



Am. Sub. H.J.R. 2

126th General Assembly

(As Adopted by the General Assembly)

- Reps.** Martin, Schaffer, Hagan, Combs, Wolpert, Aslanides, Trakas, Collier, Blasdel, Calvert, Carano, Carmichael, Cassell, Chandler, Coley, Core, Daniels, DeBose, Distel, Dolan, Domenick, C. Evans, D. Evans, Flowers, Gibbs, Harwood, Hughes, Kearns, Key, Latta, Law, Mason, McGregor, Miller, Reinhard, Schlichter, Seitz, Setzer, G. Smith, J. Stewart, Wagoner, Walcher, White, Woodard, Yuko, Speaker Husted
- Sens.** Carey, Armbruster, Austria, Clancy, Goodman, Harris, Jacobson, Roberts, Spada, Amstutz, Brady, Cates, Dann, Fedor, Fingerhut, Gardner, Grendell, Hagan, Mallory, Miller, Mumper, Niehaus, Padgett, Prentiss, Schuring, Wilson, Zurz

Effective date: *

RESOLUTION SUMMARY

- Proposes to amend the Ohio Constitution to authorize the issuance of general obligations of the state to finance local government public infrastructure capital improvements, research and development, and the development of sites and facilities in Ohio for industry, commerce, distribution, and research and development, and to expand state and local government authority regarding economic development.

CONTENT AND OPERATION

Overview of the proposed constitutional amendment--Section 2p, Article VIII

The resolution proposes to amend the Ohio Constitution to authorize the issuance of general obligation bonds and other obligations of the state to finance three types of economic development projects: (1) public infrastructure capital improvements, (2) research and development, and (3) development of sites and

* *The Legislative Service Commission had not received formal notification of the effective date at the time this analysis was prepared. Additionally, the analysis may not reflect action taken by the Governor.*

facilities in Ohio in support of industry, commerce, distribution, and research and development. The proposed amendment also authorizes the state to cooperate with local governments, for-profit and nonprofit private sector entities, and universities in the implementation of projects. The proposed amendment declares these projects to be necessary and appropriate means to create and preserve jobs and enhance employment and educational opportunities; to improve the quality of life and the general economic well-being of all the people and businesses in all areas of Ohio, including economically disadvantaged businesses and individuals; and to preserve and expand the public capital infrastructure, all to better ensure the public health, safety, and welfare. The proposed amendment is independent of, and neither derogates nor limits, other constitutional provisions or laws enacted thereunder.

Public infrastructure capital improvements

Background

In 1987 and 1995, the Ohio Constitution was amended to authorize the issuance of general obligations of the state to finance or assist in the financing of the cost of public infrastructure capital improvements of municipal corporations, counties, townships, and other governmental entities (Sections 2k and 2m, Article VIII, Ohio Constitution). The resolution proposes to amend the Ohio Constitution to authorize another issuance of general obligations of the state to finance or assist in the financing of the cost of public infrastructure capital improvements of municipal corporations, counties, townships, and other governmental entities designated by statute.

Amount and use of infrastructure obligations

(Section 2p, Article VIII--divisions (A)(1), (B)(1), and (D)(1))

Under the proposed amendment, not more than \$120 million principal amount of infrastructure obligations may be issued in each of the first five fiscal years of the issuance and not more than \$150 million principal amount of infrastructure obligations may be issued in each of the next five fiscal years of the issuance.¹ The aggregate total principal amount of infrastructure obligations authorized and issued under the proposed amendment cannot exceed \$1.35 billion. Furthermore, no obligations may be issued until less than \$500,000 of infrastructure obligations remain to be issued under Section 2m of Article VIII,

¹ *In each case, the principal amount of the obligations that in any prior fiscal year could have been but were not issued within the particular fiscal year limit may also be issued.*

which authorizes the issuance of up to \$1.2 billion in general obligations for public infrastructure capital improvements.

The public infrastructure capital improvements that may be financed by these obligations are limited to roads and bridges, waste water treatment systems, water supply systems, solid waste disposal facilities, and storm water and sanitary collection, storage, and treatment facilities, including real property, interests in real property, facilities, and equipment related or incidental to the improvements, as well as acquisition, construction, reconstruction, expansion, improvement, planning, and equipping costs.

The state may participate in any public infrastructure capital improvement with municipalities, counties, townships, or other governmental entities as designated by law by providing grants, loans, or contributions to the governmental entity for the capital improvement. The entire proceeds of the infrastructure obligations must be used for public infrastructure capital improvements of these governmental entities, except to the extent the General Assembly enacts laws providing for the state to be reasonably compensated from the proceeds for planning, financial management, or administrative services performed in relation to the issuance of the obligations.

Research and development

Amount and use of research and development obligations

(Section 2p, Article VIII--divisions (A)(2) and (B)(2))

Under the proposed amendment, not more than \$500 million principal amount of state general obligations may be issued for "research and development in support of Ohio industry, commerce, and business," which includes research and product innovation, development, and commercialization through efforts by and collaboration among Ohio business and industry, state and local public entities and agencies, public and private educational institutions, or research organizations and institutions, all as may be provided for by state or local law. Not more than \$100 million principal amount of research and development obligations may be issued in each of the first three fiscal years of issuance and not more than \$50 million principal amount of research and development obligations may be issued in any other fiscal year.² Research and development obligations may not be issued under the proposed amendment to finance research and development of coal

² *In each case, the principal amount of the obligations that in any prior fiscal year could have been but were not issued within the particular fiscal year limit may also be issued.*

technology that will encourage use of Ohio coal. Obligations already can be issued for this purpose under Article VIII, Section 15.

Implementation of research and development purposes

(Section 2p, Article VIII--division (D)(2))

Implementation of these research and development purposes includes supporting any related matters and activities, such as attracting researchers and research teams by endowing research chairs or otherwise; activities to develop and commercialize products and processes; intellectual property matters such as copyrights and patents; property interests, including time sharing arrangements; and financial rights and matters such as royalties, licensing, and other financial gain or sharing resulting from this research and development.

The proposed amendment authorizes the use of state and local public moneys, including the proceeds of obligations, to fund the following types of activities: capital formation; direct operating costs; costs of research and facilities, including interests in real property; and support for public and private institutions of higher education, research organizations and institutions, and private sector entities. The state, state agencies, local governments, research organizations and institutions, private sector entities, individuals, and public or private institutions of higher education are permitted to act jointly or to coordinate with one another in the exercise of these activities.

State and local public participation in these research and development activities may be in any manner as the entity or agency determines is appropriate. Such participation may take the form of grants; loans, including loans to lenders or the purchase of loans; subsidies; contributions; advances; guarantees; direct investments of or payment or reimbursement from available moneys; the provision of staffing and other support, including computer or other technology capacity; or the provision of equipment or facilities, including interests in real property.

In addition, the amendment authorizes the General Assembly (1) to permit from time to time state-supported and state-assisted institutions of higher education to issue obligations to pay costs of participating in and implementing these research and development purposes and (2) to permit the state, local public entities, and nonprofit corporations designated by the state or local entities as state or local agencies or instrumentalities, to issue obligations for the purpose of borrowing and lending or otherwise providing money for research and development purposes, including obligations for which, unlike the state general obligations authorized under the proposed amendment, the taxing powers of the state and its subdivisions are not pledged for the payment of debt service (see "Debt service," below).

Development of sites and facilities

Amount and use of sites and facilities obligations

(Section 2p, Article VIII--divisions (A)(3) and (B)(3))

Under the proposed amendment, not more than \$150 million principal amount of state general obligations may be issued for development of sites and facilities in Ohio for industry, commerce, distribution, and research and development purposes. Not more than \$30 million principal amount of the sites and facilities obligations may be issued in each of the first three fiscal years of issuance and not more than \$15 million principal amount of sites and facilities obligations may be issued in any other fiscal year.³

Participation in the development of sites and facilities

(Section 2p, Article VIII--division (D)(3))

The proposed amendment authorizes the use of state and local public moneys, including the proceeds of bonds, notes, and other obligations, to pay the costs of the following in developing sites and facilities for and in support of industry, commerce, distribution, and research and development purposes: acquiring real estate and interests in real estate; site preparation, including any necessary remediation and cleanup; constructing and improving facilities; and providing public infrastructure capital improvements and other transportation and communications infrastructure improvements for and in support of the use of the sites and facilities. The state, state agencies, local public entities and agencies, and individuals or private sector business entities are authorized to work together jointly or to coordinate with one another in the completion of these projects.

State and local public participation in the development of sites and facilities may be in any manner that the entity or agency determines appropriate, including by grants; loans, including loans to lenders or the purchase of loans; subsidies; contributions; advances; guarantees; or direct investments of or payment or reimbursement from available moneys.

Additionally, the amendment authorizes the General Assembly from time to time to permit state-supported and state-assisted institutions of higher education and local public entities and agencies to issue obligations to pay costs of participating in and implementing the development of sites and facilities.

³ *In each case, the principal amount of the obligations that in any prior fiscal year could have been but were not issued within the particular fiscal year limit may also be issued.*

Maturity of obligations

(Section 2p, Article VIII--division (C))

Each issue of state general obligations for public infrastructure capital improvements or development of sites and facilities must mature not later than 30 years from the date of issuance or, if issued to retire or refund other obligations, within 30 years from the date the debt being retired or refunded was originally issued. Each issue of state general obligations for research and development purposes must mature not later than 20 years from the date of issuance or, if issued to retire or refund other obligations, within 20 years from the date the debt being retired or refunded was originally issued.

If state general obligations are issued as notes in anticipation of the issuance of bonds, the General Assembly must provide for the establishment and maintenance, during the period in which the notes are outstanding, of one or more special funds into which are to be paid, from sources authorized for payment of the bonds, amounts that would have been sufficient, if bonds maturing within the permitted period of years had been issued without the prior issuance of notes, to pay the principal that would have been payable on the bonds during that period. The special fund may not be used for any purpose other than payment of principal of the notes or bonds for which the notes were issued.

The proposed amendment specifies that obligations issued to retire or refund obligations previously issued under the amendment or under the state's ongoing constitutional authority to issue obligations for public infrastructure capital improvements (Sections 2k and 2m, Article VIII, Ohio Constitution) are not to be counted against the fiscal year or total issuance limitations applicable to those issuances.

Debt service

(Section 2p, Article VIII--division (C))

With respect to the state general obligations authorized by the proposed amendment, the full faith and credit, revenue, and taxing power of the state are pledged to the timely payment of the principal of, and the premium, interest, and other accreted amounts payable on, the obligations (known as "debt service"). Accordingly, the General Assembly is required to provide by law for the sufficiency and appropriation of excises, taxes, and revenues pledged or committed to debt service and for covenants to continue the levy, collection, and application of sufficient excises, taxes, and revenues to the extent needed for purposes of paying debt service. The General Assembly is also required to

establish a bond retirement fund. No further act of appropriation is necessary for these purposes.

Fees and taxes received in connection with the use of public highways by motor vehicles may not be pledged or used for the payment of debt service on the state general obligations authorized under the amendment.

Tax exemption

(Section 2p, Article VIII--division (E))

Obligations issued under the proposed amendment, their transfer, and the interest, interest equivalent, and other income and accreted amounts from them, including any profit made on their sale, exchange, or other disposition, are at all times free from taxation within the state.

Constitutional provisions that do not apply

(Section 2p, Article VIII--divisions (C) and (E))

Section 17, Article VIII of the Ohio Constitution limits the amount of new debt the state can take on in a fiscal year. Under this limitation, state obligations cannot be issued if the total amount of debt service payments that must be made in any future fiscal year from the General Revenue Fund (GRF) and net state lottery proceeds would exceed 5% of the total estimated GRF and net state lottery proceeds revenue during the fiscal year of issuance. The proposed amendment provides that debt service on obligations issued for research and development purposes and for development of sites and facilities is not to be included in calculating the 5% limitation set forth in Section 17, Article VIII.

Additionally, the obligations issued for research and development purposes and site and facility development purposes, provision for the payment of debt service on them, the purposes and uses to which and the manner in which the proceeds of those obligations or moneys from other sources are to or may be applied, and other implementation of the development purposes authorized by the amendment, are not subject to Sections 4 and 6, Article VIII, of the Ohio Constitution. Those constitutional provisions prohibit the state and its political subdivisions from lending aid and credit to private entities or otherwise engaging in joint ventures with such entities.

Lastly, the state general obligations issued under the amendment, the provision for the payment of debt service, and the repayment by governmental entities of any loans made under the amendment are not subject to the following:

- Section 5, Article XII, Ohio Constitution--Specifies that every law imposing a tax must state the object of the tax, to which only the tax can apply.
- Section 6, Article XII, Ohio Constitution--Specifies that the state may not contract debts for purposes of internal improvement.
- Section 11, Article XII, Ohio Constitution--Specifies that no bonded indebtedness may be incurred by the state or its political subdivisions unless provision is made for annual tax levies to pay interest on the bonds and to provide a sinking fund for their final redemption at maturity.

Implementation by the General Assembly

(Section 2p, Article VIII--division (F))

The proposed amendment is to be implemented in the manner and to the extent provided by the General Assembly by law, including provision for (1) the procedure for incurring and issuing obligations, separately or in combination with other obligations, and refunding, retiring, and evidencing obligations, (2) ensuring the accountability of all state funding provided for the development purposes authorized by the amendment, (3) restricting or limiting the taking of private property under Section 19, Article I of the Ohio Constitution for disposition to private sector entities for research and development purposes and for the development of sites and facilities, as authorized by the amendment, or restricting the disposition of that property to private sector entities or individuals, and (4) the implementation of the development purposes authorized by the amendment to benefit people and businesses otherwise qualified for receipt of funding for those development purposes, including economically disadvantaged businesses and individuals in all areas of Ohio, including by the use to the extent practicable of Ohio products, materials, services, and labor.

Submission to the voters

The proposed amendment will be submitted to the voters at the November 8, 2005, general election. If adopted by a majority of the voters voting on it at that election, the amendment will take effect immediately.

HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	01-18-05	p. 68
Reported, H. Economic Development & Environment	06-02-05	pp. 898-899
Adopted House (84-7)	08-02-05	pp. 1572-1580
Adopted Senate (31-0)	08-03-05	pp. 1371-1377

05-hjr2-126.doc/jc

