



OHIO CONSTITUTIONAL MODERNIZATION COMMISSION

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Finance, Taxation & Economic Development Committee

Douglas Cole, Chair  
Karla Bell, Vice-chair

Part I

November 10, 2016

Ohio Statehouse  
Room 017

## **OCMC Finance, Taxation, and Economic Development Committee**

Chair        Mr. Douglas Cole  
Vice-chair   Ms. Karla Bell  
               Rep. Ron Amstutz  
               Mr. Herb Asher  
               Rep. Kathleen Clyde  
               Ms. Jo Ann Davidson  
               Mr. Fred Mills  
               Sen. Bob Peterson  
               Sen. Charleta Tavares  
               Ms. Kathleen Trafford

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**OHIO CONSTITUTIONAL MODERNIZATION COMMISSION**  
**FINANCE, TAXATION, AND ECONOMIC DEVELOPMENT COMMITTEE**

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**THURSDAY, NOVEMBER 10, 2016**  
**11:30 A.M.**  
**OHIO STATEHOUSE ROOM 017**

**AGENDA**

I. Call to Order

II. Roll Call

III. Approval of Minutes

- Meeting of June 9, 2016

*[Draft Minutes – attached]*

IV. Presentations

- “Update on Draft Joint Resolutions”

Steven C. Hollon  
Executive Director

*[Draft Joint Resolution Regarding Article VIII, Sections 2, 7, 8, 9, 10, and 11  
regarding The Sinking Fund – attached]*

*[Draft Joint Resolution Regarding Article VIII, Sections 2b, 2c, 2d, 2e, 2f, 2g, 2h, 2j,  
2k, and Proposed New Section 18 – attached]*

*[Draft Joint Resolution Regarding Article VIII, Proposed New Section 2t – attached]*

➤ “Review of State Policies on General Obligation Debt”

Steven H. Steinglass  
Senior Policy Advisor

*[Memorandum by Steven H. Steinglass titled “Review of State Policies on General Obligation Debt,” dated August 29, 2016 – attached]*

V. Report and Recommendation

- Article VIII, Sections 2l, 2m, 2n, 2o, 2q, 2r, and 2s (Additional Authorization of Debt Obligations)
- First Presentation
  - Public Comment
  - Discussion
  - **Possible Action Item – Adoption of Report and Recommendation**

*[Report and Recommendation – attached]*

VI. Committee Discussion

- The committee chair will lead discussion regarding the duties of the treasurer to report debt.

*[Memorandum by Shari L. O’Neill titled “State Treasurer Statutory Duties in the Fifty States,” dated August 26, 2016 – attached]*

- The committee chair will lead discussion regarding Article VIII, Sections 4, 5, and 6 (Use of State Credit).

VII. Next Steps

- The committee chair will lead discussion regarding the next steps the committee wishes to take in preparation for upcoming meetings.

*[Planning Worksheet – attached]*

VIII. Old Business

IX. New Business

X. Public Comment

XI. Adjourn



## OHIO CONSTITUTIONAL MODERNIZATION COMMISSION

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### MINUTES OF THE FINANCE, TAXATION, AND ECONOMIC DEVELOPMENT COMMITTEE FOR THE MEETING HELD THURSDAY, JUNE 9, 2016

#### **Call to Order:**

Chair Douglas Cole called the meeting of the Finance, Taxation, and Economic Development Committee to order at 11:51 a.m.

#### **Members Present:**

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

#### **Approval of Minutes:**

The minutes of the May 12, 2016 meeting of the committee were approved.

#### **Committee Discussion:**

Chair Cole began the meeting by indicating that three reports and recommendations that had been issued by the committee at its last meeting were approved by the Coordinating Committee and would be forwarded to the Commission for a first reading.

Chair Cole then stated, with regard to the committee's review of Article VIII, Sections 4, 5, 6, that the state is involved in a lawsuit challenging the JobsOhio program that is related to those sections of the constitution. He said, in the interests of full disclosure, that, as a private practice attorney, he represents JobsOhio and is lead counsel.

Chair Cole further disclosed that attorney Gregory W. Stype, of Squire Patton Boggs (US) LLP, who is one of the presenters appearing before the committee, is also counsel for JobsOhio. Chair Cole said the legal representation does not prevent either attorney from presenting or participating, but, he said, the committee will want to be careful to hear all viewpoints on Article VIII, Sections 4, 5, and 6.

**Presentations:**

*Gregory W. Stype*  
*Squire Patton Boggs (US) LLP*

Chair Cole introduced Mr. Stype, who represents the Ohio Public Facilities Commission (OPFC) as bond counsel. Chair Cole indicated Mr. Stype would be presenting to the committee on the topic of Article VIII, Sections 4, 5, and 6, related to the credit of the state, the assumption of debt by the state, and the prohibition against local governments becoming stockholders.

Mr. Stype began by noting that the core aspects of Sections 4 and 6 are the same: they limit the power of the state in Section 4, and limit the power of local governments in Section 6, to lend aid in credit or to become a joint actor with private enterprise. He said, in the 1851 constitution, those sections, as well as Section 5, sprung out of the troubled financial history of the railroads and canals. Mr. Stype noted that the version of Section 6 that is now in the constitution results from an amendment in 1912 to add the five lines that do not prohibit joining with insurance companies to insure property and risk. He said, while that provision seems unrelated, the logic becomes clear if it is considered that insurance was an evolving industry at that time and the language was believed necessary to protect that institution in the constitution.

Mr. Stype said Section 5, which restricts the state from assuming the debts of any political subdivision unless the debt was created for the purpose of addressing civil unrest, is often overlooked. He further noted the constitution does not stop with Sections 4, 5, and 6 in addressing lending aid in credit because express exceptions have been put in place.

Mr. Stype continued that, through action by voters or by the courts, the language has been illuminated and additional amendments have refined the meaning of the sections.

He noted that Section 13, adopted in 1965 and amended in 1975, allows the issuance of industrial development bonds and resulted from an Ohio Supreme Court ruling in 1964 that, even though a proposed test bond issue did not put any of the state's resources at risk, Section 4 precluded that kind of bond issue.<sup>1</sup> Thus, Section 13 provides that bonds can be issued and loans made for projects for industry, commerce, distribution, and research, with an important proviso that monies raised by taxation may not be obligated or pledged to the payment of those bonds. He said the amendment is designed to allow industrial development bond financing to convert federal tax benefits to the projects, but not to commit state tax dollars.

Chair Cole asked whether the state is viewed as a conduit or guarantor in that situation. Mr. Stype indicated that if the state is a guarantor, it can only do so from nontax revenue sources. He gave as an example that when the state made pledges of abandoned deposits that were collected by the Department of Commerce through its banking division. He added there are programs for loans being made and payments received back in circumstances where there is a large and predictable revenue stream that can be leveraged through bonds and loans made. He said an example of that type of program is the Ohio Turnpike. He said the turnpike tolls are not taxes,

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

and so that money is not a debt of the state, does not invoke the state taxing power, and all payments come from turnpike users.

Chair Cole asked Mr. Stype to provide an example of a project for which bonds are issued under Section 13. Mr. Stype said this option is used less frequently because federal tax law has become more constrained, but, he added, there are bonds that have federal tax benefits for air and water pollution control at private industrial facilities. He said those bonds are going to be repaid by those companies, but the bonds could not be issued absent Section 13.

Committee member Herb Asher asked, with regard to Section 4, whether universities can become co-owners with private sector entities. Mr. Stype answered that, as a general proposition, state universities are subject to the same restrictions as other state agencies, but structures have been created to allow projects such as making land available to build private residence halls. He said, generally, if a project is in the service of a public purpose and the state taxing power is not being exposed to risk, then a project has Section 13 ramifications.

Representative Ron Amstutz asked what category liquor sales profits fall into. Mr. Stype said those are out of the state's taxing power, as established by the Ohio Supreme Court in *State ex rel. Duerk v. Donahey*, 67 Ohio St.2d 216, 423 N.E.2d 429 (1981).

Mr. Stype continued his presentation by noting Section 14, adopted in 1982, authorized loans for housing in Ohio, an amendment that was driven by a 1976 Ohio Supreme Court decision concluding that, despite Section 13, the words "industry, commerce, distribution, and research" did not encompass housing. Thus, the Court said, if voters wanted to create that benefit the constitutional section specifically would need to indicate housing. *State ex rel. Brown v. Beard*, 48 Ohio St.2d 290, 358 N.E.2d 569 (1976).

Mr. Stype described Section 15, adopted in 1985, as authorizing the state to issue bonds to fund loans for coal research and development purposes, allowing the state to share in the returns from the bonds.

Mr. Stype said Section 16, adopted in 1990, broadened the loans-to-lenders regime that existed under Section 14, opening the door to a wider variety of housing loans.

Mr. Stype noted that, in 1993, Section 21 was adopted to authorize general obligation bonds for capital improvements for parks, land, and water recreational facilities. He said that section also says Sections 4 and 6 do not apply.

With regard to the adoption of Section 20 in 2000, he said in 2008 that provision was extended and enlarged in terms of its amount. He said that section authorizes issue of general obligation bonds for environmental and related conservation and revitalization purposes.

Chair Cole asked whether the state can become a joint owner. Mr. Stype said that would not be possible, but that the practice has been for the state to get the loan for the revitalization project and partner with local communities. He noted that owners of "brownfield" sites that require

revitalization cannot qualify for state assistance if they are the ones who created the dirty site; rather, it is the subsequent owner who qualifies for state assistance.

Chair Cole asked whether the state can participate in the profit stream, or whether the money is awarded as a grant. Mr. Stype said that type of assistance is primarily designed to provide grants, but there is also a limited amount of loans.

Rep. Amstutz asked, regarding Section 2o, whether there is an interpretation that the conservation provision could allow for some participation in some of the conservation practices that would prevent or curtail pollution, such as wastewater treatment. Mr. Stype said that might fall under Section 2o or under some other constitutional provision.

Mr. Stype noted the last set of exceptions to Sections 4, 5, and 6, are found in Section 2p, the “Third Frontier Amendments,” that were originally adopted in 2005, and extended in 2010. He said Third Frontier projects are those for which there is state authorization to issue general obligation bonds to fund research and development, and for sites and facilities for support of Ohio industry, commerce, research, distribution, and development. He noted “shovel ready sites” was the title that was used, meaning property that is ready and prepared for development. He said these moneys were invested in ways that allowed private industry to be part of the picture, so there had to be an exception to Sections 4 and 6. He said, with a couple of exceptions, all bond issues are subject to General Assembly authorization and are often subject to limitations in terms of the amount that can be issued in a given year, outstanding, or in total, or are subject to the five percent debt service limitation. So, he said, there are restrictions on these bonds.

Mr. Stype then reviewed case law relating to Sections 4, 5, and 6. He identified one case, *Grendell v. Ohio Environmental Protection Agency*, 146 Ohio App.3d 1, 764 N.E.2d 1067 (9th Dist. 2001), involving contracting for services, as one of the best cases for a history of Sections 4 and 6. In that case, the Ninth District Court of Appeals determined it was acceptable under Sections 4 and 6 for the state to contract with private vendors to implement an automobile e-check system, holding that hiring a private vendor is not same as joining together in enterprise.

Mr. Stype also indicated *State ex rel. Dickman v. Defenbacher*, 85 Ohio App. 398, 86 N.E.2d 65 (10<sup>th</sup> Dist. 1948), held the state can appropriate moneys out of the general fund, even where the state could not issue debt for that purpose. He said a current appropriation is not a long-term commitment of the state’s financial resources and not a debt. Regarding public purpose themes, he said, in 2006, another case examined the purpose of public education, while another case dealt with health care. *State ex rel. Ohio Congress of Parents & Teachers v. State Bd. of Educ.*, 111 Ohio St.3d 568, 2006-Ohio-5512, 857 N.E.2d 1148 (2006); *State ex rel. Taft v. Campanella*, 51 Ohio App.2d 237, 368 N.E.2d 76 (8<sup>th</sup> Dist. 1977). Mr. Stype described another case dealing with intergovernmental arrangements, *Bazell v. Cincinnati*, 13 Ohio St.2d 63, 233 N.E.2d 864 (1968), which related to a stadium construction project.

Mr. Stype said some cases recognize that if the goal is to accomplish a public purpose through nonprofit corporations, Sections 4 and 6 do not prevent those kinds of arrangements. Mr. Stype said an early case standing for that principle, in 1922, held the state could give money to

agricultural fairs. *State ex rel. Leaverton v. Kerns*, 104 Ohio St. 550, 136 N.E. 217 (1922). He said a 1983 case involving housing for the homeless determined that it is appropriate for a political subdivision to contract with a nonprofit corporation to provide services to the inhabitants of the political subdivision that could be provided by the municipality itself as a public service. *Franklinton Coalition v. Open Shelter, Inc.*, 13 Ohio App. 3d 399, 469 N.E.2d 861 (10<sup>th</sup> Dist. 1983).

Mr. Stype identified only two cases interpreting Section 5: *Butler Cty. Transp. Improvement Dist. v. Tracy*, 120 Ohio App.3d 346, 697 N.E.2d 1089 (12<sup>th</sup> Dist. 1997), and *Long v. Ohio State University*, 24 Ohio App. 261, 157 N.E. 395 (10<sup>th</sup> Dist. 1926). In both cases, the Court upheld the financing arrangements as falling outside the prohibition created by Section 5.

Mr. Asher noted a state revenues program linked to a deposit program out of the state treasurer's office, wondering if that program required a special statutory or constitutional provision to allow the treasurer to do that or whether, instead, the treasurer has the power to make decisions to invest. Mr. Stype said that program was authorized by statute.

There being no further questions for Mr. Stype, Chair Cole thanked him for his presentation.

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

Chair Cole recognized Jonathan Azoff, director of the Office of Debt Management and Senior Counsel to the Ohio Treasurer of State. Mr. Azoff presented to the committee on the topic of a state constitutional provision giving the Ohio treasurer the responsibility of reporting on State debt.

Mr. Azoff said currently the treasurer's office fulfills three core functions relating to state debt. He said, first, the treasurer is the issuer of debt, specifically, the state's general obligation highway debt, its Grant Anticipation Revenue Vehicle (GARVEE) transportation bonds, and its lease-appropriation debt. He said the treasurer also serves as a conduit issuer for the state's federal and state infrastructure bank programs, the Ohio Enterprise Bond Program, and the Community College Intercept Program, as well as performing certain duties as a member of the OPFC in connection with OPFC issuances.

Mr. Azoff said, as a second core function, the treasurer's office ensures the timely payment of the state's approximately \$11 billion in outstanding debt, acting as paying agent and bond registrar for all general obligation debt and coordinating debt payments via corporate bond trustees for revenue and special obligation debt. He added that the treasurer's office calculates payments on state-issued swap agreements and evaluates remarketing agent performance on the State's outstanding variable rate obligations.

Mr. Azoff described the treasurer's third core function in relation to debt is to report on the state's debt.

In relation to constitutional provisions creating a sinking fund and a sinking fund commission, Mr. Azoff said there is significant overlap between the treasurer's debt-related duties and responsibilities delegated to the commissioners of the sinking fund. He noted, while the commissioners of the sinking fund have not met since 2008, the sinking fund commission's constitutionally-delegated duties are being performed. With regard to duties delegated to the treasurer, Mr. Azoff said for at least the last 47 years, the treasurer has prepared the semi-annual report, distributing it twice a year to the governor and all members of the General Assembly. He said the report details general obligation bond activity for the preceding six-month period, providing extensive financial information regarding the state's ten types of outstanding general obligation bonds.

In addition to that reporting function, Mr. Azoff described that the treasurer also fulfills the sinking fund commission's duty to pay interest and redeem the principal on the state's general obligation debt, and does so in the capacity of the "Commissioners of the Sinking Fund." He said the "Commissioners of the Sinking Fund" receive appropriations in every state operating budget for this purpose, noting that in fiscal year 2016, the "Commissioners of the Sinking Fund" were appropriated more than \$1.1 billion. He said the Office of Debt Management at the treasurer's office transacts business using these funds as the "Commissioners of the Sinking Fund" in the state's accounting system, timely paying the state's outstanding debt from the designated bond service funds.

Mr. Azoff emphasized the treasurer does not have independent legal authority to perform many of these tasks, relying instead on the legal framework set out in the constitution. He said if Article VIII, Sections 7 through 11 are repealed, a replacement will be required.

Mr. Azoff advocated for a constitutional amendment providing for the state treasurer to report on the state's debt. He said creating such an amendment would continue the historical tradition of the semi-annual report, and retain an important constitutional principle requiring publicly-elected officials to demonstrate accountability for the money the state borrows, which taxpayers are ultimately responsible to repay.

Mr. Azoff said the committee should not stop there but should also recommend an amendment that would expressly charge the treasurer's office with the responsibility for paying the state debt.

Mr. Azoff said the "archaic Commissioners of the Sinking Fund can be modernized without removing the Constitutional accountability for statewide elected officials that was put in place at the Constitutional Convention of 1851. There has not been testimony indicating that that safeguard is no longer necessary." Mr. Azoff concluded, saying it is important to continue the practice of holding statewide elected officials accountable in the constitution for the management, reporting, and payment of the state's debt.

Chair Cole asked where the treasurer's reporting function is reflected in the law and whether there is statutory authority for this function. Mr. Azoff said there is statutory authority that does not specifically reference the sinking fund but rather references the sinking fund commission.

Chair Cole said he thought the OPFC was doing many of the functions that had been assigned to the sinking fund commission. Mr. Azoff said, with regard to issuance of debt, the reporting on debt is prepared by the treasurer under the seal of the sinking fund commission, and there is a semiannual report prepared by the treasurer in the capacity of the office of the sinking fund.

Chair Cole asked what gives the treasurer the authority to do that if the sinking fund is not meeting. Mr. Azoff said the statute permits the sinking fund to issue the report, allowing appointment of a clerk, who is the treasurer.

Chair Cole asked if there is anything that would prevent the General Assembly from creating a statute to address this procedure. Mr. Azoff said there is not, but there is value in keeping the treasurer's role in the constitution. He added he is not aware of any statutory authority for preparing the report.

Committee member Fred Mills asked whether Mr. Azoff is suggesting that there should be independent authority in the constitution if the committee recommends elimination of sinking fund. He noted those functions should be given to the treasurer as an alternative, but wondered if that provision must be in the constitution.

Mr. Azoff said the overarching point is, if the sinking fund is out of date but the function is not, Ohio would be losing some safeguards.

### **Discussion:**

With regard to addressing the sinking fund, Chair Cole noted that the committee already voted to issue a report and recommendation that the sinking fund provisions, Article VIII, Sections 7, 8, 9, 10, and 11, be repealed. He said that action does not prevent adopting a separate provision that constitutionally assigns the reporting duties to the treasurer or anyone else. Chair Cole said the committee should consider whether to move forward with formulating a new provision that would assign the duties currently assigned to the sinking fund commission and the treasurer to another government official.

Chair Cole said the committee is not yet in a position to discuss Sections 4, 5, and 6, so that discussion would be saved for another meeting.

Chair Cole said the benefit of the constitutional provisions relating to the sinking fund was that they required participation by the five statewide elected officials.

Committee member Jo Ann Davidson noted the reporting requirement could be in legislation rather than in the constitution. She said the issue is whether the committee needs to provide some way the reports can legitimately be made in the constitution or whether that function is subject to statute.

Chair Cole observed that, for the last 170 years, the reporting function was in the constitution. He said there is a potential for the possibility that if it is not in the constitution, there will be no statute assigning the reporting duty.

Mr. Asher said if the requirement is in the constitution, it gives it greater standing or sends a message to the public, but, on the other hand, requiring the treasurer to issue a report sounds more like a statutory issue. He said it might be important to have flexibility to change the requirement, which is easier if it is statutory.

Ms. Davidson noted the OPFC is doing some of this task, and the OPFC is subject to statutory change, suggesting that it makes more sense to her to marry those two together, rather than to put one provision in the constitution and the other not.

Chair Cole said one benefit is that the sinking fund provision requires the statewide officeholders to participate. He said there is no reason the General Assembly could not fix that in the statute.

Mr. Azoff noted payment on the debt function is enshrined in the constitution, and is done by the treasurer.

Chair Cole asked what role the OPFC plays. Kurt Kauffman, acting assistant director of the Office of Budget and Management (OBM), who was present in the audience, answered that OBM coordinates with the treasurer's office. He said OBM is the staff for the OPFC, and aligns the debt service payments.

Chair Cole asked Mr. Kauffman if OBM has a view on whether issuance, reporting, and payment functions should be in the constitution. Mr. Kauffman said, on the issuance side, OBM has benefited from the flexibility in the current constitutional approach. He said, on the reporting side, OBM Director Timothy Keen asked that the committee consider whether reporting should be in the constitution, agrees the treasurer is the appropriate entity, and would also support a legislative solution to that. He said, regarding the payment function, the view is that role is not worthy of a constitutional provision but rather is administrative and would be better left to statute.

Chair Cole asked whether all three functions should be in the constitution.

Mr. Azoff said his proposal reflects the treasurer's view that, in terms of priority, it seems the two functions would represent a change from constitutional tradition, and there is no need to make a wholesale change.

Mr. Asher asked how other states approach issuance, reporting, and payment functions, wondering whether they approach it constitutionally. Shari L. O'Neill, counsel to the Commission, noted that research was provided to the committee regarding other states' constitutional provisions relating to the duties of the treasurer. Chair Cole agreed that information would be useful, but asked that it be supplemented by research indicating states that address the treasurer's role by statute, and comparing the constitutional versus the statutory approach. Staff agreed that this research would be provided to the committee at a future meeting.

Chair Cole announced at its next meeting the committee would talk further about Sections 4, 5, and 6, as well as considering the role of the treasurer and whether that should be reflected in a constitutional provision.

**Adjournment:**

With no further business to come before the committee, the meeting was adjourned at 12:59 p.m.

**Approval:**

The minutes of the June 9, 2016 meeting of the Finance, Taxation, and Economic Development Committee were approved at the November 10, 2016 meeting of the committee.

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Douglas R. Cole, Chair

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Karla L. Bell, Vice-chair

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## Lr\_131\_0258

**131st General Assembly**  
**Regular Session**  
**2015-2016**

**. J. R. No.**

**A JOINT RESOLUTION**

Proposing to amend Section 2 and to repeal Sections 7, 8, 1  
 9, 10, and 11 of Article VIII of the Constitution of 2  
 the State of Ohio to adopt the recommendation of the 3  
 Ohio Constitutional Modernization Commission that 4  
 certain provisions concerning the sinking fund and the 5  
 Sinking Fund Commission be eliminated. 6

Be it resolved by the General Assembly of the State of 7  
 Ohio, three-fifths of the members elected to each house 8  
 concurring herein, that there shall be submitted to the electors 9  
 of the state, in the manner prescribed by law at the general 10  
 election to be held on November 7, 2017, a proposal to amend 11  
 Section 2 and to repeal Sections 7, 8, 9, 10, and 11 of Article 12  
 VIII of the Constitution of the State of Ohio to read as 13  
 follows: 14

**ARTICLE VIII** 15

**Section 2.** In addition to the above limited power, the 16  
 State may contract debts to repel invasion, suppress 17  
 insurrection, defend the State in war, or to redeem the present 18  
 outstanding indebtedness of the State: but the money, arising 19  
 from the contracting of such debts, shall be applied to the 20



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purpose for which it was raised, or to repay such debts, and to 21  
 no other purpose whatever; and all debts, incurred to redeem the 22  
 present outstanding indebtedness of the State, shall be so 23  
 contracted as to be payable by the ~~sinking fund, hereinafter~~ 24  
~~provided for State,~~ as the same shall accumulate. 25

EFFECTIVE DATE AND REPEAL 26

If adopted by a majority of the electors voting on this 27  
 proposal: 28

(A) The amendment of Section 2 of Article VIII of the 29  
 Constitution of the State of Ohio shall take effect immediately, 30  
 and existing Section 2 of Article VIII of the Constitution of 31  
 the State of Ohio shall be repealed from such effective date. 32

(B) Sections 7, 8, 9, 10, and 11 of Article VIII of the 33  
 Constitution of the State of Ohio are repealed effective 34  
 immediately. 35

## Lr\_131\_0259

131st General Assembly  
 Regular Session  
 2015-2016

. J. R. No.

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**A JOINT RESOLUTION**

Proposing to enact Section 18 of Article VIII and to 1  
 repeal Sections 2b, 2c, 2d, 2e, 2f, 2g, 2h, 2j, and 2k 2  
 of Article VIII of the Constitution of the State of 3  
 Ohio to adopt the recommendation of the Ohio 4  
 Constitutional Modernization Commission that obsolete 5  
 bond-authorizing provisions be eliminated. 6

Be it resolved by the General Assembly of the State of 7  
 Ohio, three-fifths of the members elected to each house 8  
 concurring herein, that there shall be submitted to the electors 9  
 of the state, in the manner prescribed by law at the general 10  
 election to be held on November 7, 2017, a proposal to enact 11  
 Section 18 of Article VIII and to repeal Sections 2b, 2c, 2d, 12  
 2e, 2f, 2g, 2h, 2j, and 2k of Article VIII of the Constitution 13  
 of the State of Ohio, the section enacted to read as follows: 14

**ARTICLE VIII** 15

Section 18. If any section of this article that authorizes 16  
the issuance of debt or other obligations is repealed, any 17  
outstanding debt or other obligations issued under authority of 18  
that section prior to its repeal shall remain in full force and 19  
effect and continue to be secured in accordance with the 20



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<u>original terms of the debt or obligations.</u>	21
EFFECTIVE DATE	22
If adopted by a majority of the electors voting on the proposal:	23 24
(A) Section 18 of Article VIII of the Constitution of the State of Ohio shall take effect immediately.	25 26
(B) Sections 2b, 2c, 2d, 2e, 2f, 2g, 2h, 2j, and 2k of Article VIII of the Constitution of the State of Ohio are repealed effective immediately.	27 28 29

## Lr\_131\_0260

**131st General Assembly**  
**Regular Session**  
**2015-2016**

**. J. R. No.**

**A JOINT RESOLUTION**

Proposing to enact Section 2t of Article VIII of the 1  
 Constitution of the State of Ohio to adopt the 2  
 recommendation of the Ohio Constitutional 3  
 Modernization Commission relative to the issuance of 4  
 general obligation bonds to pay the costs of 5  
 facilities for mental health and developmental 6  
 disabilities, parks and recreation, and housing of 7  
 agencies of state government. 8

Be it resolved by the General Assembly of the State of 9  
 Ohio, three-fifths of the members elected to each house 10  
 concurring herein, that there shall be submitted to the electors 11  
 of the state, in the manner prescribed by law at the general 12  
 election to be held on November 7, 2017, a proposal to enact 13  
 Section 2t of Article VIII of the Constitution of the State of 14  
 Ohio to read as follows: 15

**ARTICLE VIII** 16

Section 2t. (A) The General Assembly may provide by law, 17  
subject to the limitations of and in accordance with this 18  
section, for the issuance of bonds and other obligations of the 19  
state for either of the following purposes: 20



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(1) Paying the costs of facilities for mental health and developmental disabilities (formerly referred to as "mental hygiene and retardation"), parks and recreation, and housing of branches and agencies of state government; 21  
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(2) Refunding obligations previously issued under the authority of the fifth paragraph of Section 2i of Article VIII, Ohio Constitution, for the purposes described in division (A) (1) of this section. 25  
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(B) Each obligation issued under division (A) (1) of this section shall mature not later than the thirty-first day of December of the twenty-fifth calendar year after its issuance or, if issued under division (A) (2) of this section to refund obligations, not later than the thirty-first day of December of the twenty-fifth calendar year after the date the debt was originally contracted. If obligations are issued as notes in anticipation of the issuance of bonds, provision shall be made by law or in the bond or note proceedings for the establishment and maintenance, during the period in which the notes are outstanding, of a special fund or funds into which shall be paid, from the sources authorized for the payment of such bonds, 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 set forth in this division had been issued without the prior issuance of the notes. The fund or funds and investment income on the fund or funds shall be used solely for the payment of principal of those notes or the bonds in anticipation of which the notes have been issued. 29  
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(C) The 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 49  
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debt service on those obligations as they become due, and bond 52  
retirement provisions shall be made for payment of that debt 53  
service. Provision shall be made by law for the sufficiency and 54  
appropriation, for purposes of paying debt service, of excises, 55  
taxes, and revenues so pledged to that debt service, and for 56  
covenants to continue the levy, collection, and application of 57  
sufficient excises, taxes, and revenues to the extent needed for 58  
that purpose. Notwithstanding Section 22 of Article II, Ohio 59  
Constitution, no further act of appropriation shall be necessary 60  
for that purpose. The obligations and provisions for the payment 61  
of debt service on the obligations are not subject to Sections 62  
5, 6, and 11 of Article XII, Ohio Constitution. Moneys referred 63  
to in Section 5a of Article XII, Ohio Constitution, may only be 64  
pledged to or used for the payment of debt service on 65  
obligations issued for purposes permitted by Section 5a of 66  
Article XII, Ohio Constitution. 67

(D) The obligations issued under authority of this 68  
section, their transfer, and the interest, interest equivalent, 69  
and other income or accreted amounts on them, including any 70  
profit made on their sale, exchange, or other disposition, shall 71  
at all times be free from taxation within the state. 72

(E) This section shall be implemented in the manner and to 73  
the extent provided by the General Assembly by law, including 74  
provision for the procedure for incurring, refunding, retiring, 75  
and evidencing obligations issued as referred to in this 76  
section. The total principal amount of obligations issued under 77  
this section shall be as determined by the General Assembly, 78  
subject to the limitation provided for in Section 17 of this 79  
article. 80

(F) The authorizations in this section are in addition to, 81  
cumulative with, and not a limitation on, authorizations 82

contained in other sections of this article or on the authority 83  
of the General Assembly under other provisions of this 84  
Constitution, and do not impair any law previously enacted by 85  
the General Assembly. 86

(G) As used in this section: 87

(1) "Costs of facilities" includes, without limitation, 88  
the costs of acquisition, construction, improvement, expansion, 89  
planning, and equipping. 90

(2) "Debt service" means the principal and interest and 91  
other accreted amounts payable on the obligations referred to. 92

EFFECTIVE DATE 93

If adopted by a majority of the electors voting on the 94  
proposal, Section 2t of Article VIII of the Constitution of the 95  
State of Ohio shall take effect immediately. 96



## OHIO CONSTITUTIONAL MODERNIZATION COMMISSION

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### 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:** August 31, 2016

**RE:** Review of State Policies on General Obligation Debt

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To assist the committee in its study of Article VIII, this memorandum reviews state policies on incurring general obligation debt.<sup>1</sup> The memorandum contains (a) an initial review of the range of policies followed in Ohio and other states; (b) an identification of the changes that have taken place nationally since the Ohio Constitutional Revision Commission reviewed this issue in the 1970s; (c) a more detailed review of current state policies on general obligation debt; and (d) a chart summarizing the different approaches to general obligation debt taken by the various states.

#### Initial Review of State Policies

Nearly every state, including Ohio, operates under a balanced budget requirement.<sup>2</sup> In practice, however, the balanced budget requirement refers to operating budgets and not to expenditures for such items as veterans' bonuses, highway and housing construction, conservation and revitalization of natural resources, economic development, and technology support. To raise

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<sup>1</sup> Special acknowledgement is extended to Alex Benson, a 2016 graduate of the Moritz College of Law, Ohio State University, who worked on this project while an intern with the Commission.

<sup>2</sup> See National Council of State Legislators, NCSL Fiscal Brief: State Balanced Budget Provisions 2 (2010) (noting that most states "have formal balanced budget requirements with some degree of stringency, and state political cultures reinforce the requirements"). Available at: <http://www.ncsl.org/documents/fiscal/statebalancedbudgetprovisions2010.pdf> (last visited Aug. 31, 2016).

funds for these non-operating budget accounts, states typically issue bonds of varying types, depending on the project at issue and state law. The most common type of bonds issued to finance such expenditures are general obligation bonds – bonds that are backed by the full faith and credit of the state. This review focuses on such general obligation debt and not on revenue bonds or other debt that the state does not guarantee.

States have several distinct approaches governing the procedure for incurring general obligation debt. These approaches can be summarized as follows:

- Constitutional Amendments With some exceptions for the construction of public buildings, nine states only permit the issuance of general obligation debt (or the issuance of general obligation debt in excess of typically low fixed limitation) through amendments to the state constitution.
- Legislative Approval and Voter Consent Twenty states require both legislative approval and voter consent but not amendments to the state constitution; these states vary as to whether legislative approval and voter consent must be by a simple majority or a supermajority vote.
- Legislative Approval Without Voter Consent Fifteen states require legislative approval without voter consent and without an amendment to the state constitution; these states vary as to whether legislative approval must be by a simple majority or a supermajority vote.
- No Constitutional Debt Limitation Six states do not have a constitutionally-based limitation on incurring general obligation debt but leave the question of issuing state general obligation debt to the state legislative process.

### **Changes Nationally Since the 1970s**

In the 1970s, the Ohio Constitutional Revision Commission reviewed the topic of state debt. As part of this review, the 1970s Commission looked to the policies that were being followed in other states. At that time, the 1970s Commission identified 16 states that required the amendment of their constitutions to incur general obligation debt. Since that time, the trend has been to dispense with the use of constitutional amendments, and today only nine states require constitutional amendments to incur debt beyond a set (and typically very low) threshold. The remainder of the states have policies that require either legislative or voter approval, as described more fully in the balance of this memorandum.

During this period, Georgia, Louisiana, Nebraska, Nevada, North Dakota, South Dakota, and Wisconsin stopped requiring constitutional amendments to incur general obligation debt. Of these states, South Dakota requires both legislative and voter approval; Georgia, Nevada, North Dakota, and Wisconsin require legislative majority approval but not voter approval; and Louisiana and Nebraska require legislative supermajority approval but not voter approval.

During this period, no state moved in the other direction and adopted a constitutional amendment requirement for issuing general obligation debt.

### **More Detailed Review of State Approaches to Incurring General Obligation Debt**

#### *Constitutional Amendment Required (Chart Column 1)*

Nine states (including Ohio) only permit general obligation debt (in excess of a low threshold for repelling invasions or similar purposes) to be incurred by amendments to their state constitutions. In the remaining states, it is possible to amend the constitution to incur general obligation debt, but an amendment of the constitution is not required.

States that effectively require constitutional amendments to incur general obligation debt typically do not expressly require that the constitution be amended to incur such debt. Rather, these states, like Ohio, have constitutional bars on general obligation debt (or general obligation debt over a set limit), but permit those limitations to be overridden by specific amendments to the state constitution. In some states, the constitutional bar is expressly overridden by amendments that include “notwithstanding” clauses; in others the bar is overridden by implication through the adoption of amendments that ignore the earlier bar and simply authorize general obligation debt for specified purposes.

#### Alabama

The Alabama Constitution bars the creation of general obligation debt except to repel invasions or suppress insurrections,<sup>3</sup> *see* Ala. Const. Art. XI, sec. 213 (1901), but the state has adopted constitutional amendments that permit the issuance of general obligation bonds up to \$750 million to support improvements in infrastructure.

#### Arizona

The Arizona Constitution permits the state to issue general obligation bonds to meet casual deficits and repel invasions, but it bars the state from contracting other debt of more than \$350,000. *See* Ariz. Const., Art. IX, sec. 5. Arizona does not issue general obligation bonds at all, and all bonds issued by Arizona are special revenue bonds that pledge either dedicated revenue streams or the constructed building or equipment acquired as security for repayment of the issued debt. Therefore, for Arizona to issue general obligation bonds it would have to adopt a constitutional amendment authorizing the particular issuance.

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<sup>3</sup> This memorandum uses “repelling invasions” as a catch-all to refer to various state policies permitting the incursion of general obligation debt to repel invasions, to address insurrections, and to defend the state and nation in times of war.

### Colorado

The Colorado Constitution bars the state from issuing general obligation debt except to meet casual deficiencies, to suppress insurrections, etc., and to erect public buildings. *See* Colo. Const. Art. XI, secs. 1 & 3. General obligation debt for the construction of public buildings must be approved by a majority of electors voting on the issue in a legislatively-referred referendum (not a constitutional amendment). *See* Colo. Const. Art. XI, sec. 5. Multi-year obligations and other obligations beyond the authorized debt limits must be approved by constitutional amendments submitted to the voters, but currently Colorado has no general obligation debt.

### Indiana

The Indiana Constitution bars the state from issuing general obligation debt (except in limited circumstances such as casual deficits, interest on state debt and the repelling of invasions), *see* Ind. Const. Art. 10, sec. 5; therefore, a constitutional amendment is required to authorize general obligation debt. But Indiana has not approved any such amendments, and the state has no general obligation debt.

### Ohio

Article VIII, Section 3 of the Ohio Constitution prohibits the creation of general obligation debt, but Section 2 permits general obligation debt to repel invasions, and Section 3 places a \$750,000 ceiling on other general obligation debt. Nonetheless, the Ohio Constitution has been amended 20 times to permit the issuance of general obligation debt in excess of the \$750,000 limitation.

### Oregon

The Oregon Constitution bars contracting general obligation debt in excess of \$50,000 other than for repelling invasions and road building. *See* Or. Const. Art. XI, sec. 7. Nonetheless, there is a common practice of adopting constitutional amendments that avoid the bar. *See* Or. Const. art. XI-A(1) (“Notwithstanding the limits contained in section 7, Article XI of this Constitution, the credit of the State of Oregon may be loaned and indebtedness incurred in an amount not to exceed eight percent of the true cash value of all the property in the state, for the purpose of creating a fund, to be known as the “Oregon War Veterans’ Fund,” to [support housing for Oregon war veterans].” Adopted amendments have permitted the issuance of general obligation debt for various capital expenditures, including educational facilities and research spending, rehabilitation of public buildings, rehabilitation of emergency services buildings, and school district capital costs. Thus, despite the constitutional bar on general obligation debt Oregon has a robust program of adopting constitutional amendments to incur general obligation debt to support state programs

## Texas

The Texas Constitution permits the creation of state debt to meet casual deficits and to repel invasions, and it also expressly contemplates the adoption of amendments to create state debt. *See* Tex. Const. Art. 3, sec. 49(a). It also describes in detail the procedure to be followed in incurring state debt. *See* Tex. Const. Art. 3, sec. 49(b) (“The legislature, by joint resolution approved by at least two-thirds of the members of each house, may from time to time call an election and submit to the eligible voters of this State one or more propositions that, if approved by a majority of those voting on the question, authorize the legislature to create State debt for the purposes and subject to the limitations stated in the applicable proposition.”). These debt propositions are amendments to the constitution.

## Utah

The Utah Constitution permits the issuance of general obligation bonds to repel invasions, *see* Utah Const. art. XIV, § 2, and to meet casual deficits and for public purposes, including the erection of public buildings. *See generally Utah Hous. Fin. Agency v. Smart*, 561 P.2d 1052 (Utah 1977) (upholding the constitutionality of the Utah Housing Finance Agency Act). But the state limits its outstanding general obligation debt to 1.5 percent of the taxable value of all property in the state. *See* Utah Const. art. XIV, § 1 (“To meet casual deficits or failures in revenue, and for necessary expenditures for public purposes, including the erection of public buildings, and for the payment of all Territorial indebtedness assumed by the State, the State may contract debts, not exceeding in the aggregate at any one time, an amount equal to one and one-half per centum of the value of the taxable property of the State, as shown by the last assessment for State purposes, previous to the incurring of such indebtedness.”). General obligation debt in excess of this limitation may only be incurred by constitutional amendments.

## West Virginia

The West Virginia Constitution bars the state from contracting debts other than for meeting casual deficits, for redeeming prior state liability, or suppressing invasions; it also requires the state to make payments for such liability equally over a period of at least twenty years. *See* W.Va. Const., Art. X, sec. 4. Thus, the only method by which state general obligation debt may be issued is through constitutional amendments.

### *Legislative Action and Voter Consent (Chart Columns 2 & 3)*

Twenty states, or a plurality, require both legislative approval and voter consent but not an amendment to the state constitution. This is essentially a referendum procedure in which the legislature submits the proposed borrowing to the voters. Most states require a simple majority vote in the state legislature and a simple majority vote of electors voting on the bond proposition.

Maine and Michigan require a two-thirds supermajority vote in both houses of their respective state legislatures before the issue is submitted for a majority affirmative vote on the bond proposition. Two other states, Washington and South Dakota, require only a majority vote in their state legislatures but require a three-fifths supermajority affirmative votes of electors voting on the bond issue.

*Legislative Action Without Voter Approval (Chart Columns 4 & 5)*

Fifteen states permit general obligation debt to be incurred by the state legislature without voter approval, but these states vary as to whether the legislative approval must be by a simple majority or by a supermajority vote; and in three states, there is a voter approval alternative procedure for incurring general obligation debt.

Nine of these states require only a duly passed law (without a supermajority requirement) to issue general obligation debt and do not require voter approval. The majority of these provisions are identical in their operation, although they typically limit the amount of general obligation debt by tying it to the debt service, to the state budget, or to state taxable property. In North Dakota, general obligation debt in excess of a state limitation can be incurred by a two-thirds vote of the legislature. Kansas allows the legislature to act alone only with respect to certain enumerated areas, but for all other purposes, an affirmative vote of a majority of the electors (not just those voting on the bond proposal) is required to force the legislature to enact a law creating such general obligation debt.

Six of these states – Illinois, Louisiana, Minnesota, Montana, Nebraska, and South Carolina – require a supermajority vote of both houses of their respective state legislatures, and these states do not require the approval of voters to incur general obligation debt. But three of these states – Illinois, Montana, and South Carolina – have hybrid approaches under which general obligation debt can also be approved by a majority vote in the legislature followed by an affirmative vote at the polls (Illinois requires a majority of voters on the bond issue; Montana requires a majority of the electors in an election; South Carolina requires a majority of electors voting in a referendum called by the General Assembly).

*No Constitutional Debt Limitation (Chart Column 6)*

Six states – Connecticut, Delaware, Vermont, Maryland, Massachusetts, and Tennessee – do not have a constitutional prohibition on incurring general obligation debt and leave the issuance of general obligation debt to the state legislative process.

**Summary of State Policies on General Obligation Bonds**

The following chart places the 50 states in different categories based on the way in which they incur general obligation debt. A number of states, however, have hybrid approaches or unique variations in their approaches, and the notes following the chart identify some of these variations.

### State Approaches to Incurring General Obligation Debt (August 2016)

Column 1	Column 2	Column 3	Column 4	Column 5	Column 6
Constitutional Amendment Required	Legislative Action and Voter Approval	Supermajority Legislative Action and Voter Approval	Legislative Action Without Voter Approval	Supermajority Legislative Action Without Voter Approval	No Constitutional Debt Limitation
(9)	(18)	(2)	(9)	(6)	(6)
Alabama	Alaska	Maine	Arkansas #	Illinois &	Connecticut
Arizona	California	Michigan	Georgia	Louisiana	Delaware @
Colorado	Florida		Hawaii	Minnesota	Maryland
Indiana	Idaho		Kansas ##	Montana &&	Massachusetts
Ohio	Iowa		Mississippi %%	Nebraska	Tennessee
Oregon	Kentucky		Nevada	South Carolina &&&	Vermont
Texas	Missouri *		New Hampshire ###		
Utah	New Jersey		North Dakota		
West Virginia	New Mexico		Wisconsin		
	New York				
	North Carolina				
	Oklahoma				
	Pennsylvania **				
	Rhode Island				
	South Dakota ###				
	Virginia				
	Washington***				
	Wyoming				

#### Notes to Chart (organized alphabetically and by column)

##### Column 2

\* The Missouri Constitution permits the General Assembly to contract debts to refund outstanding bonds for emergency, temporary liabilities not to exceed \$1,000,000 and to be paid off in less than five years. When the liability exceeds \$1,000,000, the constitution must be amended by an amendment proposed either by the General Assembly or the constitutional initiative.

\*\* The Pennsylvania Constitution provides that general obligation debt may be issued without voter approval “for capital projects specifically itemized in a capital budget,” if such

debt will not cause the amount of “all net debt outstanding to exceed one and three-quarters times the average of the annual tax revenues deposited in the previous five fiscal years.”

\*\*\* The South Dakota Constitution requires a 60 percent supermajority affirmative vote of the electors voting on the bond issue.

\*\*\*\*The Washington Constitution requires a duly passed law and a three-fifths majority affirmative vote of the electors voting on the bond issue.

#### Column 4

# The Arkansas Constitution permits issuance of general obligation bonds for economic development infrastructure projects without voter approval. Ark. Const. amend LXXXII (2004).

## The Kansas Constitution enumerates several purposes for which the legislature – by majority affirmative vote – may authorize issuance of general obligation debt. For other, non-enumerated purposes, an affirmative vote of a majority of electors in a primary or general election is required to force the legislature to issue general obligation debt.

### The Mississippi Constitution limits bond indebtedness to less than “one and one half (1.5) times the sum of all the revenue collected during any one of the preceding four fiscal years.”

####The New Hampshire Constitution also permits legislature to issue general obligation debt in excess of 10 percent of general fund revenues with a three-fifths affirmative vote of the legislature.

#### Column 5

& The Illinois Constitution requires *either* an affirmative vote of a 3/5 supermajority of both houses of the general assembly *or* an affirmative vote of a majority of electors voting on the bond issue.

&& The Montana Constitution requires *either* a two-thirds majority of both houses of the legislature *or* an affirmative vote of the majority of all electors in an election.

&&& The South Carolina Constitution requires either an affirmative vote by a majority of electors on an initiative submitted by the legislature or an affirmative vote of two-thirds of both houses of the General Assembly.

#### Column 6

@ In Delaware, the state’s “Issuing Officers” (the Governor, Secretary of State, State Treasurer, and Secretary of Finance) must unanimously approve the amount and specific purpose of any debt issuance.



## OHIO CONSTITUTIONAL MODERNIZATION COMMISSION

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### REPORT AND RECOMMENDATION OF THE FINANCE, TAXATION, AND ECONOMIC DEVELOPMENT COMMITTEE

#### OHIO CONSTITUTION ARTICLE VIII SECTIONS 2l, 2m, 2n, 2o, 2q, 2r, AND 2s

#### ADDITIONAL AUTHORIZATION OF DEBT OBLIGATIONS

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The Finance, Taxation, and Economic Development Committee of the Ohio Constitutional Modernization Commission issues this report and recommendation regarding Sections 2l, 2m, 2n, 2o, 2q, 2r, and 2s of Article VIII of the Ohio Constitution concerning public debt and public works. It is issued pursuant to Rule 8.2 of the Ohio Constitutional Modernization Commission's Rules of Procedure and Conduct.

#### **Recommendation**

*The committee recommends that Sections 2l, 2m, 2n, 2o, 2q, 2r, and 2s of Article VIII dealing with authorization of debt obligations be retained in their present form.*

#### **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.<sup>1</sup> As proposed by delegates to the 1851 Constitutional Convention, Article VIII initially barred the state from incurring debt in excess of \$750,000, except in limited circumstances, primarily involving cash flow and military invasions and other emergencies. *See* Article VIII, Sections 1, 2, and 3.

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 authorizing debt for establishing a system of adjusted compensation for Ohio veterans of World War I.<sup>2</sup> From 1947 through 1987, voters subsequently adopted other constitutional provisions authorizing the issuance of state debt for purposes that

included compensation to veterans of World War II and the Korean and Vietnam Conflicts; construction of the state highway system, public buildings, and local public infrastructure; and the preservation and conservation of natural resources and the establishment of state recreational areas. These sections, enumerated as Sections 2b, 2c, 2d, 2e, 2f, 2g, 2h, 2j, and 2k, through a separate report and recommendation, have been recommended for repeal based on their obsolescence.

Beginning with Section 2l in 1993, voters approved eight additional constitutional provisions within Article VIII authorizing the creation of debt, seven of which – Sections 2l, 2m, 2n, 2o, 2q, 2r, and 2s – are the subject of this report and recommendation. In contrast to Sections 2b, 2c, 2d, 2e, 2f, 2h, 2j, and 2k, the sections covered in this report and recommendation do not involve bonds that have been fully issued and paid off, or their bonding authority has not yet lapsed.<sup>3</sup>

Section 2l authorizes the issuance of bonds and other obligations to finance the costs of capital improvements to state and local parks, land and water recreation facilities, soil and water restoration and protection, land and water management, fish and wildlife resource management, and other projects that enhance the use and enjoyment of natural resources. Adopted in 1993, the provision contains a statement of purpose that the capital improvements are necessary and appropriate to improve the quality of life of the people of Ohio, to ensure public health, safety and welfare, and to enhance employment opportunities. The section permits the state to support, by grants or contributions, capital improvements of this nature that are undertaken by local government entities. Significantly, the section exempts the bonds issued pursuant to its authority from operation of other constitutional provisions that strictly limit debt, or that limit the state's ability to enter into cooperative financial arrangements with private enterprise or local government.

Section 2m similarly provides for the issuance of bonds and other obligations to finance public infrastructure capital improvements of municipal corporations, counties, townships, and other governmental entities, and for highway capital improvements. The section defines “public infrastructure capital improvements” as being limited to roads and bridges, wastewater treatment and water supply systems, solid waste disposal facilities, and storm water and sanitary collection, storage, and treatment facilities, including costs related to real property, facilities, and equipment. Adopted in 1995, the section updates and modifies Section 2k, which had limited debt for public infrastructure to not more than \$120 million per calendar year, with the total debt not to exceed \$1.2 billion and a requirement that all obligations must mature within thirty years. Under Section 2m, the state is authorized to issue an additional \$1.2 billion, with no infrastructure obligations to be issued under Section 2m until at least \$1.2 billion aggregate principal amount of obligations have been issued pursuant to Section 2k. The provision also requires the use, where practicable, of Ohio products, materials, services, and labor for projects financed under Section 2m.

Section 2n authorizes debt issuance for the purpose of funding public school facilities for both K-12 and for state-supported and state-assisted institutions of higher education. Adopted in 1999, Section 2n also provides that net state lottery proceeds may be pledged or used to pay the debt service on bonds issued under the provision for K-12 educational purposes. As acknowledged by the Ohio Supreme Court in *DeRolph v. State*, 93 Ohio St.3d 309, 2001-Ohio-

1343, 754 N.E.2d 1184 (*DeRolph III*), Section 2n enhanced the state’s ability to issue bonds to fund schools, and was proposed and adopted subsequent to Court’s decision in *DeRolph v. State*, 78 Ohio St.3d 193, 208, 1997-Ohio-84, 677 N.E.2d 733, 744 (*DeRolph I*).<sup>4</sup> In *DeRolph I*, a majority of the Court concluded that state funding of schools is not adequate if school districts lack sufficient funds to provide a safe and healthy learning environment. Division (F) of Section 2n limits the total principal amount of obligations issued to an amount determined by the General Assembly, subject to the limitation provided in Section 17, which was adopted by voters on the same ballot. Article VIII, Section 17 provides, in part, that direct obligations of the state may not be issued if the amount needed in a future fiscal year to service the direct obligation debt exceeds five percent of the total estimated state revenue for the issuing year. Thus, the amount of debt issued under Section 2n for a given year is limited to five percent of the total estimated revenues of the state from the General Revenue Fund and from net state lottery proceeds for that year.

Section 2o, adopted in 2000, authorizes bonds for environmental, conservation, preservation, and revitalization projects in order to protect water and natural resources, preserve natural areas and farmlands, improve urban areas, clean up pollution, and enhance the use and enjoyment of natural areas and resources. Under the provision, while the full faith and credit of the state is pledged to conservation projects, it is not pledged to revitalization projects, the bonds for which are designated to be repaid from “all or such portion of designated revenues and receipts of the state as the General Assembly authorizes.” Section 2o(B)(2). The section requires the General Assembly to provide by law for limitations on the granting or lending of proceeds of these obligations to parties to pay costs of cleanup or remediation of contamination for which they are determined to be responsible. The section allows the state to provide grants, loans, or other support to finance projects undertaken by local government, or by non-profit organizations at the direction of local government, exempting such obligations from application of constitutional sections that limit or prohibit such arrangements. As with Section 2n, Section 17’s five percent limitation on the amount of debt issued applies.

Section 2q, adopted in 2008 and titled the “Clean Ohio Fund Amendment,” authorizes the General Assembly to issue up to \$200 million in bonds for conservation and preservation of natural areas, farmlands, park and recreation facilities, and to support other natural areas and natural resource management projects. The provision also authorizes the issuance of bonds up to \$200 million for environmental revitalization and cleanup projects. Section 2q limits the amount borrowed in any one fiscal year to \$50 million, plus the principal amount of obligations that, in any prior fiscal year, could have been issued but were not.

Section 2r was adopted in 2009 to provide compensation to the veterans of the Persian Gulf, Afghanistan, and Iraq Conflicts, and their survivors. To be eligible for compensation, veterans had to have served on active duty in one or more of those locations during the specified time periods. Unlike previous war veteran compensation amendments, Section 2r authorizes the Public Facilities Commission, rather than the Sinking Fund Commission, to issue and sell bonds and other obligations to fund payment, pledging the state’s full faith and credit, revenue, and taxing power to pay the debt service. Additionally, the section gives responsibility to the Ohio Department of Veterans Services for paying compensation and adopting rules regarding amounts, residency, or other relevant factors, in accordance with Revised Code Chapter 119.

Section 2s, adopted in 2014, authorized the General Assembly to issue bonds to finance public infrastructure capital improvements of municipal corporations, counties, townships, and other governmental entities, with the improvements being limited to roads and bridges, wastewater treatment and water supply systems, solid waste disposal facilities, and storm water and sanitary collection, storage, and treatment facilities. With broad, nearly unanimous bipartisan support in the General Assembly, the ballot measure was submitted to voters on May 6, 2014, and was approved by a margin of 65.11 percent to 34.89 percent.<sup>5</sup>

### **Amendments, Proposed Amendments, and Other Review**

Sections 2l, 2m, 2n, 2o, 2q, 2r, and 2s, are of relatively recent adoption and have not been amended.

### **Litigation Involving the Provisions**

There has been no litigation involving Article VIII, Sections 2l, 2m, 2n, 2o, 2q, 2r, or 2s.

The Ohio Supreme 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).

### **Presentations and Resources Considered**

#### *Metcalf Presentation*

Seth Metcalf, deputy treasurer and executive counsel for the Ohio Treasurer of State, presented to the 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, Mr. Metcalf noted 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.

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.

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. 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.

### *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 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.

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.

### **Discussion and Consideration**

In reviewing Article VIII, Sections 2l, 2m, 2n, 2o, 2q, 2r, and 2s, the committee discussed whether the provisions should be retained because their bonding authority remains current, and for the reason that the bonds issued pursuant to their authority have not been paid off. The committee also considered, but left for future resolution, the concept of a constitutional amendment allowing for the automatic retirement of bond authority provisions once they become obsolete, so as to relieve the need to go to the ballot to repeal expired provisions.

### **Conclusion**

Upon consideration of the foregoing, the Finance, Taxation, and Economic Development Committee concludes that Article VIII, Sections 2l, 2m, 2n, 2o, 2q, 2r, and 2s do not involve bonds that have been fully issued and paid off, and their bonding authority has not lapsed due to the passage of time. Therefore, it is necessary to retain them in their present form, and so the committee recommends no change to these provisions.

## Date Issued

After formal consideration by the Finance, Taxation, and Economic Development Committee on November 10, 2016, the committee voted to issue this report and recommendation on

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## Endnotes

<sup>1</sup> Steven H. Steinglass & Gino J. Scarselli, *The Ohio State Constitution* 233 (2<sup>nd</sup> 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 20<sup>th</sup> 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).

<sup>2</sup> Section 2a was later repealed in 1953. 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).

<sup>3</sup> The committee's review of Section 2p is not included in this report and recommendation, but will be included in the committee's consideration of Article VIII, Sections 4, 5, and 6.

<sup>4</sup> In *DeRolph III*, the Court observed:

One recent development with significant potential is that the state has enhanced its ability to issue bonds to pay part of the state share of the costs of local projects. In *DeRolph II*, 89 Ohio St. 3d at 14, 728 N.E.2d at 1004, this court noted that Senate Joint Resolution No. 1 placed on the November 2, 1999 ballot a proposal, approved by Ohio voters, to amend the Ohio Constitution "to allow the state to issue general obligation bonds to pay for school facilities." See, principally, Section 2n, Article VIII, Ohio Constitution; see, also, 1997 Am.Sub.S.B. No. 102, Section 8, 147 Ohio Laws, Part IV, 7417. The deposition of Randall A. Fischer, executive director of the Ohio School Facilities Commission, reveals that these bonds are being issued. However, it is unclear from the record before us how effectively the bonds are being utilized and whether the state has fully taken advantage of the opportunities presented by bond issuance. Our state could benefit greatly if our legislators were able to exercise additional vision to put in place plans that would make bonds a more efficacious method of paying for school facilities.

*DeRolph III*, 93 Ohio St.3d at 368, 754 N.E.2d at 1235.

<sup>5</sup> See <http://www.sos.state.oh.us/SOS/elections/Research/electResultsMain/2014Results.aspx> (last visited May 25, 2016).

## Finance, Taxation, and Economic Development Committee

### Planning Worksheet (Through October 2016 Meetings)

#### Article VIII – Public Debt and Public Works

##### Sec. 1 – Public debt; limit of deficit spending by state (1851)

Draft Status	Committee 1 <sup>st</sup> Pres.	Committee 2 <sup>nd</sup> Pres.	Committee Approval	CC Approval	OCMC 1 <sup>st</sup> Pres.	OCMC 2 <sup>nd</sup> Pres.	OCMC Approved
<b>Completed</b>	<b>4.14.16</b>	<b>5.12.16</b>	<b>5.12.16</b>	<b>6.9.16</b>	<b>6.9.16</b>	<b>9.8.16</b>	<b>9.8.16</b>

##### Sec. 2 – State may incur debts for defense or to retire outstanding debts (1851)

Draft Status	Committee 1 <sup>st</sup> Pres.	Committee 2 <sup>nd</sup> Pres.	Committee Approval	CC Approval	OCMC 1 <sup>st</sup> Pres.	OCMC 2 <sup>nd</sup> Pres.	OCMC Approved
<b>Completed</b>	<b>4.14.16</b>	<b>5.12.16</b>	<b>5.12.16</b>	<b>6.9.16</b>	<b>6.9.16</b>	<b>9.8.16</b>	<b>9.8.16</b>

##### Sec. 2b – Adjusted compensation for service in World War II; World War II veterans’ bonuses (1947)

Draft Status	Committee 1 <sup>st</sup> Pres.	Committee 2 <sup>nd</sup> Pres.	Committee Approval	CC Approval	OCMC 1 <sup>st</sup> Pres.	OCMC 2 <sup>nd</sup> Pres.	OCMC Approved
<b>Completed</b>	<b>3.10.16</b>	<b>4.14.16</b>	<b>4.14.16</b>	<b>6.9.16</b>	<b>6.9.16</b>	<b>9.8.16</b>	<b>9.8.16</b>

##### Sec. 2c – Construction of state highway system (1953)

Draft Status	Committee 1 <sup>st</sup> Pres.	Committee 2 <sup>nd</sup> Pres.	Committee Approval	CC Approval	OCMC 1 <sup>st</sup> Pres.	OCMC 2 <sup>nd</sup> Pres.	OCMC Approved
<b>Completed</b>	<b>3.10.16</b>	<b>4.14.16</b>	<b>4.14.16</b>	<b>6.9.16</b>	<b>6.9.16</b>	<b>9.8.16</b>	<b>9.8.16</b>

Sec. 2d – Korean War veterans’ bonus (1956)							
Draft Status	Committee 1 <sup>st</sup> Pres.	Committee 2 <sup>nd</sup> Pres.	Committee Approval	CC Approval	OCMC 1 <sup>st</sup> Pres.	OCMC 2 <sup>nd</sup> Pres.	OCMC Approved
<b>Completed</b>	<b>3.10.16</b>	<b>4.14.16</b>	<b>4.14.16</b>	<b>6.9.16</b>	<b>6.9.16</b>	<b>9.8.16</b>	<b>9.8.16</b>

Sec. 2e – Providing means for securing funds for highway and public building construction (1955)							
Draft Status	Committee 1 <sup>st</sup> Pres.	Committee 2 <sup>nd</sup> Pres.	Committee Approval	CC Approval	OCMC 1 <sup>st</sup> Pres.	OCMC 2 <sup>nd</sup> Pres.	OCMC Approved
<b>Completed</b>	<b>3.10.16</b>	<b>4.14.16</b>	<b>4.14.16</b>	<b>6.9.16</b>	<b>6.9.16</b>	<b>9.8.16</b>	<b>9.8.16</b>

Sec. 2f – Authorizing bond issue to provide school classrooms, support for universities, for recreation and conservation and for state buildings (1963)							
Draft Status	Committee 1 <sup>st</sup> Pres.	Committee 2 <sup>nd</sup> Pres.	Committee Approval	CC Approval	OCMC 1 <sup>st</sup> Pres.	OCMC 2 <sup>nd</sup> Pres.	OCMC Approved
<b>Completed</b>	<b>3.10.16</b>	<b>4.14.16</b>	<b>4.14.16</b>	<b>6.9.16</b>	<b>6.9.16</b>	<b>9.8.16</b>	<b>9.8.16</b>

Sec. 2g – Authorizing bond issue or other obligations for highway construction (1964)							
Draft Status	Committee 1 <sup>st</sup> Pres.	Committee 2 <sup>nd</sup> Pres.	Committee Approval	CC Approval	OCMC 1 <sup>st</sup> Pres.	OCMC 2 <sup>nd</sup> Pres.	OCMC Approved
<b>Completed</b>	<b>3.10.16</b>	<b>4.14.16</b>	<b>4.14.16</b>	<b>6.9.16</b>	<b>6.9.16</b>	<b>9.8.16</b>	<b>9.8.16</b>

Sec. 2h – Bond issue for state development (1965)							
Draft Status	Committee 1 <sup>st</sup> Pres.	Committee 2 <sup>nd</sup> Pres.	Committee Approval	CC Approval	OCMC 1 <sup>st</sup> Pres.	OCMC 2 <sup>nd</sup> Pres.	OCMC Approved
<b>Completed</b>	<b>3.10.16</b>	<b>4.14.16</b>	<b>4.14.16</b>	<b>6.9.16</b>	<b>6.9.16</b>	<b>9.8.16</b>	<b>9.8.16</b>







Sec. 6 – Counties, cities, towns, or townships, not authorized to become stockholders, etc.; insurance, etc. (1851, am. 1912)							
Draft Status	Committee 1 <sup>st</sup> Pres.	Committee 2 <sup>nd</sup> Pres.	Committee Approval	CC Approval	OCMC 1 <sup>st</sup> Pres.	OCMC 2 <sup>nd</sup> Pres.	OCMC Approved

Sec. 7 – Sinking fund (1851)							
Draft Status	Committee 1 <sup>st</sup> Pres.	Committee 2 <sup>nd</sup> Pres.	Committee Approval	CC Approval	OCMC 1 <sup>st</sup> Pres.	OCMC 2 <sup>nd</sup> Pres.	OCMC Approved
<b>Completed</b>	<b>4.14.16</b>	<b>5.12.16</b>	<b>5.12.16</b>	<b>6.9.16</b>	<b>6.9.16</b>	<b>9.8.16</b>	<b>9.8.16</b>

Sec. 8 – The commissioners of the sinking fund (1851, am. 1947)							
Draft Status	Committee 1 <sup>st</sup> Pres.	Committee 2 <sup>nd</sup> Pres.	Committee Approval	CC Approval	OCMC 1 <sup>st</sup> Pres.	OCMC 2 <sup>nd</sup> Pres.	OCMC Approved
<b>Completed</b>	<b>4.14.16</b>	<b>5.12.16</b>	<b>5.12.16</b>	<b>6.9.16</b>	<b>6.9.16</b>	<b>9.8.16</b>	<b>9.8.16</b>

Sec. 9 – Biennial report of the sinking fund commissioners (1851)							
Draft Status	Committee 1 <sup>st</sup> Pres.	Committee 2 <sup>nd</sup> Pres.	Committee Approval	CC Approval	OCMC 1 <sup>st</sup> Pres.	OCMC 2 <sup>nd</sup> Pres.	OCMC Approved
<b>Completed</b>	<b>4.14.16</b>	<b>5.12.16</b>	<b>5.12.16</b>	<b>6.9.16</b>	<b>6.9.16</b>	<b>9.8.16</b>	<b>9.8.16</b>

Sec. 10 – Application of sinking fund (1851)							
Draft Status	Committee 1 <sup>st</sup> Pres.	Committee 2 <sup>nd</sup> Pres.	Committee Approval	CC Approval	OCMC 1 <sup>st</sup> Pres.	OCMC 2 <sup>nd</sup> Pres.	OCMC Approved
<b>Completed</b>	<b>4.14.16</b>	<b>5.12.16</b>	<b>5.12.16</b>	<b>6.9.16</b>	<b>6.9.16</b>	<b>9.8.16</b>	<b>9.8.16</b>













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## OHIO CONSTITUTIONAL MODERNIZATION COMMISSION

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### **2016 Meeting Dates**

December 8

### **2017 Meeting Dates**

January 12

February 9

March 9

April 13

May 11

June 8

July 13

August 10

September 14

October 12

November 9

December 14