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Resolution Analysis
Legislative Service Commission

S.J.R. 5

127th General Assembly
(As Introduced)

Sens. Grendell, Austria, Cafaro, Carey, Cates, Faber, Fedor, Gardner, Harris, Kearney, Mason, D. Miller, R. Miller, Morano, Mumper, Niehaus, Padgett, Roberts, Sawyer, Schaffer, Schuring, Smith, Spada, Wilson

RESOLUTION SUMMARY

- Proposes a constitutional amendment to authorize the issuance of general obligations of the state to provide compensation to veterans of the Persian Gulf, Afghanistan, and Iraq Conflicts.

CONTENT AND OPERATION

Background

Article VIII of the Ohio Constitution provides that no debt can be created by or on behalf of the state except as otherwise specifically provided in that Article. A number of amendments to Article VIII have been approved by the electors over the years that allow the state to incur debt, including Sections 2a, 2b, 2d, and 2j. Each of those sections authorized the Commissioners of the Sinking Fund¹ to issue general obligations of the state the proceeds of which were to be paid as compensation to the veterans of World War I, World War II, the Korean War, and the Vietnam Conflict, respectively.

¹ The Commissioners of the Sinking Fund--a constitutionally created board--consists of the Governor, Treasurer of State, Auditor of State, Secretary of State, and Attorney General (Section 8 of Article VIII, Ohio Constitution).

Payment of compensation to veterans of the Persian Gulf, Afghanistan, and Iraq Conflicts

(Section 2q of Article VIII, Ohio Constitution)

New debt authority

The resolution proposes enactment of Section 2q of Article VIII of the Ohio Constitution to authorize the issuance of general obligations of the state the proceeds of which are to be used to pay compensation to the veterans of the Persian Gulf, Afghanistan, and Iraq Conflicts. Under this constitutional amendment, the Ohio Public Facilities Commission²--upon the order of the Commissioners of the Sinking Fund--is required to issue and sell bonds or other obligations of the state as may be required to pay the compensation established by, and the expenses of administering, the amendment's provisions. Not more than \$200 million in original principal amount of obligations can be issued under this authority.³

The full faith and credit, revenue, and taxing power of the state is pledged to the payment of debt service on these obligations as it becomes due, and the state covenants to continue the levy, collection, and application of sufficient state excises, taxes, and revenues to the extent needed for that purpose.⁴ As used in this proposed constitutional amendment, "**debt service**" means principal and interest and other accreted amounts payable on the obligations authorized by the amendment.

Each obligation must mature not later than December 31 of the 15th calendar year after its issuance, except that obligations issued to refund obligations under the proposed amendment must mature not later than December 31 of the 15th calendar year after the year in which the original obligation was issued. No

² The Ohio Public Facilities Commission consists of the Governor, as chair, and the Treasurer of State, Auditor of State, Secretary of State, Attorney General, and Director of Budget and Management (R.C. 151.02).

Throughout this proposed constitutional amendment, any reference to a public office, officer, or body includes any successor to that office, officer, or body.

³ Obligations issued under this provision to retire or refund obligations previously issued under this provision are not to be counted against the issuance limitation.

⁴ However, money raised by motor vehicle fuel taxes or registration fees cannot be used for the payment of debt service on the obligations. (See Section 5a of Article XII, Ohio Constitution.)

obligations, except for those issued to retire or refund obligations previously issued, can be issued under the proposed amendment later than April 1, 2011.

These obligations are to be sold only to the best bidder or bidders after notice of sale has been published setting forth the terms and conditions of the sale. The notice of sale is to state the date and time of the sale, the total face value of the obligations to be sold, their denominations and maturity dates, information relative to the rates of interest they may bear, the dates on which the interest will be payable, whether and on what terms they are subject to call or prior redemption, and any other applicable term or condition of the sale.

The issuance of obligations as bond anticipation notes is provided for.

Distribution of bond proceeds: compensation and bond retirement funds

The proposed amendment creates in the state treasury the Persian Gulf, Afghanistan, and Iraq Conflicts Compensation Bond Retirement Fund ("Bond Retirement Fund") and the Persian Gulf, Afghanistan, and Iraq Conflicts Compensation Fund ("Compensation Fund"). Out of the proceeds of the sale of all obligations (except those issued to refund or retire obligations previously issued), the amount that represents accrued interest is to be paid into the Bond Retirement Fund. As determined at the time of sale, the amount that represents premium may be paid into either fund. The balance of the proceeds is to be paid into the Compensation Fund. All proceeds of the sale of obligations issued to refund or retire obligations previously issued must be paid into the Bond Retirement Fund and used to pay debt service on those outstanding obligations so refunded.

The General Assembly may appropriate and pay into either fund, out of money in the treasury not otherwise appropriated, an amount "as is proper for use for the purposes for which such funds are created." Except for amounts advanced by the General Assembly to the Compensation Fund with the express expectation of reimbursement from the proceeds of obligations paid into that fund, and except for amounts transferred for the purpose of defraying the immediate cost of administration and compensation (see "**Duties of the Commissioners of the Sinking Fund**," below), if the General Assembly appropriates any funds to the Compensation Fund *prior* to the time obligations have been issued in the original principal amount authorized by the proposed constitutional amendment, that original principal amount is to be reduced by the amount of funds so appropriated.

On or before July 1 in each fiscal year, the total amount of funds necessary to provide (together with all other money that will be available in the Bond Retirement Fund) for the payment of debt service in that fiscal year, must be certified to the Director of Budget and Management. The Director is to transfer

that amount from the General Revenue Fund to the Bond Retirement Fund, without necessity of appropriation by the General Assembly.

Eligibility for, and amount of, the compensation

Definitions. For purposes of the proposed constitutional amendment:

--"**Afghanistan service**" means military service within Afghanistan during the period between October 7, 2001, and the date determined by the President or Congress of the United States as the end of the involvement of the United States Armed Forces in Afghanistan.

--"**Domestic service**" means service within the territorial limits of the 50 states, excluding sea duty.

--"**Foreign service**" means service in locations other than the territorial limits of the 50 states, excluding Persian Gulf, Afghanistan, or Iraq service.

--"**Iraq service**" means military service within Iraq during the period between March 19, 2003, and the date determined by the President or Congress as the end of the involvement of the United States Armed Forces in Iraq.

--"**Persian Gulf service**" means military service within the Persian Gulf theater of operations during the period between August 2, 1990, and March 3, 1991.

--"**United States Armed Forces**" includes members of the Ohio National Guard serving on active duty.

In general. Upon the order of the Commissioners of the Sinking Fund, and without necessity of appropriation by the General Assembly, money in the Compensation Fund is to be paid out to each person who meets *all* of the following requirements:

(1) The person has served in active duty in the United States Armed Forces, except active duty for training only, at any time between August 2, 1990, and March 3, 1991; at any time between October 7, 2001, and the date determined by the President or Congress of the United States as the end of involvement of the United States Armed Forces in Afghanistan; or at any time between March 19, 2003, and the date determined by the President or Congress as the end of the involvement of the United States Armed Forces in Iraq.

(2) The person was an Ohio resident for at least one year immediately preceding the start of active duty service and is currently an Ohio resident.

(3) The person was separated from the United States Armed Forces under honorable conditions, is still serving in active duty service, or is retired from active duty service.

A person who meets all of these requirements is entitled to receive compensation of \$50 for each month of active domestic or foreign service and \$100 for each month of Persian Gulf, Afghanistan, or Iraq service during the compensable periods. A person who is medically discharged or medically retired from service due to combat-related disabilities sustained during Persian Gulf, Afghanistan, or Iraq service is entitled to receive compensation of \$1,000. The maximum amount of cash payable to any person in active domestic or foreign service is \$500 and the maximum amount of cash payable to any person in Persian Gulf, Afghanistan, or Iraq service is \$1,000, unless the person qualifies for a survivor's payment or a payment based on missing in action or prisoner of war status (see directly below). Compensation for a fraction of a month of service is be paid on the basis of one-thirtieth of the appropriate monthly amount for each day of service.

Survivor's payment; missing in action or prisoner of war status. The surviving spouse, surviving child or children, or surviving parent or parents⁵ is entitled to the same amount of compensation that the person who served in the Armed Forces would have received pursuant to the terms described directly above. If the United States Department of Veterans' Affairs determines that the person's death was the result of injuries or illness sustained in Persian Gulf, Afghanistan, or Iraq service, the person's survivors are entitled to a survivor's payment of \$5,000, regardless of the amount of compensation that the deceased would have been entitled to receive under the proposed constitutional amendment, if living. The survivor's payment is to be made to the surviving spouse. If there is no surviving spouse, the payment is to go to the surviving child or children. And if there are no surviving children, the payment is to go to the surviving parent or parents.

A person designated by the United States Department of Defense as missing in action as a result of honorable service or held in enemy captivity, or the spouse, child, or parent of a person designated as missing in action or held in enemy captivity, is entitled to a payment of \$5,000. This payment replaces any other cash benefit payable under the proposed amendment. While the person is missing or held captive, the payment is to be made to the person's spouse. If there

⁵ In the proposed constitutional amendment and for purposes of this analysis, the term "parent" includes a person standing in loco parentis for one year preceding commencement of the child's service in the United States Armed Forces. "In loco parentis" means charged with a parent's rights, duties, and responsibilities (Black's Law Dictionary, 5th Edition).

is no spouse, payment is to be made to the person's child or children. If the person does not have children, payment is to go to the person's parent or parents.

Payment of compensation to a spouse, child, or parent of a person designated as missing in action as a result of honorable service or held in enemy captivity, while the person is missing in action or held captive, does *not* prevent the missing or captive person--on the person's release or location--from claiming and receiving a bonus of an equal amount.

Denial of compensation. Compensation is *not* to be paid, as follows:

--To any person who received from another state a bonus or compensation of a similar nature;

--To any person who served less than 90 days in the United States Armed Forces, unless active duty was terminated as a result of injuries or illness sustained during Persian Gulf, Afghanistan, or Iraq service during the compensable period;

--To any person for any time period spent under penal confinement during the compensable period.

Applications for payment of compensation; deadline. All applications for payment of compensation are to be made to the Commissioners of the Sinking Fund according to the following schedule:

(1) For Persian Gulf service, not later than December 31, 2010;

(2) For Afghanistan service, not later than three years after the date determined by the President or Congress of the United States as the end of involvement of the United States Armed Forces in Afghanistan;

(3) For Iraq service, not later than three years after the date determined by the President or Congress as the end of involvement of the United States Armed Forces in Iraq.

Duties of the Commissioners of the Sinking Fund

The proposed constitutional amendment provides the Commissioners of the Sinking Fund with "complete charge" of making compensation payments and requires them to adopt rules, including rules regarding the amounts to which beneficiaries are entitled, residency requirements, and any other rules necessary to implement the amendment. These rules must be adopted in accordance with the Administrative Procedure Act (R.C. Chapter 119.).

To carry out their responsibilities, the Commissioners are to select and appoint legal counsel and employees as are necessary, fix their compensation, and prescribe their duties. All appointees serve at the Commissioners' pleasure. When practical, the Commissioners are to employ Persian Gulf, Afghanistan, and Iraq Conflict veterans to fill the positions. The General Assembly is required to transfer necessary funds to the Compensation Fund and to the Commissioners' operating budget for the purpose of defraying the immediate cost of administration and compensation. Any funds so transferred do not reduce the original principal amount of obligations that may be issued under the proposed constitutional amendment.

On payment of all valid claims for cash compensation made within the time limitations set forth above, the Commissioners may transfer any funds remaining in the Compensation Fund to the Bond Retirement Fund. Then, on retirement of all of the obligations issued under the proposed constitutional amendment, the Commissioners must make a final report to the General Assembly. Any balance remaining in the Compensation Fund or Bond Retirement Fund is to be transferred or disposed of as provided by law.

Restrictions regarding rights or claims to compensation

No sale or assignment of any right or claim to compensation under the proposed constitutional amendment is valid. No claims of creditors are enforceable against rights or claims to or payments of compensation. And no fees can be charged for services in connection with the prosecution of any right or claim to compensation or the collection of any compensation.

Tax exemption

The obligations issued under the proposed constitutional amendment, their transfer, and the interest or other income on them, including any profit made on their sale, exchange, or other disposition, are free from taxation within the state.

Relation to existing provisions of the Ohio Constitution

The proposed constitutional amendment expresses that it is the intent of the people of Ohio that the amendment in no manner affect or change any of the existing provisions of the Constitution, except as follows:

--Debt service on the obligations issued pursuant to the proposed amendment is *not* to be included in the calculation of total debt service for purposes of the "5% cap" set forth in Section 17 of Article VIII of the Ohio Constitution. (Section 17 of Article VIII imposes a 5% cap that limits the amount of new debt the state can take on in a fiscal year: state bonds or other 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 General Assembly can waive this limitation by the vote of at least 3/5 of the members of each house.)

--Notwithstanding Section 22 of Article II of the Ohio Constitution, certain provisions of the proposed amendment do not require further appropriation by the General Assembly. (Section 22 of Article II states: "No money shall be drawn from the treasury, except in pursuance of a specific appropriation, made by law")

Self-executing

The proposed constitutional amendment states that its provisions are self-executing.

Election and effective date

The resolution provides that the proposed constitutional amendment will be submitted to the electors at the general election to be held on November 4, 2008. If approved by a majority of the electors voting on it, the proposed amendment will take effect immediately.

HISTORY

ACTION	DATE
Introduced	01-02-08

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