIII (including Section 2i, which authorizes the issuance of revenue bonds) are sufficient to permit the state to deal with the infrastructure and other projects of the future while protecting the financial interests of the state.

The background information for this review is contained, to a limited extent, in the memorandum noted above titled “The Public Debt Recommendations of the 1970s Ohio Constitutional Revision Commission.” In addition, it will be necessary to develop more information describing the larger issues, including information on both modernization and the role of public debt in economic development.

To assist the committee, Professor Richard Briffault of Columbia Law School is making a presentation to the committee at its June 4, 2015 meeting.

Comparative Review of How Other States Address Public Debt Issues

The committee has expressed interest in comparing Ohio’s current approach to public debt to the approaches used in other states.

The presentation by Professor Briffault described above will provide an opportunity to review how other states address the range of issues involved in public debt.