



OHIO CONSTITUTIONAL MODERNIZATION COMMISSION

Ohio Constitutional Modernization Commission

Co-Chair

Sen. Charleta B. Tavares
Assistant Minority Leader

February 9, 2017

Ohio Statehouse
Room 313

Ohio Constitutional Modernization Commission

Co-chair Sen. Charleta Tavares

Co-chair

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Mr. Herb Asher
Mr. Roger Beckett
Ms. Karla Bell
Ms. Paula Brooks
Rep. Kathleen Clyde
Mr. Douglas Cole
Sen. Bill Coley
Rep. Robert Cupp
Mr. Mike Curtin
Ms. Jo Ann Davidson
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Mr. Edward Gilbert
Mr. Jeff Jacobson
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Rep. Robert McColley
Mr. Fred Mills
Mr. Dennis Mulvihill
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OHIO CONSTITUTIONAL MODERNIZATION COMMISSION

COMMISSION MEETING

THURSDAY, FEBRUARY 9, 2017

1:30 P.M.

OHIO STATEHOUSE ROOM 313

AGENDA

- I. Call to Order
- II. Roll Call
- III. Approval of Minutes
 - Meeting of December 15, 2016
 - [Draft Minutes – attached]*
- IV. Standing Committee Reports
 - Coordinating Committee (Davidson)
- V. Subject Matter Committee Reports
 - Bill of Rights and Voting Committee (Saphire)
 - Constitutional Revision and Updating Committee (Mulvihill)
 - Legislative Branch and Executive Branch Committee (Brooks)
 - Education, Public Institutions, and Local Government (Gilbert)
 - Judicial Branch and Administration of Justice (Abaray)

VI. Reports and Recommendations

First Presentation

- Article II, Sections 3, 4, 5, and 11 (Member Qualifications and Vacancies in the General Assembly) (O'Neill)
 - Review of Report and Recommendation
 - Public Comment
 - Discussion

[Report and Recommendation – attached]

- Article II, Sections 6, 7, 8, 9, 13, and 14 (Conducting Business of the General Assembly) (O'Neill)
 - Review of Report and Recommendation
 - Public Comment
 - Discussion

[Report and Recommendation – attached]

Second Presentation

- Article VI, Section 5 (Loans for Higher Education) (Gilbert)
 - Review of Report and Recommendation
 - Public Comment
 - Discussion
 - **Possible Action Item: Consideration and Adoption**

[Report and Recommendation – attached]

- Article VI, Section 6 (Tuition Credits Program) (Gilbert)
 - Review of Report and Recommendation
 - Public Comment
 - Discussion
 - **Possible Action Item: Consideration and Adoption**

[Report and Recommendation – attached]

- Article VIII, Sections 2l, 2m, 2n, 2o, 2p, 2q, 2r, and 2s (Additional Authorization of Debt Obligations) (Cole)
 - Review of Report and Recommendation

- Public Comment
- Discussion
- **Possible Action Item: Consideration and Adoption**

[Report and Recommendation – attached]

VII. Executive Director's Report

VIII. Old Business

IX. New Business

X. Public Comment

XI. Adjourn

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Co-Chair
Charleta B. Tavares
Assistant Minority Leader
15th Senate District



Co-Chair
Ron Amstutz
Speaker Pro Tempore
1st House District

OHIO CONSTITUTIONAL MODERNIZATION COMMISSION

MINUTES FOR THE MEETING HELD THURSDAY, DECEMBER 15, 2016

Call to Order:

Co-chair Charleta Tavares called the meeting of the Ohio Constitutional Modernization Commission ("Commission") to order at 1:39 p.m.

Members Present:

A quorum was present with Commission Co-chairs Tavares and Amstutz, and Commission members Brooks, Clyde, Cole, Cupp, Curtin, Davidson, Fischer, Jacobson, McColley, Mills, Mulvihill, Peterson, Sapphire, Sawyer, Skindell, Sykes, and Talley in attendance.

Approval of Minutes:

The minutes of the November 10, 2016 meeting of the Commission were reviewed and approved.

Standing Committee Reports:

Coordinating Committee

Jo Ann Davidson, vice-chair of the Coordinating Committee, reported that the committee approved three reports and recommendations for no change. The first two, issued by the Education, Public Institutions, and Local Government Committee, related to Article VI, Section 5 (Loans for Higher Education), and Article VI, Section 6 (Tuition Credits Program). The third report and recommendation was issued by the Finance, Taxation, and Economic Development Committee, recommended retention of Article VIII, Sections 2l through 2s (Additional Authorization of Debt Obligations).

Vice-chair Davidson said the committee also heard a presentation regarding the Commission's Biennial Report for 2015-2016, which outlined all of the activities of the Commission and its committees over the past two years. Acknowledging the work of staff in putting together the Biennial Report, Vice-chair Davidson said the committee approved the report, which, along with

the three reports and recommendations, are being submitted for consideration by the full Commission.

Vice-chair Davidson added that the committee also decided to take the lead on reviewing and recommending possible revisions to gender-specific language currently in the constitution. She said the committee decided to give the Constitutional Revision and Updating Committee responsibility for recommending language that would ensure the use of gender-neutral language in future constitutional provisions.

Subject Matter Committee Reports:

Bill of Rights and Voting Committee

Richard Saphire, chair of the Bill of Rights and Voting Committee, reported that the committee discussed Article V, Section 1, relating to the qualifications of an elector. He said the committee voted to postpone further discussion of that section until July 1, 2017. He said the committee will begin to look at remaining provisions of Article V at its next meeting.

Constitutional Revision and Updating Committee

Dennis Mulvihill, chair of the Constitutional Revision and Updating Committee, said the committee heard excellent suggestions regarding potential changes to Article II, Sections 1 through 1g, which govern the initiative and referendum process. He said Attorney Don McTigue, as well as representatives from the League of Women Voters of Ohio and Common Cause, were present to review with the committee their concerns and suggestions about improving the process. He said the committee will continue to consider possible revisions and hopes to have a recommendation in early 2017.

Legislative Branch and Executive Branch Committee

Committee Chair Fred Mills reported that the committee would meet later in the day to review and potentially issue two reports and recommendations relating to legislative procedures, and would also hear an update and continue its review of proposals relating to Congressional redistricting.

Reports and Recommendations:

Co-chair Tavares recognized Shari L. O'Neill, counsel to the commission, to give a first presentation on behalf of the Education, Public Institutions, and Local Government Committee regarding two reports and recommendations.

Article VI, Section 5 (Loans for Higher Education)

Ms. O'Neill indicated that the report and recommendation expresses the committee's conclusion that Article VI, Section 5, relating to loans for higher education, should be retained in its current form because it articulates a policy encouraging financial support for state residents wishing to pursue higher education, specifically declaring it to be in the public interest for the state to guarantee the repayment of student loans, and authorizing laws to carry into effect such purpose.

Ms. O'Neill continued that the report describes the history of the section as being adopted by voters in May 1965 as a way of increasing opportunities for state residents to pursue higher education by guaranteeing higher education loans and allowing laws to be passed to effectuate that purpose. She said the report outlines that the provision was effectuated by statutes that first created commissions to oversee student loans, but that, by 1995, the changing landscape of the student loan market, including the success of a federal direct-lending program, and the fact that private companies were offering the same service, rendered the commissions obsolete.

Ms. O'Neill said the report and recommendation indicates that Section 5 has not been amended or reviewed since its adoption, and that the section has not been subject to any Ohio Supreme Court decisions. Ms. O'Neill said the report describes that presentations by two former directors of the commissions that oversaw the state student loan program would support the conclusion that the constitutional section is currently nonfunctional.

She said the report explains the committee's view that, despite that Article VI, Section 5 would appear unnecessary to facilitate activities of the Ohio Department of Higher Education in relation to student loans, grants, and scholarships, to accommodate the federal student loan program, or to support private lender activity related to student loans, potential changes to the federal government's student loan programs and policies could render the section useful in the future. She said the committee also was uncertain whether the provision could be necessary to support programs that forgive student loan debt in order to foster the provision of needed services in underserved areas of the state. Thus, she said, the report concludes that the section expresses an important state public policy of encouraging higher education and helping students afford it, and so should be retained in its present form.

Article VI, Section 6 (Tuition Credits Program)

Ms. O'Neill presented the report and recommendation of the Education, Public Institutions, and Local Government Committee on Article VI, Section 6, relating to Ohio's tuition credits program. Stating the report concluded the section should be retained in its current form, Ms. O'Neill described that Section 6 is designed to promote the pursuit of higher education by establishing in the constitution a government-sponsored program to encourage saving for post-secondary education.

Ms. O'Neill summarized the report's description of the history of the section, indicating that, in 1989, the General Assembly enacted statutes that established a college savings program and created the Ohio Tuition Trust Authority (OTTA), an office within the Ohio Board of Regents (now the Department of Higher Education). She said the report describes that voters approved the creation of Section 6 in 1994 as a way to address concerns about the tax exempt status of such savings plans. Ms. O'Neill said the report indicates these concerns were resolved by changes in the federal tax code that confirmed the exempt status of these "529 plans," so named for the Internal Revenue Code section that describes them. Ms. O'Neill said the report outlines a presentation by the director of the OTTA, who described that since their implementation in the early 1990s, 529 plans have grown to represent \$253.2 billion in investments nationwide, with the average account size now hovering at \$20,000. In addition, Ohio plan data indicate that, as of December 2015, over a half million accounts are open, with over \$9 billion in assets.

Ms. O'Neill said the report indicates that, although the need for the provision was resolved by the tax code change, the OTTA director recommended Section 6 be retained because one purpose of the provision is to establish the full faith and credit backing of the state for one of the savings plans offered by the program. She said the report indicates the committee's conclusion that although no new account holders for that plan have been added since 2003, the fact that some accounts are still active may require the constitutional provision to be retained in its current form. Thus, she said, the report concludes Article VI, Section 6 should be retained.

Co-chair Tavares thanked Ms. O'Neill for her presentation, indicating that a second presentation of these reports and recommendations would be heard at the next Commission meeting.

Article VIII, Sections 2l, 2m, 2n, 2o, 2p, 2q, 2r, 2s (Additional Authorization of Debt Obligations)

Co-chair Tavares recognized Doug Cole, chair of the Finance, Taxation, and Economic Development Committee, for the purpose of providing a first presentation of the committee's report and recommendation on Article VIII, Sections 2l through 2s, relating to the authorization of debt obligations.

Mr. Cole indicated the sections covered by the report and recommendation contrast with other debt authorization sections in Article VIII in that they still have outstanding bonding amounts and, as such, are the working subsections of the article. He said, as a result, while a previous report and recommendation recommended the repeal of Article VIII, Sections 2b, 2c, 2d, 2e, 2f, 2g, 2h, 2j, and 2k because they are obsolete, this report and recommendation recommends retaining Sections 2l through 2s because they are currently in use.

Mr. Cole indicated the report and recommendation outlines what each section does, briefly noting that the sections authorize debt to fund projects relating to state infrastructure. He said the sections do not have expiration dates but rather have maximum dollar amounts. He said the report and recommendation describes that the sections are relatively recent, that, for the most part, they have not been amended, and that there has been no litigation relating to the sections. He said the report concludes that because the bonds are still outstanding, the committee did not recommend change.

Mr. Cole having concluded his presentation, Co-chair Tavares thanked Mr. Cole and indicated the Commission would hear a second presentation on the report and recommendation at its next meeting.

Rules of Procedure and Conduct:

Co-chair Tavares then recognized Steven C. Hollon, executive director, for the purpose of providing a second presentation on proposed changes to the Commission's Rules of Procedure and Conduct.

Mr. Hollon described that the Organization and Administration Committee is proposing a change to Rules 5.4, 5.5, and 5.6 that would consolidate two committees, the Public Education and Information Committee and the Liaisons with Public Office Committee. He said the change was being recommended because the committees meet jointly. He said, if the Commission adopts the

change, the joint committee would be known as the Public Information and Liaisons with Public Offices Committee.

Co-chair Tavares then asked for a motion to adopt the rule change. Representative Bob Cupp so moved, with Representative Robert McColley seconding the motion. Co-chair Tavares asked for comment by the public and members of the Commission, and there was none.

Co-chair Tavares asked for a roll call vote, which was as follows:

Co-chair Tavares – yea
 Co-chair Amstutz – yea
 Brooks – yea
 Clyde – yea
 Cole – yea
 Cupp – yea
 Curtin – yea
 Davidson – yea
 Fischer – yea
 Jacobson – yea
 McColley – yea
 Mills – yea
 Mulvihill – yea
 Sapphire – yea
 Sawyer – yea
 Skindell – yea
 Sykes – yea
 Talley – yea

The motion passed unanimously, by a vote of 18 in favor and none opposed, with 13 absent.

2015-2016 Biennial Report:

Co-chair Tavares then recognized Mr. Hollon for the purposes of presenting the 2015-2016 Biennial Report. Mr. Hollon indicated that Ohio Revised Code 103.66 requires the Commission to issue a biennial report to the General Assembly. He said staff prepared the draft report, which, once adopted, will be submitted to the General Assembly. Mr. Hollon described the report as providing information about the Commission's membership, staff, and organization, as well as outlining the work of the various committees in reviewing the constitution and issuing reports and recommendations, and the adoption of reports and recommendations by the full Commission. Mr. Hollon indicated that, although the Biennial Report is complete, parts of the report would be revised by staff to reflect developments at the December 2016 Commission and committee meetings.

Co-chair Tavares opened the floor for questions. Mr. Cole asked that a portion of the draft report be revised to reflect that the Commission had not yet approved the report and recommendation for Article VIII, Sections 2l through 2s. Mr. Hollon agreed this change was necessary and indicated the final draft would so reflect.

Mr. Sapphire complimented the staff for the thoroughness of the report.

Representative Mike Curtin asked what would be the normal timing and protocol for reorganization of Commission, specifically in regard to filling vacant seats. Mr. Hollon said he would be meeting with Co-chair Tavares to discuss when and how that might be accomplished.

There being no further discussion or questions, Co-chair Tavares asked for a motion regarding the Biennial Report. Senator Mike Skindell moved to adopt the 2015-2016 Biennial Report, noting that items noted by Mr. Cole would be excluded. The motion was seconded by Commission member Patrick Fischer.

Co-chair Tavares asked for a roll call vote, which was as follows:

Co-chair Tavares – yea
 Co-chair Amstutz – yea
 Brooks – yea
 Clyde – yea
 Cole – yea
 Cupp – yea
 Curtin – yea
 Davidson – yea
 Fischer – yea
 Jacobson – yea
 McColley – yea
 Mills – yea
 Mulvihill – yea
 Peterson – yea
 Sapphire – yea
 Sawyer – yea
 Skindell – yea
 Sykes – yea
 Talley – yea

The motion passed unanimously, by a vote of 19 in favor and none opposed, with 12 absent.

Co-chair Tavares thanked staff for their work on the report.

Old Business:

Co-chair Tavares then recognized Co-chair Amstutz and Rep. Curtin for the purposes of providing an update on the progress of House Joint Resolutions related to the work of the Commission.

Co-chair Amstutz said he and Rep. Curtin had acted on the House side to introduce the recommendations of the Commission relating to proposed changes to Article IV (Judiciary) and Article VIII (Public Debt and Public Works). He said they initially had proposed four separate resolutions, but then decided to introduce an additional joint resolution that brought the state debt resolutions into one. Thus, he said there were hearings on House Joint Resolution 12 (proposing

repeal of Article IV, Section 22 [Supreme Court Commission]), and House Joint Resolution 13 (combining Commission recommendations regarding sections of Article VIII), in the House Government Accountability and Oversight Committee. He said the purpose of introducing the resolutions was to get the discussion started. He said the introduction occurred in the bustle of the last few days of the General Assembly, so typically such resolutions would not be heard, but that they had a special waiver by the committee chair at the request of himself and Rep. Curtin.

Rep. Curtin added that he hoped the resolutions would moved forward in the next General Assembly, thanking Co-chairs Amstutz and Tavares for their work in facilitating this effort. Co-chair Tavares added that efforts by herself and Senator Bob Peterson in the Senate did not make the same progress but that they would continue to work on it.

Sen. Skindell noted that his membership on the Ballot Board called to mind a concern about combining the recommendations regarding Article VIII into one joint resolution. He wondered if the combination might raise a concern about having more than one subject as a single ballot issue.

Rep. Amstutz said the decision to combine the recommendations into one resolution was a preliminary legislative decision, but ultimately the General Assembly and the Ballot Board will have the opportunity to decide the one-subject question.

New Business:

Co-chair Tavares announced this was the last Commission meeting for Co-chair Amstutz, Sen. Sawyer, and Rep. Curtin. She asked them if they would like to provide remarks on the occasion of their departure.

Co-chair Amstutz said he has been accused of being a “policy wonk,” but that the Commission is great place to ply that approach. He said he has enjoyed this work although it has plodded at times and the Commission’s slow start was frustrating. But, he added, the Commission is doing important work, momentum has happened, and is is glad to have served. He suggested that the Commission revisit the one thing that fell apart, which was the recommendation regarding what to do about the “idiots and insane persons” language in Article V, Section 6. He said he is excited about the next phase of his career, but that his time on the Commission has been a “great run.” He said he wishes the Commission all the best in the future.

Rep. Curtin said he implores those in positions of relevance and authority to take note that in the last budget the life of the Commission was cut in half from its original statutory charge. He said he hopes they may see merit in restoring the full life of the Commission because there is a lot of good work still to do.

Sen. Sawyer said this meeting draws to an end a long chapter in the opportunities he has had. He said Co-chair Amstutz came into the House in 1983, “he came as I was going out” and “our paths have woven even since.” Sen. Sawyer said this is my penultimate meeting of responsibility, and that, after serving in the Ohio Senate now after 40 years, he could not ask for a more satisfying responsibility than this one. He said he is deeply gratified to have been able to serve on this body with this particular group of people. He said “We are diverse, we come from

a diverse state, and we face challenges, and we reach far into the future. I am proud to have been a part of it.”

Asked to comment on whether he would continue to serve on the Commission after being elected as justice of the Supreme Court of Ohio, Patrick Fischer said he is reviewing the issue of whether he will be able to remain on the Commission, saying he would like to do so. He said he has enjoyed his service, and that the work of the Commission is interesting and important. He noted “We didn’t get off the ground for two years. I ask the legislature if they would review this and give the Commission time. Because we have momentum here. If you think about what we have done so far, it is important.” Judge Fischer said he hopes more judges get on the Commission because that provides a different perspective that he thinks would be helpful. He added his wish that the Commission meet outside of Columbus, saying the more rural areas of the state would catch on to the project and that local papers would give the Commission’s work more attention and support.

Adjournment:

There being no further business to come before the Commission, the meeting adjourned at 2:25 p.m.

Approval:

The minutes of the December 15, 2016 meeting of the Commission were approved at the February 9, 2017 meeting of the Commission.

Co-chair
Senator Charleta B. Tavares
Assistant Minority Leader

Co-chair



OHIO CONSTITUTIONAL MODERNIZATION COMMISSION

REPORT AND RECOMMENDATION OF THE LEGISLATIVE BRANCH AND EXECUTIVE BRANCH COMMITTEE

OHIO CONSTITUTION ARTICLE II SECTIONS 3, 4, 5, AND 11

MEMBER QUALIFICATIONS AND VACANCIES IN THE GENERAL ASSEMBLY

The Legislative Branch and Executive Branch Committee of the Ohio Constitutional Modernization Commission issues this report and recommendation regarding Sections 3, 4, 5, and 11 of Article II of the Ohio Constitution concerning member qualifications and filling vacancies in the General Assembly. 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 Article II, Sections 3, 4, 5, and 11 of the Ohio Constitution be retained in their current form.

Background

Article II generally concerns the Legislative Branch, providing the organizational structure and membership requirements of the General Assembly and the method for it conducting its business.

Article II, Sections 3, 4, 5, and 11 address the qualifications of members of the General Assembly, as well as providing for filling vacancies in legislative seats. Originally adopted as part of the 1851 constitution, the sections specifically describe residency requirements and restrictions on those who serve in the General Assembly, and the method for filling a vacancy in the General Assembly. While subject to several proposals for change since 1851, only some amendments have been approved by the electorate.

Section 3, adopted in 1851 and amended in 1967, states that senators and representatives shall have lived in their districts for one year prior to their election:

Senators and representatives shall have resided in their respective districts one year next preceding their election, unless they shall have been absent on the public business of the United States, or of this State.

Delegates at the Constitutional Convention of 1851 addressed a concern, raised by Charles Reemelin of Hamilton County, that legislators were not always residents of the communities they represented. As Reemelin observed, “under a fair and equal representation,” it would be more ideal for representatives to live closer so as to have interests “more identical with [their constituents]”.¹ Thus, as adopted in 1851, the provision required legislators to live in their respective counties or districts for at least a year before their election, with the 1967 amendment only removing the reference to “counties” in order to satisfy legislative apportionment requirements.

Section 4, adopted in 1851 and amended in 1973, restricts members of the General Assembly, while serving, from holding any other public office, except as specified. The section additionally acknowledges the ethical concerns raised by legislators creating future employment for themselves, preventing General Assembly members from later being appointed to offices created or enhanced during their term of office:

No member of the general assembly shall, during the term for which he was elected, unless during such term he resigns therefrom, hold any public office under the United States, or this state, or a political subdivision thereof; but this provision does not extend to officers of a political party, notaries public, or officers of the militia or of the United States armed forces.

No member of the general assembly shall, during the term for which he was elected, or for one year thereafter, be appointed to any public office under this state, which office was created or the compensation of which was increased, during the term for which he was elected.

Section 5, unchanged since 1851, prohibits persons convicted of embezzlement from serving in the General Assembly, and prevents persons holding money for public disbursement from serving until they account for and pay that money into the treasury:

No person hereafter convicted of an embezzlement of the public funds, shall hold any office in this State; nor shall any person, holding public money for disbursement, or otherwise, have a seat in the General Assembly, until he shall have accounted for, and paid such money into the treasury.

Delegates to the 1851 convention addressed the matter of convicted or disbursement-holding individuals being able to gain seats in the General Assembly. As originally proposed, the amendment would have read: “No person who shall be convicted of a defalcation or embezzlement of the public funds, shall be capable of holding any office of trust, honor or profit; nor shall any person holding any public money for disbursement, or otherwise, have a seat in either house of the General Assembly, until such person shall have accounted for and paid into

the Treasury all money for which he may be accountable or liable.”² However, when the discussion of the section came up, many delegates were unclear on the intended application and purpose of the proposed amendment, with delegate Peter Hitchcock of Geauga County supposing that the goal was to “disqualify any person who had been guilty of criminally appropriating the public funds” for personal intentions. Ultimately, the convention agreed to add the word “hereafter” to make the phrase “no person who shall hereafter be,” and to remove the word “defalcation.”³

Section 11, adopted in 1851 and amended in 1961, 1968, and 1973, defines how vacancies shall be filled in the Senate and House of Representatives:

A vacancy in the Senate or in the House of Representatives for any cause, including the failure of a member-elect to qualify for office, shall be filled by election by the members of the Senate or the members of the House of Representatives, as the case may be, who are affiliated with the same political party as the person last elected by the electors to the seat which has become vacant. A vacancy occurring before or during the first twenty months of a Senatorial term shall be filled temporarily by election as provided in this section, for only that portion of the term which will expire on the thirty-first day of December following the next general election occurring in an even-numbered year after the vacancy occurs, at which election the seat shall be filled by the electors as provided by law for the remaining, unexpired portion of the term, the member-elect so chosen to take office on the first day in January next following such election. No person shall be elected to fill a vacancy in the Senate or House of Representatives, as the case may be, unless he meets the qualifications set forth in this Constitution and the laws of this state for the seat in which the vacancy occurs. An election to fill a vacancy shall be accomplished, notwithstanding the provisions of section 27, Article II of this Constitution, by the adoption of a resolution, while the Senate or the House of Representatives, as the case may be, is in session, with the taking of the yeas and nays of the members of the Senate or the House of Representatives, as the case may be, affiliated with the same political party as the person last elected to the seat in which the vacancy occurs. The adoption of such resolution shall require the affirmative vote of a majority of the members elected to the Senate or the House of Representatives, as the case may be, entitled to vote thereon. Such vote shall be spread upon the journal of the Senate or the House of Representatives, as the case may be, and certified to the Secretary of State by the clerk thereof. The Secretary of State shall, upon receipt of such certification, issue a certificate of election to the person so elected and upon presentation of such certificate to the Senate or the House of Representatives, as the case may be, the person so elected shall take the oath of office and become a member of the Senate or the House of Representatives, as the case may be, for the term for which he was so elected.

As initially proposed by a committee of the 1851 convention, Section 11 read “All vacancies which may happen in either House, shall as soon as possible, be filled by an election, and the

Governor shall issue the necessary writs of election according to law.”⁴ But delegate John L. Green of Ross County expressed a concern that handling the matter in this way would cause delay in the legislature’s consideration of important matters while waiting for an election to fill the vacancy.⁵ Another delegate, George Collings of Adams County, proposed to strike the words “as soon as possible,” which was approved, as well as a proposal by A. G. Brown of Athens County to eliminate the word “an” before “election.” Motions to add “prescribed by law” and a policy relating to the governor issuing “a writ of election” to fill legislative vacancies were declined.⁶ Some delegates desired to give the governor a role in filling vacancies, while others emphasized that the General Assembly should have the ability to create law to address vacancies. As adopted by voters in 1851, the provision read: “All vacancies which may happen in either house shall, for the unexpired term, be filled by election, as shall be directed by law.”

Amendments, Proposed Amendments, and Other Review

Sections 3, 4, 5, and 11 all date to the 1851 constitution. As discussed below, Sections 3 and 11 were amended in the 1960s before undergoing revision in the 1970s. During that era, the Ohio Constitutional Revision Commission (1970s Commission) studied Article II in depth and made extensive recommendations concerning the qualifications of members of the General Assembly, their compensation, and how to fill vacancies in the General Assembly when necessary.⁷

Section 3 (Residence Requirements for State Legislators)

In 1967, voters approved, by a margin of 59.17 percent to 40.83 percent, a state legislative district apportionment amendment that included amending Section 3 to replace a reference to the legislators’ places of residence as “counties,” with a reference to their districts.⁸ The Legislative-Executive Committee of the 1970s Commission considered whether to change the provision, focusing on whether to recommend a requirement for a candidate to be a resident of the district for a certain period of time prior to election, and a requirement that a candidate maintain residency in that district throughout his or her term. Seeking to allow a candidate the opportunity to change residency prior to election, the committee recommended the following language:⁹

Senators and Representatives shall have resided in their respective districts on the day that they become candidates for the general assembly, as provided by law, and shall remain residents during their respective terms unless they are absent on the public business of the United States or of this State.¹⁰

However, the recommendation failed to achieve the support of a two-thirds majority of the full 1970s Commission, resulting in no recommendation for change being adopted.¹¹ The general concern was that the proposed amendment would alter the constitution beyond its scope, removing the secretary of state’s authority to require a legislator to be an elector of a district. A further concern was that having no residency requirement for the duration of the legislator’s term likely would lead the matter of representation to become a campaign issue.¹²

Section 4 (Dual Office and Conflict of Interest Prohibited)

Recognizing the definitional problems in the previous version of Section 4, which prevented persons “holding office under the authority of the United States” or holding “any lucrative office under the authority” of the state of Ohio, from serving in the General Assembly, the Legislative-Executive Committee of the 1970s Commission recommended replacing the ambiguous and outdated phrases with a reference to holding “public office.”¹³ The committee considered the definition of public officer expressed in case law, but ultimately recognized that the General Assembly has the authority to define public office by statute.¹⁴ The full 1970s Commission accepted the committee’s recommendation, eliminating a previous exemption for township officers and justices of the peace, and adding an exemption for officers of the United States armed forces.¹⁵

The 1970s Commission also recommended the repeal of Article II, Section 19, and the placement in Section 4 of Section 19’s prohibition on a legislator being appointed to a public office that either was created or had its compensation increased during the legislator’s term of office or for one year thereafter.¹⁶ The 1970s Commission noted that the Citizens Conference on State Legislatures favored including a period of time in the language.¹⁷ In recommending these changes, the 1970s Commission asserted the revisions essentially were non-substantive, noting the “wisdom of prohibiting public conflicts” of interest.¹⁸

The recommendations regarding Section 4 were part of a package of revisions that included changes related to Article II, Sections 4, 6, 7, 8, 9, 11, 14, 16, 17, 18, 19, and 25.¹⁹ Presented to voters on May 8, 1973, the issue passed by a vote of 680,870 to 572,980.²⁰

Section 5 (Who Shall Not Hold Office)

Section 5 currently reads the same as it did when first adopted in 1851. The provision prevents persons convicted of embezzlement from holding public office, and requires persons holding public money for disbursement from serving on the legislature until they have accounted for the money and paid it into the treasury. The 1970s Commission recommended the repeal of Section 5, considering it unnecessary due to the establishment of other qualifications for service in the General Assembly, and from a belief that such matters should be left to statutory law.²¹ Moreover, the 1970s Commission observed that Article V, Section 4, declaring felony convicts to be ineligible for public office; and Article XV, Section 4, requiring elected officials to possess the qualifications of an elector; sufficiently articulated the ability of the General Assembly to prescribe qualifications for holding office.²² Thus, the 1970s Commission determined Section 5 was obsolete.²³ However, the voters rejected the measure at the polls on May 8, 1973 by a margin of 61.55 percent to 38.45 percent.²⁴

Section 11 (Filling Vacancy in House or Senate Seat)

Section 11, relating to how the two chambers of the General Assembly fill vacant seats, has been amended three times since 1851.²⁵ The 1851 version of Section 11 reads: “All vacancies which may happen in either House shall, for the unexpired term, be filled by election, as shall be

directed by law.”²⁶ After being successfully presented to voters as a legislatively-referred amendment on November 7, 1961, the detailed procedures set forth in Section 11 applied only to vacancies in the Senate.²⁷ Vacancies in the House were still to be “filled by election as shall be directed by law.”²⁸ The 1968 version of Section 11, which made the procedure to fill vacancies the same in both houses, was legislatively proposed and adopted by the electorate on May 7, 1968 by an overwhelming majority vote of 1,020,500 for and 487,938 against.²⁹

The 1970s Commission called its recommendation to amend Section 11 to eliminate inconsistencies between the procedures for election and for appointment “corrective,” rather than substantive.³⁰ Thus, the 1970s Commission advocated revising the language adopted by the 1961 and 1968 amendments in favor of more precise terms, ultimately using the word “elected” in place of “appointed.”³¹ As with the changes to Sections 3 and 4, the recommended change to Section 11 was adopted by voters as part of the package of ballot issues proposed on May 8, 1973.

Litigation Involving the Provisions

Only two Supreme Court of Ohio cases related to Sections 3, 4, 5, or 11 have been issued since the review of these sections by the 1970s Commission.

In *State ex rel. Husted v. Brunner*, 123 Ohio St. 3d 288, 2009-Ohio-5327, 915 N.E.2d 1215, the Supreme Court of Ohio addressed a case that arose when the secretary of state canceled a state legislator’s voter registration on the grounds that the extensive time he was spending in Columbus in the service of the General Assembly meant he was no longer a resident of his home county for voting purposes. In concluding that the legislator’s home county remained his residence for voting purposes, the Court analyzed the requirements of Section 3, noting that the provision “ensures that a state legislator’s absence from the district on official duties does not jeopardize his or her right to claim a full year’s residence in the district.” *Id.* at ¶ 29. Thus, the Court held the legislator was eligible to remain on the poll books as a registered elector in Montgomery County. *Id.* at ¶ 35.

In *State ex rel. Meshel v. Keip*, 66 Ohio St.2d 379, 423 N.E.2d 60, the Court considered a claim that the state controlling board had unlawfully transferred rail transportation appropriations. Among other arguments, relator had asserted that the controlling board’s actions were unconstitutional because six of its seven members also were legislators, in violation of Article II, Section 4. Specifically, relator claimed that Section 4’s prohibition on legislators from holding public office during their term prevented legislators from serving on the controlling board. The Court disagreed, observing that, for controlling board members to be holding a public office, the controlling board must be said to exercise some portion of the state’s sovereign power. The Court found that the controlling board did not exercise independent power in the disposition of public property or have the power to incur financial obligations on behalf of the county or state, and so legislators did not violate Section 4 by simultaneously serving on the controlling board. *Id.*, 66 Ohio St.2d at 387-88, 423 N.E.2d at 66.

Presentations and Resources Considered

Hollon Presentation

On July 14, 2016, Steven C. Hollon, executive director, described that Sections 3, 4, 5, and 11 deal with residency requirements and restrictions on those who serve in the General Assembly, and the method for filling a vacant seat of the General Assembly. Mr. Hollon suggested that, because these provisions cover related subject matter, they could be reviewed together and addressed in a single report and recommendation.

Discussion and Consideration

In discussing Article II, Sections 3, 4, 5, and 11, the committee determined the revision of the sections in the 1970s adequately addressed any previous concerns. The committee further considered that the sections continue to appropriately and effectively guide the legislature's organization and operation, and so should be retained.

Conclusion

The Legislative Branch and Executive Branch Committee concludes that Article II, Sections 3, 4, 5, and 11 should be retained in their current form.

Date Issued

After formal consideration by the Legislative Branch and Executive Branch Committee on December 15, 2016, the committee voted to issue this report and recommendation on December 15, 2016.

Endnotes

¹ *Report of the Debates and Proceedings of the Convention for the Revision of the Constitution of the State of Ohio, 1850-51*, 2 vols. (Columbus: S. Medary, 1851), 102.

² *Id.* at 163-164.

³ *Id.* at 258; Isaac F. Patterson, *The Constitutions of Ohio: Amendments and Proposed Amendments*. (Cleveland: Arthur H. Clark Co., 1912), 110.

⁴ *Report of the Debates, supra*, at 163.

⁵ *Id.* at 230.

⁶ *Id.* at 232.

⁷ Ohio Constitutional Revision Commission, Recommendations for Amendments to the Ohio Constitution, Part 1, Administration, Organization, and Procedures of the General Assembly (Dec. 31, 1971). Available at: <http://www.lsc.ohio.gov/ocrc/recommendations%20pt1%20general%20assembly.pdf> (last visited Oct. 12, 2016). *See also*, Ohio Constitutional Revision Commission, Recommendations for Amendments to the Ohio Constitution, Final Report (June 30, 1977). Available at: <http://www.lsc.ohio.gov/ocrc/final%20report%20index%20to%20proceedings%20and%20research.pdf> (last visited Oct. 12, 2016).

⁸ Ohio Secretary of State, Amendment and Legislation: Proposed Constitutional Amendments, Initiated Legislation, and Laws Challenged by Referendum, Submitted to the Elector, 13 (updated May 23, 2016). Available at: <http://www.sos.state.oh.us/sos/upload/elections/historical/issuehist.pdf> (last visited Sept. 23, 2016).

The amendment removed the word “counties” so that Section 3 reads “shall have resided in their respective districts.”

⁹ Ohio Constitutional Revision Commission, Recommendations for Amendments to the Ohio Constitution, Proceedings Research, Volume 1, 39 (Jan. 8, 1970). Available at: <http://www.lsc.ohio.gov/ocrc/v1%20pgs%201-548%20meetings%20beginning%201-8-1970.pdf> (last visited Sept. 23, 2016).

¹⁰ *Id.*, Vol. 2 at 1096.

¹¹ Ohio Constitutional Revision Commission, Recommendations for Amendments to the Ohio Constitution, Proceedings Research, *supra*, at 42.

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.*

¹⁵ Ohio Constitutional Revision Commission, Recommendations for Amendments to the Ohio Constitution, Part I, Administration, Organization, and Procedures of the General Assembly, *supra*, at 20; *see also*, Ohio Constitutional Revision Commission, Recommendations for Amendments to the Ohio Constitution, Final Report, *supra*, at 100.

¹⁶ Ohio Constitutional Revision Commission, Recommendations for Amendments to the Ohio Constitution, Part I, Administration, Organization, and Procedures of the General Assembly, *supra*, at 17-20; *see also*, Ohio Constitutional Revision Commission, Recommendations for Amendments to the Ohio Constitution, Final Report, *supra*, at 97-100.

¹⁷ Ohio Constitutional Revision Commission, Recommendations for Amendments to the Ohio Constitution, Part I, Administration, Organization, and Procedures of the General Assembly, *supra*, at 22; *see also*, Ohio Constitutional Revision Commission, Recommendations for Amendments to the Ohio Constitution, Final Report, *supra*, at 102.

¹⁸ *Id.*

¹⁹ The ballot language asked whether Article II, Sections 4, 6, 7, 9, 11, 14, and 16 should be amended, whether Sections 8 and 15 should be enacted, and whether Sections 8, 15, 17, 18, 19, and 25 should be repealed, with the goal of providing qualifications for members of the General Assembly, allowing each house to choose its own officers and rules of proceeding, requiring annual legislative sessions and allowing special sessions, and providing for procedures for passing and enacting legislation.

See [https://ballotpedia.org/Ohio_Procedures_of_the_General_Assembly,_Amendment_6_\(May_1973\)](https://ballotpedia.org/Ohio_Procedures_of_the_General_Assembly,_Amendment_6_(May_1973)) (last visited Oct. 6, 2016), citing the *Toledo Blade*, May 7, 1973, <https://news.google.com/newspapers?id=8QhPAAAAIIBAJ&sjid=RAIEAAAAIIBAJ&pg=7444,4723240&hl=en> (last visited Oct. 6, 2016).

²⁰ Ohio Secretary of State, Amendment and Legislation: Proposed Constitutional Amendments, Initiated Legislation, and Laws Challenged by Referendum, Submitted to the Elector, 14 (updated May 23, 2016). Available at: <http://www.sos.state.oh.us/sos/upload/elections/historical/issuehist.pdf> (last visited Sept. 23, 2016).

²¹ Ohio Constitutional Revision Commission, Recommendations for Amendments to the Ohio Constitution, Part I, Administration, Organization, and Procedures of the General Assembly, *supra*, at 23; *see also*, Ohio Constitutional Revision Commission, Recommendations for Amendments to the Ohio Constitution, Final Report, *supra*, at 103.

²² *Id.*

²³ Ohio Constitutional Revision Commission, Recommendations for Amendments to the Ohio Constitution, Part I, Administration, Organization, and Procedures of the General Assembly, *supra*, at 24; *see also*, Ohio Constitutional Revision Commission, Recommendations for Amendments to the Ohio Constitution, Final Report, *supra*, at 104.

²⁴ Ohio Secretary of State, Amendment and Legislation: Proposed Constitutional Amendments, Initiated Legislation, and Laws Challenged by Referendum, Submitted to the Elector, 14 (updated May 23, 2016). Available at: <http://www.sos.state.oh.us/sos/upload/elections/historical/issuehist.pdf> (last visited Sept. 23, 2016).

²⁵ Ohio Constitutional Revision Commission, Recommendations for Amendments to the Ohio Constitution, Part I, Administration, Organization, and Procedures of the General Assembly, *supra*, at 26; *see also*, Ohio Constitutional Revision Commission, Recommendations for Amendments to the Ohio Constitution, Final Report, *supra*, at 106.

²⁶ *Id.*

²⁷ Ohio Constitutional Revision Commission, Recommendations for Amendments to the Ohio Constitution, Part I, Administration, Organization, and Procedures of the General Assembly, *supra*, at 37; *see also*, Ohio Constitutional Revision Commission, Recommendations for Amendments to the Ohio Constitution, Final Report, *supra*, at 117.

See <https://www.law.csuohio.edu/sites/default/files/lawlibrary/ohioconlaw/vacancies2.jpg> (last visited Oct. 12, 2016)(providing the full text of the 1961 proposed amendment to the Constitution).

²⁸ Ohio Constitutional Revision Commission, Recommendations for Amendments to the Ohio Constitution, Part I, Administration, Organization, and Procedures of the General Assembly, *supra*, at 37; *see also*, Ohio Constitutional Revision Commission, Recommendations for Amendments to the Ohio Constitution, Final Report, *supra*, at 117.

²⁹ *Id.*

³⁰ *Id.*

³¹ *Id.*

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OHIO CONSTITUTIONAL MODERNIZATION COMMISSION

REPORT AND RECOMMENDATION OF THE LEGISLATIVE BRANCH AND EXECUTIVE BRANCH COMMITTEE

OHIO CONSTITUTION ARTICLE II, SECTIONS 6, 7, 8, 9, 13, AND 14

CONDUCTING BUSINESS OF THE GENERAL ASSEMBLY

The Legislative Branch and Executive Branch Committee of the Ohio Constitutional Modernization Commission issues this report and recommendation regarding Article II, Sections 6, 7, 8, 9, 13, and 14 of the Ohio Constitution concerning the organization of the General Assembly and the basic standards for conducting the business of the body. 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 Article II, Sections 6, 7, 8, 9, 13, and 14 of the Ohio Constitution be retained in their current form.

Background

Article II generally concerns the Legislative Branch, providing the organizational structure and membership requirements of the General Assembly and the method for it conducting its business.

Article II, Section 6 outlines the powers of each house of the General Assembly, providing:

Each House shall be judge of the election, returns, and qualifications of its own members. A majority of all the members elected to each House shall be a quorum to do business; but, a less number may adjourn from day to day, and compel the attendance of absent members, in such manner, and under such penalties, as shall be prescribed by law.

Each House may punish its members for disorderly conduct and, with the concurrence of two-thirds of the members elected thereto, expel a member, but not the second time for the same cause. Each House has all powers necessary to

provide for its safety and the undisturbed transaction of its business, and to obtain, through committees or otherwise, information affecting legislative action under consideration or in contemplation, or with reference to any alleged breach of its privileges or misconduct of its members, and to that end to enforce the attendance and testimony of witnesses, and the production of books and papers.

Section 7 provides for the organization of each house of the General Assembly, providing:

The mode of organizing each House of the general assembly shall be prescribed by law.

Each House, except as otherwise provided in this Constitution, shall choose its own officers. The presiding officer in the Senate shall be designated as president of the Senate and in the House of Representatives as speaker of the House of Representatives.

Each House shall determine its own rules of proceeding.

Section 8 governs the calendar of the General Assembly, providing:

Each general assembly shall convene in first regular session on the first Monday of January in the odd-numbered year, or on the succeeding day if the first Monday of January is a legal holiday, and in second regular session on the same date of the following year. Either the governor, or the presiding officers of the general assembly chosen by the members thereof, acting jointly, may convene the general assembly in special session by a proclamation which may limit the purpose of the session. If the presiding officer of the Senate is not chosen by the members thereof, the President pro tempore of the Senate may act with the speaker of the House of Representatives in the calling of a special session.

Section 9 requires the two chambers to keep and publish a journal of proceedings, and to record the votes:

Each House shall keep a correct journal of its proceedings, which shall be published. At the desire of any two members, the yeas and nays shall be entered upon the journal; and, on the passage of every bill, in either house, the vote shall be taken by yeas and nays, and entered upon the journal.

Section 13 relates to the public nature of the legislative process, requiring open proceedings:

The proceedings of both houses shall be public, except in cases which, in the opinion of two-thirds of those present, require secrecy.

Section 14 controls the ability of either house to adjourn, providing:

Neither House shall, without the consent of the other, adjourn for more than five days, Sundays excluded; nor to any other place than that, in which the two Houses are in session.

Amendments, Proposed Amendments, and Other Review

An early agenda item for the Ohio Constitutional Revision Commission (1970s Commission) was to address the administration, organization, and procedures of the General Assembly. Consequently, the 1970s Commission issued a comprehensive report recommending the amendment of Article II, Sections 4, 6, 7, 9, 11, 14, 16, and 31; the repeal of Article II, Sections 5, 17, 18, 19, and 25; and the repeal and enactment of new sections for Article II, Sections 8 and 15.¹

In relation to Section 6, the 1970s Commission recommended that the original section from the 1851 constitution (which had its genesis in the 1802 constitution), be amended to include portions of former Section 8 dealing with the ability of each chamber of the General Assembly to discipline and control its members. Thus, the 1970s Commission advocated adding the second paragraph of Section 6, which allows each house to punish members for disorderly conduct, to expel members, and to enforce rules and procedures promoting the orderly transaction of its business.²

Addressing Section 7, which derived from a provision in the 1802 constitution that was partially retained in the 1851 constitution, the 1970s Commission recommended the addition of a portion of former Section 8 that had described the procedure for selecting legislative officers, including the president of the senate and the speaker of the house of representatives. The 1970s Commission also supported a statement confirming that each house may determine its own procedural rules. The 1970s Commission's recommended changes were intended to correct an omission from the 1851 constitution that resulted in there being no reference to how the senate was to select its officers.³

With regard to Section 8, the 1970s Commission recommended repeal and replacement, explaining that its recommendations to split the section between Sections 6 and 7 resulted in there being no remaining portion of the section to retain.⁴ To take its place, the 1970s Commission proposed a new section detailing what constitutes a "session" of the General Assembly, specifically describing a "regular session" and a "special session." Explaining its rationale, the 1970s Commission observed that, despite the provision in former Article II, Section 25 fixing the first Monday of January as the commencement of "all regular sessions," to occur biennially, the long practice of the General Assembly was to designate a "second regular session" on the same date of the following year. This resulted in the concept of the biennial General Assembly meeting in a first regular session, to be followed a year later by the second regular session. The 1970s Commission sought to clarify this practice by recommending that the constitution expressly recognize the practice of holding annual sessions, noting that it regarded the proposal as "an important element in strengthening the power of the legislative branch and insuring its ability to deal with problems as they arise."⁵ The 1970s Commission also recommended the addition of a reference to the ability of the General Assembly to hold "special sessions," as convened by the governor or the presiding officers of the General Assembly.⁶

The 1970s Commission sought to maintain the journal-keeping requirement in Section 9, acknowledging that similar legislative recordkeeping requirements are standard in most, if not all, state constitutions, as well as in the United States Constitution. However, the 1970s Commission recommended that a portion of the section, which mandated that no law could be passed without the concurrence of a majority of the members of each chamber, be moved to a proposed new Section 15.⁷

Section 13, requiring the General Assembly to hold open meetings, was not addressed by the 1970s Commission, and, in fact, has not been amended since its adoption in 1851. The current provision is based on a provision in the 1802 constitution literally expressing an “open door” policy, stating, in part, that the “doors of each house, and of committees of the whole, shall be kept open, except in such cases as, in the opinion of the house, require secrecy.”⁸

Reviewing Section 14, which restricted the separate houses of the General Assembly from adjourning for more than two days without the consent of the other house, the 1970s Commission recommended expanding the original two-day requirement to five days. The purpose of the change was to accommodate the legislature’s established practice of beginning a session week on a Tuesday, a practice that, in order to comply with the constitutional requirement, required the General Assembly to hold perfunctory, or “skeleton,” sessions on Mondays. As observed by the 1970s Commission, “a requirement that is being observed through the device of a technicality deserves reconsideration.”

The recommendations of the 1970s Commission with regard to Sections 6 through 9, and 14, were presented to voters on the May 8, 1973 ballot as part of a ballot issue package related to General Assembly operational reforms.⁹ The measure passed by a margin of 54.30 percent to 45.70 percent.¹⁰

Litigation Involving the Provision

Two Supreme Court of Ohio cases addressing these sections have been decided since the 1970s Commission completed its work.

State ex rel. Hodges v. Taft, 64 Ohio St.3d 1, 591 N.E.2d 1186 (1992), was a mandamus action based on a statutory initiative proponent’s claim that the secretary of state had forwarded the initiative petition to the General Assembly at a time that was not contemplated by Article II, Section 1b of the Ohio Constitution. Specifically, the case revolved around whether Article II, Section 8’s stipulation that the General Assembly convene in first regular session in an odd-numbered year required the secretary of state to wait to forward the initiative petition until the next General Assembly convened, which was over a year after the proponents filed their initiative petition. Interpreting the statutory initiative petition requirements of Article II, Section 1b in conjunction with the definition of “first” and “second” regular session of the General Assembly in Article II, Section 8, the Supreme Court held that once the proponents presented the initiative petition to the secretary of state on December 11, 1991, the secretary of state was required by law to transmit the petition to the General Assembly at its next regular session, which was in January 1992, rather than when the next General Assembly convened in January 1993. As interpreted by the Court, Section 8 “restores a clear distinction between the *term* of a General Assembly, which coincides with the biennial election cycle, and the *sessions* of the

General Assembly, which are annual and two in number during each biennial term.” *Id.*, 64 Ohio St.3d at 21, 591 N.E.2d at 1193. Thus, the first regular session was said to convene when each house is called to order by its respective presiding officer on the relevant day in January in the odd-numbered year, and the second regular session then convenes automatically on the same day of the following year. *Id.*

In *State ex rel. Grendell v. Davidson*, 86 Ohio St.3d 629, 1999-Ohio-130, 716 N.E.2d 704, the Supreme Court considered joint legislative rules adopted pursuant to Article II, Section 7, which gives each house of the General Assembly the ability to independently choose its officers and its rules of procedure. In *Grendell*, the senate and house of representatives passed competing versions of a bill, which was then referred to conference committee to work out the differences. In doing so, the conference committee deleted a key provision, allegedly because it would have benefited the district of a state representative who had voted against the bill. The state representative then sought a writ of mandamus to compel the conference committee to include the provision. In rejecting the writ, the Court found the complaint to be nonjusticiable because Section 7 allows each chamber of the General Assembly to determine its own rules of proceeding. *Id.*, 86 Ohio St.3d at 633, 716 N.E.2d at 709. While the case holding hinged on the separation of powers principle, noting that “mandamus will not issue to a legislative body or its officers to require the performance of duties that are purely legislative in character and over which such legislative bodies have exclusive control,” *Grendell* nevertheless confirms Section 7 as expressing the self-governing power of the General Assembly. *Id.*

Presentations and Resources Considered

Hollon Presentation

In his presentation to the committee on July 14, 2016, Steven C. Hollon, executive director, said the sections in this category deal with the organization and power of the General Assembly, providing basic standards for conducting the business of the body. He observed that, of the six sections in this category, four were adopted in 1851 and then amended in 1973, one was adopted in 1851 and has never been amended, and one was adopted in 1973. Mr. Hollon said the subject matter of these provision supports creating one report and recommendation to report the committee’s work on the topics.

Discussion and Consideration

In considering Article II, Sections 6 through 9, 13, and 14, the committee recognized the General Assembly’s ability to determine how often it meets, noting that there is nothing in the constitution controlling the legislative calendar. The committee saw no need to alter that arrangement, based on its conclusion that the legislature is its own best authority for determining how often and how long it should meet.

Conclusion

The Legislative Branch and Executive Branch Committee concludes that Article II, Sections 6, 7, 8, 9, 13, and 14 should be retained in their current form.

Date Issued

After formal consideration by the Legislative Branch and Executive Branch Committee on December 15, 2016, the committee voted to issue this report and recommendation on December 15, 2016.

Endnotes

¹ Ohio Constitutional Revision Commission (1970-77), Recommendations for Amendments to the Ohio Constitution, Part I, Administration, Organization, and Procedures of the General Assembly (Dec. 31, 1971). Available at <http://www.lsc.ohio.gov/ocrc/recommendations%20pt1%20general%20assembly.pdf> (last visited Oct. 5, 2016). *See also* Ohio Constitutional Revision Commission, Recommendations for Amendments to the Ohio Constitution, Final Report (June 30, 1977). Available at: <http://www.lsc.ohio.gov/ocrc/final%20report%20index%20to%20proceedings%20and%20research.pdf> (last visited Oct. 12, 2016).

² *Id.* at 25.

³ *Id.* at 26-29.

⁴ *Id.* at 30.

⁵ *Id.* at 31-32.

⁶ *Id.* at 32-33.

⁷ *Id.* at 33-34.

⁸ *See, e.g.,* Steven H. Steinglass and Gino J. Scarselli, *The Ohio State Constitution* 149 (2nd prtg. 2011).

⁹ The ballot language asked whether Article II, Sections 4, 6, 7, 9, 11, 14, and 16 should be amended, whether Sections 8 and 15 should be enacted, and whether Sections 8, 15, 17, 18, 19, and 25 should be repealed, with the goal of providing qualifications for members of the General Assembly, allowing each house to choose its own officers and rules of proceeding, requiring annual legislative sessions and allowing special sessions, and providing for procedures for passing and enacting legislation.

See [https://ballotpedia.org/Ohio_Procedures_of_the_General_Assembly,_Amendment_6_\(May_1973\)](https://ballotpedia.org/Ohio_Procedures_of_the_General_Assembly,_Amendment_6_(May_1973)) (last visited Oct. 6, 2016), citing the *Toledo Blade*, May 7, 1973, available at <https://news.google.com/newspapers?id=8QhPAAAAIBAJ&sjid=RAIEAAAIBAJ&pg=7444,4723240&hl=en> (last visited Oct. 6, 2016).

¹⁰ <http://www.sos.state.oh.us/sos/upload/elections/historical/issuehist.pdf> (last visited Oct. 6, 2016).



OHIO CONSTITUTIONAL MODERNIZATION COMMISSION

REPORT AND RECOMMENDATION

OHIO CONSTITUTION ARTICLE VI, SECTION 5

LOANS FOR HIGHER EDUCATION

The Ohio Constitutional Modernization Commission adopts this report and recommendation regarding Article VI, Section 5 of the Ohio Constitution concerning loans for higher education. It is issued pursuant to Rule 10.3 of the Ohio Constitutional Modernization Commission's Rules of Procedure and Conduct.

Recommendation

The Commission recommends that no change be made to Article VI, Section 5 of the Ohio Constitution and that the provision be retained in its current form.

Background

Article VI, Section 5 reads as follows:

To increase opportunities to the residents of this state for higher education, it is hereby determined to be in the public interest and a proper public purpose for the state to guarantee the repayment of loans made to residents of this state to assist them in meeting the expenses of attending an institution of higher education. Laws may be passed to carry into effect such purpose including the payment, when required, of any such guarantee from moneys available for such payment after first providing the moneys necessary to meet the requirements of any bonds or other obligations heretofore or hereafter authorized by any section of the Constitution. Such laws and guarantees shall not be subject to the limitations or requirements of Article VIII or of Section 11 of Article XII of the Constitution. Amended Substitute House Bill No.618 enacted by the General Assembly on July 11, 1961, and Amended Senate Bill No.284 enacted by the General Assembly on May 23, 1963, and all appropriations of moneys made for the purpose of such enactments, are hereby validated, ratified, confirmed, and approved in all respects, and they shall be in full force and effect from and after the effective date of this section, as laws of this state until amended or repealed by law.

Article VI of the Ohio Constitution concerns education, and Section 5 provides for a program to guarantee the repayment of student loans for state residents as a way of promoting the pursuit of higher education.

Adopted by voters upon being presented as Issue 1 on the May 1965 ballot, the provision expresses a public policy of increasing opportunities for state residents to pursue higher education by guaranteeing higher education loans and allowing laws to be passed to effectuate that purpose. The section also exempts state expenditures for student loan guarantees from the limitations on state spending contained in Article VIII (relating to state debt), and Article XII, Section 11 (preventing the state from issuing debt unless corresponding provision is made for levying and collecting taxes to pay the interest on the debt).

The provision was effectuated by statutes that first created the Ohio Student Loan Commission (OSLC), and, later, in 1993, by statutory revisions that created the Ohio Student Aid Commission (OSAC). The name change was prompted by the addition of state grant and scholarship programs to the administrative duties of OSLC, programs that previously had been under the auspices of the Ohio Board of Regents (now the Ohio Board of Higher Education).

As outlined in a 1993 Attorney General Opinion, the OSAC consisted of nine members appointed by the governor with the advice and consent of the Senate, with powers and duties that included the authority:

“ * * * [T]o guarantee the loan of money for educational purposes; to acquire property or money for its purposes by the acceptance of gifts, grants, bequests, devises, or loans; to contract with approved eligible educational institutions for the administration of any loan or loan plan guaranteed by the OSAC; to contract with “approved lenders,” as defined in R.C. 3351.07(C), for the administration of a loan or loan plan guaranteed by the OSAC and “to establish the conditions for payment by the commission to the approved lender of the guarantee on any loan,” R.C. 3351.07(A)(4); to sue and be sued; to collect loans guaranteed by the OSAC on which the commission has met its guarantee obligations; and to “[p]erform such other acts as may be necessary or appropriate to carry out effectively the objects and purposes of the commission,” R.C. 3351.07(A)(10). Further, pursuant to R.C. 3351.13, the Ohio Student Aid Commission “is the state agency authorized to enter into contracts concerning the programs established” by those federal educational loan programs specified in that statute. The OSAC also has authority to “accept any contributions, grants, advances, or subsidies made to it from state or federal funds and shall use the funds to meet administrative expenses and provide a reserve fund to guarantee loans made pursuant to [R.C. 3351.05-.14].” R.C. 3351.13.¹

In relation to its duties, the OSAC was empowered to collect loan insurance premiums, depositing them into a fund in the custody of the state treasurer to be used solely to guarantee loans and to make payments into the OSAC operating fund. Such moneys were reserved solely to pay expenses of the OSAC. Asked whether language in Article VI, Section 5 indicating the

state would guarantee the repayment of educational loans meant that the full faith and credit of the state had been pledged to cover that debt, the attorney general opined that the obligations incurred by OSAC are not backed by the full faith and credit of the state and, therefore, that the obligee would not have recourse to other funds of the state.

By 1995, the changing landscape of the student loan market rendered the utility of OSAC obsolete, partly due to the success of a federal direct-lending program, and partly because private companies were offering the same service.² Thus, OSAC commissioners voted to dissolve the agency at the conclusion of the biennial budget cycle in June 1997.³ OSAC was eliminated by the 121st General Assembly with the passage of Am. Sub. H.B. 627, effective January 3, 1997, and any remaining functions and duties of OSAC were transferred to the Ohio Board of Regents. Finally, with the passage of H.B. 562 in the 122nd General Assembly, all references to the duties and authority of OSAC were eliminated from the Revised Code.⁴

Amendments, Proposed Amendments, and Other Review

Section 5 has not been amended or reviewed since its adoption in 1965.

Litigation Involving the Provision

Although the Ohio Supreme Court has not reviewed Section 5, a federal court case addressed whether federal law changes requiring states to return excess funds in their student loan guarantee accounts to the federal government violated the United States Constitution.

In *Ohio Student Loan Comm. v. Cavazos*, 709 F.Supp. 1411 (S.D. Ohio 1988), the court described the history of the hybrid federal-state arrangement regarding student loan guarantees:

The Ohio Higher Education Assistance Commission (“OHEAC”) was created by the Ohio General Assembly in 1961 and began operations in 1962. The OHEAC was originally funded solely with state appropriations and was designed to administer state programs to assist Ohio residents attending institutions of post-secondary education. In particular, the OHEAC guaranteed loans made by private lenders to certain eligible students.

Three years later, the United States Congress created the Guaranteed Student Loan Program pursuant to the Higher Education Act of 1965, as amended, 20 U.S.C. 1071 et seq. The purpose of this program was to encourage states and nonprofit organizations and institutions to establish student loan guaranty programs, to provide a federal guaranty program for those students not having reasonable access to state or private guaranty programs, to subsidize interest payments on student loans, and to reinsure state and private guaranty programs. 20 U.S.C. 1071(a). In response to this federal program, the Ohio General Assembly created the OSLC, pursuant to Chapter 3351 of the Ohio Revised Code, as a successor to the OHEAC. The creation of such a commission was authorized by Article VI, Section 5 of the Constitution of the State of Ohio.

The OSLC is a state agency created for the administration of Ohio's student loan guaranty program. The OSLC is authorized to enter into contracts and to sue and be sued in its own name. R.C. 3351.07. In addition, R.C. 3351.07(A)(2) expressly states “that no obligation of the commission shall be a debt of the state, and the commission shall have no power to make its debts payable out of moneys except those of the commission.” The OSLC is also expressly authorized to accept federal funds and to enter into contracts pursuant to the Higher Education Act of 1965, as amended, 20 U.S.C. 1071 et seq. R.C. 3351.13.

As described in the facts of the case, OSLC’s funding sources derived partially from federal government reimbursements for losses sustained due to student loan defaults, and federal payment of administrative cost allowances, but OSLC also received money from non-federal sources in the form of private lender fees, and interest and investment income from moneys held in a reserve fund. The program was subject to a federal-state reinsurance agreement providing that OSLC would administer the guaranteed student loan program in Ohio in exchange for which the secretary of the U.S. Department of Education would reinsure the state’s guarantees.

In 1987, the relevant law was amended to limit the amount of state cash reserves, requiring any excess to be transferred to the secretary. A dispute arose when OSLC refused to transfer its excess reserves, which amounted to over \$26 million, on the grounds that the transfer would violate the terms of the contractual agreement between the secretary and OSLC. In response, the secretary withheld the reinsurance funds, and OSLC sued, and won, in federal district court.

However, the United States Court of Appeals for the Sixth Circuit reversed, concluding the secretary was transferring the funds from a federal program with a state administrator, rather than appropriating funds from a state program, and that none of the facts supported a conclusion that the federal government had breached a contract, misappropriated funds, or violated due process or other constitutional rights. *Ohio Student Loan Comm. v. Cavazos*, 900 F.2d 894 (6th Cir. 1990).

Presentations and Resources Considered

Harmon Presentation

On June 9, 2016, David H. Harmon, former executive director of OSLC, presented to the Education, Public Institutions, and Local Government Committee. Mr. Harmon was employed with OSLC from 1977 to 1988, and was executive director from 1984-88. According to Mr. Harmon, Ohio was one of the earliest states to recognize a need for the support and encouragement of the provision of credit for the financing of higher education. He noted the General Assembly acted in July of 1961 to create the Ohio Higher Education Commission, whose purpose was to guarantee repayment of student loans made by banks, savings and loan companies, and credit unions. The Higher Education Commission collected an insurance premium on each loan as it was made, covering administrative expenses and creating an insurance fund from which lender guaranty payments could be made.

Following the model established in Ohio and several other states, Mr. Harmon said the federal government moved in 1965 to create a federal program operating on the same principles. Mr. Harmon said the point of the constitutional section in 1965 was to allow OSLC to become the guaranteed agency under the federal loan program. He said the federal Guaranteed Student Loan Program was a part of the Higher Education Act of 1965. In response, in 1967, Ohio designated the Ohio Higher Education Commission as the state's guaranty agency, renaming it OSLC.

Mr. Harmon said the federal program provided for the "re-insurance" of all loans – meaning whenever the states paid off an insured loan, the federal government would reimburse the agency for each payment. He said OSLC continued collecting insurance premiums as loans were approved, providing the necessary revenue for agency operations.

During his time with the agency, Mr. Harmon said the annual loan volume grew from \$21.1 million in 1970 to \$120.3 million in 1978 – a 570 percent increase. He said the volume of loans guaranteed in 1979 was nearly double the 1978 loan volume. Mr. Harmon said OSLC began with only three employees in 1962, but grew to over 50 in 1970, and reached nearly 250 by the early 1990s.

Mr. Harmon said the 1980s saw the beginning of competition for loan volume, as several multi-state guaranty agencies began offering services to Ohio students, schools, and lenders. He said, although these competitors were non-profits, as required by federal law, increased loan volume brought increased revenue – thereby enhancing the ability of these agencies to offer enhanced support and automation.

Mr. Harmon said OSLC lacked the resources and spending authority to match these competitors on a feature-by-feature basis, but did respond to competitive developments. He said in 1992, the General Assembly authorized a move of the Ohio Instructional Grant Program from the Ohio Board of Regents to OSLC, resulting in the agency being renamed the Ohio Student Aid Commission (OSAC).

He noted that, despite the fact that the agency provided schools and students with enhanced service levels and streamlined processes, schools, lenders and student borrowers all found the competitive offerings from the out-of-state guarantors to be compelling, and the OSAC's market share, expressed as loan volume, plummeted.

Mr. Harmon said the creation of the Federal Direct Loan Program in the early 1990s resulted in a vote by the OSAC in 1995 to abolish the agency. He said, by that time, the OSAC's share of Ohio's loan volume had fallen to below 50 percent and revenues declined along with the loan volume. Thus, the OSAC ended its 36-year run at the end of the state's biennial budget cycle in 1997. As a result, the state's guaranty agency designation was awarded by the U.S. Department of Education to an out-of-state competitor, and the grant and scholarship programs were transferred to another state agency.

Asked whether there is any need to retain Article VI, Section 5, Mr. Harmon said, with the move to the federal direct loan program, no states have a guaranteed program any longer. Thus, he said, the section is no longer necessary. Mr. Harmon said unless new legislation is a precise

mirror of previous legislation, it is unlikely that Section 5 could be repurposed for the new legislation. He said he is not sure a change in the constitution was ever necessary to allow OSLC, but any need for new law could be done by statute rather than by constitutional amendment.

Mr. Harmon was asked whether eliminating Section 5 could prevent the state from promulgating programs that would forgive loan indebtedness for graduates who accept certain types of employment, such as teaching or medical jobs in underserved communities. Mr. Harmon said those types of programs are unrelated to the constitutional provision, were never part of OSLC, and could be created legislatively.

Estep Presentation

Rae Ann Estep, currently deputy director of operations at the Office of Budget and Management (OBM), testified before the committee on June 9, 2016 to provide her perspective as a former executive director of OSAC from 1995-1997. Ms. Estep said the mission of the OSAC was to administer the federal-guaranteed student loan program, and to provide loan information to students and their families. She said the OSAC also administered a state grant and scholarship program. According to Ms. Estep, the OSAC consisted of nine persons serving three-year terms, with two members representing higher education institutions, one representing secondary schools, and the three remaining members representing approved lenders. Ms. Estep said, during her tenure, the OSAC staff consisted of an executive director and 225 employees.

Ms. Estep continued that, in the summer of 1995, the OSAC began proceedings to dissolve itself due to changes in financial aid policy on the federal and state levels in the 1990s. She said a primary factor was competition from private companies and the OSAC's subsequent declining market share of student loans. She noted that, in 1989, the OSAC guaranteed 99 percent of the state's higher education loans, but that number fell below 50 percent in 1995. She commented that the OSAC administered a federal program with federal money, and was in direct competition with private companies offering the same service. In addition, the OSAC faced the threat of federal funding cuts due to the federal government's rapidly-changing financial aid policy. According to Ms. Estep, when the new federal direct lending program was established, it took away the OSAC's market share, ultimately leading to the vote to dissolve the agency.

Ms. Estep concluded by saying because the OSAC was financed by the federal government, its closing did not have a direct cost-saving measure for Ohioans. She said the grant and scholarship program, which was the only part of the OSAC's operations financed by the state, was transferred to the Ohio Board of Regents. She said the OSAC's final closure occurred on June 30, 1997. Ms. Estep noted that her tenure at the agency was focused on closing the OSAC and assisting its employees in transitioning to new positions.

Discussion and Consideration

In considering whether to recommend a change to Article VI, Section 5, the Education, Public Institutions, and Local Government Committee acknowledged that, as matters currently stand, Article VI, Section 5 would appear to be non-functional because it is not necessary to facilitate activities of the Ohio Department of Higher Education in relation to student loans, grants, and scholarships, to accommodate the federal student loan program, or to support private lender activity related to student loans.

Nevertheless, the committee was concerned that future changes to the federal government's student loan programs and policies could result in Ohio and other states taking on additional responsibilities related to student loan guarantees. Further, although the committee was uncertain whether the provision is necessary to support programs that forgive student loan debt in order to foster the provision of needed services in underserved areas of the state, the committee was reluctant to recommend its elimination in case it could be implemented in that manner. The consensus of the committee was that, in any event, the section expresses an important state public policy of encouraging higher education and helping students afford it.

For these reasons, the committee determined Article VI, Section 5 may continue to play a useful role in encouraging the state's support of funding for higher education.

Action by the Education, Public Institutions, and Local Government Committee

After formal consideration by the Education, Public Institutions, and Local Government Committee, the committee voted on November 10, 2016 to issue a report and recommendation recommending that Article VI, Section 5 be retained in its current form.

Presentation to the Commission

On December 15, 2016, on behalf of the Education, Public Institutions, and Local Government Committee, Commission Counsel Shari L. O'Neill appeared before the Commission to present the committee's report and recommendation, by which it recommended retention of Article VI, Section 5. Ms. O'Neill explained the history and purpose of the provision, indicating that the committee had determined that it would be appropriate to retain Article VI, Section 5 in its current form.

On _____, on behalf of the Education, Public Institutions, and Local Government Committee, Vice-chair Ed Gilbert appeared before the Commission to provide a second presentation of the committee's report and recommendation. Mr. Gilbert indicated that _____.

Action by the Commission

At the Commission meeting held February 9, 2017, _____ moved to adopt the report and recommendation for Article VI, Section 5, a motion that was seconded by _____.

A roll call vote was taken, and the motion _____.

Conclusion

The Ohio Constitutional Modernization Commission concludes that Article VI, Section 5 should be retained in its current form.

Date Adopted

After formal consideration by the Ohio Constitutional Modernization Commission on December 15, 2016, and February 9, 2017, the Commission voted to adopt this report and recommendation on _____.

Senator Charleta B. Tavares, Co-Chair

Endnotes

¹ Ohio Atty. Gen. Opinion No. 93-058 (Dec. 20, 1993). Available at: <http://www.ohioattorneygeneral.gov/getattachment/110d0ab1-1ac3-46c3-9d07-838260f371f2/1993-058.aspx> (last visited June 3, 2016).

² Jeanne Ponessa, “Ohio Student-Aid Agency to Dissolve Itself,” Education Week (Nov. 8, 1995) <http://www.edweek.org/ew/articles/1995/11/08/10oh.h15.html> (last visited June 3, 2016).

³ *Id.*

⁴ *See*, http://archives.legislature.state.oh.us/bills.cfm?ID=122_HB_562 (last visited June 3, 2016).



OHIO CONSTITUTIONAL MODERNIZATION COMMISSION

REPORT AND RECOMMENDATION

OHIO CONSTITUTION ARTICLE VI, SECTION 6

TUITION CREDITS PROGRAM

The Ohio Constitutional Modernization Commission adopts this report and recommendation regarding Article VI, Section 6 of the Ohio Constitution concerning the tuition credits program. It is issued pursuant to Rule 10.3 of the Ohio Constitutional Modernization Commission's Rules of Procedure and Conduct.

Recommendation

The Commission recommends that no change be made to Article VI, Section 6 of the Ohio Constitution and that the provision be retained in its current form.

Background

Article VI, Section 6 reads as follows:

(A) To increase opportunities to the residents of this state for higher education, it is hereby determined to be in the public interest and a proper public purpose for the state to maintain a program for the sale of tuition credits such that the proceeds of such credits purchased for the benefit of a person then a resident of this state shall be guaranteed to cover a specified amount when applied to the cost of tuition at any state institution of higher education, and the same or a different amount when applied to the cost of tuition at any other institution of higher education, as may be provided by law.

(B) The tuition credits program and the Ohio tuition trust fund previously created by law, which terms include any successor to that program or fund, shall be continued subject to the same laws, except as may hereafter be amended. To secure the guarantees required by division (A) of this section, the general assembly shall appropriate money sufficient to offset any deficiency that occurs in the Ohio tuition trust fund, at any time necessary to make payment of the full amount of any tuition payment or refund that would have been required by a

tuition payment contract, except for the contract's limit of payment to money available in the trust fund. Notwithstanding Section 29 of Article II of this Constitution, or the limitation of a tuition payment contract executed before the effective date of this section, such appropriations may be made by a majority of the members elected to each house of the general assembly, and the full amount of any such enhanced tuition payment or refund may be disbursed to and accepted by the beneficiary or purchaser. To these ends there is hereby pledged the full faith and credit and taxing power of the state.

All assets that are maintained in the Ohio tuition trust fund shall be used solely for the purposes of that fund. However, if the program is terminated or the fund is liquidated, the remaining assets after the obligations of the fund have been satisfied in accordance with law shall be transferred to the general revenue fund of the state.

Laws shall be passed, which may precede and be made contingent upon the adoption of this amendment by the electors, to provide that future conduct of the tuition credits program shall be consistent with this amendment. Nothing in this amendment shall be construed to prohibit or restrict any amendments to the laws governing the tuition credits program or the Ohio tuition trust fund that are not inconsistent with this amendment.

Article VI of the Ohio Constitution concerns education, and Section 6 is designed to promote the pursuit of higher education by establishing in the constitution a government-sponsored program to encourage saving for post-secondary education.

Beginning in 1989, the General Assembly enacted Revised Code Chapter 3334, establishing a college savings program and creating the Ohio Tuition Trust Authority (OTTA), an office within the Ohio Board of Regents (now the Department of Higher Education). The OTTA was designed to operate as a qualified state tuition program within the meaning of section 529 of the federal Internal Revenue Code. *See*, R.C. 3334.02, 3334.03.

Additional statutes authorize the OTTA to develop a plan for the sale of tuition units through tuition payment contracts that specify the beneficiary of the tuition units, as well as creating a tuition trust fund that is to be expended to pay beneficiaries, or to pay higher education institutions on behalf of beneficiaries, for certain higher education-related expenses. R.C. 3334.09, 3334.11. Those expenses include tuition, room and board, and books, supplies, equipment, and other expenses that meet the definition of "qualified higher education expenses" under section 529 of the Internal Revenue Code. R.C. 3334.01(H) and (P).

Both Section 6 and the related Revised Code sections work in conjunction with the so-called "529 plans," named for the Internal Revenue Code section providing tax benefits for college savings plans. As described by an analyst for the Congressional Research Service:

529 plans, named for the section of the tax code which dictates their tax treatment, are tax advantaged investment trusts used to pay for higher-education expenses.

The specific tax advantage of a 529 plan is that distributions (i.e., withdrawals) from this savings plan are tax-free if they are used to pay for qualified higher education expenses. If some or all of the distribution is used to pay for nonqualified expenses, then a portion of the distribution is taxable, and may also be subject to a 10 percent penalty tax.

Generally, a contributor, often a parent, establishes an account in a 529 plan for a designated beneficiary, often their child. Upon establishment of a 529 account, an account owner, who maintains ownership and control of the account, must also be designated. In many cases the parent who establishes the account for their child also names [him or herself] as the account owner.

According to federal law, payments to 529 accounts must be made in cash using after-tax dollars. Hence, contributions to 529 plans are not tax-deductible to the contributor. The contributor and designated beneficiary cannot direct the investments of the account, and the assets in the account cannot be used as a security for a loan. A contributor can establish multiple accounts in different states for the same beneficiary. Contributors are not limited to how much they can contribute based on their income. Similarly, beneficiaries are not limited to how much they can receive based on their income. However, each 529 plan has established an overall lifetime limit on the amount that can be contributed to an account, with contribution limits ranging from \$250,000 to nearly \$400,000 per beneficiary. [Citations omitted.]¹

Since their implementation in the early 1990s, 529 plans have grown to represent \$253.2 billion in investments nationwide, with the average account size now hovering at \$20,000.² Ohio plan data indicate that, as of December 2015, over a half million accounts are open, with over \$9 billion in assets:³

Plan	Assets Under Management	Open Accounts
CollegeAdvantage 529 Savings Plan (guaranteed) ⁴	\$340,966,665	34,275
CollegeAdvantage 529 Savings Plan (direct) ⁵	\$4,318,805,309	266,370
CollegeAdvantage 529 (advisor) ⁶	\$4,631,704,946	339,962
Total	\$9,291,476,920	640,607

Section 6 was successfully proposed to voters as Issue 3 on the November 1994 ballot. Its purpose, as described on the ballot, was to “increase opportunities to the residents of the State of Ohio for higher education and to encourage Ohio families to save ahead to better afford higher education.” The proposed amendment was projected to:

1. Allow the state to maintain a program for the sale of tuition credits whereby the proceeds of such credits purchased for the benefit of state residents are guaranteed by the state to cover a specified amount when applied to the cost

of tuition at any state institution of higher education and the same or a different amount when applied to the cost of tuition at any other higher education institution as may be provided by law.

2. * * * [R]equire that tuition credits paid from the tuition credits program and the Ohio tuition trust fund be supported by the full faith and credit of the state of Ohio and require the passage of laws for the conduct of the tuition credits program consistent with this amendment.
3. Require the General Assembly to appropriate money to offset any deficiency in the Ohio tuition trust fund to guarantee the payment of the full amount of any tuition payment or refund required by a tuition payment contract, and allow a majority of the members of each house of the General Assembly to appropriate funds for the payment of any tuition payment contract previously entered into.
4. Require that all Ohio tuition trust fund assets be used for the purpose of the fund, and if the fund is liquidated, require that any remaining assets be transferred to the general revenue fund of the state.⁷

Amendments, Proposed Amendments, and Other Review

Section 6 has not been amended or reviewed since its adoption in 1994.

Litigation Involving the Provision

There has been no litigation concerning Article VI, Section 6.

Presentations and Resources Considered

Gorrell Presentation

On April 14, 2016, Timothy Gorrell, executive director of the Ohio Tuition Trust Authority (OTTA), presented to the Education, Public Institutions, and Local Government Committee on Ohio's tuition savings program. Mr. Gorrell said his agency is part of the Department of Higher Education and is charged with responsibility for administering the tuition credits program set forth in Article VI, Section 6.

According to Mr. Gorrell, the OTTA originally was created in 1989 under R.C. Chapter 3334, with the purpose of helping families save for higher education expenses. He described that, in November 1994, Ohio voters approved State Issue 3, a constitutional amendment that provided the state's full faith and credit backing for the Ohio Prepaid Tuition Program (now known as the Guaranteed Savings Plan), and to clarify the federal tax treatment of that plan.

Mr. Gorrell said in 1996, section 529 was added to the Federal Internal Revenue Code to provide a federal tax-advantaged way to save for college education expenses. Then, in 2000, the Ohio

General Assembly authorized Ohio to offer variable savings plans, as well as allowing a state tax benefit by which Ohio residents can deduct up to \$2,000 a year, per beneficiary, from their Ohio taxable income.

In December 2003 the Guaranteed Savings Plan was closed to contributions and new enrollments in response to rapidly rising tuition costs and investment pressures due to the market environment, said Mr. Gorrell.⁸ Then, in 2009, existing legislation was changed to place OTTA under the Department of Higher Education, with the role of OTTA's 11-member board being limited to a fiduciary duty over the investments in OTTA's college savings plans.

Mr. Gorrell described OTTA as a "non-General Revenue Fund, self-funded agency," with all of its operating expenses being funded through account fees paid by CollegeAdvantage Program account owners.

Mr. Gorrell said OTTA currently sponsors three plans under the CollegeAdvantage 529 College Savings Program: the CollegeAdvantage Direct 529 Savings Plan, the CollegeAdvantage Advisor 529 Savings Plan offered through BlackRock, and the CollegeAdvantage Guaranteed 529 Savings Plan, which is closed to new investments. He said funds invested in these plans may be used at any accredited college or university in the country, as well as at trade schools and for other education programs that are eligible to participate in federal financial aid programs. According to Mr. Gorrell, across the three plans, OTTA directly manages or oversees over 641,000 accounts and \$9.4 billion in assets as of March 31, 2016.

Mr. Gorrell further explained that, in November 1994, by adopting Article VI, Section 6, Ohio voters approved providing the Guaranteed Savings Plan with the full faith and credit backing of the state, meaning that, if assets are not sufficient to cover Guaranteed Savings Plan liabilities, the Ohio General Assembly will appropriate money to offset the deficiency.

Mr. Gorrell also indicated that OTTA has the responsibility to generate investment returns on assets to match any growth in tuition obligations, noting that, currently, OTTA has sufficient assets on a cash basis to meet the payout obligations of the existing tuition units and credits held by account owners.

Mr. Gorrell said OTTA does not recommend any changes to Article VI, Section 6. He noted that a federal tax goal of the section was intended to address a period of unsettled case law that created uncertainty as to whether similar prepaid tuition programs were exempt from federal taxation. He said that uncertainty has been resolved by the codification of Internal Revenue Code section 529, rendering the constitutional provision unnecessary to clarify the federal tax treatment of such plans.

Discussion and Consideration

In considering whether to recommend a change to Article VI, Section 6, the Education, Public Institutions, and Local Government Committee was persuaded by Mr. Gorrell's testimony indicating that, while one goal of the provision was to clarify federal tax treatment of the Guaranteed Savings Plan, a purpose that became obsolete with the federal enactment of Internal

Revenue Code section 529, the constitutional provision's other purpose, to establish the full faith and credit backing of the state for the Guaranteed Savings Plan, remains viable. The committee agreed with Mr. Gorrell that, although no new Guaranteed Savings Plan account holders have been added since 2003, the fact that some accounts are still active may require the constitutional provision to be retained in its current form.

Thus, the committee was reluctant to alter or repeal Article VI, Section 6, although a future constitutional review panel may conclude there is no justification for retaining the section because all accounts have been paid out.

Action by the Education, Public Institutions, and Local Government Committee

After formal consideration by the Education, Public Institutions, and Local Government Committee, the committee voted on November 10, 2016 to issue a report and recommendation recommending that Article VI, Section 5 be retained in its current form.

Presentation to the Commission

On December 15, 2016, on behalf of the Education, Public Institutions, and Local Government Committee, Commission Counsel Shari L. O'Neill appeared before the Commission to present the committee's report and recommendation, by which it recommended retention of Article VI, Section 6. Ms. O'Neill explained the history and purpose of the provision, indicating that the committee had determined that it would be appropriate to retain Article VI, Section 6 in its current form.

On February 9, 2017, on behalf of the Education, Public Institutions, and Local Government Committee, Vice-chair Ed Gilbert appeared before the Commission to provide a second presentation of the committee's report and recommendation. Mr. Gilbert indicated that

Action by the Commission

At the Commission meeting held February 9, 2017, _____ moved to adopt the report and recommendation for Article VI, Section 6, a motion that was seconded by _____. A roll call vote was taken, and the motion _____.

Conclusion

The Ohio Constitutional Modernization Commission concludes that Article VI, Section 6 should be retained in its current form.

Date Adopted

After formal consideration by the Ohio Constitutional Modernization Commission on December 15, 2016, and February 9, 2017, the Commission voted to adopt this report and recommendation on _____.

Senator Charleta B. Tavares, Co-Chair

Endnotes

¹ Margot L. Crandall-Hollick, *Tax-Preferred College Savings Plans: An Introduction to 529 Plans*, (Washington, D.C.: Congressional Research Serv. 2015), <http://fas.org/sgp/crs/misc/R42807.pdf> (last visited June 14, 2016).

² “529 Plan Data,” College Savings Plans Network, available at: <http://www.collegesavings.org/529-plan-data/> (last visited June 15, 2016).

³ 529 Plan Data, Reporting Date Dec. 31, 2015, College Savings Plans Network. Available at: <http://www.collegesavings.org/wp-content/uploads/2015/09/Dec-2015.pdf> (last visited June 15, 2016).

⁴ A “guaranteed savings fund” is defined in the Ohio Administrative Code as: “those accounts in the Ohio college savings program, whether containing tuition credits and/or tuition units, which have the financial backing through the full faith and credit of the state of Ohio as more specifically set forth in Section 6 of Article VI, Ohio Constitution.” Ohio Admin.Code 3334-1-01(G).

⁵ A direct plan is defined as one in which the investor directly contracts with the company managing the plan. *See*, [https://www.collegeadvantage.com/docs/default-source/stand-alone-documents/otta_decisiontree_02_cr\(1\).pdf?sfvrsn=4](https://www.collegeadvantage.com/docs/default-source/stand-alone-documents/otta_decisiontree_02_cr(1).pdf?sfvrsn=4) (last visited June 24, 2016).

⁶ An “advisor” plan is one in which the investor has purchased the plan through a financial advisor or broker-dealer who, in turn, facilitates the investment with the company managing the plan. *See, id.*

⁷ Toledo *Blade*, Oct. 25, 1994, at p. 7, <https://news.google.com/newspapers?id=qUYxAAAAIBAJ&sjid=fQMEAAAAIBAJ&pg=6086,7819623&hl=en> (last visited June 14, 2016).

⁸ According to the Legislative Service Commission, the suspension of the Guaranteed Savings Plan resulted from an actuarial deficit that was “initially caused largely by the combination of the downturn in the economy and the stock market, and the large increases in tuitions at Ohio’s public colleges and universities after the removal of the tuition caps in FY 2002 and FY 2003.” LSC Greenbook, *Analysis of the Enacted Budget*, Department of Higher Education (August 2015), p. 42. Available at: <http://www.lsc.ohio.gov/fiscal/greenbooks131/bor.pdf> (last visited June 24, 2016).

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OHIO CONSTITUTIONAL MODERNIZATION COMMISSION

REPORT AND RECOMMENDATION

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

ADDITIONAL AUTHORIZATION OF DEBT OBLIGATIONS

The Ohio Constitutional Modernization Commission adopts this report and recommendation regarding Sections 2l, 2m, 2n, 2o, 2p, 2q, 2r, and 2s of Article VIII of the Ohio Constitution concerning public debt and public works. It is issued pursuant to Rule 10.3 of the Ohio Constitutional Modernization Commission's Rules of Procedure and Conduct.

Recommendation

The Commission recommends that Sections 2l, 2m, 2n, 2o, 2p, 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.¹ 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.² 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, which are Sections 2l, 2m, 2n, 2o, 2p, 2q, 2r, and 2s. 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.³

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*).⁴ 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 2p relates to bonds for economic and educational purposes and local government projects, specifically for the purpose of capital improvements to infrastructure, and for research and development in support of Ohio industry, commerce, and business. Adopted in 2005, the section was amended in 2010 to expand the Third Frontier program, an initiative designed to encourage state economic growth through grants and loans to private industry and educational institutions. The 2010 amendment continued the funding approved in 2005. The section allows the General Assembly to provide by law for the issuance of general obligation bonds and other obligations for the purpose of financing related projects, with prescribed limitations on the dollar amount to be issued in fulfillment of the purposes of the provision.

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.⁵

Amendments, Proposed Amendments, and Other Review

Sections 2l, 2m, 2n, 2o, 2p, 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, 2p, 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 Finance, Taxation, and Economic Development Committee on May 8, 2014, March 12, 2015, and March 10, 2016. In addition to reviewing the history of Article VIII, including the \$750,000 limitation in Section 1, 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, 2p, 2q, 2r, and 2s, the Finance, Taxation, and Economic Development 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.

Action by the Finance, Taxation, and Economic Development Committee

After formal consideration by the Finance, Taxation, and Economic Development Committee on November 10, 2016, the committee voted on November 10, 2016 to issue a report and recommendation recommending that Article VIII, Sections 2l, 2m, 2n, 2o, 2p, 2q, 2r, and 2s be retained in their current form.

Presentation to the Commission

On December 15, 2016, on behalf of the Finance, Taxation, and Economic Development Committee, committee Chair Doug Cole appeared before the Commission to present the committee's report and recommendation, by which it recommended retaining Article VIII, Sections 2l, 2m, 2n, 2o, 2p, 2q, 2r, and 2s in their present form. Chair Cole explained the history and purpose of the provisions, indicating that the committee determined it would be appropriate to retain them because they are relatively recent, and because the bonds they authorize are still outstanding.

On February 9, 2017, Mr. Cole provided a second presentation of the report and recommendation, indicating _____.

Action by the Commission

At the Commission meeting held February 9, 2017, _____ moved to adopt the report and recommendation for Article VIII, Sections 2l, 2m, 2n, 2o, 2p, 2q, 2r, and 2s, a motion that was seconded by _____.

A roll call vote was taken, and the motion _____ by a vote of _____.

Conclusion

The Ohio Constitutional Modernization Commission concludes that Article VIII, Sections 2l, 2m, 2n, 2o, 2p, 2q, 2r, and 2s should be retained in their current form.

Date Adopted

After formal consideration by the Ohio Constitutional Modernization Commission on December 15, 2016, and February 9, 2017, the Commission voted to issue this report and recommendation on _____.

Senator Charleta B. Tavares, Co-Chair

Endnotes

¹ Steven H. Steinglass & Gino J. Scarselli, *The Ohio State Constitution* 233 (2nd prtg. 2011). Ohio was not unique in facing the economic consequences of overspending on transportation infrastructure, nor in adopting constitutional limitations on state debt as a result. By 1860, 19 states had constitutional debt limitations, and by the early 20th Century, nearly all state constitutions contained such limitations. Richard Briffault, *Foreword: The Disfavored Constitution: State Fiscal Limits and State Constitutional Law*, 34 Rutgers L.J. 907, 917, citing B. U. Ratchford, *American State Debts* (1941); Alberta M. Sbragia, *Debt Wish, Entrepreneurial Cities, U.S. Federalism, and Economic Development* (1996). See also Richard Briffault, "State and Local Finance," in *State Constitutions for the Twenty-first Century* (G. Alan Tarr & Robert F. Williams, eds. New York: SUNY Press. 2006); Stewart E. Sterk & Elizabeth S. Goldman, *Controlling Legislative Shortsightedness: The Effectiveness of Constitutional Debt Limitations*, 1991 Wis. L.Rev. 1301 (1991).

For more on the history of the 1850-51 Constitutional Convention in relation to the state debt provisions in Article VIII, see David M. Gold, *Public Aid to Private Enterprise Under the Ohio Constitution: Sections 4, 6, and 13 of Article VIII in Historical Perspective*, 16 U. Tol. L.Rev. 405 (1984-85).

² 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).

³ 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.

⁴ 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.

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

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OHIO CONSTITUTIONAL MODERNIZATION COMMISSION

2017 Meeting Dates

March 9

April 13

May 11

June 8

July 13

August 10

September 14

October 12

November 9

December 14