



## OHIO CONSTITUTIONAL MODERNIZATION COMMISSION

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### MINUTES OF THE FINANCE, TAXATION, AND ECONOMIC DEVELOPMENT COMMITTEE

FOR THE MEETING HELD  
THURSDAY, MARCH 10, 2016

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

Chair Douglas Cole called the meeting of the Finance, Taxation, and Economic Development Committee to order at 2:33 p.m.

#### **Members Present:**

A quorum was present with Chair Cole, Vice-chair Bell, and committee members Amstutz, Asher, Clyde, Davidson, Peterson, and Tavares in attendance.

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

The minutes of the December 10, 2015 meeting of the committee were approved.

#### **Report and Recommendation**

*Article VIII, Sections 2b, 2c, 2d, 2e, 2f, 2g, 2h, 2i, 2j, 2k, and Proposed Sections 2t and 18*

Executive Director Steven C. Hollon provided a first presentation of a report and recommendation regarding obsolete provisions in Article VIII. Mr. Hollon described that the report and recommendation reflects the committee's recommendation that Section 2t and Section 18 be added, that Section 2i be modified, and that Sections 2b, 2c, 2d, 2e, 2f, 2g, 2h, and 2k be repealed due to being obsolete. He said the committee reached a consensus regarding these recommendations based on conversations it held over the last six-to-nine months. He noted an earlier draft also recommended removal of provisions dealing with the sinking fund, but it was decided it was better to create a separate report and recommendation regarding those sections. He said that report and recommendation is not ready but could be provided as early as the next meeting of the committee.

Chair Cole drew the committee's attention to Attachment A to the report and recommendation, consisting of a draft of a proposed new section 2t. He asked Mr. Hollon if the editing marks in the draft provision are related to comments provided to the committee by Ohio Budget and Management Director Timothy S. Keen. Mr. Hollon said the draft is based on staff's understanding of Mr. Keen's proposal and what the committee was planning. Mr. Hollon confirmed that the draft revised a draft provided by Mr. Keen in order to provide consistency in the constitution and reorganized some of the prior draft for clarity. Mr. Hollon also noted that language regarding the duties of the treasurer of state was removed from the prior draft and would be addressed in a report and recommendation dealing with the sinking fund provisions. Mr. Hollon explained that the new draft created a separate "Effective Date and Repeal" paragraph out of a desire to maintain consistency with other parts of the constitution.

Chair Cole thanked staff for its work on the report and recommendation, asking whether committee members had comments or questions. There being none, Chair Cole then recognized Seth Metcalf, deputy treasurer and executive counsel for the Ohio Treasurer of State.

Mr. Metcalf urged the committee to adopt a revision that would add the following paragraph to Article VIII, Section 18:

The issuance of all direct obligations of the state subject to the limitation set forth in division (A) of section 17 of this article shall be authorized by a majority of the governor, treasurer of state, auditor of state, secretary of state, and attorney general, and it shall be the duty of the treasurer of state to issue, maintain, and ensure the timely payment of interest and redemption of principal on all such direct obligations.

Mr. Metcalf emphasized the importance of maintaining public accountability for decisions regarding the issuance of state debt, indicating that the state treasurer issues some general obligation debt, interfaces with rating agencies, and pays all the principal and interest. Mr. Metcalf stated "the current recommendation removes from the constitutional process the auditor of state, the attorney general, the governor, the treasurer, and the secretary of state," cautioning that "these elected executive officials must remain in Ohio's constitution to be directly accountable to Ohio taxpayers for general obligation debt."

Chair Cole asked whether Mr. Metcalf's comments were in reaction to a previous draft of the report and recommendation that would have removed provisions relating to the sinking fund. He wondered whether there is anything in the current draft of the report and recommendation that would have the consequences about which Mr. Metcalf is concerned.

Mr. Metcalf said he is fine with Section 2t as proposed, but that his recommendation needs to be done in addition. Chair Cole asked whether Mr. Metcalf's concerns are more related to a separate recommendation regarding the sinking fund provisions. Mr. Metcalf said "you can't treat them separately, because we are talking about general obligation debt. It is important to retain this accountability."

Chair Cole noted that if the committee were simply to address the obsolete provisions and the general obligation debt issue as described in the current draft of the report and recommendation, the sinking fund issue is separate.

Mr. Metcalf disagreed with this statement, saying the current draft does not require accountability.

Chair Cole said there is nothing under proposed Section 2t that would be different from other sections in the constitution. Mr. Metcalf said his comments are about general obligation bonds generally.

Representative Ron Amstutz said he was not finding an intersection between Mr. Metcalf's comments and the current draft of the report and recommendation. Mr. Metcalf answered his comments are generally applicable to all general obligation debt, and that proposed Section 2t delegates to the legislature the ability to make these decisions. He said, if the committee is going to put in new authorization language, it should require executive input.

Rep. Amstutz asked if it is correct that the issue will come into full view when the committee considers the sinking fund language.

Chair Cole agreed that the sinking fund discussion will involve the issue, but added that Mr. Metcalf's concern is that general obligation debt not become solely a General Assembly issue and not a statewide elected officeholder issue, and that the concern is raised by the draft proposal for Section 2t because it authorizes the General Assembly to provide by law for the issuance of bonds.

Chair Cole continued that what the committee has not addressed is the proposed Section 18 language that Mr. Metcalf put in front of the committee, which the committee would treat as a proposed additional amendment. He asked if Mr. Metcalf thought these issues could be taken up in isolation from the proposed Section 2t. Chair Cole said he thought the issues could be taken up separately.

Mr. Metcalf said it would be a "grave mistake" to take them in isolation, and that the committee has to take them up together.

There being no further questions for Mr. Metcalf, Chair Cole asked whether anyone else would like to comment, either on the report and recommendation or on the suggested amendment. There being no further comment, Chair Cole asked the committee for discussion.

### **Discussion:**

Chair Cole asked whether, procedurally, the committee is comfortable with moving forward with proposed Section 2t separate and apart from proposed Section 18, or whether they should be considered together.

Rep. Amstutz asked why the committee did not have the sinking fund language in front of it for consideration. Chair Cole explained that the issues were separated out because there were questions that needed to be decided about various sections of the constitution that are related to the sinking fund, and because the committee needs to consider what should take the place of those provisions if they are eliminated.

Chair Cole wondered whether committee members feel that the question of authorization of general obligation debt is a separate, third issue that could be dealt with apart from the question of whether to repeal obsolete provisions and what to do about the sinking fund provisions.

Rep. Amstutz said it appears that proposed Section 18 would inject two parts into the process. First, the General Assembly would make the decision about general obligation bonds, and then the statewide officeholders would do so.

Chair Cole asked whether the committee is comfortable with moving forward with Sections 2t and 18. He said his understanding is that, currently, the constitution does not provide for who has issuance authority for debt. So, he added, the question of who has issuance authority for debt is currently an issue of statutory rather than constitutional law. He said the question then becomes whether to constitutionalize the authority at some level rather than providing for it by statute. His sense is this is a separate issue, adding there are pros and cons associated with constitutionalizing that issue.

Committee member Jo Ann Davidson said another way of splitting them out would consist of eliminating debt issuance provisions that are obsolete, and keeping the issues related to revenue bonds and general obligation bonds. In relation to that, she asked what the committee would do with the sinking fund provisions. She asked who has the authority over the general obligation bonds – the General Assembly or the elected officers, or a shared authority. She wondered whether it would be the preference of the treasurer to put that designation in Section 18 rather than Section 2t.

Chair Cole said he does not think that was Mr. Metcalf's testimony. He said Section 2t only refers to certain types of general obligation bonds. He said he would want it to apply in all issuances, not merely those under 2t. Mr. Metcalf said he agreed with that characterization.

Chair Cole said, to the extent Section 2i still exists as a lease appropriation section, Article VIII, Section 18 as advanced by Mr. Metcalf would not apply to that. But, he added, with respect to all forms of general obligation debt it would apply. Chair Cole said that is another reason the issue could be considered separately. He noted the repeal of the obsolete sections is a very small part of the whole thing.

Chair Cole asked whether the committee would be comfortable moving forward regarding proposed Section 2t, separate and apart from the question about whether to constitutionalize authority for debt issuance.

Committee member Herb Asher said he would support the chair moving forward and he would like to have more of a discussion on Mr. Metcalf's proposal. He said he is not sure he fully

appreciates the first part of Mr. Metcalf's proposal, regarding what we currently do versus what Mr. Metcalf wants to see happen. Mr. Asher said if statewide executive officials now have this power and there is split control in those offices, or there is a difference in that majority versus the legislative majority, he worries that this could be politicizing things. He said he is not sure he fully understands the current status quo, and suggested that it be a discussion for the next meeting.

Rep. Amstutz said it appears that the "Effective Date and Repeal" paragraph is following a drafting convention that says to repeal sections there is a statement that says the sections are repealed. He added, if amending there should also be a repeal section. He said it will be important to explain that to the voters. Mr. Hollon commented that could be better explained in the report and recommendation.

Chair Cole noted there is precedent for repealing an obsolete section, referencing the repeal of a provision providing support for World War I veterans. He suggested it would be useful to review how that was done.

Representative Kathleen Clyde asked how these obsolete provisions were treated by the Constitutional Revision Commission in the 1970s. Mr. Hollon indicated that information needs to be part of this report and recommendation. Senior Policy Advisor Steven H. Steinglass said the 1970s Commission did not address the provisions because they were not obsolete at the time. He said the provisions being recommended for repeal were adopted from 1947 through 1987. Mr. Steinglass added the only section that was repealed was the World War I provision, which was repealed in 1953.

Rep. Clyde asked whether, if a repeal of the obsolete provisions goes to the ballot, the complete language of all the sections being considered for repeal must be presented to voters on the ballot. Mr. Hollon said staff would provide research to answer that question.

Chair Cole directed the committee to its next topic, relating to the sinking fund. He noted materials provided by staff outlining other state constitutional provisions regarding the duties of the state treasurer, as well as Ohio Revised Code sections relating to the duties of the sinking fund commission.

Chair Cole said the committee needs to consider how eliminating the sinking fund provision would affect the statutes. He added that the Sinking Fund Commission has not met since 2008, wondering who is carrying out the responsibilities described in the revised code.

Mr. Metcalf said the Sinking Fund Commission is not meeting, but there is a report that is issued by statewide officials. He said the duties are being fulfilled, but mostly by the treasurer's office. Mr. Asher asked who has the responsibility for what and under what authority. He asked that this be clarified for the next meeting, indicating that, to him, it seems like the treasurer's office is stepping into the breach.

Rep. Amstutz said it would seem that there is no actual meeting of the commissioners of the sinking fund; rather, state officials just sign off on a piece of paper.

Chair Cole said he is confused about what to do with statutory provisions if the sinking fund provisions in the constitution are removed. Ms. Davidson said it has been the practice of the Legislative Service Commission that when they are amending the Revised Code and come across archaic provisions, they usually try to clean up the language.

Chair Cole indicated that next time the committee would address the sinking fund provisions, also article VIII, Section 18, or would-be Section 19 as proposed by Mr. Metcalf. He said, in order to have a fulsome discussion, the committee would need insight about the statues. He asked the committee to come prepared to discuss whether to take a vote on this report and recommendation, and whether to move forward with proposed Section 2t in the absence of the consideration of the proposal by Mr. Metcalf. He added if the committee elects to move forward with proposed Section 2t, it will have a vote. He added the committee would be considering the question of the sinking fund and additional discussion about Article VIII.

Mr. Hollon suggested the committee also could take up the proposed Section 2t issues through this report and recommendation through its second presentation, and have a first presentation on the sinking fund provisions. He said the committee would not have to vote on either and could vote on both at the same time in May so that they would go on to the Commission jointly.

Mr. Steinglass noted that the joint resolution that gets proposed has the ability to set an effective date, so that if there were statutory provisions needing to be addressed the effective date could be set in advance to give time to address the statutory provisions. Mr. Steinglass added that, looking at the ballot in 1953 repealing the World War I veteran bonds, the ballot measure was short, and there was no need to reproduce the whole repealed provision because it was all work done in the schedule.

**Adjournment:**

With no further business to come before the committee, the meeting was adjourned at 3:43 p.m.

**Approval:**

The minutes of the March 10, 2016 meeting of the Finance, Taxation, and Economic Development Committee were approved at the April 14, 2016 meeting of the committee.

*/s/ Douglas R. Cole*

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Douglas R. Cole, Chair

*/s/ Karla L. Bell*

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Karla L. Bell, Vice-chair