

ORIGINAL

In the Supreme Court of Ohio

BEAVER EXCAVATING COMPANY,
ET AL.,

Plaintiffs-Appellants,

v.

RICHARD A. LEVIN
[JOSEPH W. TESTA],
TAX COMMISSIONER OF OHIO,

Defendant-Appellee.

Case No. 2011-1536

On Appeal from the
Court of Appeals,
Tenth Appellate District

Court of Appeals
Case No. 10-AP-581

**APPENDIX TO MERIT BRIEF OF PLAINTIFFS-APPELLANTS
BEAVER EXCAVATING COMPANY, ET AL.**

VOLUME I

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118 Ohio Laws 7	0318 - 0320
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**NOTICE OF APPEAL OF PLAINTIFFS-APPELLANTS
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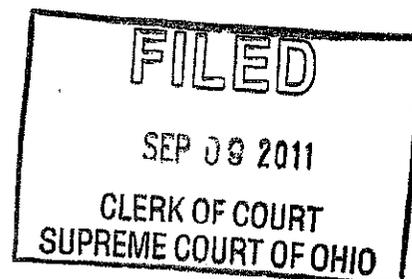
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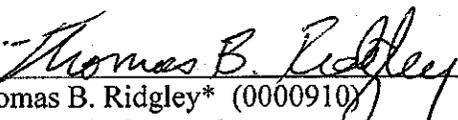


**NOTICE OF APPEAL OF PLAINTIFFS-APPELLANTS
BEAVER EXCAVATING COMPANY, ET AL.**

Plaintiffs-Appellants hereby give notice of their discretionary appeal to this Court, pursuant to Ohio Supreme Court Rule 2.1(A)(3), from a decision of the Court of Appeals of Franklin County, Tenth Appellate District, journalized in *Beaver Excavating Company, et al. v. Levin*, Court of Appeals Case No. 10-AP-581, 2011-Ohio-3649, on July 26, 2011. Date-stamped copies of the Tenth District's Entry and Decision are attached as Exhibits A and B, respectively, to the Memorandum in Support of Jurisdiction.

For the reasons set forth in the accompanying Memorandum in Support of Jurisdiction, this case raises a substantial constitutional question and is one of public and great general interest.

Respectfully submitted,


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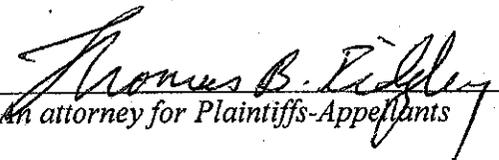
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CERTIFICATE OF SERVICE

I certify that a copy of the foregoing *Notice of Appeal* was served by U.S. mail this 9th day of September, 2011, on the following:

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IN THE COURT OF APPEALS OF OHIO
TENTH APPELLATE DISTRICT

Beaver Excavating Company et al.,	:	
	:	
Plaintiffs-Appellants,	:	
	:	
v.	:	No. 10AP-581
	:	(C.P.C. No. 08CVH-03-3921)
Richard A. Levin,	:	
Tax Commissioner of Ohio,	:	(REGULAR CALENDAR)
	:	
Defendant-Appellee.	:	
	:	

D E C I S I O N

Rendered on July 26, 2011

Vorys, Sater, Seymour and Pease LLP, Thomas B. Ridgley, Anthony L. Ehler, Jeffrey Allen Miller and Robert J. Krummen, for appellants.

Michael DeWine, Attorney General, Barton A. Hubbard and Julie E. Brigner, for appellee.

APPEAL from the Franklin County Court of Common Pleas

TYACK, J.

{¶1} This case is a challenge to the constitutionality of R.C. 5751 et seq., the Ohio Commercial Activity Tax (the "CAT"). The appellants have sought to prove that the CAT is unconstitutional to the extent that moneys derived from the CAT that relate to sales of motor vehicle fuel are not being expended for the purposes enumerated in

Section 5(a), Article XII, Ohio Constitution ("Section 5a"). For the reasons that follow, we affirm the judgment of the Franklin County Court of Common Pleas.

Background of Section 5a and the CAT

{¶2} The relevant constitutional provisions are Article XII, Sections 5 and 5a that provide as follows:

LEVYING OF TAXES.

§5 No tax shall be levied, except in pursuance of law; and every law imposing a tax shall state, distinctly, the object of the same, to which only, it shall be applied. (1851).

Use of Motor Vehicle License and Fuel Taxes Restricted.

§5a No moneys derived from fees, excises, or license taxes relating to registration, operation, or use of vehicles on public highways, or to fuels used for propelling such vehicles, shall be expended for other than costs of administering such laws, statutory refunds and adjustments provided therein, payment of highway obligations, costs for construction, reconstruction, maintenance and repair of public highways and bridges and other statutory highway purposes, expense of state enforcement of traffic laws, and expenditures authorized for hospitalization of indigent persons injured in motor vehicle accidents on the public highways. (1947)

(Emphasis sic.)

{¶3} Section 5a is an amendment to the Ohio Constitution passed in 1947 by the citizens of Ohio by means of an initiative petition. The history of Section 5a shows that prior to the amendment, moneys from motor vehicle related taxes had been used to meet general needs, such as help for the poor during the Great Depression. Citizens and highway interest groups wanted moneys obtained through taxes, fees, and licenses relating to motor vehicle operation and fuel to be expended exclusively for road projects

and highway improvement. Doing so would allow state road money to tie in with the federal highway program and would include many city streets and rural roads. See Ohio Atty.Gen.Ops. No. 82-084 (citing Ohio Secretary of State's officially prepared and published pamphlet setting forth pro and con arguments for Section 5a). Opponents contended that the amendment was unnecessary and handicapped the legislature's ability to apply revenue where it was needed by the state. *Id.*

{¶4} After the amendment passed, the General Assembly repealed the 1¢/gal. liquid fuel tax. The revenue from the liquid fuel tax had been used to pay general obligations of the state. The General Assembly then raised the motor vehicle fuel tax by 1¢ as its revenues were allocated to highway purposes. The tax burden remained the same, but all the funds were now allocated to highway purposes in accordance with Section 5a.

{¶5} Even after the passage of Section 5a, motor fuel dealers were still subject to Ohio's Corporate Franchise Tax for the privilege of doing business in Ohio. However, at that time, the tax was measured by the value of corporate stock, not gross receipts as is done under the CAT.

{¶6} Beginning in 2005, Ohio's General Assembly imposed the Commercial Activity Tax as one of a series of tax revisions designed to lessen the burden of taxation on Ohio businesses. *Ohio Grocers Assn. v. Levin*, 123 Ohio St.3d 303, 2009-Ohio-4872, ¶6. The CAT was designed to be phased in over five years beginning in 2005. *Id.* Meanwhile, the corporate franchise tax was to be phased out, along with the tangible

personal property tax. Motor fuel was temporarily exempt from the CAT until July 1, 2007. Ohio Adm.Code 5703-29-12 (effective March 5, 2006).

{¶7} The CAT is levied "on each person with taxable gross receipts for the privilege of doing business in this state." R.C. 5751.02(A). The value of that privilege is measured differently from the corporate franchise tax. The CAT uses gross receipts to measure the tax. Id. at ¶1. Gross receipts means the "total amount realized by a person, without deduction for the cost of goods sold or other expenses incurred, that contributes to the production of gross income of the person, including the fair market value of any property and any services received, and any debt transferred or forgiven as consideration." R.C. 5751.01(F).

{¶8} The CAT proceeds are allocated to the general revenue fund, the school district tangible property tax fund, and the local government tangible personal property tax repayment fund. R.C. 5751.20.

THE PARTIES

{¶9} Appellants fall into two main groups: contractors and county engineers. Beaver Excavating Company is one of a group of companies who, in the course of their business, generate gross receipts derived from motor vehicle fuel. Since July 1, 2007, these businesses have been subject to the CAT and have paid the CAT, measured in part, by gross receipts from motor vehicle fuel sales. The county engineers for Ashland and Highland Counties have alleged that their county budgets for infrastructure projects depend, in part, on money derived from taxes relating to motor vehicle fuel. They claim that because the CAT does not appropriate the moneys derived from the gross receipts of

motor vehicle fuel to highway purposes as set forth in Section 5a, the engineers are deprived of funds they should receive for road projects.

{¶10} Appellee, Richard A. Levin, is the Tax Commissioner of Ohio, and has argued that the imposition of the CAT does not violate the Ohio Constitution and is therefore valid.

TRIAL COURT ACTION

{¶11} On July 6, 2010, appellants filed an action in the Franklin County Court of Common Pleas seeking a declaratory judgment that the CAT violated Section 5a. They also asked for an injunction preventing the tax commissioner from levying, enforcing, or collecting the CAT as it relates to motor vehicle fuel.

{¶12} Both parties filed motions for summary judgment. The trial court ruled in favor of the tax commissioner, granting summary judgment on May 19, 2010. The trial court based its analysis on a case that had been recently decided by the Ohio Supreme Court in *Ohio Grocers Assn. Ohio Grocers Assn.* involved the question of whether the CAT violated the Ohio Constitution's prohibition of sales or other excise taxes on food. Sections 3(C) and 13, Article XII, Ohio Constitution. The Ohio Supreme Court held that the CAT was not a tax on the sale or purchase of food as contemplated by the constitution, and therefore did not violate the constitutional prohibitions against sales or excise taxes on food. *Id.*

{¶13} In this case, the trial court acknowledged the history and genesis of Section 5a. It also recognized the argument that the motor vehicle fuel language in Section 5a may be broader in scope than the constitutional provisions regarding excise taxes on the

sale of food. Nevertheless, the trial court came to the conclusion that if one were to substitute excises on fuels (used for propelling vehicles on public highways) for excises on food, the Ohio Supreme Court would hold, as it did in *Ohio Grocers Assn.*, that the CAT tax was constitutional.

ASSIGNMENTS OF ERROR

{¶14} On appeal, appellants raise the following three assignments of error:

[I.] The trial court erred in failing to hold that the moneys derived from the Ohio Commercial Activity Tax (the "CAT"), Ohio Revised Code Chapter 5751.01 et seq., to the extent that the CAT is applied to gross receipts from sales of "fuels used for propelling [vehicles on public highways]" ("Motor Vehicle Fuel"), relate to Motor Vehicle Fuel under Article XII, Section 5a ("Section 5a") of the Ohio Constitution.

[II.] The trial court erred in failing to conclude that moneys derived from the CAT relating to Motor Vehicle Fuel are not appropriated as mandated by Section 5a.

[III.] The trial court erred in failing to declare the CAT is unconstitutional under Article XII, Sections 5 and 5a to the extent that moneys derived from the CAT relating to Motor Vehicle Fuel are not appropriated for the specific objects permitted under Section 5a.

STANDARD OF REVIEW

{¶15} This court applies a de novo standard of review on an appeal from summary judgment. *Comer v. Risko*, 106 Ohio St.3d 185, 2005-Ohio-4559, ¶8; *Koos v. Cent. Ohio Cellular, Inc.* (1994), 94 Ohio App.3d 579, 588, citing *Brown v. Scioto Cty. Bd. of Commrs.* (1993), 87 Ohio App.3d 704, 711. When an appellate court reviews a trial court's disposition of a summary judgment motion, it applies the same standard as the trial court and conducts an independent review, without deference to the trial court's

determination. *Maust v. Bank One Columbus, N.A.* (1992), 83 Ohio App.3d 103, 107; *Brown* at 711. Pursuant to Civ.R. 56(C), summary judgment "shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, written admissions, affidavits, transcripts of evidence, and written stipulations of fact, if any, timely filed in the action, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Accordingly, summary judgment is appropriate only under the following circumstances: (1) no genuine issue of material fact remains to be litigated; (2) the moving party is entitled to judgment as a matter of law; and (3) viewing the evidence most strongly in favor of the non-moving party, reasonable minds can come to but one conclusion, that conclusion being adverse to the non-moving party. *Harless v. Willis Day Warehousing Co.* (1978), 54 Ohio St.2d 64, 66.

{¶16} In assignment of error one, appellants argue first that the CAT is an excise tax, and second, that moneys derived from the CAT relate, in part, to motor vehicle fuel. The pertinent language of Section 5a, Article XII, reads as follows:

No moneys derived from * * * excises * * * relating to * * *
fuels used for propelling * * * vehicles [on public highways],
shall be expended for other than costs of * * * construction,
reconstruction, maintenance and repair of public highways
* * *

{¶17} The Ohio Supreme Court has declared that a franchise tax is a kind of excise tax. *Ohio Grocers Assn.* at ¶30. Appellants contend that, unlike the constitutional amendments at issue in *Ohio Grocers Assn.*, Section 5a's broadly worded language includes all excise taxes including a tax on the privilege of doing business in Ohio. In support of their argument, they cite to *Ohio Grocers Assn.* in which the court stated that if

drafters had intended to affect excises of "every stripe," they would simply use the term "excise taxes." *Id.* at ¶29. Here, Section 5a reads "excises." Thus, appellants argue that the plain language of Section 5a requires a determination that the CAT moneys derived from gross sales of motor vehicle fuel must be expended solely for Section 5a purposes.

{¶18} The tax commissioner argues that whether revenue generated by the CAT is subject to Section 5a's expenditure restriction turns on whether the CAT is a general tax or a special tax. The commissioner looks to the taxes in effect at the time Section 5a was adopted, such as the liquid fuel tax, and the motor vehicle fuel tax. The commissioner suggests that highway user taxes imposed on the users of public highways for the privilege of using the highways and earmarked for maintaining highways are special taxes, unlike the corporate franchise tax which is a general tax.

{¶19} The commissioner further notes that diversion of these special taxes took place around the country for relief for the poor during the Great Depression. He contends that Ohio and many states enacted anti-diversion amendments like Section 5a to enable states to receive federal highway funds under the Hayden-Cartwright Act, as states could not receive federal funds unless their highway-related taxes were applied to highway purposes.

{¶20} The commissioner argues that we must narrowly construe the "relating to" language of the amendment, for to do otherwise, would lead to absurd results. The commissioner states that it is untenable to think corporate tax revenues received from auto manufacturers, dealers, repair shops, parts dealers, financing businesses, and insurers must be dedicated to highway purposes because those taxes relate to the use

and operation of motor vehicles. The commissioner urges that this court interpret the amendment to apply only to special taxes imposed on those who use the public highways for the express purpose of maintaining the highways and not general taxes such as the CAT.

{¶21} Any constitutional analysis must begin with the presumption of constitutionality enjoyed by all legislation. *Groch v. General Motors Corp.*, 117 Ohio St.3d 192, 2008-Ohio-546, ¶25. Before a court may declare unconstitutional an enactment of the legislative branch, "it must appear beyond a reasonable doubt that the legislation and constitutional provisions are clearly incompatible." *Id.*, quoting *State ex rel. Dickman v. Defenbacher* (1955), 164 Ohio St. 142, paragraph one of the syllabus. When a statute is challenged on the ground that it is unconstitutional as applied to a particular set of facts, the party making the challenge bears the burden of presenting clear and convincing evidence of a presently existing set of facts that make the statute unconstitutional and void when applied to those facts. *Harrold v. Collier*, 107 Ohio St.3d 44, 2005-Ohio-5334, ¶38.

{¶22} When the courts construe a statute or constitutional provision, "the object of the people in adopting it should be given effect; the polestar in the construction of constitutional, as well as legislative, provisions is the intention of the makers and adopters thereof." *Castleberry v. Evatt* (1946), 147 Ohio St. 30, paragraph one of the syllabus. The Ohio Supreme Court has described how to construe a constitutional amendment adopted by initiative petition as follows: "This is the simple language of the plain people and it is to receive such meaning as they usually give to it in political discussions and

arguments.' " *State ex rel. Keller v. Fomey* (1923), 108 Ohio St. 463, 466, quoting *State ex rel. Greenlund v. Fulton* (1919), 99 Ohio St. 168, 200. Technical hair-splitting distinctions are not favored when applying the common words of the people. *Id.* at 201.

{¶23} "The first step in determining the meaning of a constitutional provision is to look at the language of the provision itself." *State ex rel. Maurer v. Sheward*, 71 Ohio St.3d 513, 520, 1994-Ohio-496. "Words used in the Constitution that are not defined therein must be taken in their usual, normal, or customary meaning." *State ex rel. Taft v. Franklin Cty. Court of Common Pleas*, 81 Ohio St.3d 480, 481, 1998-Ohio-333.

{¶24} "If the meaning of the constitutional provision is clear on its face, courts will not look beyond the provision in an attempt to divine what the drafters intended it to mean." *Gough v. Triner*, 7th Dist. No. 05 CO 33, 2006-Ohio-3522, ¶15, citing *Sheward* at 520. However, if the meaning of the constitutional provision cannot be ascertained by its plain language, courts may look to the purpose of the amendment to determine its meaning. *Id.* Courts can look to the history of the time when it was passed, the circumstances at the time of its adoption, the need for the provision, the mischief sought to be avoided, and the remedy intended to be afforded. *Id.*, citing *State v. Jackson*, 102 Ohio St.3d 380, 2004-Ohio-3206, ¶14; *Cleveland v. Bd. of Tax Appeals* (1950), 153 Ohio St. 97, 103.

{¶25} Here, the plain language of Section 5a states that fees, excise taxes, and license taxes relating to motor vehicle fuel, must be expended exclusively for specific purposes contained in the amendment.

{¶26} The "related to" language of Section 5a can only be described as ambiguous. Taken to the broadest possible extent, everything is related in some way to everything else. See *California Div. of Labor Standards Enforcement v. Dillingham Constr., N.A., Inc.* (1997), 519 U.S. 316, 335-36, 117 S.Ct. 832 (Justice Scalia concurring). An extremely broad construction of the "related to" language could lead to absurd results such as those posited by the tax commissioner. However, a narrow rendering could thwart the intention of the citizens of Ohio when they voted for Section 5a. In the Employee Retirement Income Security Act ("ERISA") preemption context the United States Supreme Court has stated: "[w]e simply must go beyond the unhelpful text and the frustrating difficulty of defining its key term, and look instead to the objectives of the ERISA statute as a guide to the scope of the state law that Congress understood would survive." *New York State Conf. of Blue Cross & Blue Shield Plans v. Travelers Ins. Co.* (1995), 514 U.S. 645, 656, 115 S.Ct. 1671.

{¶27} As touched on briefly above, at the time Section 5a was submitted to the voters for their approval, the Ohio Secretary of State prepared and published, in accordance with Section 1g, Article II, Ohio Constitution and G.C. 4785-180b, an official publicity pamphlet, setting forth the arguments in favor of, and the arguments in opposition to, the proposed amendment. Ohio Atty.Gen.Ops. No. 82-084.

{¶28} The argument in favor stated, in pertinent part:

This Amendment simply says you want your automobile license and gas tax money to go for better roads and streets. Many Ohio highways are behind the times, and must be improved for post-war traffic.
Many streets are dangerous traffic bottle-necks.

We are disgusted with slow moving traffic in congested areas, dusty, winter mired-in roads in rural districts, and alarmed at the traffic toll on narrow roads and bridges with death inviting curves.

.....
Ohio originally promised that automobile license and gas tax funds would go for roads, streets, and related purposes. But temptation was too great and millions of these special tax dollars have been and are being spent for other purposes. This is your chance to correct these conditions.

The same thing happened in other states, but nineteen states, including Michigan, Pennsylvania, Texas, Iowa, California, Minnesota, Oregon and Kentucky, have acted to protect their road funds by amending their constitutions. Ohio now has this opportunity.

.....
Road and street improvement costs have increased. Ohio needs road money to tie-in with the promised federal highway program which will include many city streets and rural roads. It is imperative that motor vehicle taxes be used exclusively for roads and streets.

Remember, this Amendment does not increase the rate of any tax nor place restrictions on the allocation of revenues by the Legislature. It is your insurance for better roads and streets.

Vote "YES" for the "Better Roads and Streets Amendment" and put Ohio on the honor roll of progressive states."

{¶29} The opponents argued as follows:

NO TAX REDUCTION. This amendment holds no promise of a tax reduction. If revenues thus provided for road purposes without specific appropriations exceed the actual needs for the roads, unnecessary expenditures and misuse of the excess funds will be encouraged.

.....
BAD POLICY. This amendment places the Legislature in a strait-jacket and severely handicaps it in applying the revenue of the state to the needs of the state. The Legislature could not use highway revenues for emergency purposes and the revenues from such taxes will have to be spent for roads and streets and for no other purpose.

NOT NEEDED. Taxes levied upon automobile owners allocated by law for the construction and maintenance of roads and streets are the 3¢ motor vehicle fuel tax and motor vehicle license fees. The 1¢ per gallon liquid fuel tax is used to pay general governmental obligations. Liquid fuel tax revenues add approximately \$15,000,000 annually to the state general revenue fund. Appropriations are now made by the Legislature from this fund to the Department of Highways and political sub-divisions. Since the Legislature can and has appropriated this money for highway purposes, there is no need for this amendment.

{¶30} In 1972, the Ohio Constitutional Revision Committee Finance and Taxation Committee created a report containing information about the history and background of Section 5a, and how those types of "good roads" amendments have been interpreted in other states. The report summarized the purpose of Section 5a as requiring "that all of the revenues derived from the registration of motor vehicles and from the taxes imposed on the purchase of fuels for motor vehicles be expended on the requirements of the state's highway system." Ohio Constitutional Revision Commission Finance and Taxation Committee, 1755 (Vol. 4, Sept. 22, 1972). The report summarized three major earmarked taxes on the operation of motor vehicles and the use of the highways in the state. The taxes were the gasoline or motor vehicle fuel tax, the highway use tax, and the motor vehicle license or registration tax. A fourth tax, the transportation tax, was levied upon common and contract carriers. Id. at 1758.

{¶31} A review of this background and history shows that the objective of Section 5a was and is to prevent taxes collected from the motoring public from being diverted to non-highway purposes. Without the constitutional amendment, the legislature was free to divert moneys for emergencies or other priorities. The question thus becomes whether

the CAT, as applied to appellants, is related to motor vehicle fuel in such a way that Section 5a's prohibition on where such moneys may be spent is triggered.

{¶32} The Ohio Supreme Court in *Ohio Grocers Assn.* has determined that the CAT is a privilege of doing business tax, sometimes known as a franchise tax. A franchise tax "is a kind of excise tax." *Id.* at ¶30. We recognize that *Ohio Grocers Assn.* focused on an alleged unconstitutional imposition of a tax on food, while the present case involves an alleged unconstitutional expenditure of revenue derived from the CAT. Nevertheless, the following principles that are relevant to the instant case may be gleaned from the *Ohio Grocers Assn.* decision.

{¶33} A franchise tax, or a tax upon the privilege of doing business, is a kind of excise tax. *Id.* at ¶30. It is permissible to tax the privilege of doing business, and to do so, the privilege must be valued. *Id.* at ¶16. The value of the privilege of doing business, may be determined by using various factors, including gross receipts. *Id.* There is a distinction between a tax upon a certain factor and a tax upon a privilege measured by that factor. *Id.* at ¶17, 23. The only purpose of the franchise tax formula is to determine by uniform rules the value of the corporate franchise in the state, and the employment of various factors is not an indication that the subjects of such factors are being taxed. Rather, the factors are used to compose a measuring stick. *Id.* In the same way Ohio's corporate franchise tax operates, the CAT is levied on the exercise of a privilege and not on receipts. See *Bank One Dayton, N.A. v. Limbach* (1990), 50 Ohio St.3d 163, 167 (discussing the nature and operation of the corporate franchise tax).

{¶34} Applying these principles, as the Ohio Supreme Court did in *Ohio Grocers Assn.*, we must conclude that Ohio's CAT measured by gross receipts, including receipts from the sale of motor vehicle fuel, is not a tax upon motor vehicle fuel. Whether the CAT relates to the sale of motor vehicle fuel is not supported by the background and history of Section 5a which historically has been interpreted to apply to the specific taxes set forth above and not to general taxes. While in a sense one could say that the CAT as applied to these appellants has some relation to motor vehicle fuel, the relationship is too attenuated to find that the statutory allocation of the CAT moneys violates Section 5a. Appellants have not been able to show beyond a reasonable doubt that the legislation and constitutional provisions are clearly incompatible.

{¶35} Assignment of error one is overruled.

{¶36} Having overruled assignment of error number one, appellants' second and third assignments of error must fail also. Having found CAT's mechanism of valuing a privilege based in part on gross sales of motor vehicle fuel bears little to no relationship to a tax upon motor vehicle fuel, the remaining assignments of error are overruled as well.

{¶37} Based on the foregoing, the judgment of the Franklin County Court of Common Pleas is affirmed.

Judgment affirmed.

CONNOR, J., concurs.
DORRIAN, J., concurs separately.

DORRIAN, J., concurring separately.

{¶38} I concur with the majority's affirmation of the trial court's judgment, but conclude that Section 5a, Article XII, of the Ohio Constitution ("Section 5a") was intended

to restrict the use of revenues from taxes and fees *targeted at* users of the public roads, irrespective of whether they were classified as general or specific taxes. The Ohio Commercial Activity Tax (the "CAT") is a tax on the privilege of doing business, not a tax on the privilege of using the public roads or a tax targeted at users of the public roads, and, therefore, applying the CAT to businesses engaged in the sale of motor vehicle fuel (hereinafter "gasoline") does not violate Section 5a.

{¶39} As the majority explains, a constitutional amendment adopted by initiative petition must be given " 'such meaning as [the people] usually give to it in political discussions and arguments.' " *State ex rel. Keller v. Forney* (1923), 108 Ohio St. 463, 466, quoting *State ex rel. Greenlund v. Fulton* (1919), 99 Ohio St. 168, 200. Thus, the phrase "fees, excises, or license taxes relating to * * * fuels used for propelling such vehicles" in Section 5a must be understood in the context of the time it was enacted.

{¶40} Two types of taxes were specifically mentioned in the parties' discussion of the history of Section 5a: the motor vehicle fuel tax and the liquid fuel tax.¹ A review of the history and circumstances of each of these taxes demonstrates that they were targeted at users of the public roads. Thus, it is appropriate to view Section 5a as a restriction on the use of revenues from such targeted fees or taxes.

{¶41} The liquid fuel tax, which appellant suggests was a general tax, was enacted in 1933 and imposed a one-cent-per-gallon tax on liquid fuel used, distributed, or sold in the state. G.C. 5542-2, Am.Sub.S.B. No. 354, 115 Ohio Laws 631, 632-33. The

¹ Ohio also imposed a motor vehicle license tax at the time Section 5a was adopted and continues to impose this tax. The motor vehicle license tax was and is clearly targeted at users of the public roads, as it is "levied upon the operation of motor vehicles on the public roads or highways," and must be paid when the owner registers a motor vehicle. R.C. 4503.02; 4503.11.

law defined "liquid fuel" as "any volatile or inflammable liquid * * *, which is used or usable, either alone or when mixed or compounded, for the purposes of generating light, heat or power, or for any purpose whatsoever; * * * includ[ing] gasoline, kerosene and all other like substances." G.C. 5542-1, Am.Sub.S.B. No. 354, 115 Ohio Laws 631. A portion of the revenue from the liquid fuel tax was placed into a rotary fund to be used for paying refunds of the tax, and the remainder of the revenue was placed into a state public school fund. G.C. 5542-18, Am.Sub.S.B. No. 354, 115 Ohio Laws 631, 641. Subsequently, in 1939, the General Assembly amended the law to provide that revenue from the liquid fuel tax beyond the amount needed to fund the rotary fund was to be placed in the state's general revenue fund. G.C. 5542-18, Sub.H.B. No. 1, 118 Ohio Laws 7, 9.

{¶42} The liquid fuel tax was imposed on dealers of liquid fuel. G.C. 5542-2, Am.Sub.S.B. No. 354, 115 Ohio Laws 631, 632-33. However, as discussed below, gasoline dealers adopted the practice of passing the motor vehicle fuel tax on to customers in the price of gasoline, and there is no reason to believe that liquid fuel dealers did not adopt the same approach. Although the statutory definition of liquid fuel encompassed more than gasoline for use in propelling vehicles on the public roads, the history of the enactment of the liquid fuel tax indicates it was primarily targeted at users of the public roads. At the beginning of 1933, the motor vehicle fuel tax was imposed at a

rate of four cents per gallon.² On June 30, 1933, the General Assembly passed a bill reducing the existing motor vehicle fuel tax to three cents per gallon. H.B. No. 62, 115 Ohio Laws 629, 631. The very next day, July 1, 1933, the General Assembly passed the measure creating the one-cent-per-gallon liquid fuel tax. Am.Sub.S.B. No. 354, 115 Ohio Laws 631, 642. The effect of this change was to re-appropriate a portion of the revenue from the motor vehicle fuel tax, which by statute was required to be used for maintaining and improving public roads, to other uses. This intent is further demonstrated by the fact that, after Section 5a was adopted, the General Assembly repealed the liquid fuel tax and restored the motor vehicle fuel tax rate to four cents per gallon on the same day. Am.S.B. No. 358, 122 Ohio Laws 807 (repealing the liquid fuel tax); H.B. No. 500, 122 Ohio Laws 809, 809-11 (increasing rate of motor vehicle fuel tax).

{¶43} Moreover, historical revenue data establish that the liquid fuel tax essentially replaced the one-cent reduction in the motor vehicle fuel tax. In 1930, the state received gross revenue of \$39 million from the four-cents-per-gallon motor vehicle fuel tax. The following year, the tax brought in \$41.2 million in gross revenue. In 1932, the state received \$36.1 million in gross revenue from the motor vehicle fuel tax. In 1933, the year that the General Assembly reduced the motor vehicle fuel tax and enacted the liquid fuel tax, the state received combined gross revenue from both taxes of \$35.7 million. In 1934 and 1935, the two taxes brought in combined gross revenue of \$38.9 million and \$41.2 million, respectively. Ohio Department of Taxation Annual Report for

² The four-cents-per-gallon tax on motor vehicle fuel in effect at the beginning of 1933 was composed of a two-cents-per-gallon tax under G.C. 5527 and an additional two-cents-per-gallon tax under G.C. 5541-1. G.C. 5527, H.B. No. 44, 111 Ohio Laws 294, 295; G.C. 5541-1, H.B. No. 335, 113 Ohio Laws 70, 71.

the Year Ending December 31, 1947, at 9-10 (appellant's reply brief, Exhibit B). The fact that the state's revenues were essentially unchanged when the motor vehicle fuel tax was reduced and the liquid fuel tax was implemented demonstrates that the burden of the liquid fuel tax largely fell on the same individuals who bore the burden of the motor vehicle fuel tax; i.e., those using gasoline to propel vehicles on public roads.

{¶44} Appellants concede that the motor vehicle fuel tax, also known as the gasoline tax, is a "special tax" because revenue from the tax is directed to a specific purpose. The gasoline tax is collected from gasoline dealers, rather than purchasers of gasoline. R.C. 5735.05; 5735.25; 5735.29; 5735.30; *Cincinnati v. Cincinnati Oil Works Co.* (1931), 123 Ohio St. 448, 450 ("The state gasoline tax is imposed by the state upon the business of the owner of the filling station, and not upon the consumer of the gasoline.") However, since the earliest days of the gasoline tax, dealers have added the cost of the tax to the price of gasoline; as a result, purchasers of gasoline ultimately bear the burden of the tax as a cost for the privilege of using public roads. *State ex rel. Janes v. Brown* (1925), 112 Ohio St. 590, 596 ("The [gasoline] tax is upon the enjoyment of the privilege of using motor vehicle fuel in traveling upon the highways and streets of the state."); *State ex rel. Bettman v. Canfield Oil Co.* (1929), 34 Ohio App. 267, 273 ("A dealer is charged with the collection of the [gasoline] tax for administrative purposes only. The tax is upon the enjoyment of the privilege of using motor vehicle fuel. The various gasoline dealers of Ohio adopted a system whereby the amount of the tax was added to the cost and normal of the tax gasoline, and was paid by the consumer with the

The additional tax was originally levied as a one-cent-per-gallon tax in 1927 and was increased to two cents per gallon in 1929. H.B. No. 206, 112 Ohio Laws 508, 509; H.B. No. 335, 113 Ohio Laws 70, 71.

understanding that the amount added to the cost and normal profit for tax was collected by the dealer for the state of Ohio.") (internal citation omitted); *Hickok Oil Corp. v. Evatt* (1943), 141 Ohio St. 644, 653 ("As the ultimate consumer pays a price enhanced by the tax, the burden is spread upon those who use the privilege of driving motor vehicles on the highways and streets of the state."). This "pass through" structure means that the gasoline tax is effectively a tax targeted at drivers, notwithstanding the fact that the tax is collected from dealers.

{¶45} The General Assembly ensured that the gasoline tax would be targeted at automobile drivers by providing a refund of the tax for users of gasoline engaged in activities that do not involve driving on the public roads. R.C. 5735.14(A) provides that "[a]ny person who uses any motor fuel, on which the [gasoline tax] * * * has been paid" for various specified purposes that do not involve propelling a vehicle on the public roads, "shall be reimbursed in the amount of the tax so paid on such motor fuel." See also *Shafer v. Glander* (1950), 153 Ohio St. 483, paragraph one of syllabus ("The use of motor vehicle fuel is taxable only where such fuel is used for the purpose of generating power for the propulsion of motor vehicles on the public highways."). The refund provision was included as part of the original enactment of the gasoline tax law. G.C. 5534; H.B. No. 44, 111 Ohio Laws 294, 298. Granting a refund to the *user* of the gas, rather than the dealer from whom the gasoline tax is collected, effectively recognizes that the user bears the burden of the tax. Refunding the gasoline tax to those who use gasoline for purposes other than driving on the public roads ensures that the gasoline tax burden will fall on drivers.

{¶46} Moreover, the language used by proponents and opponents of Section 5a when it was on the ballot in 1947 demonstrates that people at that time understood the gasoline tax to be targeted at drivers. The official ballot argument in favor of Section 5a stated that the amendment "simply says you want *your* automobile license and gas tax money to go for better roads and streets." (Emphasis added.) (Appellee's brief, Exhibit 2.) Likewise, the ballot argument in opposition to Section 5a referred to both the gasoline tax and motor vehicle license fees as "[t]axes levied upon automobile owners." (Appellee's brief, Exhibit 2.) Viewed in this light, the logic behind the amendment is clear—revenues from taxes and fees paid as a cost of using the public roads should accrue to the benefit of those taxpayers by financing maintenance and improvement of the public roads.

{¶47} The General Assembly also recognized that the burden of the gasoline tax falls on drivers by exempting most gasoline sales from the sales tax. R.C. 5739.02(B)(6). The Supreme Court of Ohio has recognized that this exemption exists because the gasoline tax is analogous to the sales tax. In *Haefner v. Youngstown* (1946), 147 Ohio St. 58, the Supreme Court stated that "the exemptions provided for in [the sales tax law] are in keeping with a legislative policy of excepting from the sales tax proper sales already taxed in the same or a similar way, namely, sales of motor vehicle fuel." *Id.* at 64, overruled on other grounds by *Cincinnati Bell Tel. Co. v. Cincinnati* (1998), 81 Ohio St.3d 599, 607-08. As with the gasoline tax, the burden of the sales tax ultimately falls on the consumer. See *Buddies Lunch System, Inc. v. Bowers* (1960), 170 Ohio St. 410, 413 ("The primary intent of the Sales Tax Act is, of course, to collect the tax from the

consumer [sic.]); *ERB Lumber Co. v. L&J Hardwood Flooring, Inc.* (1997), 118 Ohio App.3d 421, 424 ("The Ohio statutory scheme puts the burden of collecting the sales tax on the vendor and the burden of paying the sales tax on the consumer."). Thus, applying the sales tax to gasoline would effectively be double taxation on drivers.³

{¶48} The ballot language advocating passage of Section 5a also referred to the fact that 19 states that had passed anti-diversion amendments. It is instructive to consider the experience of one state, Maine, which passed an anti-diversion amendment containing language similar to Section 5a only a few years before Ohio. In 1944, the voters of Maine adopted an amendment to that state's constitution providing that "[a]ll revenues derived from fees, excises and license taxes *relating to* registration, operation and use of vehicles on public highways, *and to fuels used for propulsion of such vehicles*" must be expended for highway purposes. (Emphasis added.) Section 19, Article IX, Maine Constitution. This provision closely mirrors Ohio's anti-diversion amendment, which restricts the use of "moneys derived from fees, excises, or license taxes relating to registration, operation, or use of vehicles on public highways, or to fuels used for propelling such vehicles." Section 5a, Article XII, Ohio Constitution. Both of these provisions restrict the use of revenues from fees and taxes "relating to" gasoline.

{¶49} In 1973, the Supreme Judicial Court of Maine decided a case involving the scope of that state's anti-diversion amendment. *Portland Pipe Line Corp. v.*

³ Appellants argue that, under appellee's reasoning, the General Assembly could levy a sales tax on gasoline and direct the revenues from that tax into the general fund. Appellants argue that this would be a clear violation of Section 5a. That is not the case before this court and addressing that argument would result in an advisory opinion, which we lack the constitutional or statutory authorization to issue. *Siders v. Reynoldsburg School Dist.* (1994), 99 Ohio App.3d 173, 193. Nevertheless, I note that a change to the longstanding exemption from the sales tax for gasoline sales would likely present a different case from the circumstances surrounding the application of the CAT to businesses involved in the sale of gasoline.

Environmental Improvement Comm. (Me.1973), 307 A.2d 1. The plaintiffs in the *Portland Pipe Line* case challenged the legislature's imposition of a fee of one-half cent per barrel of petroleum products transported over water during a specified period. *Id.* at 9. The fee was imposed against "oil terminal facilities." *Id.* at 9-10. The proceeds of the fee were used to fund the state's Coastal Protection Fund. *Id.* The plaintiffs argued that revenues from the licensing fee constituted " 'revenues derived from fees, excises, and license taxes relating * * * to fuels used for the propulsion' of vehicles on public highways," and that the anti-diversion amendment required those revenues to be used for highway purposes. *Id.* at 12. The court traced the history of the Maine motor gasoline tax, finding that "[t]he plan of the 'gasoline tax' was to focus on those who derived benefits as users of the highway system as the class subject to the tax." *Id.* at 13. The court then considered the history of the anti-diversion amendment, concluding that "[t]he Legislature and the people had been accustomed since 1923 to the 'gasoline tax,' a tax imposed on highway users. It was this revenue that was protected from diversion to non-highway uses." *Id.* Because the challenged license fee was not imposed on highway users but, rather, on "those engaged in over-water transfers of petroleum products," the court concluded that revenues from that fee were not " 'derived from fees, excises and license taxes relating to fuels used for the propulsion of * * * motor vehicles" and therefore not within the scope of the constitutional restriction. *Id.* at 14.

{¶50} I find the Maine court's reasoning persuasive, particularly in light of the historical similarities between Maine and Ohio's gasoline taxes and anti-diversion amendments. In both states, at the time the motor vehicle fuel tax was enacted, there

was no state sales tax. Ohio first enacted a motor vehicle fuel tax in 1925. H.B. No. 44, 111 Ohio Laws 294; *Caldwell v. State* (1926), 115 Ohio St. 458, syllabus. The Ohio sales tax was not enacted until 1934 and the use tax until 1935. *Gen. Motors Corp. v. Wilkins*, 102 Ohio St.3d 33, 2004-Ohio-1869, ¶37 (citing H.B. No. 134, 115 Ohio Laws, Part II, 306, and H.B. No. 590, 116 Ohio Laws, Part II, 101). Maine enacted its first motor vehicle fuel tax in 1923 but did not enact a sales and use tax until 1951. *Portland Pipe Line* at 13; *Harold MacQuinn, Inc. v. Halperin* (Me.1980), 415 A.2d 818, 821. Thus, in both states, at the time the gasoline tax was enacted, there was no method for directly collecting motor vehicle fuel taxes from the consumer. Imposing the gasoline tax on dealers or distributors was a method of streamlining the tax collection process, but the ultimate burden of the tax fell on drivers. *Bettman* at 273; *Portland Pipe Line* at 13.

{¶51} Finally, appellants cite to the *Hickok Oil* decision and argue that both the liquid fuel tax and the gasoline tax are or were taxes on the privilege of doing business and that, because Section 5a was intended to limit those taxes, it also limits the CAT because the CAT is a tax on the privilege of doing business. Admittedly, in *Hickok Oil*, the Supreme Court of Ohio referred to the motor vehicle fuel tax as a "tax levied against the dealer for the privilege of doing business as a dealer * * * measured by the amount of business done." *Id.* at 653. However, in following sentence, the Supreme Court acknowledged that the cost of the tax was passed along to the consumer and, thus, the burden fell on those who used gasoline for driving on the highways and streets. *Id.* As set forth above, I believe it is more appropriate to view the liquid fuel tax and the motor vehicle fuel tax as measures targeted at users of the public roads. The CAT, by contrast,

is a broad-based tax applicable to most businesses in the state. Furthermore, there is no indication that the cost of the CAT paid by appellants is passed along to users of public roads or even to the subcontractors to whom appellants sell gasoline.

{¶52} For all of these reasons, it is clear that the voters who adopted Section 5a would have understood the gasoline tax as a tax targeted at purchasers of gasoline who use that gasoline to drive on the public roads. Section 5a was designed to ensure that the revenues from this tax and other fees and taxes paid by drivers were used for roadway improvements and were not diverted into the general fund. Thus, the phrase "fees, excises, or license taxes relating to * * * fuels used for propelling such vehicles" should be understood as taxes targeted at users of the public roads.

{¶53} Construed in this manner, I believe the Supreme Court of Ohio's decision in *Ohio Grocers Assn. v. Levin*, 123 Ohio St.3d 303, 2009-Ohio-4872, determines the outcome of this appeal. The Supreme Court found that it was "far from clear * * * that [the CAT] falls upon the sale or purchase of food." *Id.* at ¶56. Likewise, here, it is far from clear that the CAT falls upon drivers using the public roads. It is clear, however, that the CAT is not targeted at drivers using the public roads. Therefore, I agree with the majority's conclusion that appellants have not proven by clear and convincing evidence that the CAT, as applied to appellants, is unconstitutional and void.

IN THE COURT OF APPEALS OF OHIO
TENTH APPELLATE DISTRICT

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Beaver Excavating Company et al., :

Plaintiffs-Appellants, :

v. :

Richard A. Levin, :
Tax Commissioner of Ohio, :

Defendant-Appellee. :

No. 10AP-581
(C.P.C. No. 08CVH-03-3921)

(REGULAR CALENDAR)

JUDGMENT ENTRY

For the reasons stated in the decision of this court rendered herein on July 26, 2011, appellant's assignments of error are overruled. Therefore, it is the judgment and order of this court that the judgment of the Franklin County Court of Common Pleas is affirmed. Costs shall be assessed against appellants.

TYACK, CONNOR & DORRIAN, JJ.

By Mary Tyack
Judge G. Gary Tyack

IN THE COURT OF COMMON PLEAS, FRANKLIN COUNTY, OHIO

BEAVER EXCAVATING CO. ET AL,

CASE NO. 08CV-3921

PLAINTIFF,

JUDGE HOLBROOK

VS.

RICHARD A. LEVIN,

TAX COMMISSIONER OF OHIO,

DEFENDANTS.

DECISION ON MOTIONS FOR SUMMARY JUDGMENT

Entered this 18th day of May, 2010.

The Court has for consideration the Motion for Summary Judgment filed by Plaintiffs Beaver Excavating Company, Broshear Contractors, Inc., Gerken Paving, Inc., Independence Excavating Inc., Koksosing Construction Company, Inc., Lykins Companies, Inc., Ohio Machinery Co., Inc. Prus Construction Company, The Ruhlin Company, J.D. Williamson Construction, Co., Inc., Ashland County Engineer Edward J. Meixner, and Highland County Engineer Dean Otworth ("Plaintiffs"). Plaintiffs' motion was filed September 5, 2008. Defendant Richard A. Levin, Tax Commissioner of Ohio has also filed Motions for Summary Judgment, the first filed September 5, 2008 and the second was filed February 5, 2010. The International Union of Operating Engineers, Local 18 has filed an Amicus Curie Brief in support of Plaintiffs' Motion.

Plaintiffs' motion for summary judgment asks this Court to declare the application of Ohio's Commercial Activity Tax ("CAT") to gross receipts relating to motor vehicle fuel used for propelling vehicles on public highways ("motor fuels") violates Article XII, Section 5a of the Ohio Constitution. Plaintiffs seek to enjoin the collection of CAT levies upon gross receipts from

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such motor vehicle fuel. Defendant's motions request that the Court determine as a matter of law that the CAT is valid.

Plaintiffs and Defendant have both offered their views of the historical underpinnings of the corporate franchise tax, the motor vehicle fuel tax, the liquid fuel tax and the background for enactment of the CAT. The instant action was filed in March 2008 and the original arguments of Plaintiffs and Defendant were offered in part with consideration of the Tenth District's decision in *Ohio Grocers Ass'n v. Wilkins*, 178 Ohio App. 3d 145, 2008 Ohio 4420, 897 N.E.2d 188 (*Ohio Grocers I*). The subsequent reversal of that decision by *Ohio Grocers Ass'n v. Wilkins*, 123 Ohio St.3d 303, 2009-Ohio-4872, (*Ohio Grocers II*) has disposed of some of those arguments. The Court will address the remaining substantive arguments below.

Summary judgment, pursuant to Civ.R. 56(C), is proper when there are no genuine issue of material fact, the movant is entitled to judgment as a matter of law, and reasonable minds can come to but one conclusion, that conclusion being adverse to non-movant. *Harless v. Willis Day Warehousing Co.* (1978), 54 Ohio St.2d 64, 375 N.E.2d 46. The movant must offer evidence that affirmatively demonstrates that the nonmoving party has no evidence to support his or her claims. *Dresher v. Burt* (1996), 75 Ohio St.3d 280, 293, 1996 Ohio 107, 662 N.E.2d 264. In addition to the normal scrutiny given to motions for summary judgment, a heightened burden exists when dealing with the constitutionality of statutes. As remarked in *Ohio Grocers II*, parties who challenge the constitutionality of an Ohio statute, bear a heavy burden of persuasion. Duly enacted legislation must be judged by a beyond reasonable doubt standard. (*Ohio Grocers II*, citing *Columbia Gas Transm. Corp. v. Levin*, 117 Ohio St.3d 122, 2008 Ohio 511, 882 N.E.2d 400.) The enactments under consideration must be upheld if they can plausibly be interpreted as

permissible. *Ohio Grocers II*, P11. The Court will consider the offered motions using the above considerations.

The specific sections of the Ohio Constitution are set forth as follows:

Ohio Const. Art. XII,

§3. Imposition of taxes

Laws may be passed providing for:

(A) The taxation of decedents' estates or of the right to receive or succeed to such estates, and the rates of such taxation may be uniform or may be graduated based on the value of the estate, inheritance, or succession. Such tax may also be levied at different rates upon collateral and direct inheritances, and a portion of each estate may be exempt from such taxation as provided by law.

(B) The taxation of incomes, and the rates of such taxation may be either uniform or graduated, and may be applied to such incomes and with such exemptions as may be provided by law.

(C) Excise and franchise taxes and for the imposition of taxes upon the production of coal, oil, gas, and other minerals; except that no excise tax shall be levied or collected upon the sale or purchase of food for human consumption off the premises where sold.

§ 5. Levying of taxes

No tax shall be levied, except in pursuance of law; and every law imposing a tax shall state, distinctly, the object of the same, to which only, it shall be applied.

§ 5a. Use of motor vehicle license and fuel taxes restricted

No moneys derived from fees, excises, or license taxes relating to registration, operation, or use of vehicles on public highways, or to fuels used for propelling such vehicles, shall be expended for other than costs of administering such laws, statutory refunds and adjustments provided

therein, payment of highway obligations, costs for construction, reconstruction, maintenance and repair of public highways and bridges and other statutory highway purposes, expense of state enforcement of traffic laws, and expenditures authorized for hospitalization of indigent persons injured in motor vehicle accidents on the public highways. (“§ 5a”)

Plaintiffs’ position is that § 5a invalidates the CAT as applied to their businesses and governmental entities. The Court stated in *Ohio Grocers II*, supra, that “The CAT is levied “on each person with taxable gross receipts for the privilege of doing business in this state.” R.C. 5751.02(A) [P7] “For many businesses, the CAT replaces the tax on personal property located and used in business in Ohio, see R.C. Chapter 5719, and it replaces the tax on the privilege of exercising the corporate franchise in this state.” Id P6

The Court further stated in its analysis that three fundamental principles governed the analysis of constitutionality. First, it is permissible to tax the privilege of doing business. P16 Second, there is a distinction between a tax *upon* a certain factor and a tax upon a privilege *measured by* that factor. P17 Third, the measuring stick of a privilege-of-doing-business tax may include tax-exempt factors. P20 The Court noted that while the Grocers offered a competing plausible reading, the contrary position was also plausible and given the high standard required for finding unconstitutionality, the Grocers could not prevail.

The decision further elaborated that in examining the language of the statute, R.C. 5751, the legislature denominated the CAT as a tax on the privilege of doing business in the state. It is imposed on the person exercising the privilege. R.C. 5751.02(A) It is imposed upon the entity holding the privilege and on no one else. 5751.02(B) The privilege is assessed if exercised for any portion of the calendar year. 5751.02(B) It is not levied transaction by transaction, but over

a quarterly or annual period. The tax is the product of "taxpayer's taxable gross receipts." R.C. 5751.03(A) ["after subtracting the exclusion amount in R.C. 5751.03(C)"]

The Court's ultimate opinion was that when "the CAT's practical operation is considered, it becomes evident that it is what it purports to be: a permissible tax on the privilege of doing business, not a proscribed tax upon the sale or purchase of food." P14 The Court's holding was that the CAT was not an excise tax "upon the sale or purchase of food" and did not violate the Ohio constitution. In examining the instant matter, this Court must come to the same conclusion as to the impact of the CAT upon gross receipts from the sales of motor vehicle fuels as contemplated by § 5a.

Plaintiffs maintain that the CAT is an excise tax and under R.C. 5751.01(F)(2)(ff) "Any receipts for which the tax imposed by this chapter is prohibited by the Constitution or laws of the United States or the Constitution of Ohio." The Commissioner has responded that it is the expenditure of the tax collected that is affected by § 5a, not the collection. Plaintiffs have offered that the General Assembly, in its passage of Chapter 5751, has exempted some areas from the CAT. Plaintiffs do not posit that such exemptions have rendered the tax unconstitutional. Plaintiffs have also pointed out that the Commissioner granted a two-year exclusion of gross receipts on motor vehicle fuel. This obviously benefited Plaintiffs and like situated businesses and governmental departments but does not generate unconstitutionality.

Plaintiffs urge that the Court apply the simple and common language of the constitutional section to find that it prohibits application of the CAT. *State Ex Rel Greenland v. Fulton* (1919), 99 Ohio St. 168 The Court accepts that duty, but is required to find the legislative promulgation valid unless shown that it is not by beyond a reasonable doubt. *Ohio Grocers II*, supra, and

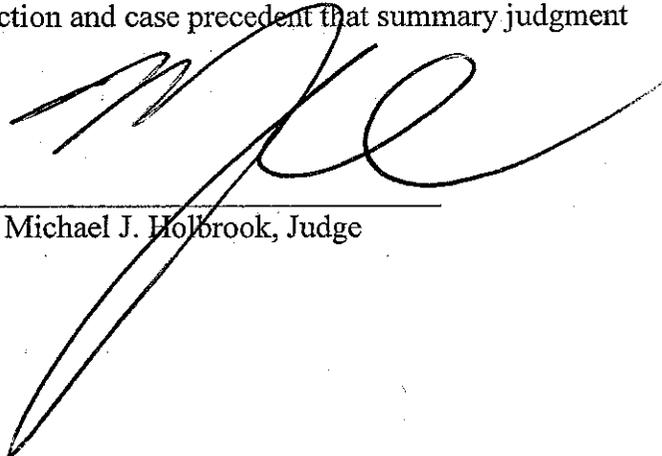
Plaintiffs contend that as the CAT is measured by gross receipts it is an excise tax relating to motor vehicle fuel and prohibited by § 5a. The Supreme Court in *Ohio Grocers II* disagreed with the appellate court's determination in *Ohio Grocers I* that the "CAT when applied to gross receipts from the wholesale sale of food and from the retail sale of food for human consumption off premises where sold, operates as, and is, an excise tax levied or collected upon the sale or purchase of food, which is prohibited by Sections 3 and 13 of Article XII of the Ohio Constitution." P27 While Plaintiffs advance that the relating to motor vehicle fuel language in § 5a is broader in scope than taxes on the sale of food, the dispositive holding of the Supreme Court is that it found it was "plausible to read Sections 3(C) and 13 as permitting the imposition of a privilege-of-doing-business tax on a food seller and measuring that tax by gross receipts including proceeds from the sale of food." P22 Substitution of fuels used for propelling vehicles on public highways would not significantly alter the above holding.

Plaintiffs have asserted that the operation of the CAT will place collected taxes into the general revenue fund, the school district tangible property tax fund, and the local government tangible property tax repayment fund pursuant to R.C. 5751.20. This appears to be a correct assertion. The Commissioner contends that it does not violate the constitution because the ultimate disposition is not dictated by such placement but rather it is the expenditure of funds for non § 5a purposes that would be at issue. Plaintiffs have responded that placing a burden upon them to delay until expenditures were authorized would emasculate the section. Plaintiffs state that the general revenue fund, the school district fund and the local government fund are unconstitutional objects of the collected monies. Plaintiffs offer R.C. 5751.31 in support of their

right to contest the application of the CAT. That section provides a right of review in the Supreme Court of final determinations under R.C. 5751.60 of the Commissioner. Had the *Ohio Grocers II* opinion been different, then the above arguments would require resolution. In light of that holding, they do not.

While both sides have offered lengthy recitations of the genesis of § 5a, the same rationale applies as above stated. Established law is that the CAT is a permissible revenue collection statute focused on the privilege of doing business in the state. The fact that it is measured by gross receipts on sales or uses that would not be directly taxable or that require earmarking of the collected funds does not invalidate the collection.

It is concluded that summary judgment is proper for the Defendant, Richard A. Levin, Tax Commissioner of Ohio and is not supported in favor of Plaintiffs. The Court finds upon both application of the rules of statutory construction and case precedent that summary judgment in favor of Defendant should be granted.



Michael J. Holbrook, Judge

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ARTICLE II: LEGISLATIVE

ARTICLE II: LEGISLATIVE

IN WHOM POWER VESTED.

§1 The legislative power of the state shall be vested in a General Assembly consisting of a Senate and House of Representatives but the people reserve to themselves the power to propose to the General Assembly laws and amendments to the constitution, and to adopt or reject the same at the polls on a referendum vote as hereinafter provided. They also reserve the power to adopt or reject any law, section of any law or any item in any law appropriating money passed by the General Assembly, except as herein after provided; and independent of the General Assembly to propose amendments to the constitution and to adopt or reject the same at the polls. The limitations expressed in the constitution, on the power of the General Assembly to enact laws, shall be deemed limitations on the power of the people to enact laws.

(1851, am. 1912, 1918, 1953)

INITIATIVE AND REFERENDUM TO AMEND CONSTITUTION.

§1a The first aforesaid power reserved by the people is designated the initiative, and the signatures of ten per centum of the electors shall be required upon a petition to propose an amendment to the constitution. When a petition signed by the aforesaid required number of electors, shall have been filed with the secretary of state, and verified as herein provided, proposing an amendment to the constitution, the full text of which shall have been set forth in such petition, the secretary of state shall submit for the approval or rejection of the electors, the proposed amendment, in the manner hereinafter provided, at the next succeeding regular or general election in any year occurring subsequent to one hundred twenty-five days after the filing of such petition. The initiative petitions, above described, shall have printed across the top thereof: "Amendment to the Constitution Proposed by Initiative Petition to be Submitted Directly to the Electors."

(1912, am. 2008)

INITIATIVE AND REFERENDUM TO ENACT LAWS.

§1b When at any time, not less than ten days prior to the commencement of any session of the General Assembly, there shall have been filed with the secretary of state a petition signed by three per centum of the electors and verified as herein provided, proposing a law,

the full text of which shall have been set forth in such petition, the secretary of state shall transmit the same to the General Assembly as soon as it convenes. If said proposed law shall be passed by the General Assembly, either as petitioned for or in an amended form, it shall be subject to the referendum. If it shall not be passed, or if it shall be passed in an amended form, or if no action shall be taken thereon within four months from the time it is received by the General Assembly, it shall be submitted by the secretary of state to the electors for their approval or rejection, if such submission shall be demanded by supplementary petition verified as herein provided and signed by not less than three per centum of the electors in addition to those signing the original petition, which supplementary petition must be signed and filed with the secretary of state within ninety days after the proposed law shall have been rejected by the General Assembly or after the expiration of such term of four months, if no action has been taken thereon, or after the law as passed by the General Assembly shall have been filed by the governor in the office of the secretary of state. The proposed law shall be submitted at the next regular or general election occurring subsequent to one hundred twenty-five days after the supplementary petition is filed in the form demanded by such supplementary petition which form shall be either as first petitioned for or with any amendment or amendments which may have been incorporated therein by either branch or by both branches, of the General Assembly. If a proposed law so submitted is approved by a majority of the electors voting thereon, it shall be the law and shall go into effect as herein provided in lieu of any amended form of said law which may have been passed by the General Assembly, and such amended law passed by the General Assembly shall not go into effect until and unless the law proposed by supplementary petition shall have been rejected by the electors. All such initiative petitions, last above described, shall have printed across the top thereof, in case of proposed laws: "Law Proposed by Initiative Petition First to be Submitted to the General Assembly." Ballots shall be so printed as to permit an affirmative or negative vote upon each measure submitted to the electors. Any proposed law or amendment to the constitution submitted to the electors as provided in section 1a and section 1b, if approved by a majority of the electors voting thereon, shall take effect thirty days after the election at which it was approved and shall be published by the secretary of state. If conflicting

ARTICLE II: LEGISLATIVE

proposed laws or conflicting proposed amendments to the constitution shall be approved at the same election by a majority of the total number of votes cast for and against the same, the one receiving the highest number of affirmative votes shall be the law, or in the case of amendments to the constitution shall be the amendment to the constitution. No law proposed by initiative petition and approved by the electors shall be subject to the veto of the governor.

(1912, am. 2008)

REFERENDUM TO CHALLENGE LAWS ENACTED BY GENERAL ASSEMBLY.

§1c The second aforesated power reserved by the people is designated the referendum, and the signatures of six per centum of the electors shall be required upon a petition to order the submission to the electors of the state for their approval or rejection, of any law, section of any law or any item in any law appropriating money passed by the General Assembly. No law passed by the General Assembly shall go into effect until ninety days after it shall have been filed by the governor in the office of the secretary of state, except as herein provided. When a petition, signed by six per centum of the electors of the state and verified as herein provided, shall have been filed with the secretary of state within ninety days after any law shall have been filed by the governor in the office of the secretary of state, ordering that such law, section of such law or any item in such law appropriating money be submitted to the electors of the state for their approval or rejection, the secretary of state shall submit to the electors of the state for their approval or rejection such law, section or item, in the manner herein provided, at the next succeeding regular or general election in any year occurring subsequent to one hundred twenty-five days after the filing of such petition, and no such law, section or item shall go into effect until and unless approved by a majority of those voting upon the same. If, however, a referendum petition is filed against any such section or item, the remainder of the law shall not thereby be prevented or delayed from going into effect.

(1912, am. 2008)

EMERGENCY LAWS; NOT SUBJECT TO REFERENDUM.

§1d Laws providing for tax levies, appropriations for the current expenses of the state government and state institutions, and emergency laws necessary for the immediate preservation of the public peace, health or

safety, shall go into immediate effect. Such emergency laws upon a yea and nay vote must receive the vote of two thirds of all the members elected to each branch of the General Assembly, and the reasons for such necessity shall be set forth in one section of the law, which section shall be passed only upon a yea and nay vote, upon a separate roll call thereon. The laws mentioned in this section shall not be subject to the referendum.

(1912)

POWERS; LIMITATION OF USE.

§1e The powers defined herein as the "initiative" and "referendum" shall not be used to pass a law authorizing any classification of property for the purpose of levying different rates of taxation thereon or of authorizing the levy of any single tax on land or land values or land sites at a higher rate or by a different rule than is or may be applied to improvements thereon or to personal property.

(1912)

POWER OF MUNICIPALITIES.

§1f The initiative and referendum powers are hereby reserved to the people of each municipality on all questions which such municipalities may now or hereafter be authorized by law to control by legislative action; such powers shall be exercised in the manner now or hereafter provided by law.

(1912)

PETITION REQUIREMENTS AND PREPARATION; SUBMISSION; BALLOT LANGUAGE; BY OHIO BALLOT BOARD.

§1g Any initiative, supplementary, or referendum petition may be presented in separate parts but each part shall contain a full and correct copy of the title, and text of the law, section or item thereof sought to be referred, or the proposed law or proposed amendment to the constitution. Each signer of any initiative, supplementary, or referendum petition must be an elector of the state and shall place on such petition after his name the date of signing and his place of residence. A signer residing outside of a municipality shall state the county and the rural route number, post office address, or township of his residence. A resident of a municipality shall state the street and number, if any, of his residence and the name of the municipality or the post office address. The names of all signers to such petitions shall be written in ink, each signer for himself. To each part of such petition shall be attached the

ARTICLE II: LEGISLATIVE

statement of the circulator, as may be required by law, that he witnessed the affixing of every signature. The secretary of state shall determine the sufficiency of the signatures not later than one hundred five days before the election.

The Ohio supreme court shall have original, exclusive jurisdiction over all challenges made to petitions and signatures upon such petitions under this section. Any challenge to a petition or signature on a petition shall be filed not later than ninety-five days before the day of the election. The court shall hear and rule on any challenges made to petitions and signatures not later than eighty-five days before the election. If no ruling determining the petition or signatures to be insufficient is issued at least eighty-five days before the election, the petition and signatures upon such petitions shall be presumed to be in all respects sufficient.

If the petitions or signatures are determined to be insufficient, ten additional days shall be allowed for the filing of additional signatures to such petition. If additional signatures are filed, the secretary of state shall determine the sufficiency of those additional signatures not later than sixty-five days before the election. Any challenge to the additional signatures shall be filed not later than fifty-five days before the day of the election. The court shall hear and rule on any challenges made to the additional signatures not later than forty-five days before the election. If no ruling determining the additional signatures to be insufficient is issued at least forty-five days before the election, the petition and signatures shall be presumed to be in all respects sufficient.

No law or amendment to the constitution submitted to the electors by initiative and supplementary petition and receiving an affirmative majority of the votes cast thereon, shall be held unconstitutional or void on account of the insufficiency of the petitions by which such submission of the same was procured; nor shall the rejection of any law submitted by referendum petition be held invalid for such insufficiency. Upon all initiative, supplementary, and referendum petitions provided for in any of the sections of this article, it shall be necessary to file from each of one-half of the counties of the state, petitions bearing the signatures of not less than one-half of the designated percentage of the electors of such county. A true copy of all laws or proposed laws or proposed amendments to the constitution, together with an argument or explanation, or both, for, and also an argument or explanation, or

both, against the same, shall be prepared. The person or persons who prepare the argument or explanation, or both, against any law, section, or item, submitted to the electors by referendum petition, may be named in such petition and the persons who prepare the argument or explanation, or both, for any proposed law or proposed amendment to the constitution may be named in the petition proposing the same. The person or persons who prepare the argument or explanation, or both, for the law, section, or item, submitted to the electors by referendum petition, or against any proposed law submitted by supplementary petition, shall be named by the General Assembly, if in session, and if not in session then by the governor. The law, or proposed law, or proposed amendment to the constitution, together with the arguments and explanations, not exceeding a total of three hundred words for each, and also the arguments and explanations, not exceeding a total of three hundred words against each, shall be published once a week for three consecutive weeks preceding the election, in at least one newspaper of general circulation in each county of the state, where a newspaper is published. The secretary of state shall cause to be placed upon the ballots, the ballot language for any such law, or proposed law, or proposed amendment to the constitution, to be submitted. The ballot language shall be prescribed by the Ohio ballot board in the same manner, and subject to the same terms and conditions, as apply to issues submitted by the general assembly pursuant to Section 1 of Article XVI of this constitution: The ballot language shall be so prescribed and the secretary of state shall cause the ballots so to be printed as to permit an affirmative or negative vote upon each law, section of law, or item in a law appropriating money, or proposed law, or proposed amendment to the constitution. The style of all laws submitted by initiative and supplementary petition shall be: "Be it Enacted by the People of the State of Ohio," and of all constitutional amendments: "Be it Resolved by the People of the State of Ohio." The basis upon which the required number of petitioners in any case shall be determined shall be the total number of votes cast for the office of governor at the last preceding election therefor. The foregoing provisions of this section shall be self-executing, except as herein otherwise provided. Laws may be passed to facilitate their operation but in no way limiting or restricting either such provisions or the powers herein reserved.

(1912, am. 1971, 1978, 2008)

ARTICLE XII: FINANCE AND TAXATION

SEVERABILITY PROVISION.

§15 The various provisions of this Article XI are intended to be severable, and the invalidity of one or more of such provisions shall not affect the validity of the remaining provisions.

(1967)

ARTICLE XII: FINANCE AND TAXATION

POLL TAXES PROHIBITED.

§1 No poll tax shall ever be levied in this state, or service required, which may be commuted in money or other thing of value.

(1851, am. 1912)

LIMITATION ON TAX RATE; EXEMPTION.

§2 No property, taxed according to value, shall be so taxed in excess of one per cent of its true value in money for all state and local purposes, but laws may be passed authorizing additional taxes to be levied outside of such limitation, either when approved by at least a majority of the electors of the taxing district voting on such proposition, or when provided for by the charter of a municipal corporation. Land and improvements thereon shall be taxed by uniform rule according to value, except that laws may be passed to reduce taxes by providing for a reduction in value of the homestead of permanently and totally disabled residents, residents sixty-five years of age and older, and residents sixty years of age or older who are surviving spouses of deceased residents who were sixty-five years of age or older or permanently and totally disabled and receiving a reduction in the value of their homestead at the time of death, provided the surviving spouse continues to reside in a qualifying homestead, and providing for income and other qualifications to obtain such reduction. Without limiting the general power, subject to the provisions of Article I of this constitution, to determine the subjects and methods of taxation or exemptions therefrom, general laws may be passed to exempt burying grounds, public school houses, houses used exclusively for public worship, institutions used exclusively for charitable purposes, and public property used exclusively for any public purpose, but all such laws shall be subject to alteration or repeal; and the value of all property so exempted

shall, from time to time, be ascertained and published as may be directed by law.

(1851, am. 1906, 1912, 1918, 1929, 1933, 1970, 1974, 1990)

AUTHORITY TO CLASSIFY REAL ESTATE FOR TAXATION; PROCEDURES.

§2a (A) Except as expressly authorized in this section, land and improvements thereon shall, in all other respects, be taxed as provided in Section 36, of Article II and Section 2 of this article

(B) This section does not apply to any of the following:

(1) Taxes levied at whatever rate is required to produce a specified amount of tax money or an amount to pay debt charges;

(2) Taxes levied within the one per cent limitation imposed by Section 2 of this article;

(3) Taxes provided for by the charter of a municipal corporation.

(C) Notwithstanding Section 2 of this article, laws may be passed that provide all of the following:

(1) Land and improvements thereon in each taxing district shall be placed into one of two classes solely for the purpose of separately reducing the taxes charged against all land and improvements in each of the two classes as provided in division (C)(2) of this section. The classes shall be:

(a) Residential and agricultural land and improvements;

(b) All other land and improvements.

(2) With respect to each voted tax authorized to be levied by each taxing district, the amount of taxes imposed by such tax against all land and improvements thereon in each class shall be reduced in order that the amount charged for collection against all land and improvements in that class in the current year, exclusive of land and improvements not taxed by the district in both the preceding year and in the current year and those not taxed in that class in the preceding year, equals the amount charged for collection against such land and improvements in the preceding year.

(D) Laws may be passed to provide that the reductions made under this section in the amounts of taxes charged for the current expenses of cities, townships, school districts, counties, or other taxing districts are

ARTICLE XII: FINANCE AND TAXATION

subject to the limitation that the sum of the amounts of all taxes charged for current expenses against the land and improvements thereon in each of the two classes of property subject to taxation in cities, townships, school districts, counties, or other types of taxing districts, shall not be less than a uniform per cent of the taxable value of the property in the districts to which the limitation applies. Different but uniform percentage limitations may be established for cities, townships, school districts, counties, and other types of taxing districts.

(1980)

IMPOSITION OF TAXES.

§3 Laws may be passed providing for:

(A) The taxation of decedents' estates or of the right to receive or succeed to such estates, and the rates of such taxation may be uniform or may be graduated based on the value of the estate, inheritance, or succession. Such tax may also be levied at different rates upon collateral and direct inheritances, and a portion of each estate may be exempt from such taxation as provided by law.

(B) The taxation of incomes, and the rates of such taxation may be either uniform or graduated, and may be applied to such incomes and with such exemptions as may be provided by law.

(C) Excise and franchise taxes and for the imposition of taxes upon the production of coal, oil, gas, and other minerals; except that no excise tax shall be levied or collected upon the sale or purchase of food for human consumption off the premises where sold.

(1976)

REVENUE TO PAY EXPENSES AND RETIRE DEBTS.

§4 The General Assembly shall provide for raising revenue, sufficient to defray the expenses of the state, for each year, and also a sufficient sum to pay principal and interest as they become due on the state debt.

(1851, am. 1976)

LEVYING OF TAXES.

§5 No tax shall be levied, except in pursuance of law; and every law imposing a tax shall state, distinctly, the object of the same, to which only, it shall be applied.

(1851)

USE OF MOTOR VEHICLE LICENSE AND FUEL TAXES RESTRICTED.

§5a No moneys derived from fees, excises, or license taxes relating to registration, operation, or use of vehicles on public highways, or to fuels used for propelling such vehicles, shall be expended for other than costs of administering such laws, statutory refunds and adjustments provided therein, payment of highway obligations, costs for construction, reconstruction, maintenance and repair of public highways and bridges and other statutory highway purposes, expense of state enforcement of traffic laws, and expenditures authorized for hospitalization of indigent persons injured in motor vehicle accidents on the public highways.

(1947)

NO DEBT FOR INTERNAL IMPROVEMENT.

§6 Except as otherwise provided in this constitution the state shall never contract any debt for purposes of internal improvement.

(1851, am. 1912)

REPEALED. REFERRED TO TAXATION OF INHERITANCES.

§7

(1912, rep. 1976)

REPEALED. REFERRED TO TAXATION OF INCOMES.

§8

(1912, am. 1973, rep. 1976)

APPORTIONMENT OF INCOME, ESTATE, AND INHERITANCE TAXES.

§9 Not less than fifty per cent of the income, estate, and inheritance taxes that may be collected by the state shall be returned to the county, school district, city, village, or township in which said income, estate, or inheritance tax originates, or to any of the same, as may be provided by law.

(1912, am. 1930, 1976)

REPEALED. REFERRED TO TAXATION OF FRANCHISES AND PRODUCTION OF MINERALS.

§10

(1912, rep. 1976)

ARTICLE XIII: CORPORATIONS

SINKING FUND.

§11 No bonded indebtedness of the state, or any political subdivisions thereof, shall be incurred or renewed unless, in the legislation under which such indebtedness is incurred or renewed, provision is made for levying and collecting annually by taxation an amount sufficient to pay the interest on said bonds, and to provide a sinking fund for their final redemption at maturity.

(1912)

REPEALED. SPECIFIED THAT NO EXCISE TAX WOULD BE LEVIED UPON THE SALE OR PURCHASE OF FOOD FOR HUMAN CONSUMPTION OFF THE PREMISES WHERE SOLD.

§12

(1936, rep. 1976)

WHOLESALE TAXES ON FOODS.

§13 No sales or other excise taxes shall be levied or collected (1) upon any wholesale sale or wholesale purchase of food for human consumption, its ingredients or its packaging, (2) upon any sale or purchase of such items sold to or purchased by a manufacturer, processor, packager, distributor or reseller of food for human consumption, or its ingredients, for use in its trade or business; or (3) in any retail transaction, on any packaging that contains food for human consumption on or off the premises where sold. For purposes of this section, food for human consumption shall include nonalcoholic beverages. This section shall not affect the extent to which the levy or collection of sales or other excise taxes on the retail sale or retail purchase of food for human consumption is permitted or prohibited by Section 3(C) of this Article.

(1994)

ARTICLE XIII: CORPORATIONS

SPECIAL ACTS CONFERRING CORPORATE POWERS; PROHIBITED.

§1 The General Assembly shall pass no special act conferring corporate powers.

(1851)

CORPORATIONS, HOW FORMED.

§2 Corporations may be formed under general laws; but all such laws may, from time to time, be altered

or repealed. Corporations may be classified and there may be conferred upon proper boards, commissions or officers, such supervisory and regulatory powers over their organization, business and issue and sale of stocks and securities and over the business and sale of the stocks and securities of foreign corporations and joint stock companies in this state, as may be prescribed by law. Laws may be passed regulating the sale and conveyance of other personal property, whether owned by a corporation, joint stock company or individual.

(1851, am. 1912)

LIABILITY OF STOCKHOLDERS FOR UNPAID SUBSCRIPTIONS; DUES FROM CORPORATIONS; HOW SECURED; INSPECTION OF PRIVATE BANKS.

§3 Dues from private corporations shall be secured by such means as may be prescribed by law, but in no case shall any stockholder be individually liable otherwise than for the unpaid stock owned by him or her. No corporation not organized under the laws of this state, or of the United States, or person, partnership or association shall use the word "bank," "banker" or "banking," or words of similar meaning in any foreign language, as a designation or name under which business may be conducted in this state unless such corporation, person, partnership or association shall submit to inspection, examination and regulation as may hereafter be provided by the laws of this state.

(1851, am. 1903, 1912, 1937)

CORPORATE PROPERTY SUBJECT TO TAXATION.

§4 The property of corporations, now existing or hereafter created, shall forever be subject to taxation, the same as the property of individuals.

(1851)

CORPORATE POWER OF EMINENT DOMAIN TO OBTAIN RIGHTS OF WAY; PROCEDURE; JURY TRIAL.

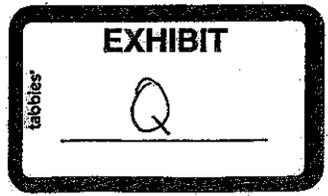
§5 No right of way shall be appropriated to the use of any corporation, until full compensation therefor be first made in money or first secured by a deposit of money, to the owner, irrespective of any benefit from any improvement proposed by such corporation, which compensation shall be ascertained by a jury of twelve men, in a court of record, as shall be prescribed by law.

(1851)

Proposed Amendments to the Constitution of Ohio, Section 5b

PROPOSED AMENDMENTS TO THE CONSTITUTION OF OHIO (Proposed by Initiative Petition)	
<input type="checkbox"/>	<p>Proposing to amend Article XII of the Constitution of the State of Ohio by adopting Section 5a. relative to the taxation of motor vehicles and the use of the revenue derived from license taxes thereon.</p> <p>ARTICLE XII</p> <p>Section 5a. Motor vehicles registered by the owner thereof, upon the use of which on the public highways a license tax is imposed and paid, shall not be taxed in the same year as property, and the revenue derived from such license taxes shall be applied only for public thoroughfare purposes, including the control and protection of traffic thereon, and shall not be diverted by transfer of funds or otherwise to any other object.</p> <p>SCHEDULE</p> <p>The foregoing section shall take effect on the first day of January, 1935.</p>
<input type="checkbox"/> YES <input type="checkbox"/> NO	SHALL THIS PROPOSED AMENDMENT BE ADOPTED?
<input type="checkbox"/>	<p>Proposing to amend Article XII of the Constitution of the State of Ohio by adopting Section 5b. relative to motor vehicle fuel excise taxes and the use of the revenue derived therefrom.</p> <p>ARTICLE XII</p> <p>Section 5b. Excise taxes imposed upon the receipt, storage, use, disposition or purchase of fuel suitable for use in propelling motor vehicles, or upon any two or more of the same, shall be measured by a specific sum for each unit of quantity, which shall not exceed three cents per gallon, shall be applied only for public thoroughfare purposes, including the control and protection of traffic thereon, and shall not be diverted by transfer of funds or otherwise to any other object.</p> <p>SCHEDULE</p> <p>The foregoing section shall take effect on the first day of July, 1935.</p>
<input type="checkbox"/> YES <input type="checkbox"/> NO	SHALL THIS PROPOSED AMENDMENT BE ADOPTED?

0043



1.42 Common, technical or particular terms.

Words and phrases shall be read in context and construed according to the rules of grammar and common usage. Words and phrases that have acquired a technical or particular meaning, whether by legislative definition or otherwise, shall be construed accordingly.

Effective Date: 01-03-1972

113.09 Creation of general revenue fund.

Except as provided in section 113.10 of the Revised Code, all moneys deposited with the treasurer of state, the disposition of which is not otherwise provided for by law, shall be credited to the general revenue fund, which is hereby created in the state treasury. If a warrant for the payment of money from the state treasury has been illegally or improperly issued , or the amount of a warrant exceeds the sum that should have been named therein, and payment of such warrant or excess has been made by the treasurer of state, the director of budget and management shall, unless the account of the appropriation from which it was paid has been closed, credit the amount collected to such appropriation; but, if such account has been closed, the director shall credit the amount so collected to the fund on which the warrant was originally drawn.

All investment earnings on moneys deposited in the state treasury shall be credited to the general revenue fund unless:

(A) The disposition of the earnings is otherwise provided for by law;

(B) The director has provided in the plan approved under section 131.36 of the Revised Code that a different fund is entitled to the earnings.

Effective Date: 07-01-1992; 12-01-2006

(Amended Substitute House Bill No. 155)

AN ACT

To amend sections 115.31, 124.15, 124.16, 124.18, 125.81, 126.09, 127.02, 127.03, 127.04, 127.21, 127.26, 143.62, 149.30, 153.04, 173.02, 742.36, 3317.02, 3317.05, 3317.06, 3317.062, 3318.04, 3333.12, 3343.05, 3706.02, 3901.07, 4751.03, 4905.10, 5121.04, 5123.94, 5139.06, 5315.02, 5728.03, 5735.26, 5735.291, 6101.451, 6123.02, and 6123.05, to amend to adopt a new section number as indicated in parentheses sections 127.21 (126.10), 127.26 (126.11), and 143.62 (124.82), to enact sections 124.181, 127.011, 127.11, 127.12, 127.13, 127.14, 127.15, 127.16, 127.17, 3311.40, 3333.041, and 3901.39, new section 124.14, and to repeal sections 124.14, 124.141, 5139.41, 5139.42, 5139.43, 5139.44, 5139.45, 5139.46, 5139.47, 5139.48, 5139.49, 5139.50, 5139.51, 5139.52, and 5139.53 of the Revised Code relative to eliminating existing classifications for state and county welfare positions, to provide state employee pay raises, to provide employee pay schedules, to establish a controlling board, to expand the membership and duties of the emergency board, to clarify the joint duties of the controlling board and the emergency board, to transfer the authority over the business

The above boxed material was disapproved June 29, 1975 by James A. Rhodes.

manager from the board of trustees at Central state university, to modify support provisions relative to institutions of the department of mental health and mental retardation, to make state institutions eligible for reimbursement of costs when a patient hospitalized in a state institution has insurance coverage, to raise the adjusted effective income upper limit for eligibility for instructional grants, to increase the assessment against public utilities for the support of the public utilities commission, to require the board of regents to promulgate rules to require affirmative action programs at the institutions of higher education, to increase the flexibility of the Ohio youth commission in releasing committed youth, to eliminate support payments for care of children to the Ohio youth commission, to require school districts to file amended official certificates, to change administrative responsibility for the state capital plan, and miscellaneous other changes regarding the employment of state employees and officers, to make general appropriations for the biennium beginning July 1, 1975, and ending June 30, 1977.

Be it enacted by the General Assembly of the State of Ohio:

SECTION 1. That sections 115.31, 124.15, 124.16, 124.18, 125.81, 126.09, ~~127.02, 127.03, 127.04,~~ 127.21, 127.26, 143.62, 149.30, 153.04, 173.02, 742.36, 3317.02, 3317.05, 3317.06, 3317.062, 3318.04, 3333.12, 3343.05, 3706.02, 3901.07, 4751.03, 4905.10, 5121.04, 5123.94, 5139.06, 5315.02, 5728.08, 5735.26, 5735.291, 6101.451, 6123.02, and 6123.05 be amended, that sections 127.21

The above boxed material was disapproved June 29, 1975 by James A. Rhodes.

(126.10), 127.26 (126.11), and 143.62 (124.82) be amended for the purpose of adopting a new section number as indicated in parentheses, and sections 124.181, 127.011, 127.11, 127.12, 127.13, 127.14, 127.15, 127.16, 127.17, 3311.40, 3333.041, and 3901.39 and new section 124.14 of the Revised Code be enacted to read as follows:

Sec. 115.31. Whenever a deficit exists in the general revenue fund or any other fund of the state, by reason of which the general operating expenses of the state cannot be paid from appropriations made from such fund, an emergency exists and the auditor of state may, with the approval of the emergency CONTROLLING board, make temporary transfers to such fund of any surplus moneys in any other fund available for state purposes. Any fund from which moneys are so transferred shall be reimbursed from the first moneys accruing and available for such purpose. The auditor of state may make the necessary transfers to reimburse funds from which moneys have been transferred, and he shall certify such action to the treasurer of state.

Sec. 124.14. (A) THE DIRECTOR OF ADMINISTRATIVE SERVICES WITH THE APPROVAL OF THE STATE EMPLOYEE COMPENSATION BOARD SHALL ESTABLISH, AND MAY MODIFY OR REPEAL, BY RULE A JOB CLASSIFICATION PLAN FOR ALL POSITIONS, OFFICES, AND EMPLOYMENTS THE SALARIES OF WHICH ARE PAID IN WHOLE OR IN PART BY THE STATE. THE DIRECTOR WITH THE APPROVAL OF THE BOARD SHALL GROUP JOBS WITHIN A CLASSIFICATION SO THAT THE POSITIONS ARE SIMILAR ENOUGH IN DUTIES AND RESPONSIBILITIES TO BE DESCRIBED BY THE SAME TITLE, TO HAVE THE SAME PAY ASSIGNED WITH EQUITY, AND TO HAVE THE SAME QUALIFICATIONS FOR SELECTION APPLIED. HOWEVER, THE DIRECTOR WITH THE APPROVAL OF THE BOARD SHALL CONSIDER IN ESTABLISHING CLASSIFICATIONS AND ASSIGNING PAY RANGES SUCH FACTORS AS DUTIES PERFORMED ONLY ON ONE SHIFT, SPECIAL SKILLS IN SHORT SUPPLY IN THE LABOR MARKET, RECRUITMENT PROBLEMS, SEPARATION RATES, COMPARATIVE SALARY RATES, THE AMOUNT OF TRAINING REQUIRED, AND OTHER CONDITIONS AFFECTING EMPLOYMENT. THE DIRECTOR WITH THE APPROVAL OF THE BOARD SHALL DESCRIBE THE DUTIES AND RESPONSIBILITIES OF THE CLASS AND ESTABLISH THE QUALIFICATIONS FOR BEING EMPLOYED IN THAT POSITION; THE BOARD SHALL FILE WITH THE SECRETARY OF STATE A COPY OF SPECIFICATIONS FOR ALL OF THE CLASSIFICATIONS. NEW, ADDITIONAL, OR REVISED SPECIFICATIONS SHALL BE FILED WITH THE SECRETARY OF STATE BEFORE BEING USED. THE DIRECTOR WITH THE APPROVAL OF THE BOARD SHALL BY RULE ASSIGN EACH CLASSIFICATION,

The above hoxed material was disapproved June 29, 1975 by James A. Rhodes.

131.32 Classifying funds of state and custodial funds of state treasurer.

The director of budget and management may, for external financial reporting purposes, classify the funds of the state and the custodial funds of the treasurer of state in a manner required or permitted by generally accepted accounting principles.

Effective Date: 07-01-1985

0049

Chapter 5705: TAX LEVY LAW

5705.01 Tax levy law definitions.

As used in this chapter:

0050

(A) "Subdivision" means any county; municipal corporation; township; township police district; joint police district; township fire district; joint fire district; joint ambulance district; joint emergency medical services district; fire and ambulance district; joint recreation district; township waste disposal district; township road district; community college district; technical college district; detention facility district; a district organized under section 2151.65 of the Revised Code; a combined district organized under sections 2152.41 and 2151.65 of the Revised Code; a joint-county alcohol, drug addiction, and mental health service district; a drainage improvement district created under section 6131.52 of the Revised Code; a union cemetery district; a county school financing district; a city, local, exempted village, cooperative education, or joint vocational school district; or a regional student education district created under section 3313.83 of the Revised Code.

(B) "Municipal corporation" means all municipal corporations, including those that have adopted a charter under Article XVIII, Ohio Constitution.

(C) "Taxing authority" or "bond issuing authority" means, in the case of any county, the board of county commissioners; in the case of a municipal corporation, the council or other legislative authority of the municipal corporation; in the case of a city, local, exempted village, cooperative education, or joint vocational school district, the board of education; in the case of a community college district, the board of trustees of the district; in the case of a technical college district, the board of trustees of the district; in the case of a detention facility district, a district organized under section 2151.65 of the Revised Code, or a combined district organized under sections 2152.41 and 2151.65 of the Revised Code, the joint board of county commissioners of the district; in the case of a township, the board of township trustees; in the case of a joint police district, the joint police district board; in the case of a joint fire district, the board of fire district trustees; in the case of a joint recreation district, the joint recreation district board of trustees; in the case of a joint-county alcohol, drug addiction, and mental health service district, the district's board of alcohol, drug addiction, and mental health services; in the case of a joint ambulance district or a fire and ambulance district, the board of trustees of the district; in the case of a union cemetery district, the legislative authority of the municipal corporation and the board of township trustees, acting jointly as described in section 759.341 of the Revised Code; in the case of a drainage improvement district, the board of county commissioners of the county in which the drainage district is located; in the case of a joint emergency medical services district, the joint board of county commissioners of

all counties in which all or any part of the district lies; and in the case of a township police district, a township fire district, a township road district, or a township waste disposal district, the board of township trustees of the township in which the district is located. "Taxing authority" also means the educational service center governing board that serves as the taxing authority of a county school financing district as provided in section 3311.50 of the Revised Code, and the board of directors of a regional student education district created under section 3313.83 of the Revised Code.

(D) "Fiscal officer" in the case of a county, means the county auditor; in the case of a municipal corporation, the city auditor or village clerk, or an officer who, by virtue of the charter, has the duties and functions of the city auditor or village clerk, except that in the case of a municipal university the board of directors of which have assumed, in the manner provided by law, the custody and control of the funds of the university, the chief accounting officer of the university shall perform, with respect to the funds, the duties vested in the fiscal officer of the subdivision by sections 5705.41 and 5705.44 of the Revised Code; in the case of a school district, the treasurer of the board of education; in the case of a county school financing district, the treasurer of the educational service center governing board that serves as the taxing authority; in the case of a township, the township fiscal officer; in the case of a joint police district, the treasurer of the district; in the case of a joint fire district, the clerk of the board of fire district trustees; in the case of a joint ambulance district, the clerk of the board of trustees of the district; in the case of a joint emergency medical services district, the person appointed as fiscal officer pursuant to division (D) of section 307.053 of the Revised Code; in the case of a fire and ambulance district, the person appointed as fiscal officer pursuant to division (B) of section 505.375 of the Revised Code; in the case of a joint recreation district, the person designated pursuant to section 755.15 of the Revised Code; in the case of a union cemetery district, the clerk of the municipal corporation designated in section 759.34 of the Revised Code; in the case of a children's home district, educational service center, general health district, joint-county alcohol, drug addiction, and mental health service district, county library district, detention facility district, district organized under section 2151.65 of the Revised Code, a combined district organized under sections 2152.41 and 2151.65 of the Revised Code, or a metropolitan park district for which no treasurer has been appointed pursuant to section 1545.07 of the Revised Code, the county auditor of the county designated by law to act as the auditor of the district; in the case of a metropolitan park district which has appointed a treasurer pursuant to section 1545.07 of the Revised Code, that treasurer; in the case of a drainage improvement district, the auditor of the county in which the drainage improvement district is located; in the case of a regional student education district, the fiscal officer appointed pursuant to section 3313.83 of the Revised Code; and in all other cases, the officer responsible for keeping

the appropriation accounts and drawing warrants for the expenditure of the moneys of the district or taxing unit.

(E) "Permanent improvement" or "improvement" means any property, asset, or improvement with an estimated life or usefulness of five years or more, including land and interests therein, and reconstructions, enlargements, and extensions thereof having an estimated life or usefulness of five years or more.

(F) "Current operating expenses" and "current expenses" mean the lawful expenditures of a subdivision, except those for permanent improvements, and except payments for interest, sinking fund, and retirement of bonds, notes, and certificates of indebtedness of the subdivision.

(G) "Debt charges" means interest, sinking fund, and retirement charges on bonds, notes, or certificates of indebtedness.

(H) "Taxing unit" means any subdivision or other governmental district having authority to levy taxes on the property in the district or issue bonds that constitute a charge against the property of the district, including conservancy districts, metropolitan park districts, sanitary districts, road districts, and other districts.

(I) "District authority" means any board of directors, trustees, commissioners, or other officers controlling a district institution or activity that derives its income or funds from two or more subdivisions, such as the educational service center, the trustees of district children's homes, the district board of health, a joint-county alcohol, drug addiction, and mental health service district's board of alcohol, drug addiction, and mental health services, detention facility districts, a joint recreation district board of trustees, districts organized under section 2151.65 of the Revised Code, combined districts organized under sections 2152.41 and 2151.65 of the Revised Code, and other such boards.

(J) "Tax list" and "tax duplicate" mean the general tax lists and duplicates prescribed by sections 319.28 and 319.29 of the Revised Code.

(K) "Property" as applied to a tax levy means taxable property listed on general tax lists and duplicates.

(L) "School library district" means a school district in which a free public library has been established that is under the control and management of a board of library trustees as provided in section 3375.15 of the Revised Code.

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Amended by 129th General Assembly File No. 28, HB 153, § 101.01, eff. 9/29/2011.

Amended by 128th General Assembly File No. 9, HB 1, § 101.01, eff. 10/16/2009.

5705.02 Ten-mill limitation.

The aggregate amount of taxes that may be levied on any taxable property in any subdivision or other taxing unit shall not in any one year exceed ten mills on each dollar of tax valuation of such subdivision or other taxing unit, except for taxes specifically authorized to be levied in excess thereof. The limitation provided by this section shall be known as the "ten-mill limitation," and wherever said term is used in the Revised Code, it refers to and includes both the limitation imposed by this section and the limitation imposed by Section 2 of Article XII, Ohio Constitution.

Effective Date: 10-01-1953

5705.03 Authorization to levy taxes - collection.

(A) The taxing authority of each subdivision may levy taxes annually, subject to the limitations of sections 5705.01 to 5705.47 of the Revised Code, on the real and personal property within the subdivision for the purpose of paying the current operating expenses of the subdivision and acquiring or constructing permanent improvements. The taxing authority of each subdivision and taxing unit shall, subject to the limitations of such sections, levy such taxes annually as are necessary to pay the interest and sinking fund on and retire at maturity the bonds, notes, and certificates of indebtedness of such subdivision and taxing unit, including levies in anticipation of which the subdivision or taxing unit has incurred indebtedness.

(B)(1) When a taxing authority determines that it is necessary to levy a tax outside the ten-mill limitation for any purpose authorized by the Revised Code, the taxing authority shall certify to the county auditor a resolution or ordinance requesting that the county auditor certify to the taxing authority the total current tax valuation of the subdivision, and the number of mills required to generate a specified amount of revenue, or the dollar amount of revenue that would be generated by a specified number of mills. The resolution or ordinance shall state the purpose of the tax, whether the tax is an additional levy or a renewal or a replacement of an existing tax, and the section of the Revised Code authorizing submission of the question of the tax. If a subdivision is located in more than one county, the county auditor shall obtain from the county auditor of each other county in which the subdivision is located the current tax valuation for the portion of the subdivision in that county. The county auditor shall issue the certification to the taxing authority within ten days after receiving the taxing authority's resolution or ordinance requesting it.

(2) When considering the tangible personal property component of the tax valuation of the subdivision, the county auditor shall take into account the assessment percentages prescribed in section 5711.22 of the Revised Code. The tax commissioner may issue rules, orders, or instructions directing how the assessment percentages must be utilized.

(3) If, upon receiving the certification from the county auditor, the taxing authority proceeds with the submission of the question of the tax to electors, the taxing authority shall certify its resolution or ordinance, accompanied by a copy of the county auditor's certification, to the proper county board of elections in the manner and within the time prescribed by the section of the Revised Code governing submission of the question, and shall include with its certification the rate of the tax levy, expressed in mills for each one dollar in tax valuation as estimated by the county auditor. The county board of elections shall not submit the question of the tax to electors unless a copy of the county auditor's certification accompanies the resolution or ordinance the taxing authority certifies to the board. Before requesting a taxing authority to submit a tax levy, any agency or authority authorized to make that request shall first request the certification from the county auditor provided under this section.

(4) This division is supplemental to, and not in derogation of, any similar requirement governing the certification by the county auditor of the tax valuation of a subdivision or necessary tax rates for the purposes of the submission of the question of a tax in excess of the ten-mill limitation, including sections 133.18 and 5705.195 of the Revised Code.

(C) All taxes levied on property shall be extended on the tax duplicate by the county auditor of the county in which the property is located, and shall be collected by the county treasurer of such county in the same manner and under the same laws and rules as are prescribed for the assessment and collection of county taxes. The proceeds of any tax levied by or for any subdivision when received by its fiscal officer shall be deposited in its treasury to the credit of the appropriate fund.

Effective Date: 12-21-1998; 03-30-2006

5705.04 Division of taxes levied.

The taxing authority of each subdivision shall divide the taxes levied into the following separate levies:

(A) The general levy for debt charges within the ten-mill limitation;

(B) The general levy for current expense within the ten-mill limitation;

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(C) Special levies authorized by sections 5705.01 to 5705.47, inclusive, of the Revised Code, within the ten-mill limitation;

(D) The general levy for debt charges authorized by law or by vote of the people in excess of the ten-mill limitation;

(E) Other special or general levies authorized by law or by vote of the people in excess of the ten-mill limitation.

Effective Date: 10-01-1953

5705.05 Purpose and intent of general levy for current expenses.

The purpose and intent of the general levy for current expenses is to provide one general operating fund derived from taxation from which any expenditures for current expenses of any kind may be made. The taxing authority of a political subdivision may include in such levy the amounts required for carrying into effect any of the general or special powers granted by law to such subdivision, including the acquisition or construction of permanent improvements and the payment of judgments, but excluding the payment of debt charges and, in the case of counties, the construction, reconstruction, resurfacing, or repair of roads and bridges . The power to include in the general levy for current expenses additional amounts for purposes for which a special tax is authorized shall not affect the right or obligation to levy such special tax. Without prejudice to the generality of the authority to levy a general tax for any current expense, such general levy shall include:

(A) The amounts certified to be necessary for the payment of final judgments;

(B) The amounts necessary for general, special, and primary elections;

(C) The amounts necessary for boards and commissioners of health, and other special or district appropriating authorities deriving their revenue in whole or part from the subdivision;

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(D) In the case of municipal corporations, the amounts necessary for the maintenance, operation, and repair of public buildings, wharves, bridges, parks, and streets, for the prevention, control, and abatement of air pollution, and for a sanitary fund;

(E) In the case of counties, the amounts necessary for the maintenance, operation, and repair of public buildings, for providing or maintaining senior citizens services or facilities, for the relief and support of the poor, for the relief of needy blind, for the support of mental health, mental retardation, or developmental disability services, for the relief of honorably discharged soldiers, indigent soldiers, sailors, and marines, for the operation and maintenance and the acquisition, construction, or improvement of permanent improvements, including, without limitation, the acquisition and improvement of land and

buildings owned or used by a county land reutilization corporation organized under Chapter 1724. of the Revised Code, for mothers' pension fund, support of soil and water conservation districts, watershed conservancy districts, and educational television, for the prevention, control, and abatement of air pollution, and for the county's share of the compensation paid judges;

(F) In the case of a school district, the amounts necessary for tuition, the state teachers retirement system, and the maintenance, operation, and repair of schools;

(G) In the case of a township, the amounts necessary for the relief of the poor and for the prevention, control, and abatement of air pollution.

This section does not require the inclusion within the general levy of amounts for any purpose for which a special levy is authorized by section 5705.06 of the Revised Code.

Effective Date: 11-11-1990; 2008 HB458 12-31-2008; 2008 SB353 04-07-2009

5705.06 Special levies without vote of the people within ten-mill limitation.

The following special levies are hereby authorized without vote of the people:

(A) A levy for any specific permanent improvement which the subdivision is authorized by law to acquire, construct, or improve, or any class of such improvements which could be included in a single bond issue;

(B) A levy for the library purposes of the subdivision, in accordance with the provisions of the Revised Code authorizing levies for such purposes, but only to the extent so authorized;

(C) In the case of a municipal corporation, a levy for a municipal university under section 3349.13 of the Revised Code, but only to the extent authorized;

(D) In the case of a county, a levy for the construction, reconstruction, resurfacing, and repair of roads and bridges, other than state roads and bridges;

(E) In the case of a county, a levy for paying the county's proportion of the cost of the construction, improvement, and maintenance of state highways;

(F) In the case of a township, a levy for the construction, reconstruction, resurfacing, and repair of roads and bridges, excluding state roads and bridges, including the township's portion of the cost of the construction, improvement, maintenance, and repair of county roads and bridges;

(G) The levies prescribed by division (B) of sections 742.33 and 742.34 of the Revised Code.

Each such special levy shall be within the ten-mill limitation and shall be subject to the control of the county budget commission, as provided by sections 5705.01 to 5705.47 of the Revised Code.

Except for the special levies authorized in divisions (A), (B), (C), (D), (E), and (G) of this section, any authority granted by the Revised Code to levy a special tax within the ten-mill limitation for a current expense shall be construed as authority to provide for such expense by the general levy for current expenses.

Effective Date: 07-01-1985; 2008 HB458 12-31-2008

5705.07 Levies in excess of ten-mill limitation.

The taxing authority of any subdivision may make tax levies authorized in excess of the ten-mill limitation by a vote of the people under the law applicable thereto, irrespective of all limitations on the tax rate.

Effective Date: 10-01-1953

5705.08 Certification by fiscal officer.

On or before the first Monday in May of each year, the fiscal officer of each subdivision that is not a school district shall certify to its taxing authority the amount necessary to provide for the payment of final judgments against the subdivision, except in condemnation of property cases. The taxing authority shall place such certified amount in each budget and in the annual appropriation measure for the full amount certified.

On or before the first Monday in November of each year, the fiscal officer of each school district, shall certify to its board of education the amount necessary to provide for the payment of final judgments against the district, except in condemnation of property cases. The board of education shall place such certified amount in each budget and in the annual appropriation measure for the full amount certified.

Effective Date: 09-29-1995

5705.09 Establishment of funds.

Each subdivision shall establish the following funds:

(A) General fund;

- (B) Sinking fund whenever the subdivision has outstanding bonds other than serial bonds;
- (C) Bond retirement fund, for the retirement of serial bonds, notes, or certificates of indebtedness;
- (D) A special fund for each special levy;
- (E) A special bond fund for each bond issue;
- (F) A special fund for each class of revenues derived from a source other than the general property tax, which the law requires to be used for a particular purpose;
- (G) A special fund for each public utility operated by a subdivision;
- (H) A trust fund for any amount received by a subdivision in trust.

Effective Date: 10-01-1953

5705.091 County developmental disabilities general fund - capital fund - medicaid reserve fund.

The board of county commissioners of each county shall establish a county developmental disabilities general fund. Notwithstanding section 5705.10 of the Revised Code, proceeds from levies under section 5705.222 and division (L) of section 5705.19 of the Revised Code shall be deposited to the credit of the county developmental disabilities general fund. Accounts shall be established within the county developmental disabilities general fund for each of the several particular purposes of the levies as specified in the resolutions under which the levies were approved, and proceeds from different levies that were approved for the same particular purpose shall be credited to accounts for that purpose. Other money received by the county for the purposes of Chapters 3323. and 5126. of the Revised Code and not required by state or federal law to be deposited to the credit of a different fund shall also be deposited to the credit of the county developmental disabilities general fund, in an account appropriate to the particular purpose for which the money was received. Unless otherwise provided by law, an unexpended balance at the end of a fiscal year in any account in the county developmental disabilities general fund shall be appropriated the next fiscal year to the same fund.

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A county board of developmental disabilities may request, by resolution, that the board of county commissioners establish a county developmental disabilities capital fund for money to be used for acquisition, construction, or improvement of capital facilities or acquisition of capital equipment used in providing services to mentally retarded and developmentally disabled persons. The county board of developmental disabilities shall transmit a certified

copy of the resolution to the board of county commissioners. Upon receiving the resolution, the board of county commissioners shall establish a county developmental disabilities capital fund.

Amended by 128th General Assembly ch. 7, SB 79, § 1, eff. 10/6/2009.

Effective Date: 06-06-2001; 07-01-2005; 06-30-2006

5705.10 Use of revenues.

(A) All revenue derived from the general levy for current expense within the ten-mill limitation, from any general levy for current expense authorized by vote in excess of the ten-mill limitation, and from sources other than the general property tax, unless its use for a particular purpose is prescribed by law, shall be paid into the general fund.

(B) All revenue derived from general or special levies for debt charges, whether within or in excess of the ten-mill limitation, which is levied for the debt charges on serial bonds, notes, or certificates of indebtedness having a life less than five years, shall be paid into the bond retirement fund; and all such revenue which is levied for the debt charges on all other bonds, notes, or certificates of indebtedness shall be paid into the sinking fund.

(C) All revenue derived from a special levy shall be credited to a special fund for the purpose for which the levy was made.

(D) Except as otherwise provided by resolution adopted pursuant to section 3315.01 of the Revised Code, all revenue derived from a source other than the general property tax and which the law prescribes shall be used for a particular purpose, shall be paid into a special fund for such purpose. Except as otherwise provided by resolution adopted pursuant to section 3315.01 of the Revised Code or as otherwise provided by section 3315.40 of the Revised Code, all revenue derived from a source other than the general property tax, for which the law does not prescribe use for a particular purpose, including interest earned on the principal of any special fund, regardless of the source or purpose of the principal, shall be paid into the general fund.

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(E) All proceeds from the sale of public obligations or fractionalized interests in public obligations as defined in section 133.01 of the Revised Code, except premium and accrued interest, shall be paid into a special fund for the purpose of such issue, and any interest and other income earned on money in such special fund may be used for the purposes for which the indebtedness was authorized or may be credited to the general fund or other fund or account as the taxing authority authorizes and used for the purposes of that fund or account. The premium and accrued interest received from such sale shall be paid into the sinking fund or the bond retirement fund of the subdivision.

(F) Except as provided in division (G) of this section, if a permanent improvement of the subdivision is sold, the amount received from the sale shall be paid into the sinking fund, the bond retirement fund, or a special fund for the construction or acquisition of permanent improvements; provided that the proceeds from the sale of a public utility shall be paid into the sinking fund or bond retirement fund to the extent necessary to provide for the retirement of the outstanding indebtedness incurred in the construction or acquisition of such utility. Proceeds from the sale of property other than a permanent improvement shall be paid into the fund from which such property was acquired or is maintained or, if there is no such fund, into the general fund.

(G) A township that has a population greater than fifteen thousand according to the most recent federal decennial census and that has declared one or more improvements in the township to be a public purpose under section 5709.73 of the Revised Code may pay proceeds from the sale of a permanent improvement of the township into its general fund if both of the following conditions are satisfied:

(1) The township fiscal officer determines that all foreseeable public infrastructure improvements, as defined in section 5709.40 of the Revised Code, to be made in the township in the ten years immediately following the date the permanent improvement is sold will have been financed through resolutions adopted under section 5709.73 of the Revised Code on or before the date of the sale. The fiscal officer shall provide written certification of this determination for the township's records.

(2) The permanent improvement being sold was financed entirely from moneys in the township's general fund.

(H) Money paid into any fund shall be used only for the purposes for which such fund is established.

Effective Date: 12-22-1992; 09-21-2006

5705.11 Distribution of revenue derived from federal government.

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Whenever lands are removed from the tax duplicate of a county under the act of June 28, 1938, 45 Stat. 535, 33 U.S.C. 701b, or the "Flood Control Act of 1954," 68 Stat. 1266, U.S.C. 701c-3, and the federal government makes payments to the county in lieu of the general real property taxes, in the form of rents or otherwise, such revenues shall be distributed by the board of county commissioners to the taxing districts for the purposes provided under such acts to the taxing districts adversely affected by the removal of said lands from the tax duplicate, in proportion to the amount of loss suffered by each taxing unit.

Loss shall be determined by multiplying the total value of the lands removed from the tax duplicate within the given taxing unit by the tax levy for that taxing unit.

"Total value of the lands removed from the tax duplicate" means the value on the tax duplicate at the time the lands were so removed.

Effective Date: 12-20-1971

5705.12 Approval to establish special funds.

In addition to the funds provided for by sections 5705.09, 5705.12, 5705.13, and 5705.131 of the Revised Code, the taxing authority of a subdivision may establish, with the approval of and in the manner prescribed by the auditor of state, such other funds as are desirable, and may provide by ordinance or resolution that money derived from specified sources other than the general property tax shall be paid directly into such funds. The auditor of state shall consult with the tax commissioner before approving such funds.

Effective Date: 07-22-1998

5705.121 Other special funds.

A municipal corporation may establish in the manner provided by law a sanitary police pension fund, an urban redevelopment tax increment equivalent fund, or a cemetery fund. A township may establish by law a cemetery fund.

Effective Date: 07-22-1998

5705.13 Reserve balance accounts - special revenue fund - capital projects fund.

(A) A taxing authority of a subdivision, by resolution or ordinance, may establish reserve balance accounts to accumulate currently available resources for the following purposes:

(1) To stabilize subdivision budgets against cyclical changes in revenues and expenditures;

(2) Except as otherwise provided by this section, to provide for the payment of claims under a self-insurance program for the subdivision, if the subdivision is permitted by law to establish such a program;

(3) To provide for the payment of claims under a retrospective ratings plan for workers' compensation.

The ordinance or resolution establishing a reserve balance account shall state the purpose for which the account is established, the fund in which the account is to be established, and the total amount of money to be reserved in the account.

A subdivision that participates in a risk-sharing pool, by which governments pool risks and funds and share in the costs of losses, shall not establish a reserve balance account to provide self-insurance for the subdivision.

Not more than one reserve balance account may be established for each of the purposes permitted under divisions (A)(2) and (3) of this section. Money to the credit of a reserve balance account may be expended only for the purpose for which the account was established.

A reserve balance account established for the purpose described in division (A)(1) of this section may be established in the general fund or in one or more special funds for operating purposes of the subdivision. The amount of money to be reserved in such an account in any fiscal year shall not exceed five per cent of the revenue credited in the preceding fiscal year to the fund in which the account is established. Subject to division (G) of section 5705.29 of the Revised Code, any reserve balance in an account established under division (A)(1) of this section shall not be considered part of the unencumbered balance or revenue of the subdivision under division (A) of section 5705.35 or division (A)(1) of section 5705.36 of the Revised Code.

At any time, a taxing authority of a subdivision, by resolution or ordinance, may reduce or eliminate the reserve balance in a reserve balance account established for the purpose described in division (A)(1) of this section.

A reserve balance account established for the purpose described in division (A)(2) or (3) of this section shall be established in the general fund of the subdivision or by the establishment of a separate internal service fund established to account for the operation of the self-insurance or retrospective ratings plan program, and shall be based on sound actuarial principles. The total amount of money in a reserve balance account for self-insurance may be expressed in dollars or as the amount determined to represent an adequate reserve according to sound actuarial principles.

A taxing authority of a subdivision, by resolution or ordinance, may rescind a reserve balance account established under this division. If a reserve balance account is rescinded, money that has accumulated in the account shall be transferred to the fund or funds from which the money originally was transferred.

(B) A taxing authority of a subdivision, by resolution or ordinance, may establish a special revenue fund for the purpose of accumulating resources for the payment of accumulated sick leave and vacation leave, and for payments in lieu of taking compensatory time off, upon the termination of employment or the retirement of officers and employees of the subdivision. The special revenue fund may also accumulate resources for payment of salaries during any fiscal year when the number of pay periods exceeds the usual and customary number of pay periods. Notwithstanding sections 5705.14, 5705.15, and 5705.16 of the Revised Code, the taxing authority, by resolution or ordinance, may transfer money to the special revenue fund from any other fund of the subdivision from which such payments may lawfully be made. The taxing authority, by resolution or ordinance, may rescind a special revenue fund established under this division. If a special revenue fund is rescinded, money that has accumulated in the fund shall be transferred to the fund or funds from which the money originally was transferred.

(C) A taxing authority of a subdivision, by resolution or ordinance, may establish a capital projects fund for the purpose of accumulating resources for the acquisition, construction, or improvement of fixed assets of the subdivision. For the purposes of this section, "fixed assets" includes motor vehicles. More than one capital projects fund may be established and may exist at any time. The ordinance or resolution shall identify the source of the money to be used to acquire, construct, or improve the fixed assets identified in the resolution or ordinance, the amount of money to be accumulated for that purpose, the period of time over which that amount is to be accumulated, and the fixed assets that the taxing authority intends to acquire, construct, or improve with the money to be accumulated in the fund.

A taxing authority of a subdivision shall not accumulate money in a capital projects fund for more than ten years after the resolution or ordinance establishing the fund is adopted. If the subdivision has not entered into a contract for the acquisition, construction, or improvement of fixed assets for which money was accumulated in such a fund before the end of that ten-year period, the fiscal officer of the subdivision shall transfer all money in the fund to the fund or funds from which that money originally was transferred or the fund that originally was intended to receive the money.

A taxing authority of a subdivision, by resolution or ordinance, may rescind a capital projects fund. If a capital projects fund is rescinded, money that has accumulated in the fund shall be transferred to the fund or funds from which the money originally was transferred.

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Notwithstanding sections 5705.14, 5705.15, and 5705.16 of the Revised Code, the taxing authority of a subdivision, by resolution or ordinance, may transfer money to the capital projects fund from any other fund of the subdivision that may lawfully be used for the

purpose of acquiring, constructing, or improving the fixed assets identified in the resolution or ordinance.

Effective Date: 03-31-2003

5705.131 Nonexpendable trust fund.

A taxing authority of a subdivision may establish a nonexpendable trust fund for the purpose of receiving donations or contributions that the donor or contributor requires to be maintained intact. The principal of such fund may be invested, and the investment earnings on the principal shall be credited to the fund. The principal of the fund, and any additions to principal arising from sources other than the reinvestment of investment earnings arising from the fund, shall not be considered part of the unencumbered balance or revenue of the subdivision under division (A) of section 5705.35 or division (A)(1) of section 5705.36 of the Revised Code. Only investment earnings arising from investment of the principal or investment of such additions to principal may be considered an unencumbered balance or revenue of the subdivision under that division.

Effective Date: 07-22-1998

5705.132 Reserve balance account for other purposes.

In addition to any reserve balance account established under section 5705.13 of the Revised Code, a board of township trustees, by resolution, may establish a reserve balance account to accumulate currently available resources for any purpose for which the board may lawfully expend money of the township other than for the purposes for which a reserve balance account may be established under section 5705.13 of the Revised Code. Money may be transferred to the reserve balance account from another fund or account of the township only if money in that fund or account may lawfully be expended for the purpose for which the reserve balance account is created. A reserve balance account created under this section may exist for not more than five fiscal years beginning with the first fiscal year in which money is credited to the account. The total amount of money to the credit of all reserve balance accounts established under this section at any time in any fiscal year shall not exceed five per cent of the total of the township's revenue from all sources for the preceding fiscal year and any unencumbered balances carried over to the current fiscal year from the preceding fiscal year. Money in a reserve balance account shall be expended only for the purpose for which the account is established. More than one reserve balance account may be established under this section.

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The resolution establishing a reserve balance account shall state the specific purpose for which the account is established, the fund within which the account is established, the fund or account from which money shall be transferred to the account, and the number of

years the account will exist. The resolution shall specify the maximum total amount of money that may be credited to the account during its existence and the maximum amount of money to be credited to the account each fiscal year the account exists. The board, by subsequent resolution, may change the amount to be credited and the source from which money is transferred, subject to the limitations of this section.

The board, by resolution, may rescind a reserve balance account established under this section before the expiration of the account. The board, by resolution, may extend the life of a reserve balance account, provided that the total number of years the fund exists shall not exceed five fiscal years beginning with the first fiscal year in which money is credited to the account.

Upon the expiration or rescission of a reserve balance account established under this section, any unexpended balance in the account shall be transferred to the fund or account from which money in the account was originally transferred. If money in the account originally was transferred from more than one fund or account, a pro rata share of the unexpended balance shall be transferred to each such fund or account proportionate to the amount originally transferred from that fund or account.

The balance to the credit of a reserve balance account shall not be considered part of the unencumbered balance or revenue of the township under division (A) of section 5705.35 or division (A)(1) of section 5705.36 of the Revised Code.

Effective Date: 09-21-2006

5705.14 Transfer of funds.

No transfer shall be made from one fund of a subdivision to any other fund, by order of the court or otherwise, except as follows:

(A) The unexpended balance in a bond fund that is no longer needed for the purpose for which such fund was created shall be transferred to the sinking fund or bond retirement fund from which such bonds are payable.

(B) The unexpended balance in any specific permanent improvement fund, other than a bond fund, after the payment of all obligations incurred in the acquisition of such improvement, shall be transferred to the sinking fund or bond retirement fund of the subdivision; provided that if such money is not required to meet the obligations payable from such funds, it may be transferred to a special fund for the acquisition of permanent improvements, or, with the approval of the court of common pleas of the county in which such subdivision is located, to the general fund of the subdivision.

(C) (1) Except as provided in division (C)(2) of this section, the unexpended balance in the sinking fund or bond retirement fund of a subdivision, after all indebtedness, interest, and other obligations for the payment of which such fund exists have been paid and retired, shall be transferred, in the case of the sinking fund, to the bond retirement fund, and in the case of the bond retirement fund, to the sinking fund; provided that if such transfer is impossible by reason of the nonexistence of the fund to receive the transfer, such unexpended balance, with the approval of the court of common pleas of the county in which such division is located, may be transferred to any other fund of the subdivision.

(2) Money in a bond fund or bond retirement fund of a city, local, exempted village, cooperative education, or joint vocational school district may be transferred to a specific permanent improvement fund provided that the county budget commission of the county in which the school district is located approves the transfer upon its determination that the money transferred will not be required to meet the obligations payable from the bond fund or bond retirement fund. In arriving at such a determination, the county budget commission shall consider the balance of the bond fund or bond retirement fund, the outstanding obligations payable from the fund, and the sources and timing of the fund's revenue.

(D) The unexpended balance in any special fund, other than an improvement fund, existing in accordance with division (D), (F), or (G) of section 5705.09 or section 5705.12 of the Revised Code, may be transferred to the general fund or to the sinking fund or bond retirement fund after the termination of the activity, service, or other undertaking for which such special fund existed, but only after the payment of all obligations incurred and payable from such special fund.

(E) Money may be transferred from the general fund to any other fund of the subdivision.

(F) Moneys retained or received by a county under section 4501.04 or division (A)(3) of section 5735.27 of the Revised Code may be transferred from the fund into which they were deposited to the sinking fund or bond retirement fund from which any principal, interest, or charges for which such moneys may be used is payable.

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(G) Moneys retained or received by a municipal corporation under section 4501.04 or division (A)(1) or (2) of section 5735.27 of the Revised Code may be transferred from the fund into which they were deposited to the sinking fund or bond retirement fund from which any principal, interest, or charges for which such moneys may be used is payable.

(H)(1) Money may be transferred from the county developmental disabilities general fund to the county developmental disabilities capital fund established under section 5705.091 of the Revised Code or to any other fund created for the purposes of the county board of developmental disabilities, so long as money in the fund to which the money is transferred

can be spent for the particular purpose of the transferred money. The county board of developmental disabilities may request, by resolution, that the board of county commissioners make the transfer. The county board of developmental disabilities shall transmit a certified copy of the resolution to the board of county commissioners. Upon receiving the resolution, the board of county commissioners may make the transfer. Money transferred to a fund shall be credited to an account appropriate to its particular purpose.

(2) An unexpended balance in an account in the county developmental disabilities capital fund or any other fund created for the purposes of the county board of developmental disabilities may be transferred back to the county developmental disabilities general fund. The transfer may be made if the unexpended balance is no longer needed for its particular purpose and all outstanding obligations have been paid. Money transferred back to the county developmental disabilities general fund shall be credited to an account for current expenses within that fund. The county board of developmental disabilities may request, by resolution, that the board of county commissioners make the transfer. The county board of developmental disabilities shall transmit a certified copy of the resolution to the board of county commissioners. Upon receiving the resolution, the board of county commissioners may make the transfer.

(I) Money may be transferred from the public assistance fund established under section 5101.161 of the Revised Code to either of the following funds, so long as the money to be transferred from the public assistance fund may be spent for the purposes for which money in the receiving fund may be used:

(1) The children services fund established under section 5101.144 of the Revised Code;

(2) The child support enforcement administrative fund established, as authorized under rules adopted by the director of job and family services, in the county treasury for use by any county family services agency.

Except in the case of transfer pursuant to division (E) of this section, transfers authorized by this section shall only be made by resolution of the taxing authority passed with the affirmative vote of two-thirds of the members.

Amended by 129th General Assembly File No. 28, HB 153, § 101.01, eff. 9/29/2011.

Amended by 128th General Assembly ch. 7, SB 79, § 1, eff. 10/6/2009.

Effective Date: 01-10-1992

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5705.15 Transfer of public funds - exceptions.

In addition to the transfers authorized in section 5705.14 of the Revised Code, the taxing authority of any political subdivision may, in the manner provided in this section and section 5705.16 of the Revised Code, transfer from one fund to another any public funds under its supervision, except the proceeds or balances of loans, bond issues, special levies for the payment of loans or bond issues, the proceeds or balances of funds derived from any excise tax levied by law for a specified purpose, and the proceeds or balances of any license fees imposed by law for a specified purpose.

Effective Date: 10-01-1953

5705.16 Resolution for transfer of funds - petition - approval by tax commissioner - hearing - certification.

A resolution of the taxing authority of any political subdivision shall be passed by a majority of all the members thereof, declaring the necessity for the transfer of funds authorized by section 5705.15 of the Revised Code, and such taxing authority shall prepare a petition addressed to the court of common pleas of the county in which the funds are held. The petition shall set forth the name and amount of the fund, the fund to which it is desired to be transferred, a copy of such resolution with a full statement of the proceedings pertaining to its passage, and the reason or necessity for the transfer. A duplicate copy of said petition shall be forwarded to the tax commissioner for the commissioner's examination and approval.

If the petition is disapproved by the commissioner, it shall be returned within ten days of its receipt to the officers who submitted it, with a memorandum of the commissioner's objections. This disapproval shall not prejudice a later application for approval. If the petition is approved by the commissioner, it shall be forwarded within ten days of its receipt to the clerk of the court of common pleas of the county to whose court of common pleas the petition is addressed, marked with the approval of the commissioner. If the commissioner approves the petition, the commissioner shall notify immediately the officers who submitted the petition, who then may file the petition in the court to which it is addressed.

The petitioner shall give notice of the filing, object, and prayer of the petition, and of the time when it will be heard. The notice shall be given by one publication in a newspaper of general circulation in the territory to be affected by such transfer of funds. If there is no such newspaper, the notice shall be posted in ten conspicuous places within the territory for a period of four weeks.

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The petition may be heard at the time stated in the notice, or as soon thereafter as convenient for the court. Any person who objects to the prayer of such petition shall file

the person's objections in such cause on or before the time fixed in the notice for hearing, and that person shall be entitled to be heard.

If, upon hearing, the court finds that the notice has been given as required by this section, that the petition states sufficient facts, that there are good reasons, or that a necessity exists, for the transfer, and that no injury will result therefrom, it shall grant the prayer of the petition and order the petitioners to make such transfer.

A copy of the findings, orders, and judgments of the court shall be certified by the clerk and entered on the records of the petitioning officers or board, and thereupon the petitioners may make the transfer of funds as directed by the court. All costs of such proceedings shall be paid by the petitioners, except that if objections are filed the court may order such objectors to pay all or a portion of the costs.

Amended by 129th General Assembly File No. 28, HB 153, § 101.01, eff. 9/29/2011.

Effective Date: 09-27-1983

5705.17 [Repealed].

Effective Date: 07-17-1995

5705.18 Charter prevails over ten-mill limitation - calculation of tax rate.

Sections 5705.02 and 5705.32 of the Revised Code do not apply to the tax levies of any municipal corporation which, by its charter or amendment thereto, provides for a limitation of the total tax rate which may be levied without a vote of the people for all the purposes of the municipal corporation, or for the current operating expenses thereof. Said charter or charter amendment may also provide for the levying of taxes by said legislative authority in excess of said charter limitation upon approval by the majority of the electors of said municipal corporation voting thereon at a November election.

For the purpose of calculating the ten-mill limitation and the distribution of taxes under section 5705.32 of the Revised Code within such limitation to counties, boards of education, and townships, the tax rate in each such municipal corporation is deemed to be the same as the average rate allowed to such municipal corporation within such limitation, or the fifteen-mill limitation prescribed by law prior to January 1, 1934, for the three years next preceding the year in which a charter provision has originally taken effect, except that:

(A) For the purpose of computing such average rate the annual rate allowed in the year 1933 or in any year prior thereto for the purposes of the next succeeding year shall be taken to be two thirds of the rate actually allowed in each such year for such purposes.

(B) If the rate actually levied by a municipal corporation for current operating expenses within the ten-mill limitation whether pursuant to the provisions of the Revised Code or pursuant to any provision of the charter of such municipal corporation or any ordinance enacted under authority of such a charter, whereby a part of the taxes levied by such corporation are apportioned to the ten-mill limitation is less than such average rate, then the rate actually levied within the ten-mill limitation shall be considered the rate of the municipal corporation for the purpose of calculating said limitation.

Effective Date: 11-04-1959

5705.19 Resolution relative to tax levy in excess of ten-mill limitation.

This section does not apply to school districts or county school financing districts.

The taxing authority of any subdivision at any time and in any year, by vote of two-thirds of all the members of the taxing authority, may declare by resolution and certify the resolution to the board of elections not less than ninety days before the election upon which it will be voted that the amount of taxes that may be raised within the ten-mill limitation will be insufficient to provide for the necessary requirements of the subdivision and that it is necessary to levy a tax in excess of that limitation for any of the following purposes:

(A) For current expenses of the subdivision, except that the total levy for current expenses of a detention facility district or district organized under section 2151.65 of the Revised Code shall not exceed two mills and that the total levy for current expenses of a combined district organized under sections 2151.65 and 2152.41 of the Revised Code shall not exceed four mills;

(B) For the payment of debt charges on certain described bonds, notes, or certificates of indebtedness of the subdivision issued subsequent to January 1, 1925;

(C) For the debt charges on all bonds, notes, and certificates of indebtedness issued and authorized to be issued prior to January 1, 1925;

(D) For a public library of, or supported by, the subdivision under whatever law organized or authorized to be supported;

(E) For a municipal university, not to exceed two mills over the limitation of one mill prescribed in section 3349.13 of the Revised Code;

(F) For the construction or acquisition of any specific permanent improvement or class of improvements that the taxing authority of the subdivision may include in a single bond issue;

(G) For the general construction, reconstruction, resurfacing, and repair of streets, roads, and bridges in municipal corporations, counties, or townships;

(H) For parks and recreational purposes;

(I) For the purpose of providing and maintaining fire apparatus, appliances, buildings, or sites therefor, or sources of water supply and materials therefor, or the establishment and maintenance of lines of fire alarm telegraph, or the payment of firefighting companies or permanent, part-time, or volunteer firefighting, emergency medical service, administrative, or communications personnel to operate the same, including the payment of any employer contributions required for such personnel under section 145.48 or 742.34 of the Revised Code, or the purchase of ambulance equipment, or the provision of ambulance, paramedic, or other emergency medical services operated by a fire department or firefighting company;

(J) For the purpose of providing and maintaining motor vehicles, communications, other equipment, buildings, and sites for such buildings used directly in the operation of a police department, or the payment of salaries of permanent or part-time police, communications, or administrative personnel to operate the same, including the payment of any employer contributions required for such personnel under section 145.48 or 742.33 of the Revised Code, or the payment of the costs incurred by townships as a result of contracts made with other political subdivisions in order to obtain police protection, or the provision of ambulance or emergency medical services operated by a police department;

(K) For the maintenance and operation of a county home or detention facility;

(L) For community mental retardation and developmental disabilities programs and services pursuant to Chapter 5126. of the Revised Code, except that the procedure for such levies shall be as provided in section 5705.222 of the Revised Code;

(M) For regional planning;

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(N) For a county's share of the cost of maintaining and operating schools, district detention facilities, forestry camps, or other facilities, or any combination thereof, established under section 2151.65 or 2152.41 of the Revised Code or both of those sections;

- (O) For providing for flood defense, providing and maintaining a flood wall or pumps, and other purposes to prevent floods;
- (P) For maintaining and operating sewage disposal plants and facilities;
- (Q) For the purpose of purchasing, acquiring, constructing, enlarging, improving, equipping, repairing, maintaining, or operating, or any combination of the foregoing, a county transit system pursuant to sections 306.01 to 306.13 of the Revised Code, or of making any payment to a board of county commissioners operating a transit system or a county transit board pursuant to section 306.06 of the Revised Code;
- (R) For the subdivision's share of the cost of acquiring or constructing any schools, forestry camps, detention facilities, or other facilities, or any combination thereof, under section 2151.65 or 2152.41 of the Revised Code or both of those sections;
- (S) For the prevention, control, and abatement of air pollution;
- (T) For maintaining and operating cemeteries;
- (U) For providing ambulance service, emergency medical service, or both;
- (V) For providing for the collection and disposal of garbage or refuse, including yard waste;
- (W) For the payment of the police officer employers' contribution or the firefighter employers' contribution required under sections 742.33 and 742.34 of the Revised Code;
- (X) For the construction and maintenance of a drainage improvement pursuant to section 6131.52 of the Revised Code;
- (Y) For providing or maintaining senior citizens services or facilities as authorized by section 307.694, 307.85, 505.70, or 505.706 or division (EE) of section 717.01 of the Revised Code;
- (Z) For the provision and maintenance of zoological park services and facilities as authorized under section 307.76 of the Revised Code;
- (AA) For the maintenance and operation of a free public museum of art, science, or history;
- (BB) For the establishment and operation of a 9-1-1 system, as defined in section 4931.40 of the Revised Code;

(CC) For the purpose of acquiring, rehabilitating, or developing rail property or rail service. As used in this division, "rail property" and "rail service" have the same meanings as in section 4981.01 of the Revised Code. This division applies only to a county, township, or municipal corporation.

(DD) For the purpose of acquiring property for, constructing, operating, and maintaining community centers as provided for in section 755.16 of the Revised Code;

(EE) For the creation and operation of an office or joint office of economic development, for any economic development purpose of the office, and to otherwise provide for the establishment and operation of a program of economic development pursuant to sections 307.07 and 307.64 of the Revised Code, or to the extent that the expenses of a county land reutilization corporation organized under Chapter 1724. of the Revised Code are found by the board of county commissioners to constitute the promotion of economic development, for the payment of such operations and expenses;

(FF) For the purpose of acquiring, establishing, constructing, improving, equipping, maintaining, or operating, or any combination of the foregoing, a township airport, landing field, or other air navigation facility pursuant to section 505.15 of the Revised Code;

(GG) For the payment of costs incurred by a township as a result of a contract made with a county pursuant to section 505.263 of the Revised Code in order to pay all or any part of the cost of constructing, maintaining, repairing, or operating a water supply improvement;

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(HH) For a board of township trustees to acquire, other than by appropriation, an ownership interest in land, water, or wetlands, or to restore or maintain land, water, or wetlands in which the board has an ownership interest, not for purposes of recreation, but for the purposes of protecting and preserving the natural, scenic, open, or wooded condition of the land, water, or wetlands against modification or encroachment resulting from occupation, development, or other use, which may be styled as protecting or preserving "greenspace" in the resolution, notice of election, or ballot form. Except as otherwise provided in this division, land is not acquired for purposes of recreation, even if the land is used for recreational purposes, so long as no building, structure, or fixture used for recreational purposes is permanently attached or affixed to the land. Except as otherwise provided in this division, land that previously has been acquired in a township for these greenspace purposes may subsequently be used for recreational purposes if the board of township trustees adopts a resolution approving that use and no building, structure, or fixture used for recreational purposes is permanently attached or affixed to the land. The authorization to use greenspace land for recreational use does not apply to land located in a township that had a population, at the time it passed its first greenspace

levy, of more than thirty-eight thousand within a county that had a population, at that time, of at least eight hundred sixty thousand.

(II) For the support by a county of a crime victim assistance program that is provided and maintained by a county agency or a private, nonprofit corporation or association under section 307.62 of the Revised Code;

(JJ) For any or all of the purposes set forth in divisions (I) and (J) of this section. This division applies only to a township.

(KK) For a countywide public safety communications system under section 307.63 of the Revised Code. This division applies only to counties.

(LL) For the support by a county of criminal justice services under section 307.45 of the Revised Code;

(MM) For the purpose of maintaining and operating a jail or other detention facility as defined in section 2921.01 of the Revised Code;

(NN) For purchasing, maintaining, or improving, or any combination of the foregoing, real estate on which to hold agricultural fairs. This division applies only to a county.

(OO) For constructing, rehabilitating, repairing, or maintaining sidewalks, walkways, trails, bicycle pathways, or similar improvements, or acquiring ownership interests in land necessary for the foregoing improvements;

(PP) For both of the purposes set forth in divisions (G) and (OO) of this section.

(QQ) For both of the purposes set forth in divisions (H) and (HH) of this section. This division applies only to a township.

(RR) For the legislative authority of a municipal corporation, board of county commissioners of a county, or board of township trustees of a township to acquire agricultural easements, as defined in section 5301.67 of the Revised Code, and to supervise and enforce the easements.

(SS) For both of the purposes set forth in divisions (BB) and (KK) of this section. This division applies only to a county.

(TT) For the maintenance and operation of a facility that is organized in whole or in part to promote the sciences and natural history under section 307.761 of the Revised Code.

(UU) For the creation and operation of a county land reutilization corporation and for any programs or activities of the corporation found by the board of directors of the corporation to be consistent with the purposes for which the corporation is organized;

(VV) For construction and maintenance of improvements and expenses of soil and water conservation district programs under Chapter 1515. of the Revised Code;

(WW) For the Ohio cooperative extension service fund created under section 3335.35 of the Revised Code for the purposes prescribed under section 3335.36 of the Revised Code for the benefit of the citizens of a county. This division applies only to a county.

The resolution shall be confined to the purpose or purposes described in one division of this section, to which the revenue derived therefrom shall be applied. The existence in any other division of this section of authority to levy a tax for any part or all of the same purpose or purposes does not preclude the use of such revenues for any part of the purpose or purposes of the division under which the resolution is adopted.

The resolution shall specify the amount of the increase in rate that it is necessary to levy, the purpose of that increase in rate, and the number of years during which the increase in rate shall be in effect, which may or may not include a levy upon the duplicate of the current year. The number of years may be any number not exceeding five, except as follows:

(1) When the additional rate is for the payment of debt charges, the increased rate shall be for the life of the indebtedness.

(2) When the additional rate is for any of the following, the increased rate shall be for a continuing period of time:

(a) For the current expenses for a detention facility district, a district organized under section 2151.65 of the Revised Code, or a combined district organized under sections 2151.65 and 2152.41 of the Revised Code;

(b) For providing a county's share of the cost of maintaining and operating schools, district detention facilities, forestry camps, or other facilities, or any combination thereof, established under section 2151.65 or 2152.41 of the Revised Code or under both of those sections.

(3) When the additional rate is for either of the following, the increased rate may be for a continuing period of time:

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(a) For the purposes set forth in division (I), (J), (U), or (KK) of this section;

(b) For the maintenance and operation of a joint recreation district.

(4) When the increase is for the purpose or purposes set forth in division (D), (G), (H), (CC), or (PP) of this section, the tax levy may be for any specified number of years or for a continuing period of time, as set forth in the resolution.

(5) When the additional rate is for the purpose described in division (Z) of this section, the increased rate shall be for any number of years not exceeding ten.

A levy for one of the purposes set forth in division (G), (I), (J), or (U) of this section may be reduced pursuant to section 5705.261 or 5705.31 of the Revised Code. A levy for one of the purposes set forth in division (G), (I), (J), or (U) of this section may also be terminated or permanently reduced by the taxing authority if it adopts a resolution stating that the continuance of the levy is unnecessary and the levy shall be terminated or that the millage is excessive and the levy shall be decreased by a designated amount.

A resolution of a detention facility district, a district organized under section 2151.65 of the Revised Code, or a combined district organized under both sections 2151.65 and 2152.41 of the Revised Code may include both current expenses and other purposes, provided that the resolution shall apportion the annual rate of levy between the current expenses and the other purpose or purposes. The apportionment need not be the same for each year of the levy, but the respective portions of the rate actually levied each year for the current expenses and the other purpose or purposes shall be limited by the apportionment.

Whenever a board of county commissioners, acting either as the taxing authority of its county or as the taxing authority of a sewer district or subdistrict created under Chapter 6117. of the Revised Code, by resolution declares it necessary to levy a tax in excess of the ten-mill limitation for the purpose of constructing, improving, or extending sewage disposal plants or sewage systems, the tax may be in effect for any number of years not exceeding twenty, and the proceeds of the tax, notwithstanding the general provisions of this section, may be used to pay debt charges on any obligations issued and outstanding on behalf of the subdivision for the purposes enumerated in this paragraph, provided that any such obligations have been specifically described in the resolution.

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The resolution shall go into immediate effect upon its passage, and no publication of the resolution is necessary other than that provided for in the notice of election.

When the electors of a subdivision have approved a tax levy under this section, the taxing authority of the subdivision may anticipate a fraction of the proceeds of the levy and issue anticipation notes in accordance with section 5705.191 or 5705.193 of the Revised Code.

Amended by 129th General Assembly File No. 28, HB 153, § 101.01, eff. 9/29/2011.

Amended by 128th General Assembly File No. 31, HB 313, § 1, eff. 7/7/2010.

Amended by 128th General Assembly File No. 29, HB 48, § 1, eff. 7/2/2010.

Effective Date: 03-11-2004; 03-30-2006; 2008 HB385 09-12-2008; 2008 SB353 04-07-2009

5705.191 Levy in excess of ten-mill limitation - political subdivisions other than schools.

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The taxing authority of any subdivision, other than the board of education of a school district or the taxing authority of a county school financing district, by a vote of two-thirds of all its members, may declare by resolution that the amount of taxes that may be raised within the ten-mill limitation by levies on the current tax duplicate will be insufficient to provide an adequate amount for the necessary requirements of the subdivision, and that it is necessary to levy a tax in excess of such limitation for any of the purposes in section 5705.19 of the Revised Code, or to supplement the general fund for the purpose of making appropriations for one or more of the following purposes: public assistance, human or social services, relief, welfare, hospitalization, health, and support of general hospitals, and that the question of such additional tax levy shall be submitted to the electors of the subdivision at a general, primary, or special election to be held at a time therein specified. Such resolution shall not include a levy on the current tax list and duplicate unless such election is to be held at or prior to the general election day of the current tax year. Such resolution shall conform to the requirements of section 5705.19 of the Revised Code, except that a levy to supplement the general fund for the purposes of public assistance, human or social services, relief, welfare, hospitalization, health, or the support of general or tuberculosis hospitals may not be for a longer period than ten years. All other levies under this section may not be for a longer period than five years unless a longer period is permitted by section 5705.19 of the Revised Code, and the resolution shall specify the date of holding such election, which shall not be earlier than ninety days after the adoption and certification of such resolution. The resolution shall go into immediate effect upon its passage and no publication of the same is necessary other than that provided for in the notice of election. A copy of such resolution, immediately after its passage, shall be certified to the board of elections of the proper county or counties in the manner provided by section 5705.25 of the Revised Code, and such section shall govern the arrangements for the submission of such question and other matters with respect to such election, to which section 5705.25 of the Revised Code refers, excepting that such election shall be held on the date specified in the resolution, which shall be consistent with the requirements of section 3501.01 of the Revised Code, provided that only one special election for the submission of such question may be held in any one calendar year and provided that a special election may be held upon the same day a primary election is held.

Publication of notice of that election shall be made in a newspaper of general circulation in the county once a week for two consecutive weeks, or as provided in section 7.16 of the Revised Code, prior to the election. If the board of elections operates and maintains a web site, the board of elections shall post notice of the election on its web site for thirty days prior to the election.

If a majority of the electors voting on the question vote in favor thereof, the taxing authority of the subdivision may make the necessary levy within such subdivision at the additional rate or at any lesser rate outside the ten-mill limitation on the tax list and duplicate for the purpose stated in the resolution. Such tax levy shall be included in the next annual tax budget that is certified to the county budget commission.

After the approval of such a levy by the electors, the taxing authority of the subdivision may anticipate a fraction of the proceeds of such levy and issue anticipation notes. In the case of a continuing levy that is not levied for the purpose of current expenses, notes may be issued at any time after approval of the levy in an amount not more than fifty per cent of the total estimated proceeds of the levy for the succeeding ten years, less an amount equal to the fraction of the proceeds of the levy previously anticipated by the issuance of anticipation notes. In the case of a levy for a fixed period that is not for the purpose of current expenses, notes may be issued at any time after approval of the levy in an amount not more than fifty per cent of the total estimated proceeds of the levy throughout the remaining life of the levy, less an amount equal to the fraction of the proceeds of the levy previously anticipated by the issuance of anticipation notes. In the case of a levy for current expenses, notes may be issued after the approval of the levy by the electors and prior to the time when the first tax collection from the levy can be made. Such notes may be issued in an amount not more than fifty per cent of the total estimated proceeds of the levy throughout the term of the levy in the case of a levy for a fixed period, or fifty per cent of the total estimated proceeds for the first ten years of the levy in the case of a continuing levy.

No anticipation notes that increase the net indebtedness of a county may be issued without the prior consent of the board of county commissioners of that county. The notes shall be issued as provided in section 133.24 of the Revised Code, shall have principal payments during each year after the year of their issuance over a period not exceeding the life of the levy anticipated, and may have a principal payment in the year of their issuance.

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"Taxing authority" and "subdivision" have the same meanings as in section 5705.01 of the Revised Code.

This section is supplemental to and not in derogation of sections 5705.20, 5705.21, and 5705.22 of the Revised Code.

Amended by 129th General Assembly File No. 28, HB 153, § 101.01, eff. 9/29/2011.

Amended by 128th General Assembly File No. 29, HB 48, § 1, eff. 7/2/2010.

Amended by 128th General Assembly File No. 7, SB 79, § 1, eff. 10/6/2009.

Effective Date: 10-10-2000; 09-05-2005; 06-01-2006

5705.192 Replacement levies.

(A) For the purposes of this section only, "taxing authority" includes a township board of park commissioners appointed under section 511.18 of the Revised Code.

(B) A taxing authority may propose to replace an existing levy that the taxing authority is authorized to levy, regardless of the section of the Revised Code under which the authority is granted, except a school district emergency levy proposed pursuant to sections 5705.194 to 5705.197 of the Revised Code. The taxing authority may propose to replace the existing levy in its entirety at the rate at which it is authorized to be levied; may propose to replace a portion of the existing levy at a lesser rate; or may propose to replace the existing levy in its entirety and increase the rate at which it is levied. If the taxing authority proposes to replace an existing levy, the proposed levy shall be called a replacement levy and shall be so designated on the ballot. Except as otherwise provided in this division, a replacement levy shall be limited to the purpose of the existing levy, and shall appear separately on the ballot from, and shall not be conjoined with, the renewal of any other existing levy. In the case of an existing school district levy imposed under section 5705.21 of the Revised Code for the purpose specified in division (F) of section 5705.19 of the Revised Code, the replacement for that existing levy may be for the same purpose or for the purpose of general permanent improvements as defined in section 5705.21 of the Revised Code.

The resolution proposing a replacement levy shall specify the purpose of the levy; its proposed rate expressed in mills; whether the proposed rate is the same as the rate of the existing levy, a reduction, or an increase; the extent of any reduction or increase expressed in mills; the first calendar year in which the levy will be due; and the term of the levy, expressed in years or, if applicable, that it will be levied for a continuing period of time.

0079

The sections of the Revised Code governing the maximum rate and term of the existing levy, the contents of the resolution that proposed the levy, the adoption of the resolution, the arrangements for the submission of the question of the levy, and notice of the election also govern the respective provisions of the proposal to replace the existing levy, except as provided in division (B)(1) or (2) of this section:

(1) In the case of an existing school district levy imposed under section 5705.21 of the Revised Code for the purpose specified in division (F) of section 5705.19 of the Revised Code that is to be replaced by a levy for general permanent improvements, the maximum term of the replacement levy is not limited to the term of the existing levy and may be for a continuing period of time.

(2) The date on which the election is held shall be as follows:

(a) For the replacement of a levy with a fixed term of years, the date of the general election held during the last year the existing levy may be extended on the real and public utility property tax list and duplicate, or the date of any election held in the ensuing year;

(b) For the replacement of a levy imposed for a continuing period of time, the date of any election held in any year after the year the levy to be replaced is first approved by the electors, except that only one election on the question of replacing the levy may be held during any calendar year.

The failure by the electors to approve a proposal to replace a levy imposed for a continuing period of time does not terminate the existing continuing levy.

(C) The form of the ballot at the election on the question of a replacement levy shall be as follows:

"A replacement of a tax for the benefit of (name of subdivision or public library) for the purpose of (the purpose stated in the resolution) at a rate not exceeding mills for each one dollar of valuation, which amounts to (rate expressed in dollars and cents) for each one hundred dollars in valuation, for (number of years levy is to run, or that it will be levied for a continuous period of time)

FOR THE TAX LEVY

AGAINST THE TAX LEVY"

If the proposal is to replace an existing levy and increase the rate of the existing levy, the form of the ballot shall be changed by adding the words "..... mills of an existing levy and an increase of mills, to constitute" after the words "a replacement of." If the proposal is to replace only a portion of an existing levy, the form of the ballot shall be changed by adding the words "a portion of an existing levy, being a reduction of mills, to constitute" after the words "a replacement of."

0080

If the tax is to be placed on the tax list of the current tax year, the form of the ballot shall be modified by adding at the end of the form the phrase ", commencing in (first

year the replacement tax is to be levied), first due in calendar year (first calendar year in which the tax shall be due)."

The question covered by the resolution shall be submitted as a separate proposition, but may be printed on the same ballot with any other proposition submitted at the same election, other than the election of officers. More than one such question may be submitted at the same election.

(D) Two existing levies, or any portion of those levies, may be combined into one replacement levy, so long as both of the existing levies are for the same purpose and either both are due to expire the same year or both are for a continuing period of time. The question of combining all or portions of the two existing levies into the replacement levy shall appear as one ballot proposition before the electors. If the electors approve the ballot proposition, all or the stated portions of the two existing levies are replaced by one replacement levy.

(E) A levy approved in excess of the ten-mill limitation under this section shall be certified to the tax commissioner. In the first year of a levy approved under this section, the levy shall be extended on the tax lists after the February settlement succeeding the election at which the levy was approved. If the levy is to be placed on the tax lists of the current year, as specified in the resolution providing for its submission, the result of the election shall be certified immediately after the canvass by the board of elections to the taxing authority, which shall forthwith make the necessary levy and certify it to the county auditor, who shall extend it on the tax lists for collection. After the first year, the levy shall be included in the annual tax budget that is certified to the county budget commission.

If notes are authorized to be issued in anticipation of the proceeds of the existing levy, notes may be issued in anticipation of the proceeds of the replacement levy, and such issuance is subject to the terms and limitations governing the issuance of notes in anticipation of the proceeds of the existing levy.

This section does not authorize a tax to be levied in any year after the year in which revenue is not needed for the purpose for which the tax is levied.

Effective Date: 08-16-1999; 03-31-2005

0081

5705.193 County anticipation notes for permanent improvement or class of permanent improvements.

When the electors of a county have approved a tax levy under section 5705.191 of the Revised Code for the purpose of providing funds for the acquisition or construction of a

specific permanent improvement or class of permanent improvements for the county, the taxing authority of such county may anticipate a fraction of the proceeds of such levy and from time to time, during the life of such levy, issue anticipation notes in a principal amount not to exceed seventy-five per cent of the estimated proceeds of such levy to be collected after the date of the issuance of such notes, less an amount equal to the proceeds of such levy previously obligated by the issuance of anticipation notes. No anticipation notes that increase the net indebtedness of a county may be issued without the prior consent of the board of county commissioners of that county.

Such notes shall be issued as provided in section 133.24 of the Revised Code, shall have principal payments during each remaining year of the life of the levy after the year of their issuance, and may have a principal payment in the year of their issuance.

Effective Date: 09-17-1991

5705.194 Levy in excess of ten-mill limitation - schools.

The board of education of any city, local, exempted village, cooperative education, or joint vocational school district at any time may declare by resolution that the revenue that will be raised by all tax levies which the district is authorized to impose, when combined with state and federal revenues, will be insufficient to provide for the emergency requirements of the school district or to avoid an operating deficit, and that it is therefore necessary to levy an additional tax in excess of the ten-mill limitation. The resolution shall be confined to a single purpose and shall specify that purpose. If the levy is proposed to renew all or a portion of the proceeds derived from one or more existing levies imposed pursuant to this section, it shall be called a renewal levy and shall be so designated on the ballot. If two or more existing levies are to be included in a single renewal levy but are not scheduled to expire in the same year, the resolution shall specify that the existing levies to be renewed shall not be levied after the year preceding the year in which the renewal levy is first imposed. Notwithstanding the original purpose of any one or more existing levies that are to be in any single renewal levy, the purpose of the renewal levy may be either to avoid an operating deficit or to provide for the emergency requirements of the school district. The resolution shall further specify the amount of money it is necessary to raise for the specified purpose for each calendar year the millage is to be imposed; if a renewal levy, whether the levy is to renew all, or a portion of, the proceeds derived from one or more existing levies; and the number of years in which the millage is to be in effect, which may include a levy upon the current year's tax list. The number of years may be any number not exceeding ten.

0082

The question shall be submitted at a special election on a date specified in the resolution. The date shall not be earlier than eighty days after the adoption and certification of the

resolution to the county auditor and shall be consistent with the requirements of section 3501.01 of the Revised Code. A resolution for a renewal levy shall not be placed on the ballot unless the question is submitted on a date on which a special election may be held under division (D) of section 3501.01 of the Revised Code, except for the first Tuesday after the first Monday in February and August, during the last year the levy to be renewed may be extended on the real and public utility property tax list and duplicate, or at any election held in the ensuing year, except that if the resolution proposes renewing two or more existing levies, the question shall be submitted on the date of the general or primary election held during the last year at least one of the levies to be renewed may be extended on that list and duplicate, or at any election held during the ensuing year. For purposes of this section, a levy shall be considered to be an "existing levy" through the year following the last year it can be placed on the real and public utility property tax list and duplicate.

The submission of questions to the electors under this section is subject to the limitation on the number of election dates established by section 5705.214 of the Revised Code.

The resolution shall go into immediate effect upon its passage, and no publication of the resolution shall be necessary other than that provided for in the notice of election. A copy of the resolution shall immediately after its passing be certified to the county auditor of the proper county. Section 5705.195 of the Revised Code shall govern the arrangements for the submission of questions to the electors under this section and other matters concerning the election. Publication of notice of the election shall be made in one newspaper of general circulation in the county once a week for two consecutive weeks, or as provided in section 7.16 of the Revised Code, prior to the election. If the board of elections operates and maintains a web site, the board of elections shall post notice of the election on its web site for thirty days prior to the election. If a majority of the electors voting on the question submitted in an election vote in favor of the levy, the board of education of the school district may make the additional levy necessary to raise the amount specified in the resolution for the purpose stated in the resolution. The tax levy shall be included in the next tax budget that is certified to the county budget commission.

After the approval of the levy and prior to the time when the first tax collection from the levy can be made, the board of education may anticipate a fraction of the proceeds of the levy and issue anticipation notes in an amount not exceeding the total estimated proceeds of the levy to be collected during the first year of the levy.

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The notes shall be issued as provided in section 133.24 of the Revised Code, shall have principal payments during each year after the year of their issuance over a period not to exceed five years, and may have principal payment in the year of their issuance.

Amended by 129th General Assembly File No. 28, HB 153, § 101.01, eff. 9/29/2011.

5705.195 Calculation of millage and years school levy shall run.

Within five days after the resolution is certified to the county auditor as provided by section 5705.194 of the Revised Code, the auditor shall calculate and certify to the taxing authority the annual levy, expressed in dollars and cents for each one hundred dollars of valuation as well as in mills for each one dollar of valuation, throughout the life of the levy which will be required to produce the annual amount set forth in the resolution assuming that the amount of the tax list of such subdivision remains throughout the life of the levy the same as the amount of the tax list for the current year, and if this is not determined, the estimated amount submitted by the auditor to the county budget commission. When considering the tangible personal property component of the tax valuation of the subdivision, the county auditor shall take into account the assessment percentages prescribed in section 5711.22 of the Revised Code. The tax commissioner may issue rules, orders, or instructions directing how the assessment percentages must be utilized.

Upon receiving the certification from the county auditor, if the taxing authority desires to proceed with the submission of the question it shall, not less than ninety days before the day of such election, certify its resolution, together with the amount of the average tax levy, expressed in dollars and cents for each one hundred dollars of valuation as well as in mills for each one dollar of valuation, estimated by the auditor, and the number of years the levy is to run to the board of elections of the county which shall prepare the ballots and make other necessary arrangements for the submission of the question to the voters of the subdivision.

Amended by 128th General Assembly File No. 29, HB 48, § 1, eff. 7/2/2010.

Effective Date: 05-07-1986; 03-30-2006

5705.196 Submitting school levy to electors.

0084

The election provided for in section 5705.194 of the Revised Code shall be held at the regular places for voting in the district, and shall be conducted, canvassed, and certified in the same manner as regular elections in the district for the election of county officers, provided that in any such election in which only part of the electors of a precinct are qualified to vote, the board of elections may assign voters in such part to an adjoining precinct. Such an assignment may be made to an adjoining precinct in another county with the consent and approval of the board of elections of such other county. Notice of the

election shall be published in one newspaper of general circulation in the district once a week for two consecutive weeks or as provided in section 7.16 of the Revised Code, prior to the election. If the board of elections operates and maintains a web site, the board of elections shall post notice of the election on its web site for thirty days prior to the election. Such notice shall state the annual proceeds of the proposed levy, the purpose for which such proceeds are to be used, the number of years during which the levy shall run, and the estimated average additional tax rate expressed in dollars and cents for each one hundred dollars of valuation as well as in mills for each one dollar of valuation, outside the limitation imposed by Section 2 of Article XII, Ohio Constitution, as certified by the county auditor.

Amended by 129th General Assembly File No. 28, HB 153, § 101.01, eff. 9/29/2011.

Effective Date: 08-17-1971; 06-01-2006

5705.197 Form of ballot.

The form of the ballot to be used at the election provided for in section 5705.195 of the Revised Code shall be as follows:

"Shall a levy be imposed by the (here insert name of school district) for the purpose of (here insert purpose of levy) in the sum of (here insert annual amount the levy is to produce) and a levy of taxes to be made outside of the ten-mill limitation estimated by the county auditor to average (here insert number of mills) mills for each one dollar of valuation, which amounts to (here insert rate expressed in dollars and cents) for each one hundred dollars of valuation, for a period of (here insert the number of years the millage is to be imposed) years?

FOR THE TAX LEVY

AGAINST THE TAX LEVY

The purpose for which the tax is to be levied shall be printed in the space indicated, in boldface type of at least twice the size of the type immediately surrounding it.

If the tax is to be placed on the current tax list, the form of the ballot shall be modified by adding, after "years," the phrase ", commencing in (first year the tax is to be levied), first due in calendar year (first calendar year in which the tax shall be due)."

If the levy submitted is a proposal to renew all or a portion of an existing levy, the form of the ballot specified in this section may be changed by adding the following at the beginning of the form, after the words "shall a levy" :

(A) "Renewing an existing levy" in the case of a proposal to renew an existing levy in the same amount;

(B) "Renewing dollars and providing an increase of dollars" in the case of an increase;

(C) "Renewing part of an existing levy, being a reduction of dollars" in the case of a renewal of only part of an existing levy.

If the levy submitted is a proposal to renew all or a portion of more than one existing levy, the form of the ballot may be changed in any of the manners provided in division (A), (B), or (C) of this section, or any combination of those manners, as appropriate, so long as the form of the ballot reflects the number of levies to be renewed, whether the amount of any of the levies will be increased or decreased, the amount of any such increase or decrease for each levy, and that none of the existing levies to be renewed will be levied after the year preceding the year in which the renewal levy is first imposed. The form of the ballot shall be changed by adding the following statement after "for a period of years?" and before "For the Tax Levy" and "Against the Tax Levy" :

"If approved, any remaining tax years on any of the above (here insert the number of existing levies) existing levies will not be collected after (here insert the current tax year or, if not the current tax year, the applicable tax year)."

Effective Date: 08-16-1999

5705.198 Tax levy by joint recreation district.

The taxing authority of a joint recreation district may levy a tax approved by the electors for the purpose stated in division (H) of section 5705.19 of the Revised Code and for a continuing period of time, and in accordance with that section. After the approval at any time of a levy for that purpose by vote, the taxing authority of a joint recreation district may anticipate a fraction of the proceeds of that levy and, from time to time during the life of the levy, issue anticipation notes. The aggregate principal payments on all such anticipation notes to be made in any calendar year shall not exceed fifty per cent of the anticipated proceeds from the levy for that year, and no anticipation note shall mature later than the thirty-first day of December of the fifth calendar year following the calendar year in which that note is issued. Such notes shall be issued as provided in section 133.24 of the Revised Code.

5705.199 School levy in excess of ten-mill limitation.

(A) At any time the board of education of a city, local, exempted village, cooperative education, or joint vocational school district, by a vote of two-thirds of all its members, may declare by resolution that the revenue that will be raised by all tax levies that the district is authorized to impose, when combined with state and federal revenues, will be insufficient to provide for the necessary requirements of the school district, and that it is therefore necessary to levy a tax in excess of the ten-mill limitation for the purpose of providing for the necessary requirements of the school district. Such a levy shall be proposed as a substitute for all or a portion of one or more existing levies imposed under sections 5705.194 to 5705.197 of the Revised Code or under this section, by levying a tax as follows:

(1) In the initial year the levy is in effect, the levy shall be in a specified amount of money equal to the aggregate annual dollar amount of proceeds derived from the levy or levies, or portion thereof, being substituted.

(2) In each subsequent year the levy is in effect, the levy shall be in a specified amount of money equal to the sum of the following:

(a) The dollar amount of the proceeds derived from the levy in the prior year; and

(b) The dollar amount equal to the product of the total taxable value of all taxable real property in the school district in the then-current year, excluding carryover property as defined in section 319.301 of the Revised Code, multiplied by the annual levy, expressed in mills for each one dollar of valuation, that was required to produce the annual dollar amount of the levy under this section in the prior year; provided, that the amount under division (A)(2)(b) of this section shall not be less than zero.

(B) The resolution proposing the substitute levy shall specify the annual dollar amount the levy is to produce in its initial year; the first calendar year in which the levy will be due; and the term of the levy expressed in years, which may be any number not exceeding ten, or for a continuing period of time. The resolution shall specify the date of holding the election, which shall not be earlier than ninety days after certification of the resolution to the board of elections, and which shall be consistent with the requirements of section 3501.01 of the Revised Code. If two or more existing levies are to be included in a single substitute levy, but are not scheduled to expire in the same year, the resolution shall specify that the existing levies to be substituted shall not be levied after the year preceding the year in which the substitute levy is first imposed.

The resolution shall go into immediate effect upon its passage, and no publication of the resolution shall be necessary other than that provided for in the notice of election. A copy of the resolution shall immediately after its passage be certified to the county auditor in the manner provided by section 5705.195 of the Revised Code, and sections 5705.194 and 5705.196 of the Revised Code shall govern the arrangements for the submission of the question and other matters concerning the notice of election and the election, except as may be provided otherwise in this section.

(C) The form of the ballot to be used at the election on the question of a levy under this section shall be as follows:

"Shall a tax levy substituting for an existing levy be imposed by the (here insert name of school district) for the purpose of providing for the necessary requirements of the school district in the initial sum of (here insert the annual dollar amount the levy is to produce in its initial year), and a levy of taxes be made outside of the ten-mill limitation estimated by the county auditor to require (here insert number of mills) mills for each one dollar of valuation, which amounts to (here insert rate expressed in dollars and cents) for each one hundred dollars of valuation for the initial year of the tax, for a period of (here insert the number of years the levy is to be imposed, or that it will be levied for a continuing period of time), commencing in (first year the tax is to be levied), first due in calendar year (first calendar year in which the tax shall be due), with the sum of such tax to increase only if and as new land or real property improvements not previously taxed by the school district are added to its tax list?

FOR THE TAX LEVY

AGAINST THE TAX LEVY "

If the levy submitted is a proposal to substitute all or a portion of more than one existing levy, the form of the ballot may be changed so long as the ballot reflects the number of levies to be substituted and that none of the existing levies to be substituted will be levied after the year preceding the year in which the substitute levy is first imposed. The form of the ballot shall be modified by substituting the statement "Shall a tax levy substituting for an existing levy" with "Shall a tax levy substituting for existing levies" and adding the following statement after "added to its tax list?" and before "For the Tax Levy" :

"If approved, any remaining tax years on any of the (here insert the number of existing levies) existing levies will not be collected after (here insert the current tax year or, if not the current tax year, the applicable tax year)."

(D) The submission of questions to the electors under this section is subject to the limitation on the number of election dates established by section 5705.214 of the Revised Code.

(E) If a majority of the electors voting on the question so submitted in an election vote in favor of the levy, the board of education may make the necessary levy within the school district at the rate and for the purpose stated in the resolution. The tax levy shall be included in the next tax budget that is certified to the county budget commission.

(F) A levy for a continuing period of time may be decreased pursuant to section 5705.261 of the Revised Code.

(G) A levy under this section substituting for all or a portion of one or more existing levies imposed under sections 5705.194 to 5705.197 of the Revised Code or under this section shall be treated as having renewed the levy or levies being substituted for purposes of the payments made under sections 5751.20 to 5751.22 of the Revised Code.

(H) After the approval of a levy on the current tax list and duplicate, and prior to the time when the first tax collection from the levy can be made, the board of education may anticipate a fraction of the proceeds of the levy and issue anticipation notes in a principal amount not exceeding fifty per cent of the total estimated proceeds of the levy to be collected during the first year of the levy. The notes shall be issued as provided in section 133.24 of the Revised Code, shall have principal payments during each year after the year of their issuance over a period not to exceed five years, and may have a principal payment in the year of their issuance.

Amended by 128th General Assembly File No. 29, HB 48, § 1, eff. 7/2/2010.

Effective Date: 2008 HB562 09-22-2008

5705.20 Special levy for tuberculosis treatment or clinics.

The board of county commissioners of any county, in any year, after providing the normal and customary percentage of the total general fund appropriations for the support of the tuberculosis treatment specified under section 339.73 of the Revised Code or for the support of tuberculosis clinics established pursuant to section 339.76 of the Revised Code, by vote of two-thirds of all the members of said board may declare by resolution that the amount of taxes which may be raised within the ten-mill limitation will be insufficient to provide an adequate amount for that support, and that it is necessary to levy a tax in excess of the ten-mill limitation to supplement such general fund appropriations for such purpose, but the total levy for this purpose shall not exceed sixty-five one hundredths of a mill.

Such resolution shall conform to section 5705.19 of the Revised Code and be certified to the board of elections not less than ninety days before the general election and submitted in the manner provided in section 5705.25 of the Revised Code.

If the majority of electors voting on a levy to supplement general fund appropriations for the support of the tuberculosis treatment specified under section 339.73 of the Revised Code or for the support of tuberculosis clinics established pursuant to section 339.76 of the Revised Code, vote in favor thereof, the board of said county may levy a tax within such county at the additional rate in excess of the ten-mill limitation during the period and for the purpose stated in the resolution or at any less rate or for any of said years.

If a tax was levied under this section for the support of tuberculosis clinics before October 10, 2000, the levy may be renewed for that purpose on or after October 10, 2000, in accordance with section 5705.25 of the Revised Code.

Amended by 128th General Assembly File No. 29, HB 48, § 1, eff. 7/2/2010.

Effective Date: 10-10-2000

5705.21 Special election on additional school district levy.

(A) At any time, the board of education of any city, local, exempted village, cooperative education, or joint vocational school district, by a vote of two-thirds of all its members, may declare by resolution that the amount of taxes which may be raised within the ten-mill limitation by levies on the current tax duplicate will be insufficient to provide an adequate amount for the necessary requirements of the school district, that it is necessary to levy a tax in excess of such limitation for one of the purposes specified in division (A), (D), (F), (H), or (DD) of section 5705.19 of the Revised Code, for general permanent improvements, for the purpose of operating a cultural center, or for the purpose of providing education technology, and that the question of such additional tax levy shall be submitted to the electors of the school district at a special election on a day to be specified in the resolution. If the resolution states that the levy is for the purpose of operating a cultural center, the ballot shall state that the levy is "for the purpose of operating the (name of cultural center)."

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As used in this section, "cultural center" means a freestanding building, separate from a public school building, that is open to the public for educational, musical, artistic, and cultural purposes; "education technology" means, but is not limited to, computer hardware, equipment, materials, and accessories, equipment used for two-way audio or video, and software; and "general permanent improvements" means permanent improvements without regard to the limitation of division (F) of section 5705.19 of the

Revised Code that the improvements be a specific improvement or a class of improvements that may be included in a single bond issue.

The submission of questions to the electors under this section is subject to the limitation on the number of election dates established by section 5705.214 of the Revised Code.

(B) Such resolution shall be confined to a single purpose and shall specify the amount of the increase in rate that it is necessary to levy, the purpose of the levy, and the number of years during which the increase in rate shall be in effect. The number of years may be any number not exceeding five or, if the levy is for current expenses of the district or for general permanent improvements, for a continuing period of time. The resolution shall specify the date of holding such election, which shall not be earlier than ninety days after the adoption and certification of the resolution and which shall be consistent with the requirements of section 3501.01 of the Revised Code.

The resolution may propose to renew one or more existing levies imposed under this section or to increase or decrease a single levy imposed under this section. If the board of education imposes one or more existing levies for the purpose specified in division (F) of section 5705.19 of the Revised Code, the resolution may propose to renew one or more of those existing levies, or to increase or decrease a single such existing levy, for the purpose of general permanent improvements. If the resolution proposes to renew two or more existing levies, the levies shall be levied for the same purpose. The resolution shall identify those levies and the rates at which they are levied. The resolution also shall specify that the existing levies shall not be extended on the tax lists after the year preceding the year in which the renewal levy is first imposed, regardless of the years for which those levies originally were authorized to be levied.

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The resolution shall go into immediate effect upon its passage, and no publication of the resolution shall be necessary other than that provided for in the notice of election. A copy of the resolution shall immediately after its passing be certified to the board of elections of the proper county in the manner provided by section 5705.25 of the Revised Code, and that section shall govern the arrangements for the submission of such question and other matters concerning such election, to which that section refers, except that such election shall be held on the date specified in the resolution. Publication of notice of that election shall be made in a newspaper of general circulation in the county once a week for two consecutive weeks, or as provided in section 7.16 of the Revised Code, prior to the election. If the board of elections operates and maintains a web site, the board of elections shall post notice of the election on its web site for thirty days prior to the election. If a majority of the electors voting on the question so submitted in an election vote in favor of the levy, the board of education may make the necessary levy within the school district at the additional rate, or at any lesser rate in excess of the ten-mill

limitation on the tax list, for the purpose stated in the resolution. A levy for a continuing period of time may be reduced pursuant to section 5705.261 of the Revised Code. The tax levy shall be included in the next tax budget that is certified to the county budget commission.

(C)(1) After the approval of a levy on the current tax list and duplicate for current expenses, for recreational purposes, for community centers provided for in section 755.16 of the Revised Code, or for a public library of the district and prior to the time when the first tax collection from the levy can be made, the board of education may anticipate a fraction of the proceeds of the levy and issue anticipation notes in a principal amount not exceeding fifty per cent of the total estimated proceeds of the levy to be collected during the first year of the levy.

(2) After the approval of a levy for general permanent improvements for a specified number of years, or for permanent improvements having the purpose specified in division (F) of section 5705.19 of the Revised Code, the board of education may anticipate a fraction of the proceeds of the levy and issue anticipation notes in a principal amount not exceeding fifty per cent of the total estimated proceeds of the levy remaining to be collected in each year over a period of five years after the issuance of the notes.

The notes shall be issued as provided in section 133.24 of the Revised Code, shall have principal payments during each year after the year of their issuance over a period not to exceed five years, and may have a principal payment in the year of their issuance.

(3) After approval of a levy for general permanent improvements for a continuing period of time, the board of education may anticipate a fraction of the proceeds of the levy and issue anticipation notes in a principal amount not exceeding fifty per cent of the total estimated proceeds of the levy to be collected in each year over a specified period of years, not exceeding ten, after the issuance of the notes.

The notes shall be issued as provided in section 133.24 of the Revised Code, shall have principal payments during each year after the year of their issuance over a period not to exceed ten years, and may have a principal payment in the year of their issuance.

Amended by 129th General Assembly File No. 28, HB 153, § 101.01, eff. 9/29/2011.

Amended by 128th General Assembly File No. 29, HB 48, § 1, eff. 7/2/2010.

Effective Date: 08-16-1999; 03-31-2005; 06-01-2006

5705.211 Special levy for school district current operating expenses.

(A) As used in this section:

(1) "Adjusted charge-off increase" for a tax year means two and two-tenths per cent of the cumulative carryover property value increase.

(2) "Cumulative carryover property value increase" means the sum of the increases in carryover value certified under division (B)(2) of section 3317.015 of the Revised Code and included in a school district's total taxable value in the computation of recognized valuation under division (B) of that section for all fiscal years from the fiscal year that ends in the first tax year a levy under this section is extended on the tax list of real and public utility property until and including the fiscal year that ends in the current tax year.

(3) "Taxes charged and payable" means the taxes charged and payable from a tax levy extended on the real and public utility property tax list and the general list of personal property before any reduction under section 319.302, 323.152, or 323.158 of the Revised Code.

(B) The board of education of a city, local, or exempted village school district may adopt a resolution proposing the levy of a tax in excess of the ten-mill limitation for the purpose of paying the current operating expenses of the district. If the resolution is approved as provided in division (D) of this section, the tax may be levied at such a rate each tax year that the total taxes charged and payable from the levy equals the adjusted charge-off increase for the tax year or equals a lesser amount as prescribed under division (C) of this section. The tax may be levied for a continuing period of time or for a specific number of years, but not fewer than five years, as provided in the resolution. The tax may not be placed on the tax list for a tax year beginning before the first day of January following adoption of the resolution. A board of education may not adopt a resolution under this section proposing to levy a tax under this section concurrently with any other tax levied by the board under this section.

(C) After the first year a tax is levied under this section, the rate of the tax in any year shall not exceed the rate, estimated by the county auditor, that would cause the sums levied from the tax against carryover property to exceed one hundred four per cent of the sums levied from the tax against carryover property in the preceding year. A board of education imposing a tax under this section may specify in the resolution imposing the tax that the percentage shall be less than one hundred four per cent, but the percentage shall not be less than one hundred per cent. At any time after a resolution adopted under this section is approved by a majority of electors as provided in division (D) of this section, the board of education, by resolution, may decrease the percentage specified in the resolution levying the tax.

(D) A resolution adopted under this section shall state that the purpose of the tax is to pay current operating expenses of the district, and shall specify the first year in which the tax is to be levied, the number of years the tax will be levied or that it will be levied for a continuing period of time, and the election at which the question of the tax is to appear on the ballot, which shall be a general or special election consistent with the requirements of section 3501.01 of the Revised Code. If the board of education specifies a percentage less than one hundred four per cent pursuant to division (C) of this section, the percentage shall be specified in the resolution.

Upon adoption of the resolution, the board of education may certify a copy of the resolution to the proper county board of elections. The copy of the resolution shall be certified to the board of elections not later than ninety days before the day of the election at which the question of the tax is to appear on the ballot. Upon receiving a timely certified copy of such a resolution, the board of elections shall make the necessary arrangements for the submission of the question to the electors of the school district, and the election shall be conducted, canvassed, and certified in the same manner as regular elections in the school district for the election of members of the board of education. Notice of the election shall be published in a newspaper of general circulation in the school district once per week for four consecutive weeks or as provided in section 7.16 of the Revised Code. The notice shall state that the purpose of the tax is for the current operating expenses of the school district, the first year the tax is to be levied, the number of years the tax is to be levied or that it is to be levied for a continuing period of time, that the tax is to be levied each year in an amount estimated to offset decreases in state base cost funding caused by appreciation in real estate values, and that the estimated additional tax in any year shall not exceed the previous year's by more than four per cent, or a lesser percentage specified in the resolution levying the tax, except for increases caused by the addition of new taxable property.

The question shall be submitted as a separate proposition but may be printed on the same ballot with any other proposition submitted at the same election other than the election of officers.

The form of the ballot shall be substantially as follows:

"An additional tax for the benefit of (name of school district) for the purpose of paying the current operating expenses of the district, for (number of years or for continuing period of time), at a rate sufficient to offset any reduction in basic state funding caused by appreciation in real estate values? This levy will permit variable annual growth in revenue up to (amount specified by school district) per cent for the duration of the levy.

If a majority of the electors of the school district voting on the question vote in favor of the question, the board of elections shall certify the results of the election to the board of education and to the tax commissioner immediately after the canvass.

(E) When preparing any estimate of the contemplated receipts from a tax levied pursuant to this section for the purposes of sections 5705.28 to 5705.40 of the Revised Code, and in preparing to certify the tax under section 5705.34 of the Revised Code, a board of education authorized to levy such a tax shall use information supplied by the department of education to determine the adjusted charge-off increase for the tax year for which that certification is made. If the board levied a tax under this section in the preceding tax year, the sum to be certified for collection from the tax shall not exceed the sum that would exceed the limitation imposed under division (C) of this section. At the request of the board of education or the treasurer of the school district, the county auditor shall assist the board of education in determining the rate or sum that may be levied under this section.

The board of education shall certify the sum authorized to be levied to the county auditor, and, for the purpose of the county auditor determining the rate at which the tax is to be levied in the tax year, the sum so certified shall be the sum to be raised by the tax unless the sum exceeds the limitation imposed by division (C) of this section. A tax levied pursuant to this section shall not be levied at a rate in excess of the rate estimated by the county auditor to produce the sum certified by the board of education before the reductions under sections 319.302, 323.152, and 323.158 of the Revised Code. Notwithstanding section 5705.34 of the Revised Code, a board of education authorized to levy a tax under this section shall certify the tax to the county auditor before the first day of October of the tax year in which the tax is to be levied, or at a later date as approved by the tax commissioner.

Amended by 129th General Assembly File No. 28, HB 153, § 101.01, eff. 6/30/2011.

Amended by 128th General Assembly File No. 29, HB 48, § 1, eff. 7/2/2010.

Amended by 128th General Assembly File No. 9, HB 1, § 101.01, eff. 10/16/2009.

Effective Date: 06-30-2006

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5705.212 School levy of up to five incremental taxes.

(A)(1) The board of education of any school district, at any time and by a vote of two-thirds of all of its members, may declare by resolution that the amount of taxes that may be raised within the ten-mill limitation will be insufficient to provide an adequate amount

for the present and future requirements of the school district, that it is necessary to levy not more than five taxes in excess of that limitation for current expenses, and that each of the proposed taxes first will be levied in a different year, over a specified period of time. The board shall identify the taxes proposed under this section as follows: the first tax to be levied shall be called the "original tax." Each tax subsequently levied shall be called an "incremental tax." The rate of each incremental tax shall be identical, but the rates of such incremental taxes need not be the same as the rate of the original tax. The resolution also shall state that the question of these additional taxes shall be submitted to the electors of the school district at a special election. The resolution shall specify separately for each tax proposed: the amount of the increase in rate that it is necessary to levy, expressed separately for the original tax and each incremental tax; that the purpose of the levy is for current expenses; the number of years during which the original tax shall be in effect; a specification that the last year in which the original tax is in effect shall also be the last year in which each incremental tax shall be in effect; and the year in which each tax first is proposed to be levied. The original tax may be levied for any number of years not exceeding ten, or for a continuing period of time. The resolution shall specify the date of holding the special election, which shall not be earlier than ninety days after the adoption and certification of the resolution and shall be consistent with the requirements of section 3501.01 of the Revised Code.

(2) The board of education, by a vote of two-thirds of all of its members, may adopt a resolution proposing to renew taxes levied other than for a continuing period of time under division (A)(1) of this section. Such a resolution shall provide for levying a tax and specify all of the following:

(a) That the tax shall be called and designated on the ballot as a renewal levy;

(b) The rate of the renewal tax, which shall be a single rate that combines the rate of the original tax and each incremental tax into a single rate. The rate of the renewal tax shall not exceed the aggregate rate of the original and incremental taxes.

(c) The number of years, not to exceed ten, that the renewal tax will be levied, or that it will be levied for a continuing period of time;

(d) That the purpose of the renewal levy is for current expenses;

(e) Subject to the certification and notification requirements of section 5705.251 of the Revised Code, that the question of the renewal levy shall be submitted to the electors of the school district at the general election held during the last year the original tax may be extended on the real and public utility property tax list and duplicate or at a special election held during the ensuing year.

(3) A resolution adopted under division (A)(1) or (2) of this section shall go into immediate effect upon its adoption and no publication of the resolution is necessary other than that provided for in the notice of election. Immediately after its adoption, a copy of the resolution shall be certified to the board of elections of the proper county in the manner provided by division (A) of section 5705.251 of the Revised Code, and that division shall govern the arrangements for the submission of the question and other matters concerning the election to which that section refers. The election shall be held on the date specified in the resolution. If a majority of the electors voting on the question so submitted in an election vote in favor of the taxes or a renewal tax, the board of education, if the original or a renewal tax is authorized to be levied for the current year, immediately may make the necessary levy within the school district at the authorized rate, or at any lesser rate in excess of the ten-mill limitation, for the purpose stated in the resolution. No tax shall be imposed prior to the year specified in the resolution as the year in which it is first proposed to be levied. The rate of the original tax and the rate of each incremental tax shall be cumulative, so that the aggregate rate levied in any year is the sum of the rates of both the original tax and all incremental taxes levied in or prior to that year under the same proposal. A tax levied for a continuing period of time under this section may be reduced pursuant to section 5705.261 of the Revised Code.

(4) The submission of questions to the electors under this section is subject to the limitation on the number of election dates established by section 5705.214 of the Revised Code.

(B) Notwithstanding sections 133.30 and 133.301 of the Revised Code, after the approval of a tax to be levied in the current or the succeeding year and prior to the time when the first tax collection from that levy can be made, the board of education may anticipate a fraction of the proceeds of the levy and issue anticipation notes in an amount not to exceed fifty per cent of the total estimated proceeds of the levy to be collected during the first year of the levy. The notes shall be sold as provided in Chapter 133. of the Revised Code. If anticipation notes are issued, they shall mature serially and in substantially equal amounts during each year over a period not to exceed five years; and the amount necessary to pay the interest and principal as the anticipation notes mature shall be deemed appropriated for those purposes from the levy, and appropriations from the levy by the board of education shall be limited each fiscal year to the balance available in excess of that amount.

If the auditor of state has certified a deficit pursuant to section 3313.483 of the Revised Code, the notes authorized under this section may be sold in accordance with Chapter 133. of the Revised Code, except that the board may sell the notes after providing a reasonable opportunity for competitive bidding.

Effective Date: 04-17-1990

5705.213 Special school district election on levy for current expenses - renewal levy.

(A)(1) The board of education of any school district, at any time and by a vote of two-thirds of all of its members, may declare by resolution that the amount of taxes that may be raised within the ten-mill limitation will be insufficient to provide an adequate amount for the present and future requirements of the school district and that it is necessary to levy a tax in excess of that limitation for current expenses. The resolution also shall state that the question of the additional tax shall be submitted to the electors of the school district at a special election. The resolution shall specify, for each year the levy is in effect, the amount of money that the levy is proposed to raise, which may, for years after the first year the levy is made, be expressed in terms of a dollar or percentage increase over the prior year's amount. The resolution also shall specify that the purpose of the levy is for current expenses, the number of years during which the tax shall be in effect which may be for any number of years not exceeding ten, and the year in which the tax first is proposed to be levied. The resolution shall specify the date of holding the special election, which shall not be earlier than ninety-five days after the adoption and certification of the resolution to the county auditor and not earlier than ninety days after certification to the board of elections. The date of the election shall be consistent with the requirements of section 3501.01 of the Revised Code.

(2) The board of education, by a vote of two-thirds of all of its members, may adopt a resolution proposing to renew a tax levied under division (A)(1) of this section. Such a resolution shall provide for levying a tax and specify all of the following:

- (a) That the tax shall be called and designated on the ballot as a renewal levy;
- (b) The amount of the renewal tax, which shall be no more than the amount of tax levied during the last year the tax being renewed is authorized to be in effect;
- (c) The number of years, not to exceed ten, that the renewal tax will be levied, or that it will be levied for a continuing period of time;
- (d) That the purpose of the renewal levy is for current expenses;
- (e) Subject to the certification and notification requirements of section 5705.251 of the Revised Code, that the question of the renewal levy shall be submitted to the electors of the school district at the general election held during the last year the tax being renewed

may be extended on the real and public utility property tax list and duplicate or at a special election held during the ensuing year.

(3) A resolution adopted under division (A)(1) or (2) of this section shall go into immediate effect upon its adoption and no publication of the resolution is necessary other than that provided for in the notice of election. Immediately after its adoption, a copy of the resolution shall be certified to the county auditor of the proper county, who shall, within five days, calculate and certify to the board of education the estimated levy, for the first year, and for each subsequent year for which the tax is proposed to be in effect. The estimates shall be made both in mills for each dollar of valuation, and in dollars and cents for each one hundred dollars of valuation. In making the estimates, the auditor shall assume that the amount of the tax list remains throughout the life of the levy, the same as the tax list for the current year. If the tax list for the current year is not determined, the auditor shall base the auditor's estimates on the estimated amount of the tax list for the current year as submitted to the county budget commission.

If the board desires to proceed with the submission of the question, it shall certify its resolution, with the estimated tax levy expressed in mills and dollars and cents per hundred dollars of valuation for each year that the tax is proposed to be in effect, to the board of elections of the proper county in the manner provided by division (A) of section 5705.251 of the Revised Code. Section 5705.251 of the Revised Code shall govern the arrangements for the submission of the question and other matters concerning the election to which that section refers. The election shall be held on the date specified in the resolution. If a majority of the electors voting on the question so submitted in an election vote in favor of the tax, and if the tax is authorized to be levied for the current year, the board of education immediately may make the additional levy necessary to raise the amount specified in the resolution or a lesser amount for the purpose stated in the resolution.

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(4) The submission of questions to the electors under this section is subject to the limitation on the number of election dates established by section 5705.214 of the Revised Code.

(B) Notwithstanding sections 133.30 and 133.301 of the Revised Code, after the approval of a tax to be levied in the current or the succeeding year and prior to the time when the first tax collection from that levy can be made, the board of education may anticipate a fraction of the proceeds of the levy and issue anticipation notes in an amount not to exceed fifty per cent of the total estimated proceeds of the levy to be collected during the first year of the levy. The notes shall be sold as provided in Chapter 133. of the Revised Code. If anticipation notes are issued, they shall mature serially and in substantially equal amounts during each year over a period not to exceed five years; and the amount

necessary to pay the interest and principal as the anticipation notes mature shall be deemed appropriated for those purposes from the levy, and appropriations from the levy by the board of education shall be limited each fiscal year to the balance available in excess of that amount.

If the auditor of state has certified a deficit pursuant to section 3313.483 of the Revised Code, the notes authorized under this section may be sold in accordance with Chapter 133. of the Revised Code, except that the board may sell the notes after providing a reasonable opportunity for competitive bidding.

Amended by 128th General Assembly File No. 29, HB 48, § 1, eff. 7/2/2010.

Effective Date: 04-17-1990

5705.214 Frequency of school district elections.

Not more than three elections during any calendar year shall include the questions by a school district of tax levies proposed under any one or any combination of the following sections: sections 5705.194, 5705.199, 5705.21, 5705.212, 5705.213, 5705.217, 5705.218, 5705.219, and 5748.09 of the Revised Code.

Amended by 129th General Assembly File No. 28, HB 153, § 101.01, eff. 9/29/2011.

Amended by 128th General Assembly File No. 9, HB 1, § 101.01, eff. 10/16/2009.

Effective Date: 02-13-1997; 2008 HB562 09-22-2008

See 129th General Assembly File No. 28, HB 153, §757.90.

5705.215 County school financing district levy.

(A) The governing board of an educational service center that is the taxing authority of a county school financing district, upon receipt of identical resolutions adopted within a sixty-day period by a majority of the members of the board of education of each school district that is within the territory of the county school financing district, may submit a tax levy to the electors of the territory in the same manner as a school board may submit a levy under division (B) of section 5705.21 of the Revised Code, except that:

(1) The levy may be for a period not to exceed ten years, or, if the levy is solely for the purpose or purposes described in division (A)(2)(a) or (c) of this section, for a continuing period of time.

(2) The purpose of the levy shall be one or more of the following:

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(a) For current expenses for the provision of special education and related services within the territory of the district;

(b) For permanent improvements within the territory of the district for special education and related services;

(c) For current expenses for specified educational programs within the territory of the district;

(d) For permanent improvements within the territory of the district for specified educational programs;

(e) For permanent improvements within the territory of the district.

(B) If the levy provides for but is not limited to current expenses, the resolutions shall apportion the annual rate of the levy between current expenses and the other purposes. The apportionment need not be the same for each year of the levy, but the respective portions of the rate actually levied each year for current expenses and the other purposes shall be limited by that apportionment.

(C) Prior to the application of section 319.301 of the Revised Code, the rate of a levy that is limited to, or to the extent that it is apportioned to, purposes other than current expenses shall be reduced in the same proportion in which the district's total valuation increases during the life of the levy because of additions to such valuation that have resulted from improvements added to the tax list and duplicate.

(D) After the approval of a county school financing district levy under this section, the taxing authority may anticipate a fraction of the proceeds of such levy and may from time to time during the life of such levy, but in any given year prior to the time when the tax collection from such levy can be made for that year, issue anticipation notes in an amount not exceeding fifty per cent of the estimated proceeds of the levy to be collected in each year up to a period of five years after the date of the issuance of such notes, less an amount equal to the proceeds of such levy obligated for each year by the issuance of anticipation notes, provided that the total amount maturing in any one year shall not exceed fifty per cent of the anticipated proceeds of the levy for that year. Each issue of notes shall be sold as provided in Chapter 133. of the Revised Code, and shall, except for such limitation that the total amount of such notes maturing in any one year shall not exceed fifty per cent of the anticipated proceeds of such levy for that year, mature serially in substantially equal installments during each year over a period not to exceed five years after their issuance.

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(E)(1) In a resolution to be submitted to the taxing authority of a county school financing district under division (A) of this section calling for a ballot issue on the question of the

levying of a tax for a continuing period of time by the taxing authority, the board of education of a school district that is part of the territory of the county school financing district also may propose to reduce the rate of one or more of that school district's property taxes levied for a continuing period of time in excess of the ten-mill limitation. The reduction in the rate of a property tax may be any amount, expressed in mills per one dollar of valuation, not exceeding the rate at which the tax is authorized to be levied. The reduction in the rate of a tax shall first take effect in the same year that the county school financing district tax takes effect, and shall continue for each year that the county school financing district tax is in effect. A board of education's resolution proposing to reduce the rate of one or more of its school district property taxes shall specifically identify each such tax and shall state for each tax the maximum rate at which it currently may be levied and the maximum rate at which it could be levied after the proposed reduction, expressed in mills per one dollar of valuation.

Before submitting the resolution to the taxing authority of the county school financing district, the board of education of the school district shall certify a copy of it to the tax commissioner. Within ten days of receiving the copy, the tax commissioner shall certify to the board the reduction in the school district's total effective tax rate for each class of property that would have resulted if the proposed reduction in the rate or rates had been in effect the previous year. After receiving the certification from the commissioner, the board may amend its resolution to change the proposed property tax rate reduction before submitting the resolution to the financing district taxing authority. As used in this paragraph, "effective tax rate" has the same meaning as in section 323.08 of the Revised Code.

If the board of education of a school district that is part of the territory of a county school financing district adopts a resolution proposing to reduce the rate of one or more of its property taxes in conjunction with the levying of a tax by the financing district, the resolution submitted by the board to the taxing authority of the financing district under division (A) of this section does not have to be identical in this respect to the resolutions submitted by the boards of education of the other school districts that are part of the territory of the county school financing district.

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(2) Each school district that is part of the territory of a county school financing district may tailor to its own situation a proposed reduction in one or more property tax rates in conjunction with the proposed levying of a tax by the county school financing district; if one such school district proposes a reduction in one or more tax rates, another school district may propose a reduction of a different size or may propose no reduction. Within each school district that is part of the territory of the county school financing district, the electors shall vote on one ballot issue combining the question of the levying of the tax by the taxing authority of the county school financing district with, if any such reduction is

proposed, the question of the reduction in the rate of one or more taxes of the school district. If a majority of the electors of the county school financing district voting on the question of the proposed levying of a tax by the taxing authority of the financing district vote to approve the question, any tax reductions proposed by school districts that are part of the territory of the financing district also are approved.

(3) The form of the ballot for an issue proposing to levy a county school financing district tax in conjunction with the reduction of the rate of one or more school district taxes shall be as follows:

"Shall the (name of the county school financing district) be authorized to levy an additional tax for (purpose stated in the resolutions) at a rate not exceeding mills for each one dollar of valuation, which amounts to (rate expressed in dollars and cents) for each one hundred dollars of valuation, for a continuing period of time? If the county school financing district tax is approved, the rate of an existing tax currently levied by the (name of the school district of which the elector is a resident) at the rate of mills for each one dollar of valuation shall be reduced to mills until any such time as the county school financing district tax is decreased or repealed.

FOR THE ISSUE

AGAINST THE ISSUE

|_____||_____||"

If the board of education of the school district proposes to reduce the rate of more than one of its existing taxes, the second sentence of the ballot language shall be modified for residents of that district to express the rates at which those taxes currently are levied and the rates to which they would be reduced. If the board of education of the school district does not propose to reduce the rate of any of its taxes, the second sentence of the ballot language shall not be used for residents of that district. In any case, the first sentence of the ballot language shall be the same for all the electors in the county school financing district, but the second sentence shall be different in each school district depending on whether and in what amount the board of education of the school district proposes to reduce the rate of one or more of its property taxes.

(4) If the rate of a school district property tax is reduced pursuant to this division, the tax commissioner shall compute the percentage required to be computed for that tax under division (D) of section 319.301 of the Revised Code each year the rate is reduced as if the tax had been levied in the preceding year at the rate to which it has been reduced. If the

reduced rate of a tax is increased under division (E)(5) of this section, the commissioner shall compute the percentage required to be computed for that tax under division (D) of section 319.301 of the Revised Code each year the rate is increased as if the tax had been levied in the preceding year at the rate to which it has been increased.

(5) After the levying of a county school financing district tax in conjunction with the reduction of the rate of one or more school district taxes is approved by the electors under this division, if the rate of the county school financing district tax is decreased pursuant to an election under section 5705.261 of the Revised Code, the rate of each school district tax that had been reduced shall be increased by the number of mills obtained by multiplying the number of mills of the original reduction by the same percentage that the financing district tax rate is decreased. If the county school financing district tax is repealed pursuant to an election under section 5705.261 of the Revised Code, each school district may resume levying the property taxes that had been reduced at the full rate originally approved by the electors. A reduction in the rate of a school district property tax under this division is a reduction in the rate at which the board of education may levy that tax only for the period during which the county school financing district tax is levied prior to any decrease or repeal under section 5705.261 of the Revised Code. The resumption of the authority of the board of education to levy an increased or the full rate of tax does not constitute the levying of a new tax in excess of the ten-mill limitation.

Effective Date: 09-29-1995

5705.216 Issuing additional anticipation notes for school purposes.

A board of education that has issued notes in anticipation of the proceeds of a permanent improvements levy in the maximum amount permitted under division (C)(2) or (3) of section 5705.21 of the Revised Code or a taxing authority of a county school financing district that has issued notes in anticipation of the proceeds of a levy in the maximum amount permitted under section 5705.215 of the Revised Code may, if the proceeds from the issuance of such notes have been spent, contracted, or encumbered, apply to the superintendent of public instruction for authorization to anticipate a fraction of the remaining estimated proceeds of the levy and issue anticipation notes for that purpose. The application shall be in such form and contain such information as the superintendent considers necessary and shall specify the amount of notes to be issued. The amount shall not exceed the following:

(A) In the case of a school district:

(1) For levies described under division (C)(2) of section 5705.21 of the Revised Code, the amount by which the total estimated proceeds of the levy remaining to be collected throughout its life exceeds the amount from such proceeds required to pay the principal and interest on notes issued under section 5705.21 of the Revised Code and the interest on any notes issued under this section;

(2) For levies described under division (C)(3) of section 5705.21 of the Revised Code, the amount by which the total estimated proceeds of the levy remaining to be collected over the specified number of years authorized for the issuance of the notes exceeds the amount from such proceeds required to pay the principal and interest on notes issued under section 5705.21 of the Revised Code and the interest on any notes issued under this section.

(B) In the case of a county school financing district, the amount by which the total estimated proceeds of the levy remaining to be collected for the first five years of its life exceed the amount from such proceeds required to pay the principal and interest on notes issued under section 5705.215 of the Revised Code and the interest on any notes issued under this section.

The superintendent shall examine the application and any other relevant information submitted and shall determine and certify the maximum amount of notes the district may issue under this section, which may be an amount less than the amount requested by the district.

If the superintendent determines that the anticipated proceeds from the levy may be significantly less than expected and that additional notes should not be issued, he may deny the application and give written notice of the denial to the president of the district's board of education or the taxing authority.

Such notes shall be sold in the same manner as notes issued under section 5705.21 or 5705.215 of the Revised Code.

Effective Date: 07-01-1993

5705.217 Holding special elections on additional tax for school district purposes.

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(A) The board of education of a city, local, or exempted village school district, at any time by a vote of two-thirds of all its members, may declare by resolution that the amount of taxes that can be raised within the ten-mill limitation will be insufficient to provide an adequate amount for the present and future requirements of the school district; that it is necessary to levy an additional tax in excess of that limitation for the purposes of

providing funds for current operating expenses and for the acquisition, construction, enlargement, renovation, and financing of permanent improvements; and that the question of the tax shall be submitted to the electors of the district at a special election. The tax may be levied for a specified number of years not exceeding five or, if the tax is for current operating expenses or for general, on-going permanent improvements, for a continuing period of time. The resolution shall specify the proposed tax rate, the first year the tax will be levied, and the number of years it will be levied, or that it will be levied for a continuing period of time. The resolution shall apportion the annual rate of the tax between current operating expenses and permanent improvements. The apportionment may but need not be the same for each year of the tax, but the respective portions of the rate actually levied each year for current operating expenses and permanent improvements shall be limited by the apportionment.

The resolution shall specify the date of holding the special election, which shall not be earlier than ninety days after certification of the resolution to the board of elections and shall be consistent with the requirements of section 3501.01 of the Revised Code. The resolution shall go into immediate effect upon its passage, and no publication of it is necessary other than that provided in the notice of election. The board of education shall certify a copy of the resolution to the board of elections immediately after its adoption. Section 5705.25 of the Revised Code governs the arrangements and form of the ballot for the submission of the question to the electors.

If a majority of the electors voting on the question vote in favor of the tax, the board of education may make the levy at the additional rate, or at any lesser rate in excess of the ten-mill limitation. If the tax is for a continuing period of time, it may be decreased in accordance with section 5705.261 of the Revised Code.

(B)(1) After the approval of a tax for current operating expenses under this section and prior to the time the first collection and distribution from the levy can be made, the board of education may anticipate a fraction of the proceeds of such levy and issue anticipation notes in a principal amount not exceeding fifty per cent of the total estimated proceeds of the tax to be collected during the first year of the levy.

(2) After the approval of a tax under this section for permanent improvements having a specific purpose, the board of education may anticipate a fraction of the proceeds of such tax and issue anticipation notes in a principal amount not exceeding fifty per cent of the total estimated proceeds of the tax remaining to be collected in each year over a period of five years after issuance of the notes.

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(3) After the approval of a tax for general, on-going permanent improvements under this section, the board of education may anticipate a fraction of the proceeds of such tax and issue anticipation notes in a principal amount not exceeding fifty per cent of the total

estimated proceeds of the tax to be collected in each year over a specified period of years, not exceeding ten, after issuance of the notes.

Anticipation notes under this section shall be issued as provided in section 133.24 of the Revised Code. Notes issued under division (B)(1) or (2) of this section shall have principal payments during each year after the year of their issuance over a period not to exceed five years, and may have a principal payment in the year of their issuance. Notes issued under division (B)(3) of this section shall have principal payments during each year after the year of their issuance over a period not to exceed ten years, and may have a principal payment in the year of their issuance.

(C) The submission of a question to the electors under this section is subject to the limitation on the number of elections that can be held in a year under section 5705.214 of the Revised Code.

Amended by 128th General Assembly File No. 29, HB 48, § 1, eff. 7/2/2010.

Effective Date: 02-13-1997

5705.218 Holding special elections on general obligation bonds for school district purposes.

(A) The board of education of a city, local, or exempted village school district, at any time by a vote of two-thirds of all its members, may declare by resolution that it may be necessary for the school district to issue general obligation bonds for permanent improvements. The resolution shall state all of the following:

- (1) The necessity and purpose of the bond issue;
- (2) The date of the special election at which the question shall be submitted to the electors;
- (3) The amount, approximate date, estimated rate of interest, and maximum number of years over which the principal of the bonds may be paid;
- (4) The necessity of levying a tax outside the ten-mill limitation to pay debt charges on the bonds and any anticipatory securities.

0107

On adoption of the resolution, the board shall certify a copy of it to the county auditor. The county auditor promptly shall estimate and certify to the board the average annual property tax rate required throughout the stated maturity of the bonds to pay debt charges on the bonds, in the same manner as under division (C) of section 133.18 of the Revised Code.

(B) After receiving the county auditor's certification under division (A) of this section, the board of education of the city, local, or exempted village school district, by a vote of two-thirds of all its members, may declare by resolution that the amount of taxes that can be raised within the ten-mill limitation will be insufficient to provide an adequate amount for the present and future requirements of the school district; that it is necessary to issue general obligation bonds of the school district for permanent improvements and to levy an additional tax in excess of the ten-mill limitation to pay debt charges on the bonds and any anticipatory securities; that it is necessary for a specified number of years or for a continuing period of time to levy additional taxes in excess of the ten-mill limitation to provide funds for the acquisition, construction, enlargement, renovation, and financing of permanent improvements or to pay for current operating expenses, or both; and that the question of the bonds and taxes shall be submitted to the electors of the school district at a special election, which shall not be earlier than ninety days after certification of the resolution to the board of elections, and the date of which shall be consistent with section 3501.01 of the Revised Code. The resolution shall specify all of the following:

- (1) The county auditor's estimate of the average annual property tax rate required throughout the stated maturity of the bonds to pay debt charges on the bonds;
- (2) The proposed rate of the tax, if any, for current operating expenses, the first year the tax will be levied, and the number of years it will be levied, or that it will be levied for a continuing period of time;
- (3) The proposed rate of the tax, if any, for permanent improvements, the first year the tax will be levied, and the number of years it will be levied, or that it will be levied for a continuing period of time.

The resolution shall apportion the annual rate of the tax between current operating expenses and permanent improvements, if both taxes are proposed. The apportionment may but need not be the same for each year of the tax, but the respective portions of the rate actually levied each year for current operating expenses and permanent improvements shall be limited by the apportionment. The resolution shall go into immediate effect upon its passage, and no publication of it is necessary other than that provided in the notice of election. The board of education shall certify a copy of the resolution, along with copies of the auditor's estimate and its resolution under division (A) of this section, to the board of elections immediately after its adoption.

0108

(C) The board of elections shall make the arrangements for the submission of the question to the electors of the school district, and the election shall be conducted, canvassed, and certified in the same manner as regular elections in the district for the election of county officers. The resolution shall be put before the electors as one ballot

question, with a favorable vote indicating approval of the bond issue, the levy to pay debt charges on the bonds and any anticipatory securities, the current operating expenses levy, and the permanent improvements levy, if either or both levies are proposed. The board of elections shall publish notice of the election in a newspaper of general circulation in the school district once a week for two consecutive weeks, or as provided in section 7.16 of the Revised Code, prior to the election. If a board of elections operates and maintains a web site, that board also shall post notice of the election on its web site for thirty days prior to the election. The notice of election shall state all of the following:

- (1) The principal amount of the proposed bond issue;
- (2) The permanent improvements for which the bonds are to be issued;
- (3) The maximum number of years over which the principal of the bonds may be paid;
- (4) The estimated additional average annual property tax rate to pay the debt charges on the bonds, as certified by the county auditor;
- (5) The proposed rate of the additional tax, if any, for current operating expenses;
- (6) The number of years the current operating expenses tax will be in effect, or that it will be in effect for a continuing period of time;
- (7) The proposed rate of the additional tax, if any, for permanent improvements;
- (8) The number of years the permanent improvements tax will be in effect, or that it will be in effect for a continuing period of time;
- (9) The time and place of the special election.

(D) The form of the ballot for an election under this section is as follows:

"Shall the school district be authorized to do the following:

- (1) Issue bonds for the purpose of in the principal amount of \$....., to be repaid annually over a maximum period of years, and levy a property tax outside the ten-mill limitation, estimated by the county auditor to average over the bond repayment period mills for each one dollar of tax valuation, which amounts to (rate expressed in cents or dollars and cents, such as "36 cents" or "\$1.41") for each \$100 of tax valuation, to pay the annual debt charges on the bonds, and to pay debt charges on any notes issued in anticipation of those bonds?"

If either a levy for permanent improvements or a levy for current operating expenses is proposed, or both are proposed, the ballot also shall contain the following language, as appropriate:

"(2) Levy an additional property tax to provide funds for the acquisition, construction, enlargement, renovation, and financing of permanent improvements at a rate not exceeding mills for each one dollar of tax valuation, which amounts to (rate expressed in cents or dollars and cents) for each \$100 of tax valuation, for (number of years of the levy, or a continuing period of time)?

(3) Levy an additional property tax to pay current operating expenses at a rate not exceeding mills for each one dollar of tax valuation, which amounts to (rate expressed in cents or dollars and cents) for each \$100 of tax valuation, for (number of years of the levy, or a continuing period of time)?

FOR THE BOND ISSUE AND LEVY (OR LEVIES)

AGAINST THE BOND ISSUE AND LEVY (OR LEVIES) "

(E) The board of elections promptly shall certify the results of the election to the tax commissioner and the county auditor of the county in which the school district is located. If a majority of the electors voting on the question vote for it, the board of education may proceed with issuance of the bonds and with the levy and collection of the property tax or taxes at the additional rate or any lesser rate in excess of the ten-mill limitation. Any securities issued by the board of education under this section are Chapter 133. securities, as that term is defined in section 133.01 of the Revised Code.

(F)(1) After the approval of a tax for current operating expenses under this section and prior to the time the first collection and distribution from the levy can be made, the board of education may anticipate a fraction of the proceeds of such levy and issue anticipation notes in a principal amount not exceeding fifty per cent of the total estimated proceeds of the tax to be collected during the first year of the levy.

(2) After the approval of a tax under this section for permanent improvements having a specific purpose, the board of education may anticipate a fraction of the proceeds of such tax and issue anticipation notes in a principal amount not exceeding fifty per cent of the total estimated proceeds of the tax remaining to be collected in each year over a period of five years after issuance of the notes.

0110

(3) After the approval of a tax for general, on-going permanent improvements under this section, the board of education may anticipate a fraction of the proceeds of such tax and issue anticipation notes in a principal amount not exceeding fifty per cent of the total

estimated proceeds of the tax to be collected in each year over a specified period of years, not exceeding ten, after issuance of the notes.

Anticipation notes under this section shall be issued as provided in section 133.24 of the Revised Code. Notes issued under division (F)(1) or (2) of this section shall have principal payments during each year after the year of their issuance over a period not to exceed five years, and may have a principal payment in the year of their issuance. Notes issued under division (F)(3) of this section shall have principal payments during each year after the year of their issuance over a period not to exceed ten years, and may have a principal payment in the year of their issuance.

(G) A tax for current operating expenses or for permanent improvements levied under this section for a specified number of years may be renewed or replaced in the same manner as a tax for current operating expenses or for permanent improvements levied under section 5705.21 of the Revised Code. A tax for current operating expenses or for permanent improvements levied under this section for a continuing period of time may be decreased in accordance with section 5705.261 of the Revised Code.

(H) The submission of a question to the electors under this section is subject to the limitation on the number of elections that can be held in a year under section 5705.214 of the Revised Code.

(I) A school district board of education proposing a ballot measure under this section to generate local resources for a project under the school building assistance expedited local partnership program under section 3318.36 of the Revised Code may combine the questions under division (D) of this section with a question for the levy of a property tax to generate moneys for maintenance of the classroom facilities acquired under that project as prescribed in section 3318.361 of the Revised Code.

Amended by 129th General Assembly File No. 28, HB 153, § 101.01, eff. 9/29/2011.

Amended by 128th General Assembly File No. 29, HB 48, § 1, eff. 7/2/2010.

Effective Date: 06-28-2002; 06-01-2006

5705.219 Conversion of existing levies imposed for the purpose of current expenses into a levy raising a specified amount of tax money.

(A) As used in this section:

(1) "Eligible school district" means a city, local, or exempted village school district in which the taxes charged and payable for current expenses on residential/agricultural real property in the tax year preceding the year in which the levy authorized by this section will be submitted for elector approval or rejection are greater than two per cent of the taxable value of the residential/agricultural real property.

(2) "Residential/agricultural real property" and "nonresidential/agricultural real property" means the property classified as such under section 5713.041 of the Revised Code.

(3) "Effective tax rate" and "taxes charged and payable" have the same meanings as in division (B) of section 319.301 of the Revised Code.

(B) On or after January 1, 2010, but before January 1, 2015, the board of education of an eligible school district, by a vote of two-thirds of all its members, may adopt a resolution proposing to convert existing levies imposed for the purpose of current expenses into a levy raising a specified amount of tax money by repealing all or a portion of one or more of those existing levies and imposing a levy in excess of the ten-mill limitation that will raise a specified amount of money for current expenses of the district.

The board of education shall certify a copy of the resolution to the tax commissioner not later than one hundred five days before the election upon which the repeal and levy authorized by this section will be proposed to the electors. Within ten days after receiving the copy of the resolution, the tax commissioner shall determine each of the following and certify the determinations to the board of education:

(1) The dollar amount to be raised by the proposed levy, which shall be the product of:

(a) The difference between the aggregate effective tax rate for residential/agricultural real property for the tax year preceding the year in which the repeal and levy will be proposed to the electors and twenty mills per dollar of taxable value;

(b) The total taxable value of all property on the tax list of real and public utility property for the tax year preceding the year in which the repeal and levy will be proposed to the electors.

(2) The estimated tax rate of the proposed levy.

(3) The existing levies and any portion of an existing levy to be repealed upon approval of the question. Levies shall be repealed in reverse chronological order from most recently imposed to least recently imposed until the sum of the effective tax rates repealed for residential/agricultural real property is equal to the difference calculated in division (B)(1)

(a) of this section.

(4) The sum of the following:

(a) The total taxable value of nonresidential/agricultural real property for the tax year preceding the year in which the repeal and levy will be proposed to the electors multiplied by the difference between (i) the aggregate effective tax rate for nonresidential/agricultural real property for the existing levies and any portion of an existing levy to be repealed and (ii) the amount determined under division (B)(1)(a) of this section, but not less than zero;

(b) The total taxable value of public utility tangible personal property for the tax year preceding the year in which the repeal and levy will be proposed to the electors multiplied by the difference between (i) the aggregate voted tax rate for the existing levies and any portion of an existing levy to be repealed and (ii) the amount determined under division (B)(1)(a) of this section, but not less than zero.

(c) Upon receipt of the certification from the tax commissioner under division (B) of this section, a majority of the members of the board of education may adopt a resolution proposing the repeal of the existing levies as identified in the certification and the imposition of a levy in excess of the ten-mill limitation that will raise annually the amount certified by the commissioner. If the board determines that the tax should be for an amount less than that certified by the commissioner, the board may request that the commissioner redetermine the rate under division (B)(2) of this section on the basis of the lesser amount the levy is to raise as specified by the board. The amount certified under division (B)(4) and the levies to be repealed as certified under division (B)(3) of this section shall not be redetermined. Within ten days after receiving a timely request specifying the lesser amount to be raised by the levy, the commissioner shall redetermine the rate and recertify it to the board as otherwise provided in division (B) of this section. Only one such request may be made by the board of education of an eligible school district.

The resolution shall state the first calendar year in which the levy will be due; the existing levies and any portion of an existing levy that will be repealed, as certified by the commissioner; the term of the levy expressed in years, which may be any number not exceeding ten, or that it will be levied for a continuing period of time; and the date of the election, which shall be the date of a primary or general election.

0113

Immediately upon its passage, the resolution shall go into effect and shall be certified by the board of education to the county auditor of the proper county. The county auditor and the board of education shall proceed as required under section 5705.195 of the Revised Code. No publication of the resolution is necessary other than that provided for in the notice of election. Section 5705.196 of the Revised Code shall govern the matters concerning the election. The submission of a question to the electors under this section is

subject to the limitation on the number of election dates established by section 5705.214 of the Revised Code.

(D) The form of the ballot to be used at the election provided for in this section shall be as follows:

"Shall the existing levy of (insert the voted millage rate of the levy to be repealed), currently being charged against residential and agricultural property by the (insert the name of school district) at a rate of (insert the residential/agricultural real property effective tax rate of the levy being repealed) for the purpose of (insert the purpose of the existing levy) be repealed, and shall a levy be imposed by the (insert the name of school district) in excess of the ten-mill limitation for the necessary requirements of the school district in the sum of (insert the annual amount the levy is to produce), estimated by the tax commissioner to require (insert the number of mills) mills for each one dollar of valuation, which amounts to (insert the rate expressed in dollars and cents) for each one hundred dollars of valuation for the initial year of the tax, for a period of (insert the number of years the levy is to be imposed, or that it will be levied for a continuing period of time), commencing in (insert the first year the tax is to be levied), first due in calendar year (insert the first calendar year in which the tax shall be due)?

FOR THE REPEAL AND TAX

AGAINST THE REPEAL AND TAX "

If the question submitted is a proposal to repeal all or a portion of more than one existing levy, the form of the ballot shall be modified by substituting the statement "shall the existing levy of" with "shall existing levies of" and inserting the aggregate voted and aggregate effective tax rates to be repealed.

(E) If a majority of the electors voting on the question submitted in an election vote in favor of the repeal and levy, the result shall be certified immediately after the canvass by the board of elections to the board of education. The board of education may make the levy necessary to raise the amount specified in the resolution for the purpose stated in the resolution and shall certify it to the county auditor, who shall extend it on the current year tax lists for collection. After the first year, the levy shall be included in the annual tax budget that is certified to the county budget commission.

0114

(F) A levy imposed under this section for a continuing period of time may be decreased or repealed pursuant to section 5705.261 of the Revised Code. If a levy imposed under this section is decreased, the amount calculated under division (B)(4) of this section and paid under section 5705.2110 of the Revised Code shall be decreased by the same proportion

as the levy is decreased. If the levy is repealed, no further payments shall be made to the district under that section.

(G) At any time, the board of education, by a vote of two-thirds of all of its members, may adopt a resolution to renew a tax levied under this section. The resolution shall provide for levying the tax and specifically all of the following:

- (1) That the tax shall be called, and designated on the ballot as, a renewal levy;
- (2) The amount of the renewal tax, which shall be no more than the amount of tax previously collected;
- (3) The number of years, not to exceed ten, that the renewal tax will be levied, or that it will be levied for a continuing period of time;
- (4) That the purpose of the renewal tax is for current expenses.

The board shall certify a copy of the resolution to the board of elections not later than ninety days before the date of the election at which the question is to be submitted, which shall be the date of a primary or general election.

(H) The form of the ballot to be used at the election on the question of renewing a levy under this section shall be as follows:

"Shall a tax levy renewing an existing levy of (insert the annual dollar amount the levy is to produce each year), estimated to require (insert the number of mills) mills for each one dollar of valuation be imposed by the (insert the name of school district) for the purpose of current expenses for a period of (insert the number of years the levy is to be imposed, or that it will be levied for a continuing period of time), commencing in (insert the first year the tax is to be levied), first due in calendar year (insert the first calendar year in which the tax shall be due)?"

FOR THE RENEWAL OF THE TAX LEVY

AGAINST THE RENEWAL OF THE TAX LEVY

0115

If the levy submitted is to be for less than the amount of money previously collected, the form of the ballot shall be modified to add "and reducing" after "renewing" and to add before "estimated to require" the statement "be approved at a tax rate necessary to produce (insert the lower annual dollar amount the levy is to produce each year)."

Amended by 128th General Assembly File No. 29, HB 48, § 1, eff. 7/2/2010.

Added by 128th General Assembly File No. 9, HB 1, § 101.01, eff. 10/16/2009.

5705.2110 Certification of tax amount.

(A) For purposes of this section:

(1) "Carryover property" has the same meaning as in section 319.301 of the Revised Code.

(2) "Residential/agricultural real property" has the same meaning as in section 5705.219 of the Revised Code.

(B) For each city, local, or exempted village school district in which the tax authorized by section 5705.219 of the Revised Code has been approved by electors in the preceding year, the tax commissioner, not later than the twenty-eighth day of February, shall certify to the department of education the amount determined in division (B)(4) of section 5705.219 of the Revised Code. Not later than the twenty-eighth day of February of each year thereafter for twelve years, the commissioner shall certify an amount equal to the difference between the amount certified in the preceding year under this division and the product of ten mills per dollar multiplied by the excess, if any, of the value of carryover property for residential/agricultural real property for the preceding tax year over the value of carryover property for residential/agricultural real property in the second preceding tax year. If the amount to be certified in any year is zero, in the commissioner's certification the commissioner shall state that no further certifications shall be forthcoming.

(C) Not later than the last day of April and of October beginning in the first year in which a certification under division (B) of this section is received, the department of education shall pay to the school district for which the certification is made one-half of the amount most recently certified by the tax commissioner.

Added by 128th General Assembly File No. 9, HB 1, § 101.01, eff. 10/16/2009.

5705.2111 Proposal for levy in excess of limitation.

(A) If the board of directors of a regional student education district created under section 3313.83 of the Revised Code desires to levy a tax in excess of the ten-mill limitation throughout the district for the purpose of funding the services to be provided by the district to students enrolled in the school districts of which the district is composed and their immediate family members, the board shall propose the levy to each of the boards of education of those school districts. The proposal shall specify the rate or amount of the tax, the number of years the tax will be levied or that it will be levied for a continuing period of time, and that the aggregate rate of the tax shall not exceed three mills per dollar of taxable value in the regional student education district.

(B)(1) If a majority of the boards of education of the school districts of which the regional student education district is composed approves the proposal for the tax levy, the board of directors of the regional student education district may adopt a resolution approved by a majority of the board's full membership declaring the necessity of levying the proposed tax in excess of the ten-mill limitation throughout the district for the purpose of funding the services to be provided by the district to students enrolled in the school districts of which the district is composed and their immediate family members. The resolution shall provide for the question of the tax to be submitted to the electors of the district at a general, primary, or special election on a day to be specified in the resolution that is consistent with the requirements of section 3501.01 of the Revised Code and that occurs at least ninety days after the resolution is certified to the board of elections. The resolution shall specify the rate or amount of the tax and the number of years the tax will be levied or that the tax will be levied for a continuing period of time. The aggregate rate of tax levied by a regional student education district under this section at any time shall not exceed three mills per dollar of taxable value in the district. A tax levied under this section may be renewed, subject to section 5705.25 of the Revised Code, or replaced as provided in section 5705.192 of the Revised Code.

(2) The resolution shall take effect immediately upon passage, and no publication of the resolution is necessary other than that provided in the notice of election. The resolution shall be certified and submitted in the manner provided under section 5705.25 of the Revised Code, and that section governs the arrangements governing submission of the question and other matters concerning the election.

Amended by 128th General Assembly File No. 29, HB 48, § 1, eff. 7/2/2010.

Added by 128th General Assembly File No. 9, HB 1, § 101.01, eff. 10/16/2009.

5705.22 Additional levy for county hospitals.

The board of county commissioners of any county, at any time and in any year, after providing the normal and customary percentages of the total general fund appropriations for the support of county hospitals, by vote of two-thirds of all members of said board, may declare by resolution that the amount of taxes which may be raised within the ten-mill limitation will be insufficient to provide an adequate amount for the support of county hospitals, and that it is necessary to levy a tax in excess of the ten-mill limitation to supplement such general fund appropriations for such purpose, but the total levy for this purpose shall not exceed sixty-five one hundredths of a mill.

0117

Such resolution shall conform to the requirements of section 5705.19 of the Revised Code, and shall be certified to the board of elections not less than ninety days before the

general election and submitted in the manner provided in section 5705.25 of the Revised Code.

If the majority of electors voting on a levy to supplement the general fund appropriations for the support of county hospitals vote in favor of the levy, the board of said county may levy a tax within such county at the additional rate in excess of the ten-mill limitation during the period for the purpose stated in the resolution or at any less rate or for any of the said years.

Amended by 128th General Assembly File No. 29, HB 48, § 1, eff. 7/2/2010.

Effective Date: 03-23-1981

5705.221 Additional levy for county alcohol, drug addiction, and mental health programs.

(A) At any time, the board of county commissioners of any county by a majority vote of the full membership may declare by resolution and certify to the board of elections of the county that the amount of taxes which may be raised within the ten-mill limitation by levies on the current tax duplicate will be insufficient to provide the necessary requirements of the county's alcohol, drug addiction, and mental health service district established pursuant to Chapter 340. of the Revised Code, or the county's contribution to a joint-county district of which the county is a part, and that it is necessary to levy a tax in excess of such limitation for the operation of alcohol and drug addiction programs and mental health programs and the acquisition, construction, renovation, financing, maintenance, and operation of alcohol and drug addiction facilities and mental health facilities.

Such resolution shall conform to section 5705.19 of the Revised Code, except that the increased rate may be in effect for any number of years not exceeding ten.

The resolution shall be certified and submitted in the manner provided in section 5705.25 of the Revised Code, except that it may be placed on the ballot in any election, and shall be certified to the board of elections not less than ninety days before the election at which it will be voted upon.

If the majority of the electors voting on a levy to supplement general fund appropriations for the support of the comprehensive alcohol and drug addiction and mental health program vote in favor of the levy, the board may levy a tax within the county at the additional rate outside the ten-mill limitation during the specified or continuing period, for the purpose stated in the resolution.

(B) When electors have approved a tax levy under this section, the board of county commissioners may anticipate a fraction of the proceeds of the levy and, from time to time, issue anticipation notes in accordance with section 5705.191 or 5705.193 of the Revised Code.

(C) The county auditor who is the fiscal officer of the alcohol, drug addiction, and mental health service district, upon receipt of a resolution from the board of alcohol, drug addiction, and mental health services, shall establish for the district a capital improvements account or a reserve balance account, or both, as specified in the resolution. The capital improvements account shall be a contingency fund for the necessary acquisition, replacement, renovation, or construction of facilities and movable and fixed equipment. Upon the request of the board, funds not needed to pay for current expenses may be appropriated to the capital improvements account, in amounts such that the account does not exceed twenty-five per cent of the replacement value of all capital facilities and equipment currently used by the board for programs and services. Other funds which are available for current capital expenses from federal, state, or local sources may also be appropriated to this account.

The reserve balance account shall contain those funds that are not needed to pay for current operating expenses and not deposited in the capital improvements account but that will be needed to pay for operating expenses in the future. Upon the request of a board, such funds shall be appropriated to the reserve balance account. Payments from the capital improvements account and the reserve balance account shall be made by the county treasurer who is the custodian of funds for the district upon warrants issued by the county auditor who is the fiscal officer of the district pursuant to orders of the board.

Amended by 128th General Assembly File No. 29, HB 48, § 1, eff. 7/2/2010.

Effective Date: 10-10-1989

5705.222 Additional levy for county developmental disabilities programs.

(A) At any time the board of county commissioners of any county by a majority vote of the full membership may declare by resolution and certify to the board of elections of the county that the amount of taxes which may be raised within the ten-mill limitation by levies on the current tax duplicate will be insufficient to provide the necessary requirements of the county board of developmental disabilities established pursuant to Chapter 5126. of the Revised Code and that it is necessary to levy a tax in excess of such limitation for the operation of programs and services by county boards of developmental

disabilities and for the acquisition, construction, renovation, financing, maintenance, and operation of mental retardation and developmental disabilities facilities.

Such resolution shall conform to section 5705.19 of the Revised Code, except that the increased rate may be in effect for any number of years not exceeding ten or for a continuing period of time.

The resolution shall be certified and submitted in the manner provided in section 5705.25 of the Revised Code, except that it may be placed on the ballot in any election, and shall be certified to the board of elections not less than ninety days before the election at which it will be voted upon.

If the majority of the electors voting on a levy for the support of the programs and services of the county board of developmental disabilities vote in favor of the levy, the board of county commissioners may levy a tax within the county at the additional rate outside the ten-mill limitation during the specified or continuing period, for the purpose stated in the resolution. The county board of developmental disabilities, within its budget and with the approval of the board of county commissioners through annual appropriations, shall use the proceeds of a levy approved under this section solely for the purposes authorized by this section.

(B) When electors have approved a tax levy under this section, the county commissioners may anticipate a fraction of the proceeds of the levy and issue anticipation notes in accordance with section 5705.191 or 5705.193 of the Revised Code.

(C) The county auditor, upon receipt of a resolution from the county board of developmental disabilities, shall establish a capital improvements account or a reserve balance account, or both, as specified in the resolution. The capital improvements account shall be a contingency account for the necessary acquisition, replacement, renovation, or construction of facilities and movable and fixed equipment. Upon the request of the county board of developmental disabilities, moneys not needed to pay for current expenses may be appropriated to this account, in amounts such that this account does not exceed twenty-five per cent of the replacement value of all capital facilities and equipment currently used by the county board of developmental disabilities for mental retardation and developmental disabilities programs and services. Other moneys available for current capital expenses from federal, state, or local sources may also be appropriated to this account.

The reserve balance account shall contain those moneys that are not needed to pay for current operating expenses and not deposited in the capital improvements account but that will be needed to pay for operating expenses in the future. Upon the request of a

county board of developmental disabilities, the board of county commissioners may appropriate moneys to the reserve balance account.

Amended by 128th General Assembly File No. 29, HB 48, § 1, eff. 7/2/2010.

Amended by 128th General Assembly ch. 7, SB 79, § 1, eff. 10/6/2009.

Effective Date: 01-10-1992; 09-05-2005

5705.23 Special levy for public library - resolution - submission to electors.

The board of library trustees of any county, municipal corporation, school district, or township public library by a vote of two-thirds of all its members may at any time declare by resolution that the amount of taxes which may be raised within the ten-mill limitation by levies on the current tax duplicate will be insufficient to provide an adequate amount for the necessary requirements of the public library, that it is necessary to levy a tax in excess of such limitation for current expenses of the public library or for the construction of any specific permanent improvement or class of improvements which the board of library trustees is authorized to make or acquire and which could be included in a single issue of bonds, and that the question of such additional tax levy shall be submitted by the taxing authority of the political subdivision to whose jurisdiction the board is subject, to the electors of the subdivision, or, if the resolution so states, to the electors residing within the boundaries of the library district, as defined by the state library board pursuant to section 3375.01 of the Revised Code, on the day specified by division (E) of section 3501.01 of the Revised Code for the holding of a primary election or at an election on another day to be specified in the resolution. No more than two elections shall be held under authority of this section in any one calendar year. Such resolution shall conform to section 5705.19 of the Revised Code, except that the tax levy may be in effect for any specified number of years or for a continuing period of time, as set forth in the resolution, and the resolution shall specify the date of holding the election, which shall not be earlier than ninety days after the adoption and certification of the resolution to the taxing authority of the political subdivision to whose jurisdiction the board is subject, and which shall be consistent with the requirements of section 3501.01 of the Revised Code. The resolution shall not include a levy on the current tax list and duplicate unless the election is to be held at or prior to the first Tuesday after the first Monday in November of the current tax year.

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Upon receipt of the resolution, the taxing authority of the political subdivision to whose jurisdiction the board is subject shall adopt a resolution providing for the submission of such additional tax levy to the electors of the subdivision, or, if the resolution so states, to

the electors residing within the boundaries of the library district, as defined by the state library board pursuant to section 3375.01 of the Revised Code, on the date specified in the resolution of the board of library trustees. The resolution adopted by the taxing authority shall otherwise conform to the resolution certified to it by the board. The resolution of the taxing authority shall be certified to the board of elections of the proper county not less than ninety days before the date of such election. Such resolution shall go into immediate effect upon its passage, and no publication of the resolution shall be necessary other than that provided in the notice of election. Section 5705.25 of the Revised Code shall govern the arrangements for the submission of such question and other matters concerning the election, to which that section refers, except that if the resolution so states, the question shall be submitted to the electors residing within the boundaries of the library district, as defined by the state library board pursuant to section 3375.01 of the Revised Code, and except that such election shall be held on the date specified in the resolution. If a majority of the electors voting on the question so submitted in an election vote in favor of such levy, the taxing authority may forthwith make the necessary levy within the subdivision or within the boundaries of the library district, as defined by the state library board pursuant to section 3375.01 of the Revised Code, at the additional rate in excess of the ten-mill limitation on the tax list, for the purpose stated in such resolutions. Such tax levy shall be included in the next annual tax budget that is certified to the county budget commission. The proceeds of any library levy in excess of the ten-mill limitation shall be used for purposes of the board in accordance with the law applicable to the board.

After the approval of a levy on the current tax list and duplicate to provide an increase in current expenses, and prior to the time when the first tax collection from such levy can be made, the taxing authority at the request of the board of library trustees may anticipate a fraction of the proceeds of such levy and issue anticipation notes in an amount not exceeding fifty per cent of the total estimated proceeds of the levy to be collected during the first year of the levy.

After the approval of a levy to provide revenues for the construction or acquisition of any specific permanent improvement or class of improvements, the taxing authority at the request of the board of library trustees may anticipate a fraction of the proceeds of such levy and issue anticipation notes in a principal amount not exceeding fifty per cent of the total estimated proceeds of the levy to be collected in each year over a period of ten years after the issuance of such notes.

The notes shall be issued as provided in section 133.24 of the Revised Code, shall have principal payments during each year after the year of their issuance over a period not to exceed ten years, and may have a principal payment in the year of their issuance.

When a board of public library trustees of a county library district, appointed under section 3375.22 of the Revised Code, requests the submission of such special levy, the taxing authority shall submit the levy to the voters of the county library district only. For the purposes of this section, and of the board of public library trustees only, the words "electors of the subdivision," as used in this section and in section 5705.25 of the Revised Code, mean "electors of the county library district." Any levy approved by the electors of the county library district shall be made within the county library district only.

Amended by 128th General Assembly File No. 29, HB 48, § 1, eff. 7/2/2010.

Effective Date: 08-06-1997

5705.24 County tax levy for support of children services.

The board of county commissioners of any county, at any time and in any year, after providing the normal and customary percentage of the total general fund appropriations for the support of children services and the care and placement of children, by vote of two-thirds of all the members of said board may declare by resolution that the amount of taxes which may be raised within the ten-mill limitation will be insufficient to provide an adequate amount for the support of such children services, and that it is necessary to levy a tax in excess of the ten-mill limitation to supplement such general fund appropriations for such purpose. Taxes collected from a levy imposed under this section may be expended for any operating or capital improvement expenditure necessary for the support of children services and the care and placement of children.

Such resolution shall conform to the requirements of section 5705.19 of the Revised Code, except that the levy may be for any number of years not exceeding ten. The resolution shall be certified to the board of elections not less than ninety days before the general, primary, or special election upon which it will be voted, and be submitted in the manner provided in section 5705.25 of the Revised Code, except that it may be placed on the ballot in any such election.

If the majority of the electors voting on a levy to supplement general fund appropriations for the support of children services and the care and placement of children vote in favor thereof, the board may levy a tax within such county at the additional rate outside the ten-mill limitation during the period and for the purpose stated in the resolution or at any less rate or for any of the said years.

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After the approval of such levy and prior to the time when the first tax collection from such levy can be made, the board of county commissioners may anticipate a fraction of the proceeds of such levy and issue anticipation notes in a principal amount not to exceed fifty per cent of the total estimated proceeds of the levy throughout its life.

Such notes shall be issued as provided in section 133.24 of the Revised Code, shall have principal payments during each year after the year of their issuance over a period not exceeding the life of the levy, and may have a principal payment in the year of their issuance.

Amended by 128th General Assembly File No. 29, HB 48, § 1, eff. 7/2/2010.

Effective Date: 09-17-1991

5705.25 Submission of proposed levy - notice of election - form of ballot - certification.

(A) A copy of any resolution adopted as provided in section 5705.19 or 5705.2111 of the Revised Code shall be certified by the taxing authority to the board of elections of the proper county not less than ninety days before the general election in any year, and the board shall submit the proposal to the electors of the subdivision at the succeeding November election. Except as otherwise provided in this division, a resolution to renew an existing levy, regardless of the section of the Revised Code under which the tax was imposed, shall not be placed on the ballot unless the question is submitted at the general election held during the last year the tax to be renewed or replaced may be extended on the real and public utility property tax list and duplicate, or at any election held in the ensuing year. The limitation of the foregoing sentence does not apply to a resolution to renew and increase or to renew part of an existing levy that was imposed under section 5705.191 of the Revised Code to supplement the general fund for the purpose of making appropriations for one or more of the following purposes: for public assistance, human or social services, relief, welfare, hospitalization, health, and support of general hospitals. The limitation of the second preceding sentence also does not apply to a resolution that proposes to renew two or more existing levies imposed under section 5705.21 of the Revised Code, in which case the question shall be submitted on the date of the general or primary election held during the last year at least one of the levies to be renewed may be extended on the real and public utility property tax list and duplicate, or at any election held during the ensuing year. For purposes of this section, a levy shall be considered to be an "existing levy" through the year following the last year it can be placed on that tax list and duplicate.

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The board shall make the necessary arrangements for the submission of such questions to the electors of such subdivision, and the election shall be conducted, canvassed, and certified in the same manner as regular elections in such subdivision for the election of county officers. Notice of the election shall be published in a newspaper of general circulation in the subdivision once a week for two consecutive weeks, or as provided in

section 7.16 of the Revised Code, prior to the election. If the board of elections operates and maintains a web site, the board of elections shall post notice of the election on its web site for thirty days prior to the election. The notice shall state the purpose, the proposed increase in rate expressed in dollars and cents for each one hundred dollars of valuation as well as in mills for each one dollar of valuation, the number of years during which the increase will be in effect, the first month and year in which the tax will be levied, and the time and place of the election.

(B) The form of the ballots cast at an election held pursuant to division (A) of this section shall be as follows:

"An additional tax for the benefit of (name of subdivision or public library) for the purpose of (purpose stated in the resolution) at a rate not exceeding mills for each one dollar of valuation, which amounts to (rate expressed in dollars and cents) for each one hundred dollars of valuation, for (life of indebtedness or number of years the levy is to run).

For the Tax Levy

Against the Tax Levy "

(C) If the levy is to be in effect for a continuing period of time, the notice of election and the form of ballot shall so state instead of setting forth a specified number of years for the levy.

If the tax is to be placed on the current tax list, the form of the ballot shall be modified by adding, after the statement of the number of years the levy is to run, the phrase ", commencing in (first year the tax is to be levied), first due in calendar year (first calendar year in which the tax shall be due)."

If the levy submitted is a proposal to renew, increase, or decrease an existing levy, the form of the ballot specified in division (B) of this section may be changed by substituting for the words "An additional" at the beginning of the form, the words "A renewal of a" in case of a proposal to renew an existing levy in the same amount; the words "A renewal of mills and an increase of mills to constitute a" in the case of an increase; or the words "A renewal of part of an existing levy, being a reduction of mills, to constitute a" in the case of a decrease in the proposed levy.

If the levy submitted is a proposal to renew two or more existing levies imposed under section 5705.21 of the Revised Code, the form of the ballot specified in division (B) of this section shall be modified by substituting for the words "an additional tax" the words "a renewal of(insert the number of levies to be renewed) existing taxes."

The question covered by such resolution shall be submitted as a separate proposition but may be printed on the same ballot with any other proposition submitted at the same election, other than the election of officers. More than one such question may be submitted at the same election.

(D) A levy voted in excess of the ten-mill limitation under this section shall be certified to the tax commissioner. In the first year of the levy, it shall be extended on the tax lists after the February settlement succeeding the election. If the additional tax is to be placed upon the tax list of the current year, as specified in the resolution providing for its submission, the result of the election shall be certified immediately after the canvass by the board of elections to the taxing authority, who shall make the necessary levy and certify it to the county auditor, who shall extend it on the tax lists for collection. After the first year, the tax levy shall be included in the annual tax budget that is certified to the county budget commission.

Amended by 129th General Assembly File No. 28, HB 153, § 101.01, eff. 9/29/2011.

Amended by 128th General Assembly File No. 29, HB 48, § 1, eff. 7/2/2010.

Amended by 128th General Assembly File No. 9, HB 1, § 101.01, eff. 10/16/2009.

Effective Date: 10-10-2000; 06-01-2006

5705.251 Election on incremental taxes for schools.

(A) A copy of a resolution adopted under section 5705.212 or 5705.213 of the Revised Code shall be certified by the board of education to the board of elections of the proper county not less than ninety days before the date of the election specified in the resolution, and the board of elections shall submit the proposal to the electors of the school district at a special election to be held on that date. The board of elections shall make the necessary arrangements for the submission of the question or questions to the electors of the school district, and the election shall be conducted, canvassed, and certified in the same manner as regular elections in the school district for the election of county officers. Notice of the election shall be published in a newspaper of general circulation in the subdivision once a week for two consecutive weeks, or as provided in section 7.16 of the Revised Code, prior to the election. If the board of elections operates and maintains a web site, the board of elections shall post notice of the election on its web site for thirty days prior to the election.

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(1) In the case of a resolution adopted under section 5705.212 of the Revised Code, the notice shall state separately, for each tax being proposed, the purpose; the proposed increase in rate, expressed in dollars and cents for each one hundred dollars of valuation

as well as in mills for each one dollar of valuation; the number of years during which the increase will be in effect; and the first calendar year in which the tax will be due. For an election on the question of a renewal levy, the notice shall state the purpose; the proposed rate, expressed in dollars and cents for each one hundred dollars of valuation as well as in mills for each one dollar of valuation; and the number of years the tax will be in effect.

(2) In the case of a resolution adopted under section 5705.213 of the Revised Code, the notice shall state the purpose; the amount proposed to be raised by the tax in the first year it is levied; the estimated average additional tax rate for the first year it is proposed to be levied, expressed in mills for each one dollar of valuation and in dollars and cents for each one hundred dollars of valuation; the number of years during which the increase will be in effect; and the first calendar year in which the tax will be due. The notice also shall state the amount by which the amount to be raised by the tax may be increased in each year after the first year. The amount of the allowable increase may be expressed in terms of a dollar increase over, or a percentage of, the amount raised by the tax in the immediately preceding year. For an election on the question of a renewal levy, the notice shall state the purpose; the amount proposed to be raised by the tax; the estimated tax rate, expressed in mills for each one dollar of valuation and in dollars and cents for each one hundred dollars of valuation; and the number of years the tax will be in effect.

In any case, the notice also shall state the time and place of the election.

(B) The form of the ballot in an election on taxes proposed under section 5705.212 of the Revised Code shall be as follows:

"Shall the school district be authorized to levy taxes for current expenses, the aggregate rate of which may increase in (number) increment(s) of not more than mill(s) for each dollar of valuation, from an original rate of mill(s) for each dollar of valuation, which amounts to (rate expressed in dollars and cents) for each one hundred dollars of valuation, to a maximum rate of mill(s) for each dollar of valuation, which amounts to (rate expressed in dollars and cents) for each one hundred dollars of valuation? The original tax is first proposed to be levied in (the first year of the tax), and the incremental tax in (the first year of the increment) (if more than one incremental tax is proposed in the resolution, the first year that each incremental tax is proposed to be levied shall be stated in the preceding format, and the increments shall be referred to as the first, second, third, or fourth increment, depending on their number). The aggregate rate of tax so authorized will (insert either, "expire with the original rate of tax which shall be in effect for years" or "be in effect for a continuing period of time").

AGAINST THE TAX LEVIES "

The form of the ballot in an election on the question of a renewal levy under section 5705.212 of the Revised Code shall be as follows:

"Shall the school district be authorized to renew a tax for current expenses at a rate not exceeding mills for each dollar of valuation, which amounts to (rate expressed in dollars and cents) for each one hundred dollars of valuation, for (number of years the levy shall be in effect, or a continuing period of time)?

FOR THE TAX LEVY

AGAINST THE TAX LEVY "

If the tax is to be placed on the current tax list, the form of the ballot shall be modified by adding, after the statement of the number of years the levy is to be in effect, the phrase ", commencing in (first year the tax is to be levied), first due in calendar year (first calendar year in which the tax shall be due)."

(C) The form of the ballot in an election on a tax proposed under section 5705.213 of the Revised Code shall be as follows:

"Shall the school district be authorized to levy the following tax for current expenses? The tax will first be levied in (year) to raise (dollars). In the (number of years) following years, the tax will increase by not more than (per cent or dollar amount of increase) each year, so that, during (last year of the tax), the tax will raise approximately (dollars). The county auditor estimates that the rate of the tax per dollar of valuation will be mill(s), which amounts to \$...... per one hundred dollars of valuation, both during (first year of the tax) and mill(s), which amounts to \$...... per one hundred dollars of valuation, during (last year of the tax). The tax will not be levied after (year).

FOR THE TAX LEVY

AGAINST THE TAX LEVY "

The form of the ballot in an election on the question of a renewal levy under section 5705.213 of the Revised Code shall be as follows:

"Shall the school district be authorized to renew a tax for current expenses which will raise (dollars), estimated by the county auditor to be mills for each dollar of valuation, which amounts to (rate expressed in dollars and cents) for each one

hundred dollars of valuation? The tax shall be in effect for (the number of years the levy shall be in effect, or a continuing period of time).

FOR THE TAX LEVY

AGAINST THE TAX LEVY "

If the tax is to be placed on the current tax list, the form of the ballot shall be modified by adding, after the statement of the number of years the levy is to be in effect, the phrase ", commencing in (first year the tax is to be levied), first due in calendar year (first calendar year in which the tax shall be due)."

(D) The question covered by a resolution adopted under section 5705.212 or 5705.213 of the Revised Code shall be submitted as a separate question, but may be printed on the same ballot with any other question submitted at the same election, other than the election of officers. More than one question may be submitted at the same election.

(E) Taxes voted in excess of the ten-mill limitation under division (B) or (C) of this section shall be certified to the tax commissioner. If an additional tax is to be placed upon the tax list of the current year, as specified in the resolution providing for its submission, the result of the election shall be certified immediately after the canvass by the board of elections to the board of education. The board of education immediately shall make the necessary levy and certify it to the county auditor, who shall extend it on the tax list for collection. After the first year, the levy shall be included in the annual tax budget that is certified to the county budget commission.

Amended by 129th General Assembly File No. 28, HB 153, § 101.01, eff. 9/29/2011.

Amended by 128th General Assembly File No. 29, HB 48, § 1, eff. 7/2/2010.

Effective Date: 08-16-1999; 06-01-2006

5705.26 Majority vote necessary for levies.

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Except as otherwise provided in section 5705.191 of the Revised Code, if the majority of the electors voting on a levy authorized by sections 5705.19 to 5705.25, inclusive, of the Revised Code vote in favor of such levy at such election, the taxing authority of the subdivision may levy a tax within such subdivision at the additional rate in excess of the ten-mill limitation during the period and for the purpose stated in the resolution, or at any less rate, or for any of said years or purposes; provided that levies for payment of debt charges shall not exceed the amount necessary for such charges on the indebtedness mentioned in the resolution. If such levy is for the payment of charges on debts incurred prior to January 1, 1935, in excess of the ten-mill limitation but within the fifteen-mill

limitation, the taxing authority of said subdivision shall levy in excess of the ten-mill limitation such tax if a majority of the electors voting on the levy vote in favor thereof.

Effective Date: 12-01-1967

5705.261 Election on decrease of an increased rate of levy approved for a continuing period of time.

The question of decrease of an increased rate of levy approved for a continuing period of time by the voters of a subdivision may be initiated by the filing of a petition with the board of elections of the proper county not less than ninety days before the general election in any year requesting that an election be held on such question. Such petition shall state the amount of the proposed decrease in the rate of levy and shall be signed by qualified electors residing in the subdivision equal in number to at least ten per cent of the total number of votes cast in the subdivision for the office of governor at the most recent general election for that office. Only one such petition may be filed during each five-year period following the election at which the voters approved the increased rate for a continuing period of time.

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After determination by it that such petition is valid, the board of elections shall submit the question to the electors of the district at the succeeding general election. The election shall be conducted, canvassed, and certified in the same manner as regular elections in such subdivision for county offices. Notice of the election shall be published in a newspaper of general circulation in the district once a week for two consecutive weeks, or as provided in section 7.16 of the Revised Code, prior to the election. If the board of elections operates and maintains a web site, the board of elections shall post notice of the election on its web site for thirty days prior to the election. The notice shall state the purpose, the amount of the proposed decrease in rate, and the time and place of the election. The form of the ballot cast at such election shall be prescribed by the secretary of state. The question covered by such petition shall be submitted as a separate proposition but it may be printed on the same ballot with any other propositions submitted at the same election other than the election of officers. If a majority of the qualified electors voting on the question of a decrease at such election approve the proposed decrease in rate, the result of the election shall be certified immediately after the canvass by the board of elections to the subdivision's taxing authority, which shall thereupon, after the current year, cease to levy such increased rate or levy such tax at such reduced rate upon the duplicate of the subdivision. If notes have been issued in anticipation of the collection of such levy, the taxing authority shall continue to levy and collect under authority of the election authorizing the original levy such amounts as will be sufficient to pay the principal of and interest on such anticipation notes as the same fall due.

Amended by 129th General Assembly File No. 28, HB 153, § 101.01, eff. 9/29/2011.

Amended by 128th General Assembly File No. 29, HB 48, § 1, eff. 7/2/2010.

Effective Date: 11-20-1996; 06-01-2006

5705.27 County budget commission.

There is hereby created in each county a county budget commission consisting of the county auditor, the county treasurer, and the prosecuting attorney. Upon petition filed with the board of elections, signed by the number of electors of the county equal in amount to three per cent of the total number of votes cast for governor at the most recent election therefor, there shall be submitted to the electors of the county at the next general election occurring not sooner than ninety days after the filing of the petition, the question "Shall the county budget commission consist of two additional members to be elected from the county?" Provision shall be made on the ballot for the election from the county at large of two additional members of the county budget commission who shall be electors of the county if a majority of the electors voting on the question shall have voted in the affirmative. In such counties, where the electors have voted in the affirmative, the county budget commission shall consist of such two elected members in addition to the county auditor, the county treasurer and the prosecuting attorney. Such members, who shall not hold any other public office, shall serve for a term of four years. The commission shall meet at the office of the county auditor in each county on the first Monday in February and on the first Monday in August, annually, and shall complete its work on or before the first day of September, annually, unless for good cause the tax commissioner extends the time for completing the work. A majority of members shall constitute a quorum, provided that no action of the commission shall be valid unless agreed to by a majority of the members of the commission. The auditor shall be the secretary of the commission and shall keep a full and accurate record of all proceedings. The auditor shall appoint such messengers and clerks as the commission deems necessary, and the budget commissioners shall be allowed their actual and necessary expenses. The elected members of the commission shall also receive twenty dollars for each day in attendance at commission meetings and in discharge of official duties. Any vacancy among such elected members shall be filled by the presiding judge of the court of common pleas. In adjusting the rates of taxation and fixing the amount of taxes to be levied each year, the commissioners shall be governed by the amount of the taxable property shown on the auditor's tax list for the current year; provided that if the auditor's tax list has not been completed, the auditor shall estimate, as nearly as practicable, the amount of the taxable property for such year, and such officers shall be governed by such estimate.

In any county in which two members of the commission are elected, upon petition filed with the board of elections, signed by the number of electors of the county equal in amount to three per cent of the votes cast for governor at the most recent election therefor, there shall be submitted to the electors of the county at the next general election occurring not sooner than ninety days after the filing of the petition, the question "Shall the elected members be eliminated from the county budget commission?" If the majority of the electors voting thereon shall have voted in the affirmative, the county budget commission shall consist solely of the county auditor, the county treasurer, and the prosecuting attorney.

Amended by 128th General Assembly File No. 29, HB 48, § 1, eff. 7/2/2010.

Effective Date: 08-22-1995

5705.28 Adoption of tax budget - procedure for participation by public library trustees.

(A) Except as provided in division (B)(1) or (2) of this section or in section 5705.281 of the Revised Code, the taxing authority of each subdivision or other taxing unit shall adopt a tax budget for the next succeeding fiscal year:

- (1) On or before the fifteenth day of January in the case of a school district;
- (2) On or before the fifteenth day of July in the case of all other subdivisions and taxing units.

(B)(1) Before the first day of June in each year, the board of trustees of a school library district entitled to participate in any appropriation or revenue of a school district or to have a tax proposed by the board of education of a school district shall file with the board of education of the school district a tax budget for the ensuing fiscal year. On or before the fifteenth day of July in each year, the board of education of a school district to which a school library district tax budget was submitted under this division shall adopt such tax budget on behalf of the library district, but such budget shall not be part of the school district's tax budget.

(2)(a) The taxing authority of a taxing unit that does not levy a tax is not required to adopt a tax budget pursuant to division (A) of this section. Instead, on or before the fifteenth day of July each year, such taxing authority shall adopt an operating budget for the taxing unit for the ensuing fiscal year. The operating budget shall include an estimate of receipts from all sources, a statement of all taxing unit expenses that are anticipated to occur, and the amount required for debt charges during the fiscal year. The operating

budget is not required to be filed with the county auditor or the county budget commission.

(b) Except for this section and sections 5705.36, 5705.38, 5705.40, 5705.41, 5705.43, 5705.44, and 5705.45 of the Revised Code, a taxing unit that does not levy a tax is not a taxing unit for purposes of Chapter 5705. of the Revised Code. Documents prepared in accordance with such sections are not required to be filed with the county auditor or county budget commission.

(c) The total appropriations from each fund of a taxing unit that does not levy a tax shall not exceed the total estimated revenue available for expenditures from the fund, and appropriations shall be made from each fund only for the purposes for which the fund is established.

(C)(1) To assist in the preparation of the tax budget, the head of each department, board, commission, and district authority entitled to participate in any appropriation or revenue of a subdivision shall file with the taxing authority, or in the case of a municipal corporation, with its chief executive officer, before the forty-fifth day prior to the date on which the budget must be adopted, an estimate of contemplated revenue and expenditures for the ensuing fiscal year, in such form as is prescribed by the taxing authority of the subdivision or by the auditor of state. The taxing authority shall include in its budget of expenditures the full amounts requested by district authorities, not to exceed the amount authorized by law, if such authorities may fix the amount of revenue they are to receive from the subdivision. In a municipal corporation in which a special levy for a municipal university has been authorized to be levied in excess of the ten-mill limitation, or is required by the charter of the municipal corporation, the taxing authority shall include an amount not less than the estimated yield of such levy, if such amount is requested by the board of directors of the municipal university.

(2) A county board of developmental disabilities may include within its estimate of contemplated revenue and expenditures a reserve balance account in the community developmental disabilities residential services fund. The account shall contain money that is not needed to pay for current expenses for residential services and supported living but will be needed to pay for expenses for such services in the future or may be needed for unanticipated emergency expenses. On the request of the county board of developmental disabilities, the board of county commissioners shall include such an account in its budget of expenditures and appropriate money to the account from residential service moneys for the county board.

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(D) The board of trustees of any public library desiring to participate in the distribution of the county public library fund shall adopt appropriate rules extending the benefits of the library service of such library to all the inhabitants of the county on equal terms, unless

such library service is by law available to all such inhabitants, and shall certify a copy of such rules to the taxing authority with its estimate of contemplated revenue and expenditures. Where such rules have been so certified or where the adoption of such rules is not required, the taxing authority shall include in its budget of receipts such amounts as are specified by such board as contemplated revenue from the county public library fund, and in its budget of expenditures the full amounts requested therefrom by such board. No library association, incorporated or unincorporated, is entitled to participate in the proceeds of the county public library fund unless such association both was organized and operating prior to January 1, 1968, and participated in the distribution of the proceeds of the county public library fund prior to December 31, 2005.

Amended by 128th General Assembly ch. 7, SB 79, § 1, eff. 10/6/2009.

Effective Date: 06-08-2000; 2008 SB185 06-20-2008

5705.281 Waiving requirement of adoption of tax budget.

(A) Notwithstanding section 5705.28 of the Revised Code, the county budget commission, by an affirmative vote of a majority of the commission, including an affirmative vote by the county auditor, may waive the requirement that the taxing authority of a subdivision or other taxing unit adopt a tax budget as provided under section 5705.28 of the Revised Code, but shall require such a taxing authority to provide such information to the commission as may be required by the commission to perform its duties under this chapter, including dividing the rates of each of the subdivision's or taxing unit's tax levies as provided under section 5705.04 of the Revised Code.

(B)(1) Notwithstanding divisions (B)(1) and (D) of section 5705.28 of the Revised Code, in any county in which a single library receives all of the county public library fund or receives all of that portion of the fund that is distributed to libraries, the county budget commission, by an affirmative vote of a majority of the commission, including an affirmative vote by the county auditor, may waive any or all of the following requirements:

(a) The requirement that the board of trustees of a school library district entitled to participate in any appropriation or revenue of a school district or to have a tax proposed by the board of education of a school district file with the board of education of the school district a tax budget, and the requirement that the board of education adopt the tax budget on behalf of the library district, as provided in division (B)(1) of section 5705.28 of the Revised Code;

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(b) The requirement that the board of trustees of a public library desiring to participate in the distribution of the county public library fund certify to the taxing authority its estimate

of contemplated revenue and expenditures, and the requirement that the taxing authority include in its budget of receipts and budget of expenditures the full amounts specified or requested by the board of trustees, as provided in division (D) of section 5705.28 of the Revised Code.

(2) If a county budget commission waives the requirements described in division (B)(1) (a) or (b) of this section, the commission shall require the board of trustees of the school library district or the board of trustees of the public library desiring to participate in the distribution of the county public library fund to provide to the commission any information the commission may require from the board in order for the commission to perform its duties under this chapter.

Effective Date: 11-09-2003; 2008 SB185 06-20-2008

5705.29 Contents of tax budget - contingency reserve balance - spending reserve.

This section does not apply to a subdivision or taxing unit for which the county budget commission has waived the requirement to adopt a tax budget pursuant to section 5705.281 of the Revised Code. The tax budget shall present the following information in such detail as is prescribed by the auditor of state:

(A)(1) A statement of the necessary current operating expenses for the ensuing fiscal year for each department and division of the subdivision, classified as to personal services and other expenses, and the fund from which such expenditures are to be made. Except in the case of a school district, this estimate may include a contingent expense not designated for any particular purpose, and not to exceed three per cent of the total amount of appropriations for current expenses. In the case of a school district, this estimate may include a contingent expense not designated for any particular purpose and not to exceed thirteen per cent of the total amount of appropriations for current expenses.

(2) A statement of the expenditures for the ensuing fiscal year necessary for permanent improvements, exclusive of any expense to be paid from bond issues, classified as to the improvements contemplated by the subdivision and the fund from which such expenditures are to be made;

(3) The amounts required for the payment of final judgments;

(4) A statement of expenditures for the ensuing fiscal year necessary for any purpose for which a special levy is authorized, and the fund from which such expenditures are to be made;

(5) Comparative statements, so far as possible, in parallel columns of corresponding items of expenditures for the current fiscal year and the two preceding fiscal years.

(B)(1) An estimate of receipts from other sources than the general property tax during the ensuing fiscal year, which shall include an estimate of unencumbered balances at the end of the current fiscal year, and the funds to which such estimated receipts are credited;

(2) The amount each fund requires from the general property tax, which shall be the difference between the contemplated expenditure from the fund and the estimated receipts, as provided in this section. The section of the Revised Code under which the tax is authorized shall be set forth.

(3) Comparative statements, so far as possible, in parallel columns of taxes and other revenues for the current fiscal year and the two preceding fiscal years.

(C)(1) The amount required for debt charges;

(2) The estimated receipts from sources other than the tax levy for payment of such debt charges, including the proceeds of refunding bonds to be issued to refund bonds maturing in the next succeeding fiscal year;

(3) The net amount for which a tax levy shall be made, classified as to bonds authorized and issued prior to January 1, 1922, and those authorized and issued subsequent to such date, and as to what portion of the levy will be within and what in excess of the ten-mill limitation.

(D) An estimate of amounts from taxes authorized to be levied in excess of the ten-mill limitation on the tax rate, and the fund to which such amounts will be credited, together with the sections of the Revised Code under which each such tax is exempted from all limitations on the tax rate.

(E)(1) A board of education may include in its budget for the fiscal year in which a levy proposed under section 5705.194, 5705.199, 5705.21, 5705.213, or 5705.219, a property tax levy proposed under section 5748.09, or the original levy under section 5705.212 of the Revised Code is first extended on the tax list and duplicate an estimate of expenditures to be known as a voluntary contingency reserve balance, which shall not be greater than twenty-five per cent of the total amount of the levy estimated to be available for appropriation in such year.

0136

(2) A board of education may include in its budget for the fiscal year following the year in which a levy proposed under section 5705.194, 5705.199, 5705.21, 5705.213, or 5705.219, a property tax levy proposed under section 5748.09, or the original levy under

section 5705.212 of the Revised Code is first extended on the tax list and duplicate an estimate of expenditures to be known as a voluntary contingency reserve balance, which shall not be greater than twenty per cent of the amount of the levy estimated to be available for appropriation in such year.

(3) Except as provided in division (E)(4) of this section, the full amount of any reserve balance the board includes in its budget shall be retained by the county auditor and county treasurer out of the first semiannual settlement of taxes until the beginning of the next succeeding fiscal year, and thereupon, with the depository interest apportioned thereto, it shall be turned over to the board of education, to be used for the purposes of such fiscal year.

(4) A board of education, by a two-thirds vote of all members of the board, may appropriate any amount withheld as a voluntary contingency reserve balance during the fiscal year for any lawful purpose, provided that prior to such appropriation the board of education has authorized the expenditure of all amounts appropriated for contingencies under section 5705.40 of the Revised Code. Upon request by the board of education, the county auditor shall draw a warrant on the district's account in the county treasury payable to the district in the amount requested.

(F)(1) A board of education may include a spending reserve in its budget for fiscal years ending on or before June 30, 2002. The spending reserve shall consist of an estimate of expenditures not to exceed the district's spending reserve balance. A district's spending reserve balance is the amount by which the designated percentage of the district's estimated personal property taxes to be settled during the calendar year in which the fiscal year ends exceeds the estimated amount of personal property taxes to be so settled and received by the district during that fiscal year. Moneys from a spending reserve shall be appropriated in accordance with section 133.301 of the Revised Code.

(2) For the purposes of computing a school district's spending reserve balance for a fiscal year, the designated percentage shall be as follows:

Fiscal year ending in: Designated percentage

1998	50%
1999	40%
2000	30%
2001	20%
2002	10%

0138

(G) Except as otherwise provided in this division, the county budget commission shall not reduce the taxing authority of a subdivision as a result of the creation of a reserve balance account. Except as otherwise provided in this division, the county budget commission shall not consider the amount in a reserve balance account of a township, county, or municipal corporation as an unencumbered balance or as revenue for the purposes of division (E)(3) or (4) of section 5747.51 of the Revised Code. The county budget commission may require documentation of the reasonableness of the reserve balance held in any reserve balance account. The commission shall consider any amount in a reserve balance account that it determines to be unreasonable as unencumbered and

as revenue for the purposes of section 5747.51 of the Revised Code and may take such amounts into consideration when determining whether to reduce the taxing authority of a subdivision.

Amended by 129th General Assembly File No. 28, HB 153, § 101.01, eff. 9/29/2011.

Amended by 128th General Assembly File No. 9, HB 1, § 101.01, eff. 10/16/2009.

Effective Date: 06-03-2002; 2007 HB119 01-01-2008; 2008 HB562 09-22-2008

See 129th General Assembly File No. 28, HB 153, §757.90.

5705.30 Public inspection of budget - hearing - notice - submission to county auditor.

This section does not apply to a subdivision for which the county budget commission has waived the requirement to adopt a tax budget under section 5705.281 of the Revised Code.

In addition to the information required by section 5705.29 of the Revised Code, the budget of each subdivision and school library district shall include such other information as is prescribed by the auditor of state. At least two copies of the budget shall be filed in the office of the fiscal officer of the subdivision for public inspection not less than ten days before its adoption by the taxing authority, and such taxing authority shall hold at least one public hearing thereon, of which public notice shall be given by at least one publication not less than ten days prior to the date of hearing in the official publication of such subdivision, or in a newspaper having general circulation in the subdivision. The budget, after adoption, shall be submitted to the county auditor on or before the twentieth day of July, or in the case of a school district, by the twentieth day of January. The tax commissioner may prescribe a later date for the submission of a subdivision's tax budget. Any subdivision that fails to submit its budget to the county auditor on or before the twentieth day of July, unless the commissioner on or before the twentieth day of July prescribes a later date for submission of the budget by that subdivision, shall not receive an apportionment from the undivided local government fund distribution for the ensuing calendar year, unless upon review of the matter the commissioner determines that the budget was adopted by the subdivision on or before the fifteenth day of July, but was not submitted to the county auditor by the twentieth day of July or the later time prescribed by the commissioner because of ministerial error by the subdivision or its officers, employees, or other representatives.

Effective Date: 06-03-2002

0139

5705.31 Approval of levies by budget commission - minimum levy.

The county auditor shall present to the county budget commission the annual tax budgets submitted under sections 5705.01 to 5705.47 of the Revised Code, together with an estimate prepared by the auditor of the amount of any state levy, the rate of any school tax levy as previously determined, the tax commissioner's estimate of the amount to be received in the county public library fund, the tax rates provided under section 5705.281 of the Revised Code if adoption of the tax budget was waived under that section, and such other information as the commission requests or the tax commissioner prescribes. The budget commission shall examine such budget and ascertain the total amount proposed to be raised in the county for the purposes of each subdivision and other taxing units in the county.

The commission shall ascertain that the following levies have been properly authorized and, if so authorized, shall approve them without modification:

- (A) All levies in excess of the ten-mill limitation;
- (B) All levies for debt charges not provided for by levies in excess of the ten-mill limitation, including levies necessary to pay notes issued for emergency purposes;
- (C) The levies prescribed by division (B) of sections 742.33 and 742.34 of the Revised Code;
- (D) Except as otherwise provided in this division, a minimum levy within the ten-mill limitation for the current expense and debt service of each subdivision or taxing unit, which shall equal two-thirds of the average levy for current expenses and debt service allotted within the fifteen-mill limitation to such subdivision or taxing unit during the last five years the fifteen-mill limitation was in effect unless such subdivision or taxing unit requests an amount requiring a lower rate. Except as provided in section 5705.312 of the Revised Code, if the levies required in divisions (B) and (C) of this section for the subdivision or taxing unit equal or exceed the entire minimum levy of the subdivision as fixed, the minimum levies of the other subdivisions or taxing units shall be reduced by the commission to provide for the levies and an operating levy for the subdivision. Such additional levy shall be deducted from the minimum levies of each of the other subdivisions or taxing units, but the operating levy for a school district shall not be reduced below a figure equivalent to forty-five per cent of the millage available within the ten-mill limitation after all the levies in divisions (B) and (C) of this section have been provided for.

If a municipal corporation and a township have entered into an annexation agreement under section 709.192 of the Revised Code in which they agree to reallocate their shares of the minimum levies established under this division and if that annexation agreement is submitted along with the annual tax budget of both the township and the municipal corporation, then, when determining the minimum levy under this division, the auditor shall allocate, to the extent possible, the minimum levy for that municipal corporation and township in accordance with their annexation agreement.

(E) The levies prescribed by section 3709.29 of the Revised Code.

Divisions (A) to (E) of this section are mandatory, and commissions shall be without discretion to reduce such minimum levies except as provided in such divisions.

If any debt charge is omitted from the budget, the commission shall include it therein.

Effective Date: 06-03-2002; 2008 SB185 06-20-2008

5705.311 Application of levy to annexed territory.

During any tax year or years within which any territory annexed to a city or a village is not a part of the city school district or a school district of which such village is a part, the minimum levy for such city or village under section 5705.31 of the Revised Code shall not be diminished except that in such annexed territory and only during said tax year or years, and in order to preserve the minimum levies of overlapping subdivisions under said section so that the full amount of taxes within the ten-mill limitation may be levied to the extent possible, the minimum levy of said city or village shall be the lowest of the following amounts: an amount which when added to the minimum levies of the other overlapping subdivisions equals ten mills, or an amount equal to the minimum levy of such city or village, or an amount equal to the minimum levy theretofore made in said area for township or municipal purposes.

Effective Date: 01-10-1961

5705.312 Increasing minimum levy to pay debt service.

The county budget commission shall not increase the minimum levy of a municipal corporation pursuant to division (D) of section 5705.31 of the Revised Code to pay debt service unless moneys available to pay such debt service are insufficient after applying divisions (A) to (C) of this section:

0141

(A) The amount of debt service on unvoted general obligations of the municipal corporation, not otherwise provided for, shall be charged against the minimum levy of the municipal corporation pursuant to division (D) of section 5705.31 of the Revised Code to

the full extent of such levy that may lawfully be used for such purpose, if necessary, without preserving to the municipal corporation any operating levy within the ten-mill limitation.

(B) The amount of debt service on unvoted general obligations of the municipal corporation, not otherwise provided for, after application of division (A) of this section shall be paid from receipts of any income tax levied by the municipal corporation that may lawfully be used for such purpose.

(C) The amount of debt service on unvoted general obligations of the municipal corporation, not otherwise provided for, after application of divisions (A) and (B) of this section shall be paid from the receipts of any levy in excess of the ten-mill limitation available for current expenses of the municipal corporation that may lawfully be used for such purpose.

Moneys produced by the application of divisions (A) to (C) of this section shall be placed in the bond retirement fund of the municipal corporation by the county auditor or the officer of the municipal corporation collecting such taxes, as appropriate.

Effective Date: 10-17-1979

5705.313 Permitting property tax rate reduction when county sales tax increased.

(A)(1) Whenever a board of county commissioners adopts a resolution pursuant to section 5739.021 or 5739.026 of the Revised Code to levy or increase the rate of a sales tax, the board may adopt an accompanying resolution reducing the rate of any property tax the county currently is levying for current expenses within the ten-mill limitation or amending a previously adopted accompanying resolution increasing the amount of an existing reduction made under this division.

(2) At any time after a board of county commissioners has adopted a resolution pursuant to section 5739.021 or 5739.026 of the Revised Code to levy or increase the rate of the sales tax, the board may adopt another resolution reducing the rate of any property tax the county currently is levying for current expenses within the ten-mill limitation or amending a previously adopted accompanying resolution increasing the amount of an existing reduction made under this division. This resolution may be adopted at any time during which the county is levying the sales tax under section 5739.021 or 5739.026 of the Revised Code.

0142

The rate reduction under division (A)(1) or (2) of this section may be any amount, provided it does not reduce the annual property tax revenue for current expenses within

the ten-mill limitation by more than the amount of annual revenue the commissioners estimate the sales tax levy to generate. The resolution shall set forth the current millage rate for current expenses of the county within the ten-mill limitation; the number of such mills not currently levied under this division, if any; the number of such mills currently levied that will not be levied until a resolution is adopted under division (C) of this section or the expiration of the specified number of years the rate is not to be levied, and the tax year in which the rate reduction shall first apply. The resolution may state that the property tax rate reduction will be for a specified number of years. A copy of the resolution shall be certified to the county auditor.

(B) Notwithstanding any other provision of law, whenever a board of county commissioners adopts a resolution under division (A) of this section, no other taxing unit may levy any portion of the rate the county does not levy until the expiration of the specified number of years that such portion of the rate reduction is in effect as set forth in the resolution.

(C) At any time a rate reduction is in effect the board of county commissioners may, by two-thirds vote of its members, adopt a resolution increasing the rate of the levy by any amount up to the rate at which it was levied prior to its rate reduction under this section. The board shall then immediately certify its action to the county auditor. If the commissioners increase the rate to the full rate at which it was levied prior to its rate reduction under this section, this section shall thereupon cease to apply to that county until another resolution is adopted pursuant to division (A)(1) or (2) of this section.

Effective Date: 05-08-1996

5705.314 Conducting public hearing on proposed school levy.

0143

If the board of education of a city, local, or exempted village school district proposes to change its levy within the ten-mill limitation in a manner that will result in an increase in the amount of real property taxes levied by the board in the tax year the change takes effect, the board shall hold a public hearing solely on the proposal before adopting a resolution to implement the proposal. The board shall publish notice of the hearing in a newspaper of general circulation in the school district once a week for two consecutive weeks or as provided in section 7.16 of the Revised Code. The second publication shall be not less than ten nor more than thirty days before the date of the hearing, and the notice shall include the date, time, place, and subject of the hearing, and a statement that the change proposed by the board may result in an increase in the amount of real property taxes levied by the board. At the time the board submits the notice for publication, the board shall send a copy of the notice to the auditor of the county where the school district

is located or, if the school district is located in more than one county, to the auditor of each of those counties.

Amended by 129th General Assembly File No. 28, HB 153, § 101.01, eff. 9/29/2011.

Effective Date: 12-21-1998

5705.315 Effect of annexation on minimum municipal and township levies.

With respect to annexations granted on or after the effective date of this section and during any tax year or years within which any territory annexed to a municipal corporation is part of a township, the minimum levy for the municipal corporation and township under section 5705.31 of the Revised Code shall not be diminished, except that in the annexed territory and only during those tax year or years, and in order to preserve the minimum levies of overlapping subdivisions under section 5705.31 of the Revised Code so that the full amount of taxes within the ten-mill limitation may be levied to the extent possible, the minimum levy of the municipal corporation or township shall be the lowest of the following amounts:

(A) An amount that when added to the minimum levies of the other overlapping subdivisions equals ten mills;

(B) An amount equal to the minimum levy of the municipal corporation or township, provided the total minimum levy does not exceed ten mills.

The municipal corporation and the township may enter into an agreement to determine the municipal corporation's and the township's minimum levy under this section. If it cannot be determined what minimum levy is available to each and no agreement has been entered into by the municipal corporation and township, the municipal corporation and township shall each receive one-half of the millage available for use within the portion of the territory annexed to the municipal corporation that remains part of the township.

Effective Date: 10-26-2001

5705.32 Budget commission to adjust amounts required - revision of estimate - distribution - hearing.

0144

(A) The county budget commission shall adjust the estimated amounts required from the general property tax for each fund, as shown by the tax budgets or other information required to be provided under section 5705.281 of the Revised Code, so as to bring the tax levies required therefor within the limitations specified in sections 5705.01 to 5705.47

of the Revised Code, for such levies, but no levy shall be reduced below a minimum fixed by law. The commission may revise and adjust the estimate of balances and receipts from all sources for each fund and shall determine the total appropriations that may be made therefrom.

(B) The commission shall fix the amount of the county public library fund to be distributed to each board of public library trustees that has qualified under section 5705.28 of the Revised Code for participation in the proceeds of such fund. The amount paid to all libraries in the county from such fund shall never be a smaller per cent of the fund than the average of the percentages of the county's classified taxes that were distributed to libraries in 1982, 1983, and 1984, as determined by the county auditor. The commission shall base the amount for distribution on the needs of such library for the construction of new library buildings, parts of buildings, improvements, operation, maintenance, or other expenses. In determining the needs of each library board of trustees, and in calculating the amount to be distributed to any library board of trustees on the basis of its needs, the commission shall make no reduction in its allocation from the fund on account of additional revenues realized by a library from increased taxes or service charges voted by its electorate, from revenues received through federal or state grants, projects, or programs, or from grants from private sources.

(C) Notwithstanding the fact that alternative methods of financing such needs are available, after fixing the amount to be distributed to libraries, the commission shall fix the amount, if any, of the county public library fund to be distributed to each board of township park commissioners, the county, and each municipal corporation in accordance with the following:

(1) Each municipal corporation in the county shall receive a per cent of the remainder that equals the per cent that the county auditor determines the classified property taxes originating in such municipal corporation in 1984 were of the total of all of the county's classified property taxes in 1984. The commission may deduct from this amount any amount that the budget commission allows to the board of township park commissioners of a township park district, the boundaries of which are coextensive with or contained within the boundaries of the municipal corporation.

(2) The county shall receive a per cent of the remainder that equals the per cent that the county auditor determines the classified property taxes originating outside of the boundaries of municipal corporations in the county in 1984 were of the total of all of the county's classified property taxes in 1984. The commission may deduct from this amount any amount that the budget commission allows to the board of township park commissioners of a township park district, the boundaries of which are not coextensive with or contained within those of any municipal corporation in the county.

(D) The commission shall separately set forth the amounts fixed and determined under divisions (B) and (C) of this section in the "official certificate of estimated resources," as provided in section 5705.35 of the Revised Code, and separately certify such amount to the county auditor who shall be guided thereby in the distribution of the county public library fund for and during the fiscal year. In determining such amounts, the commission shall be guided by the estimate certified by the tax commissioner and presented by the auditor under section 5705.31 of the Revised Code, as to the total amount of revenue to be received in the county public library fund during such fiscal year.

(E)(1) At least five days before the date of any meeting at which the budget commission plans to discuss the distribution of the county public library fund, it shall notify each legislative authority and board of public library trustees, county commissioners, and township park commissioners eligible to participate in the distribution of the fund of the date, time, place, and agenda for the meeting. Any legislative authority or board entitled to notice under this division may designate an officer or employee of such legislative authority or board to whom the commission shall deliver the notice.

(2) Before the final determination of the amount to be allotted to each subdivision from any source, the commission shall permit representatives of each subdivision and of each board of public library trustees to appear before it to explain its financial needs.

(F) If any public library receives and expends any funds allocated to it under this section for the construction of new library buildings or parts of buildings, such library shall be free and open to the inhabitants of the county in which it is located. Any board of library trustees that receives funds under this section and section 5747.48 of the Revised Code shall have its financial records open for public inspection at all reasonable times.

Effective Date: 06-03-2002; 2008 SB185 06-20-2008

5705.321 Alternative method of apportionment.

(A) As used in this section:

0146

(1) "City, located wholly or partially in the county, with the greatest population" means the city, located wholly or partially in the county, with the greatest population residing in the county; however, if the county budget commission on or before January 1, 1998, adopted an alternative method of apportionment that was approved by the city, located partially in the county, with the greatest population but not the greatest population residing in the county, "city, located wholly or partially in the county, with the greatest population" means the city, located wholly or partially in the county, with the greatest population whether residing in the county or not, if this alternative meaning is adopted by action of the board of county commissioners and a majority of the boards of township

trustees and legislative authorities of municipal corporations located wholly or partially in the county.

(2) "Participating political subdivision" means a municipal corporation or township that satisfies all of the following:

(a) It is located wholly or partially in the county.

(b) It is not the city, located wholly or partially in the county, with the greatest population.

(c) Public library fund moneys are apportioned to it under the county's alternative method or formula of apportionment in the current calendar year.

(B) In lieu of the method of apportionment of the county public library fund provided by division (C) of section 5705.32 of the Revised Code, the county budget commission may provide for the apportionment of the fund under an alternative method or on a formula basis as authorized by this section.

0147

Except as otherwise provided in division (C) of this section, the alternative method of apportionment shall have first been approved by all of the following governmental units: the board of county commissioners; the legislative authority of the city, located wholly or partially in the county, with the greatest population; and a majority of the boards of township trustees and legislative authorities of municipal corporations, located wholly or partially in the county, excluding the legislative authority of the city, located wholly or partially in the county, with the greatest population. In granting or denying approval for an alternative method of apportionment, the board of county commissioners, boards of township trustees, and legislative authorities of municipal corporations shall act by motion. A motion to approve shall be passed upon a majority vote of the members of a board of county commissioners, board of township trustees, or legislative authority of a municipal corporation, shall take effect immediately, and need not be published.

Any alternative method of apportionment adopted and approved under this division may be revised, amended, or repealed in the same manner as it may be adopted and approved. If an alternative method of apportionment adopted and approved under this division is repealed, the county public library fund shall be apportioned among the subdivisions eligible to participate in the fund, commencing in the ensuing calendar year, under the apportionment provided in divisions (B) and (C) of section 5705.32 of the Revised Code, unless the repeal occurs by operation of division (C) of this section or a new method for apportionment of the fund is provided in the action of repeal.

(C) This division applies only in counties in which the city, located wholly or partially in the county, with the greatest population has a population of twenty thousand or less and

a population that is less than fifteen per cent of the total population of the county. In such a county, the legislative authorities or boards of township trustees of two or more participating political subdivisions, which together have a population residing in the county that is a majority of the total population of the county, each may adopt a resolution to exclude the approval otherwise required of the legislative authority of the city, located wholly or partially in the county, with the greatest population. All of the resolutions to exclude that approval shall be adopted not later than the first Monday of August of the year preceding the calendar year in which distributions are to be made under an alternative method of apportionment.

A motion granting or denying approval of an alternative method of apportionment under this division shall be adopted by a majority vote of the members of the board of county commissioners and by a majority vote of a majority of the boards of township trustees and legislative authorities of the municipal corporations located wholly or partially in the county, other than the city, located wholly or partially in the county, with the greatest population, shall take effect immediately, and need not be published. The alternative method of apportionment under this division shall be adopted and approved annually, not later than the first Monday of August of the year preceding the calendar year in which distributions are to be made under it. A motion granting approval of an alternative method of apportionment under this division repeals any existing alternative method of apportionment, effective with distributions to be made from the fund in the ensuing calendar year. An alternative method of apportionment under this division shall not be revised or amended after the first Monday of August of the year preceding the calendar year in which distributions are to be made under it.

(D) In determining an alternative method of apportionment authorized by this section, the county budget commission may include in the method any factor considered to be appropriate and reliable, in the sole discretion of the county budget commission.

(E) On the basis of any alternative method of apportionment adopted and approved as authorized by this section, as certified by the auditor to the county treasurer, the county treasurer shall make distribution of the money in the county public library fund to each subdivision eligible to participate in the fund, and the auditor, when the amount of those shares is in the custody of the treasurer in the amounts so computed to be due the respective subdivisions, shall at the same time certify to the tax commissioner the percentage share of the county as a subdivision. All money received into the treasury of a subdivision from the county public library fund in a county treasury shall be paid into the general fund and used for the current operating expenses of the subdivision.

(F) The actions of the county budget commission taken pursuant to this section are final and may not be appealed to the board of tax appeals, except on the issues of abuse of discretion and failure to comply with the formula.

Effective Date: 08-29-2002; 2008 SB185 06-20-2008

5705.33 Reduction of operating levy.

In the case of any subdivision which issued refunding bonds as provided in volume 116, Part 2, Ohio Laws, page 57, sections 1 to 14, inclusive, whereby such subdivision has reduced the amount of the levy required to service its debt charges, the budget commission shall not, when acting under section 5705.32 of the Revised Code, reduce the operating levy of such subdivision below the amount which such subdivision has reduced its debt levy.

Effective Date: 10-01-1953

5705.331 [Repealed].

Effective Date: 06-28-1972

5705.34 Certification of tax levy - revision of budget.

When the budget commission has completed its work with respect to a tax budget or other information required to be provided under section 5705.281 of the Revised Code, it shall certify its action to the taxing authority, together with an estimate by the county auditor of the rate of each tax necessary to be levied by the taxing authority within its subdivision or taxing unit, and what part thereof is in excess of, and what part within, the ten-mill tax limitation. The certification shall also indicate the date on which each tax levied by the taxing authority will expire.

0149

If a taxing authority levies a tax for a fixed sum of money or to pay debt charges for the tax year for which the tax budget is prepared, and a payment on account of that tax is payable to the taxing authority for the tax year under section 5727.85, 5727.86, 5751.21, or 5751.22 of the Revised Code, the county auditor, when estimating the rate at which the tax shall be levied in the current year, shall estimate the rate necessary to raise the required sum less the estimated amount of any payments made for the tax year to a taxing unit for fixed-sum levies under those sections. The estimated rate shall be the rate of the levy that the budget commission certifies with its action under this section.

Each taxing authority, by ordinance or resolution, shall authorize the necessary tax levies and certify them to the county auditor before the first day of October in each year, or at

such later date as is approved by the tax commissioner, except that the certification by a board of education shall be made by the first day of April or at such later date as is approved by the commissioner, and except that a township board of park commissioners that is appointed by the board of township trustees and oversees a township park district that contains only unincorporated territory shall authorize only those taxes approved by, and only at the rate approved by, the board of township trustees as required by division (C) of section 511.27 of the Revised Code. If the levying of a tax to be placed on the duplicate of the current year is approved by the electors of the subdivision under sections 5705.01 to 5705.47 of the Revised Code; if the rate of a school district tax is increased due to the repeal of a school district income tax and property tax rate reduction at an election held pursuant to section 5748.04 of the Revised Code; or if refunding bonds to refund all or a part of the principal of bonds payable from a tax levy for the ensuing fiscal year are issued or sold and in the process of delivery, the budget commission shall reconsider and revise its action on the budget of the subdivision or school library district for whose benefit the tax is to be levied after the returns of such election are fully canvassed, or after the issuance or sale of such refunding bonds is certified to it.

Effective Date: 06-03-2002; 03-30-2006

5705.341 Right of appeal.

Any person required to pay taxes on real, public utility, or tangible personal property in any taxing district or other political subdivision of this state may appeal to the board of tax appeals from the action of the county budget commission of any county which relates to the fixing of uniform rates of taxation and the rate necessary to be levied by each taxing authority within its subdivision or taxing unit and which action has been certified by the county budget commission to the taxing authority of any political subdivision or other taxing district within the county.

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Such appeal shall be in writing and shall set forth the tax rate complained of and the reason that such a tax rate is not necessary to produce the revenue needed by the taxing district or political subdivision for the ensuing fiscal year as those needs are set out in the tax budget of said taxing unit or, if adoption of a tax budget was waived under section 5705.281 of the Revised Code, as set out in such other information the district or subdivision was required to provide under that section, or that the action of the budget commission appealed from does not otherwise comply with sections 5705.01 to 5705.47 of the Revised Code. The notice of appeal shall be filed with the board of tax appeals, and a true copy thereof shall be filed with the tax commissioner, the county auditor, and with the fiscal officer of each taxing district or political subdivision authorized to levy the tax complained of, and such notice of appeal and copies thereof must be filed within thirty days after the budget commission has certified its action as provided by section 5705.34

of the Revised Code. Such notice of appeal and the copies thereof may be filed either in person or by certified mail. If filed by certified mail, the date of the United States postmark placed on the sender's receipt by the postal employee to whom the notice of appeal is presented shall be treated as the date of filing.

Prior to filing the appeal provided by this section, the appellant shall deposit with the county auditor of the county or, in the event the appeal concerns joint taxing districts in two or more counties, with the county auditor of the county with the greatest valuation of taxable property the sum of five hundred dollars to cover the costs of the proceeding. The county auditor shall forthwith issue a pay-in order and pay such money into the county treasury to the credit of the general fund. The appellant shall produce the receipt of the county treasurer for such deposit and shall file such receipt with the notice of appeal.

The board of tax appeals shall forthwith consider the matter presented on appeal from the action of the county budget commission and may modify any action of the commission with reference to the fixing of tax rates, to the end that no tax rate shall be levied above that necessary to produce the revenue needed by the taxing district or political subdivision for the ensuing fiscal year and to the end that the action of the budget commission appealed from shall otherwise be in conformity with sections 5705.01 to 5705.47 of the Revised Code. The findings of the board of tax appeals shall be substituted for the findings of the budget commission and shall be sent to the county auditor and the taxing authority of the taxing district or political subdivision affected as the action of such budget commission under sections 5705.01 to 5705.47 of the Revised Code and to the tax commissioner. At the request of an appellant, the findings of the board of tax appeals shall be sent by certified mail at the appellant's expense.

The board of tax appeals shall promptly prepare a cost bill listing the expenses incurred by the board in conducting any hearing on the appeal and certify the cost bill to the county auditor of the county receiving the deposit for costs, who shall forthwith draw a warrant on the general fund of the county in favor of the person or persons named in the bill of costs certified by the board of tax appeals.

In the event the appellant prevails, the board of tax appeals promptly shall direct the county auditor to refund the deposit to the appellant and the costs shall be taxed to the taxing district or political subdivision involved in the appeal. The county auditor shall withhold from any funds then or thereafter in the auditor's possession belonging to the taxing district or political subdivision named in the order of the board of tax appeals and shall reimburse the general fund of the county.

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If the appellant fails, the costs shall be deducted from the deposit provided for in this section and any balance which remains shall be refunded promptly to the appellant by warrant of the county auditor drawn on the general fund of the county.

Nothing in this section or any section of the Revised Code shall permit or require the levying of any rate of taxation, whether within the ten-mill limitation or whether the levy has been approved by the electors of the taxing district, the political subdivision, or the charter of a municipal corporation in excess of such ten-mill limitation, unless such rate of taxation for the ensuing fiscal year is clearly required by a budget of the taxing district or political subdivision properly and lawfully adopted under this chapter, or by other information that must be provided under section 5705.281 of the Revised Code if a tax budget was waived.

In the event more than one appeal is filed involving the same taxing district or political subdivision, all such appeals may be consolidated by the board of tax appeals and heard at the same time.

Nothing herein contained shall be construed to bar or prohibit the tax commissioner from initiating an investigation or hearing on the commissioner's own motion.

The tax commissioner shall adopt and issue such orders, rules, and instructions, not inconsistent with law, as the commissioner deems necessary, as to the exercise of the powers and the discharge of the duties of any particular county budget commission, county auditor, or other officer which relate to the budget, the assessment of property, or the levy and collection of taxes. The commissioner shall cause the orders and instructions issued by the commissioner to be obeyed.

Amended by 128th General Assembly File No. 9, HB 1, § 101.01, eff. 10/16/2009.

Effective Date: 06-03-2002

5705.35 Contents of certification.

0152

(A) The certification of the budget commission to the taxing authority of each subdivision or taxing unit, as set forth in section 5705.34 of the Revised Code, shall show the various funds of such subdivisions other than funds to be created by transfer and shall be filed by the county budget commission with such taxing authority on or before the first day of March in the case of school districts and on or before the first day of September in each year in the case of all other taxing authorities. There shall be set forth on the credit side of each fund the estimated unencumbered balances and receipts, and if a tax is to be levied for such fund, the estimated revenue to be derived therefrom, the rate of the levy, and what portion thereof is within, and what in excess of, the ten-mill tax limitation, and on the debit side, the total appropriations that may be made therefrom. Subject to division (G) of section 5705.29 of the Revised Code, any reserve balance in an account established under section 5705.13 of the Revised Code for the purpose described in

division (A)(1) of that section, and the principal of a nonexpendable trust fund established under section 5705.131 of the Revised Code and any additions to principal arising from sources other than the reinvestment of investment earnings arising from that fund, are not unencumbered balances for the purposes of this section. The balance in a reserve balance account established under section 5705.132 of the Revised Code is not an unencumbered balance for the purposes of this division.

There shall be attached to the certification a summary, which shall be known as the "official certificate of estimated resources," that shall state the total estimated resources of each fund of the subdivision that are available for appropriation in the fiscal year, other than funds to be created by transfer, and a statement of the amount of the total tax duplicate of the school district to be used in the collection of taxes for the following calendar year. Before the end of the fiscal year, the taxing authority of each subdivision and other taxing unit shall revise its tax budget, if one was adopted, so that the total contemplated expenditures from any fund during the ensuing fiscal year will not exceed the total appropriations that may be made from such fund, as determined by the budget commission in its certification; and such revised budget shall be the basis of the annual appropriation measure.

(B)(1) Except as otherwise provided in division (B)(2) of this section, revenues from real property taxes scheduled to be settled on or before the tenth day of August and the fifteenth day of February of a fiscal year under divisions (A) and (C) of section 321.24 of the Revised Code, and revenue from taxes levied on personal property used in business scheduled to be settled on or before the thirty-first day of October and the thirtieth day of June of a fiscal year under divisions (B) and (D) of section 321.24 of the Revised Code shall not be available for appropriation by a board of education prior to the fiscal year in which such latest scheduled settlement date occurs, except that moneys advanced to the treasurer of a board of education under division (A)(2)(b) of section 321.34 of the Revised Code shall be available for appropriation in the fiscal year in which they are paid to the treasurer under such section. If the date for any settlement of taxes is extended under division (E) of section 321.24 of the Revised Code, the latest date set forth in divisions (A) to (D) of that section shall be used to determine in which fiscal year the revenues are first available for appropriation.

(2) Revenues available for appropriation by a school district during a fiscal year may include amounts borrowed in that fiscal year under section 133.301 of the Revised Code in anticipation of the collection of taxes that are to be included in the settlements made under divisions (C) and (D) of section 321.24 of the Revised Code in the ensuing fiscal year.

5705.36 Certification of available revenue - additional revenue - amended official certificate.

(A)(1) On or about the first day of each fiscal year, the fiscal officer of each subdivision and other taxing unit shall certify to the county auditor the total amount from all sources available for expenditures from each fund set up in the tax budget or, if adoption of a tax budget was waived under section 5705.281 of the Revised Code, from each fund created by or on behalf of the taxing authority. The amount certified shall include any unencumbered balances that existed at the end of the preceding year, excluding any of the following:

(a) Subject to division (G) of section 5705.29 of the Revised Code, any reserve balance in an account established under section 5705.13 of the Revised Code for the purpose described in division (A)(1) of that section;

(b) The principal of a nonexpendable trust fund established under section 5705.131 of the Revised Code and any additions to principal arising from sources other than the reinvestment of investment earnings arising from that fund;

(c) The balance in a reserve balance account established under section 5705.132 of the Revised Code.

A school district's certification shall separately show the amount of any notes and unpaid and outstanding expenses on the preceding thirtieth day of June that are to be paid from property taxes that are to be settled during the current fiscal year under divisions (C) and (D) of section 321.24 of the Revised Code, and the amount of any spending reserve available for appropriation during the current fiscal year under section 133.301 of the Revised Code. The budget commission, taking into consideration the balances and revenues to be derived from taxation and other sources, shall revise its estimate of the amounts that will be credited to each fund from such sources, and shall certify to the taxing authority of each subdivision an amended official certificate of estimated resources.

(2) Subject to divisions (A)(3) and (4) of this section, upon a determination by the fiscal officer of a subdivision that the revenue to be collected by the subdivision will be greater or less than the amount included in an official certificate, the fiscal officer may certify the amount of the deficiency or excess to the commission, and if the commission determines that the fiscal officer's certification is reasonable, the commission shall certify an amended official certificate reflecting the deficiency or excess.

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(3) Upon a determination by the fiscal officer of a subdivision that the revenue to be collected by the subdivision will be greater than the amount included in an official certificate and the legislative authority intends to appropriate and expend the excess

revenue, the fiscal officer shall certify the amount of the excess to the commission, and if the commission determines that the fiscal officer's certification is reasonable, the commission shall certify an amended official certificate reflecting the excess.

(4) Upon a determination by the fiscal officer of a subdivision that the revenue to be collected by the subdivision will be less than the amount included in an official certificate and that the amount of the deficiency will reduce available resources below the level of current appropriations, the fiscal officer shall certify the amount of the deficiency to the commission, and the commission shall certify an amended certificate reflecting the deficiency.

(5) The total appropriations made during the fiscal year from any fund shall not exceed the amount set forth as available for expenditure from such fund in the official certificate of estimated resources, or any amendment thereof, certified prior to the making of the appropriation or supplemental appropriation.

(B) At the time of settlement of taxes against which notes have been issued under section 133.301 or division (D) of section 133.10 of the Revised Code and at the time a tax duplicate is delivered pursuant to section 319.28 or 319.29 of the Revised Code, the county auditor shall determine whether the total amount to be distributed to each school district from such settlement or duplicate, when combined with the amounts to be distributed from any subsequent settlement, will increase or decrease the amount available for appropriation during the current fiscal year from any fund. The county auditor shall certify this finding to the budget commission, which shall certify an amended official certificate reflecting the finding or certify to the school district that no amended certificate needs to be issued.

Effective Date: 07-22-1998; 09-21-2006

5705.37 Appeal to board of tax appeals.

0155

The taxing authority of any subdivision, or the board of trustees of any public library, nonprofit corporation, or library association maintaining a free public library that has adopted and certified rules under section 5705.28 of the Revised Code, that is dissatisfied with any action of the county budget commission may, through its fiscal officer, appeal to the board of tax appeals within thirty days after the receipt by the subdivision of the official certificate or notice of the commission's action. In like manner, but through its clerk, any park district may appeal to the board of tax appeals. An appeal under this section shall be taken by the filing of a notice of appeal, either in person or by certified mail, express mail, or authorized delivery service as provided in section 5703.056 of the Revised Code, with the board and with the commission. If notice of appeal is filed by certified mail, express mail, or authorized delivery service, date of the United States

postmark placed on the sender's receipt by the postal service or the date of receipt recorded by the authorized delivery service shall be treated as the date of filing. Upon receipt of the notice of appeal, the commission, by certified mail, shall notify all persons who were parties to the proceeding before the commission of the filing of the notice of appeal and shall file proof of notice with the board of tax appeals. The secretary of the commission shall forthwith certify to the board a transcript of the full and accurate record of all proceedings before the commission, together with all evidence presented in the proceedings or considered by the commission, pertaining to the action from which the appeal is taken. The secretary of the commission also shall certify to the board any additional information that the board may request.

The board of tax appeals, in a de novo proceeding, shall forthwith consider the matter presented to the commission, and may modify any action of the commission with reference to the budget, the estimate of revenues and balances, the allocation of the public library fund, or the fixing of tax rates. The finding of the board of tax appeals shall be substituted for the findings of the commission, and shall be sent to the tax commissioner, the county auditor, and the taxing authority of the subdivision affected, or to the board of public library trustees affected, as the action of the commission under sections 5705.01 to 5705.47 of the Revised Code. At the request of the taxing authority, board of trustees, or park district that appealed an action of the county budget commission under this section, the findings of the board of tax appeals shall be sent by certified mail at the requestor's expense.

This section does not give the board of tax appeals any authority to place any tax levy authorized by law within the ten-mill limitation outside of that limitation, or to reduce any levy below any minimum fixed by law.

Amended by 128th General Assembly File No. 9, HB 1, § 101.01, eff. 10/16/2009.

Effective Date: 09-29-2000; 2008 SB185 06-20-2008

0156

5705.38 Annual appropriation measures - classification.

(A) This division does not apply to school district appropriation measures. On or about the first day of each year, the taxing authority of each subdivision or other taxing unit shall pass an appropriation measure, and thereafter during the year it may pass any supplemental appropriation measures as it finds necessary, based on the revised tax budget or the official certificate of estimated resources or amendments of the certificate. If it desires to postpone the passage of the annual appropriation measure until an amended certificate is received based on the actual balances, it may pass a temporary appropriation measure for meeting the ordinary expenses of the taxing unit until no later than the first day of April of the current year, and the appropriations made in the

temporary measure shall be chargeable to the appropriations in the annual appropriation measure for that fiscal year when passed.

(B) A board of education shall pass its annual appropriation measure by the first day of October. If, by the first day of October, a board has not received either the amended certificates of estimated resources required by division (B) of section 5705.36 of the Revised Code or certifications that no amended certificates need be issued, the adoption of the annual appropriation measure shall be delayed until the amended certificates or certifications are received. Prior to the passage of the annual appropriation measure, the board may pass a temporary appropriation measure for meeting the ordinary expenses of the district until it passes an annual appropriation measure, and appropriations made in the temporary measure shall be chargeable to the appropriations in the annual appropriation measure for that fiscal year when passed. During the fiscal year and after the passage of the annual appropriation measure, a district may pass any supplemental appropriation measures as it finds necessary, based on the revised tax budget or the official certificate of estimated resources or amendments of the certificate. School district appropriation measures shall be in the form as the auditor of state, after consultation with the tax commissioner, prescribes.

(C) Appropriation measures shall be classified so as to set forth separately the amounts appropriated for each office, department, and division, and, within each, the amount appropriated for personal services. In the case of a municipal university, the board of directors of which have assumed, in the manner provided by law, custody and control of the funds of the university, funds shall be appropriated as a lump sum for the use of the university.

Effective Date: 06-03-2002

5705.39 Appropriations limited by estimated revenue.

The total appropriations from each fund shall not exceed the total of the estimated revenue available for expenditure therefrom, as certified by the budget commission, or in case of appeal, by the board of tax appeals. No appropriation measure shall become effective until the county auditor files with the appropriating authority a certificate that the total appropriations from each fund, taken together with all other outstanding appropriations, do not exceed such official estimate or amended official estimate. When the appropriation does not exceed such official estimate, the county auditor shall give such certificate forthwith upon receiving from the appropriating authority a certified copy of the appropriation measure. Appropriations shall be made from each fund only for the purposes for which such fund is established.

Effective Date: 09-26-2003

5705.391 Board of education spending plan.

(A) No later than July 1, 1998, the department of education and the auditor of state shall jointly adopt rules requiring boards of education to submit five-year projections of operational revenues and expenditures. The rules shall provide for the auditor of state or the department to examine the five-year projections and to determine whether any further fiscal analysis is needed to ascertain whether a district has the potential to incur a deficit during the first three years of the five-year period.

The auditor of state or the department may conduct any further audits or analyses necessary to assess any district's fiscal condition. If further audits or analyses are conducted by the auditor of state, the auditor of state shall notify the department of the district's fiscal condition, and the department shall immediately notify the district of any potential to incur a deficit in the current fiscal year or of any strong indications that a deficit will be incurred in either of the ensuing two years. If such audits or analyses are conducted by the department, the department shall immediately notify the district and the auditor of state of such potential deficit or strong indications thereof.

A district notified under this section shall take immediate steps to eliminate any deficit in the current fiscal year and shall begin to plan to avoid the projected future deficits.

(B) The state board of education, in accordance with sections 3319.31 and 3319.311 of the Revised Code, may limit, suspend, or revoke a license as defined under section 3319.31 of the Revised Code that has been issued to any school employee found to have willfully contributed erroneous, inaccurate, or incomplete data required for the submission of the five-year projection required by this section.

Effective Date: 06-03-2002; 09-29-2005

5705.392 County spending plan.

0158

(A) A board of county commissioners may adopt as a part of its annual appropriation measure a spending plan, or in the case of an amended appropriation measure, an amended spending plan, setting forth a quarterly schedule of expenses and expenditures of all appropriations for the fiscal year from the county general fund. The spending plan shall be classified to set forth separately a quarterly schedule of expenses and expenditures for each office, department, and division, and within each, the amount appropriated for personal services. Each office, department, and division shall be limited in its expenses and expenditures of moneys appropriated from the general fund during any quarter by the schedule established in the spending plan. The schedule established in the spending plan shall serve as a limitation during a quarter on the making of contracts

and giving of orders involving the expenditure of money during that quarter for purposes of division (D) of section 5705.41 of the Revised Code.

(B)(1) A board of county commissioners, by resolution, may adopt a spending plan or an amended spending plan setting forth separately a quarterly schedule of expenses and expenditures of appropriations from any county fund, for the second half of a fiscal year and any subsequent fiscal year, for any county office, department, or division that has spent or encumbered more than six-tenths of the amount appropriated for personal services and payrolls during the first half of any fiscal year.

(2) During any fiscal year, a board of county commissioners, by resolution, may adopt a spending plan or an amended spending plan setting forth separately a quarterly schedule of expenses and expenditures of appropriations from any county fund, for any county office, department, or division that, during the previous fiscal year, spent one hundred ten per cent or more of the total amount appropriated for personal services and payrolls by the board in its annual appropriation measure required by section 5705.38 of the Revised Code. The spending plan or amended spending plan shall remain in effect two fiscal years, or until the county officer of the office for which the plan was adopted is no longer in office, including terms of office to which the county officer is re-elected, whichever is later.

(3) At least thirty days before adopting a resolution under division (B)(1) or (2) of this section, the board of county commissioners shall provide written notice to each county office, department, or division for which it intends to adopt a spending plan or an amended spending plan. The notice shall be sent by regular first class mail or provided by personal service, and shall include a copy of the proposed spending plan or proposed amended spending plan. The county office, department, or division may meet with the board at any regular session of the board to comment on the notice, or to express concerns or ask questions about the proposed spending plan or proposed amended spending plan.

Amended by 129th General Assembly File No. 28, HB 153, § 101.01, eff. 9/29/2011.

Effective Date: 10-05-1987

5705.40 Amending or supplementing appropriation ordinance - transfer - unencumbered balance - appropriation for contingencies.

0159

Any appropriation ordinance or measure may be amended or supplemented, provided that such amendment or supplement shall comply with all provisions of law governing the

taxing authority in making an original appropriation and that no appropriation for any purpose shall be reduced below an amount sufficient to cover all unliquidated and outstanding contracts or obligations certified from or against the appropriation. Transfers may be made by resolution or ordinance from one appropriation item to another, except that a board of county commissioners shall, at the request of the county board of elections, adopt a resolution to transfer funds from one appropriation item of the board of elections to another appropriation item of the board of elections unless the board of county commissioners determines that the transfer is sought for the purpose of providing employee bonuses or salary increases other than increases necessary to reimburse employees for overtime worked. At the close of each fiscal year, the unencumbered balance of each appropriation shall revert to the respective fund from which it was appropriated and shall be subject to future appropriations, provided that funds unexpended at the end of such fiscal year previously appropriated for the payment of obligations unliquidated and outstanding, or previously appropriated pursuant to section 321.261 of the Revised Code for the collection of delinquent taxes, need not be reappropriated, but such unexpended funds shall not be included by any budget-making body or board or any county budget commission in estimating the balance available for the purposes of the next or any succeeding fiscal year.

The annual appropriation measure, or an amendment or supplement thereto, may contain an appropriation for contingencies not to exceed the amount authorized by section 5705.29 of the Revised Code and in the case of a school district may also include a voluntary contingency reserve balance in the amount authorized by such section. By a two-thirds vote of all members of the taxing authority of a subdivision or taxing unit, expenditures may be authorized in pursuance of such contingency appropriation or voluntary contingency reserve balance for any lawful purpose for which public funds may be expended, if such purpose could not have reasonably been foreseen at the time of the adoption of the appropriation measure or, in the case of a voluntary contingency reserve balance, if the board of education requests payment of any portion of such balance.

Effective Date: 03-27-1991; 09-29-2005

5705.41 Restriction upon appropriation and expenditure of money - certificate of fiscal officer.

No subdivision or taxing unit shall:

(A) Make any appropriation of money except as provided in Chapter 5705. of the Revised Code; provided, that the authorization of a bond issue shall be deemed to be an appropriation of the proceeds of the bond issue for the purpose for which such bonds were

issued, but no expenditure shall be made from any bond fund until first authorized by the taxing authority;

(B) Make any expenditure of money unless it has been appropriated as provided in such chapter;

(C) Make any expenditure of money except by a proper warrant drawn against an appropriate fund;

(D)(1) Except as otherwise provided in division (D)(2) of this section and section 5705.44 of the Revised Code, make any contract or give any order involving the expenditure of money unless there is attached thereto a certificate of the fiscal officer of the subdivision that the amount required to meet the obligation or, in the case of a continuing contract to be performed in whole or in part in an ensuing fiscal year, the amount required to meet the obligation in the fiscal year in which the contract is made, has been lawfully appropriated for such purpose and is in the treasury or in process of collection to the credit of an appropriate fund free from any previous encumbrances. This certificate need be signed only by the subdivision's fiscal officer. Every such contract made without such a certificate shall be void, and no warrant shall be issued in payment of any amount due thereon. If no certificate is furnished as required, upon receipt by the taxing authority of the subdivision or taxing unit of a certificate of the fiscal officer stating that there was at the time of the making of such contract or order and at the time of the execution of such certificate a sufficient sum appropriated for the purpose of such contract and in the treasury or in process of collection to the credit of an appropriate fund free from any previous encumbrances, such taxing authority may authorize the drawing of a warrant in payment of amounts due upon such contract, but such resolution or ordinance shall be passed within thirty days after the taxing authority receives such certificate; provided that, if the amount involved is less than one hundred dollars in the case of counties or three thousand dollars in the case of all other subdivisions or taxing units, the fiscal officer may authorize it to be paid without such affirmation of the taxing authority of the subdivision or taxing unit, if such expenditure is otherwise valid.

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(2) Annually, the board of county commissioners may adopt a resolution exempting county purchases of one thousand dollars or less from the requirement of division (D)(1) of this section that a certificate be attached to any contract or order involving the expenditure of money. The resolution shall state the dollar amount that is exempted from the certificate requirement and whether the exemption applies to all purchases, to one or more specific classes of purchases, or to the purchase of one or more specific items. Prior to the adoption of the resolution, the board shall give written notice to the county auditor that it intends to adopt the resolution. The notice shall state the dollar amount that is proposed to be exempted and whether the exemption would apply to all purchases, to one

or more specific classes of purchases, or to the purchase of one or more specific items. The county auditor may review and comment on the proposal, and shall send any comments to the board within fifteen days after receiving the notice. The board shall wait at least fifteen days after giving the notice to the auditor before adopting the resolution. A person authorized to make a county purchase in a county that has adopted such a resolution shall prepare and file with the county auditor, within three business days after incurring an obligation not requiring a certificate, or within any other period of time the board of county commissioners specifies in the resolution, a written or electronically transferred document specifying the purpose and amount of the expenditure, the date of the purchase, the name of the vendor, the specific appropriation items from which the expenditures are to be made, and any additional information as the auditor of state may prescribe.

(3) Upon certification by the auditor or other chief fiscal officer that a certain sum of money, not in excess of an amount established by resolution or ordinance adopted by a majority of the members of the legislative authority of the subdivision or taxing unit, has been lawfully appropriated, authorized, or directed for a certain purpose and is in the treasury or in the process of collection to the credit of a specific line-item appropriation account in a certain fund free from previous and then outstanding obligations or certifications, then for such purpose and from such line-item appropriation account in such fund, over a period not extending beyond the end of the fiscal year, expenditures may be made, orders for payment issued, and contracts or obligations calling for or requiring the payment of money made and assumed; provided, that the aggregate sum of money included in and called for by such expenditures, orders, contracts, and obligations shall not exceed the sum so certified. Such a certification need be signed only by the fiscal officer of the subdivision or the taxing district and may, but need not, be limited to a specific vendor. An itemized statement of obligations incurred and expenditures made under such certificate shall be rendered to the auditor or other chief fiscal officer before another such certificate may be issued, and not more than one such certificate shall be outstanding at a time.

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In addition to providing the certification for expenditures as specified in this division, a subdivision also may make expenditures, issue orders for payment, and make contracts or obligations calling for or requiring the payment of money made and assumed for specified permitted purposes from a specific line-item appropriation account in a specified fund for a sum of money upon the certification by the fiscal officer of the subdivision that this sum of money has been lawfully appropriated, authorized, or directed for a permitted purpose and is in the treasury or in the process of collection to the credit of the specific line-item appropriation account in the specified fund free from previous and then-outstanding obligations or certifications; provided that the aggregate sum of money included in and called for by the expenditures, orders, and obligations shall not exceed the certified sum.

The purposes for which a subdivision may lawfully appropriate, authorize, or issue such a certificate are the services of an accountant, architect, attorney at law, physician, professional engineer, construction project manager, consultant, surveyor, or appraiser by or on behalf of the subdivision or contracting authority; fuel oil, gasoline, food items, roadway materials, and utilities; and any purchases exempt from competitive bidding under section 125.04 of the Revised Code and any other specific expenditure that is a recurring and reasonably predictable operating expense. Such a certification shall not extend beyond the end of the fiscal year or, in the case of a board of county commissioners that has established a quarterly spending plan under section 5705.392 of the Revised Code, beyond the quarter to which the plan applies. Such a certificate shall be signed by the fiscal officer and may, but need not, be limited to a specific vendor. An itemized statement of obligations incurred and expenditures made under such a certificate shall be rendered to the fiscal officer for each certificate issued. More than one such certificate may be outstanding at any time.

In any case in which a contract is entered into upon a per unit basis, the head of the department, board, or commission for the benefit of which the contract is made shall make an estimate of the total amount to become due upon such contract, which estimate shall be certified in writing to the fiscal officer of the subdivision. Such a contract may be entered into if the appropriation covers such estimate, or so much thereof as may be due during the current year. In such a case the certificate of the fiscal officer based upon the estimate shall be a sufficient compliance with the law requiring a certificate.

Any certificate of the fiscal officer attached to a contract shall be binding upon the political subdivision as to the facts set forth therein. Upon request of any person receiving an order or entering into a contract with any political subdivision, the certificate of the fiscal officer shall be attached to such order or contract. "Contract" as used in this section excludes current payrolls of regular employees and officers.

(E) Taxes and other revenue in process of collection, or the proceeds to be derived from authorized bonds, notes, or certificates of indebtedness sold and in process of delivery, shall for the purpose of this section be deemed in the treasury or in process of collection and in the appropriate fund. This section applies neither to the investment of sinking funds by the trustees of such funds, nor to investments made under sections 731.56 to 731.59 of the Revised Code.

No district authority shall, in transacting its own affairs, do any of the things prohibited to a subdivision by this section, but the appropriation referred to shall become the appropriation by the district authority, and the fiscal officer referred to shall mean the fiscal officer of the district authority.

5705.411 Anticipated proceeds from levy for permanent improvement are deemed appropriated.

Upon the approval of a tax levy by the electors of a county under section 5705.191 of the Revised Code for the purpose of providing funds for the acquisition or construction of a specific permanent improvement or class of permanent improvements for the county, the total anticipated proceeds from such levy are deemed appropriated for such purpose by the taxing authority of the county and are deemed in process of collection within the meaning of section 5705.41 of the Revised Code.

Effective Date: 09-29-1961

5705.412 Certificate of revenue required for school district expenditures.

(A) As used in this section, "qualifying contract" means any agreement for the expenditure of money under which aggregate payments from the funds included in the school district's five-year forecast under section 5705.391 of the Revised Code will exceed the lesser of the following amounts:

(1) Five hundred thousand dollars;

(2) One per cent of the total revenue to be credited in the current fiscal year to the district's general fund, as specified in the district's most recent certificate of estimated resources certified under section 5705.36 of the Revised Code.

(B)(1) Notwithstanding section 5705.41 of the Revised Code, no school district shall adopt any appropriation measure, make any qualifying contract, or increase during any school year any wage or salary schedule unless there is attached thereto a certificate, signed as required by this section, that the school district has in effect the authorization to levy taxes including the renewal or replacement of existing levies which, when combined with the estimated revenue from all other sources available to the district at the time of certification, are sufficient to provide the operating revenues necessary to enable the district to maintain all personnel and programs for all the days set forth in its adopted school calendars for the current fiscal year and for a number of days in succeeding fiscal years equal to the number of days instruction was held or is scheduled for the current fiscal year, as follows:

0164

(a) A certificate attached to an appropriation measure under this section shall cover only the fiscal year in which the appropriation measure is effective and shall not consider the renewal or replacement of an existing levy as the authority to levy taxes that are subject

to appropriation in the current fiscal year unless the renewal or replacement levy has been approved by the electors and is subject to appropriation in the current fiscal year.

(b) A certificate attached, in accordance with this section, to any qualifying contract shall cover the term of the contract.

(c) A certificate attached under this section to a wage or salary schedule shall cover the term of the schedule.

If the board of education has not adopted a school calendar for the school year beginning on the first day of the fiscal year in which a certificate is required, the certificate attached to an appropriation measure shall include the number of days on which instruction was held in the preceding fiscal year and other certificates required under this section shall include that number of days for the fiscal year in which the certificate is required and any succeeding fiscal years that the certificate must cover.

The certificate shall be signed by the treasurer and president of the board of education and the superintendent of the school district, unless the district is in a state of fiscal emergency declared under Chapter 3316. of the Revised Code. In that case, the certificate shall be signed by a member of the district's financial planning and supervision commission who is designated by the commission for this purpose.

(2) In lieu of the certificate required under division (B) of this section, an alternative certificate stating the following may be attached:

(a) The contract is a multi-year contract for materials, equipment, or nonpayroll services essential to the education program of the district;

(b) The multi-year contract demonstrates savings over the duration of the contract as compared to costs that otherwise would have been demonstrated in a single year contract, and the terms will allow the district to reduce the deficit it is currently facing in future years as demonstrated in its five-year forecast adopted in accordance with section 5705.391 of the Revised Code.

The certificate shall be signed by the treasurer and president of the board of education and the superintendent of the school district, unless the district is in a state of fiscal emergency declared under Chapter 3316. of the Revised Code. In that case, the certificate shall be signed by a member of the district's financial planning and supervision commission who is designated by the commission for this purpose.

(C) Every qualifying contract made or wage or salary schedule adopted or put into effect without such a certificate shall be void, and no payment of any amount due thereon shall be made.

(D) The department of education and the auditor of state jointly shall adopt rules governing the methods by which treasurers, presidents of boards of education, superintendents, and members of financial planning and supervision commissions shall estimate revenue and determine whether such revenue is sufficient to provide necessary operating revenue for the purpose of making certifications required by this section.

(E) The auditor of state shall be responsible for determining whether school districts are in compliance with this section. At the time a school district is audited pursuant to section 117.11 of the Revised Code, the auditor of state shall review each certificate issued under this section since the district's last audit, and the appropriation measure, contract, or wage and salary schedule to which such certificate was attached. If the auditor of state determines that a school district has not complied with this section with respect to any qualifying contract or wage or salary schedule, the auditor of state shall notify the prosecuting attorney for the county, the city director of law, or other chief law officer of the school district. That officer may file a civil action in any court of appropriate jurisdiction to seek a declaration that the contract or wage or salary schedule is void, to recover for the school district from the payee the amount of payments already made under it, or both, except that the officer shall not seek to recover payments made under any collective bargaining agreement entered into under Chapter 4117. of the Revised Code. If the officer does not file such an action within one hundred twenty days after receiving notice of noncompliance from the auditor of state, any taxpayer may institute the action in the taxpayer's own name on behalf of the school district.

0166

(F) This section does not apply to any contract or increase in any wage or salary schedule that is necessary in order to enable a board of education to comply with division (B) of section 3317.13 of the Revised Code, provided the contract or increase does not exceed the amount required to be paid to be in compliance with such division.

(G) Any officer, employee, or other person who expends or authorizes the expenditure of any public funds or authorizes or executes any contract or schedule contrary to this section, expends or authorizes the expenditure of any public funds on the void contract or schedule, or issues a certificate under this section which contains any false statements is liable to the school district for the full amount paid from the district's funds on the contract or schedule. The officer, employee, or other person is jointly and severally liable in person and upon any official bond that the officer, employee, or other person has given to the school district to the extent of any payments on the void claim, not to exceed ten thousand dollars. However, no officer, employee, or other person shall be liable for a mistaken estimate of available resources made in good faith and based upon reasonable grounds. If an officer, employee, or other person is found to have complied with rules jointly adopted by the department of education and the auditor of state under this section

governing methods by which revenue shall be estimated and determined sufficient to provide necessary operating revenue for the purpose of making certifications required by this section, the officer, employee, or other person shall not be liable under this section if the estimates and determinations made according to those rules do not, in fact, conform with actual revenue. The prosecuting attorney of the county, the city director of law, or other chief law officer of the district shall enforce this liability by civil action brought in any court of appropriate jurisdiction in the name of and on behalf of the school district. If the prosecuting attorney, city director of law, or other chief law officer of the district fails, upon the written request of any taxpayer, to institute action for the enforcement of the liability, the attorney general, or the taxpayer in the taxpayer's own name, may institute the action on behalf of the subdivision.

(H) This section does not require the attachment of an additional certificate beyond that required by section 5705.41 of the Revised Code for current payrolls of, or contracts of employment with, any employees or officers of the school district.

This section does not require the attachment of a certificate to a temporary appropriation measure if all of the following apply:

(1) The amount appropriated does not exceed twenty-five per cent of the total amount from all sources available for expenditure from any fund during the preceding fiscal year;

(2) The measure will not be in effect on or after the thirtieth day following the earliest date on which the district may pass an annual appropriation measure;

(3) An amended official certificate of estimated resources for the current year, if required, has not been certified to the board of education under division (B) of section 5705.36 of the Revised Code.

Amended by 129th General Assembly File No. 28, HB 153, § 101.01, eff. 9/29/2011.

Effective Date: 08-15-2003

5705.413 [Repealed].

Effective Date: 08-19-1994

5705.42 Grants by United States government.

0167

When the United States government or the state or any department, division, agency, authority, or unit thereof makes a grant or loan of money to any political subdivision of this state to aid in paying the cost of any program, activity, or function of such subdivision, or enters into an agreement with the subdivision for the making of any such

grant or loan of money, the amount thereof is deemed appropriated for such purpose by the taxing authority of the subdivision as provided by law and shall be recorded as such by the fiscal officer of the subdivision, and is deemed in process of collection within the meaning of section 5705.41 of the Revised Code.

Effective Date: 03-17-1989

5705.43 Improvements paid by special assessments.

In the case of an improvement, the cost of which is to be paid in whole or part by special assessments, a contract may be executed without an appropriation or certificate for that portion of the cost derived or to be derived from special assessments, provided that a resolution or ordinance authorizing such assessment and the bonds or notes to be issued in anticipation thereof has been passed in the manner provided by law, or that such contract is for the provision of engineering, legal, or other necessary professional services in connection with such improvement.

Effective Date: 09-24-1963

5705.44 Contracts running beyond fiscal year - certificate not required on contracts payable from utility earnings.

When contracts or leases run beyond the termination of the fiscal year in which they are made, the fiscal officer of the taxing authority shall make a certification for the amount required to meet the obligation of such contract or lease maturing in such fiscal year. The amount of the obligation under such contract or lease remaining unfulfilled at the end of a fiscal year, and which will become payable during the next fiscal year, shall be included in the annual appropriation measure for the next year as a fixed charge.

The certificate required by section 5705.41 of the Revised Code as to money in the treasury shall not be required for contracts on which payments are to be made from the earnings of a publicly operated water works or public utility, but in the case of any such contract made without such certification, no payment shall be made on account thereof, and no claim or demand thereon shall be recoverable, except out of such earnings. That certificate also shall not be required if requiring the certificate makes it impossible for a county board of developmental disabilities to pay the nonfederal share of medicaid expenditures that the county board is required by sections 5126.059 and 5126.0510 of the Revised Code to pay.

Amended by 128th General Assembly ch. 7, SB 79, § 1, eff. 10/6/2009.

Effective Date: 12-13-2001; 2007 HB119 07-01-2007

5705.45 Liability for wrongful payments from public funds - enforcement.

Any officer, employee, or other person who issues any order contrary to section 5705.41 of the Revised Code, or who expends or authorizes the expenditure of any public funds, or who authorizes or executes any contract contrary to sections 5705.01 to 5705.47 of the Revised Code, unless payments thereon are subsequently ordered as provided in section 5705.41 of the Revised Code, or expends or authorizes the expenditure of any public funds on any such void contract, obligation, or order, unless subsequently approved as provided in that section, or issues a certificate under the provisions thereof which contains any false statements, shall be liable to the political subdivision for the full amount paid from the funds of the subdivision on any such order, contract, or obligation. Such officer, employee, or other person shall be jointly and severally liable in person and upon any official bond that he has given to such subdivision, to the extent of any payments of such void claim. The prosecuting attorney of the county, the city director of law, or other chief law officer of the subdivision shall enforce this liability by civil action brought in any court of appropriate jurisdiction in the name of and on behalf of the municipal corporation, county, or subdivision. If the prosecuting attorney, city director of law, or other chief law officer of the subdivision fails upon the written request of any taxpayer, to institute action for the enforcement of the liability, the taxpayer may institute suit in his own name in behalf of the subdivision.

Effective Date: 11-01-1977

5705.46 Payment of current payrolls.

Each political subdivision may make expenditures for the payment of current payrolls upon the authority of a proper appropriation for such purpose, provided that the positions of such employees and their compensation have been determined prior thereto by resolution, ordinance, or in the manner provided by law. The total expenditures for such purpose during the first half of any fiscal year shall not exceed six tenths of the appropriation therefor, unless the taxing authority of such subdivision, by a three-fourths vote of all the members, waives such limitation. In the resolution waiving such limitation there shall be set forth the reason therefor.

Effective Date: 10-01-1953

5705.47 Existing actions or proceedings.

Any act or proceeding taken prior to May 12, 1927, authorizing any tax or debt charge to be levied, or any contract or expenditure to be made, shall not be affected by sections 5705.01 to 5705.47, inclusive, of the Revised Code, but such act or proceeding shall be completed, and the tax or debt charge shall be levied and the contract or expenditure shall be made in the same manner as if such sections had not been passed.

Effective Date: 10-01-1953

5705.48 Joint budget commission - adjustment of tax rate.

Whenever a taxing district is located in two or more counties, the budget commission of the counties in which such district is located shall meet in joint session at the call of the chairman of the commission of the county in which the greatest value of taxable property of such taxing district is located, and adjust the rates of taxation for the purpose of such district so as to enforce the limitations on the tax rate prescribed by law and to produce uniform rates throughout the district. The levies for such taxing district purposes shall not be reduced by such joint budget commission below what would be required to enforce such limitation in the part of such district in which the least reduction of such levies is necessary to enforce such limitation, and such levies so fixed shall be applied uniformly throughout such district.

Effective Date: 10-01-1953

5705.49 Subdivision's power to tax - limitation.

Wherever in the Revised Code the taxing authorities of any subdivision, as defined in section 5705.01 of the Revised Code, are authorized to levy taxes on the taxable property within such subdivision, such authority shall extend only to the levy of taxes on the taxable real and public utility property listed on general tax lists and duplicates provided for by section 319.28 of the Revised Code. Where the amount of indebtedness of any subdivision is limited by law with reference to the tax valuation or aggregate value of the property on the tax list and duplicate of such subdivision, such limitation shall be measured by the property listed on such general tax lists and duplicates in such subdivision.

Effective Date: 10-30-1989

5705.50 Subdivisions may expend local funds for real property inventory.

Any housing authority or any political subdivision, including counties and the state, by resolution of the taxing authority of such subdivision, may incur indebtedness and authorize the expenditure of funds of such subdivision to carry forward a real property inventory of all or part of the county in which such subdivision is located and may contribute to any organization established for the purpose of carrying forward such a real property inventory.

Effective Date: 10-01-1953

5705.51 Indirect debt limitation.

(A) As used in this section:

(1) "Indirect debt limit" means such limitation, in effect at the time of issuance, upon the issuance of unvoted general obligation bonds, notes, or certificates of indebtedness by a subdivision as results from a restriction on the amount of unvoted taxes which may be levied annually upon the general tax lists and duplicates.

(2) "Direct debt limit" means those respective limitations on the principal amount of net indebtedness which may be created or incurred by a municipal corporation, school district, county, or township, imposed by sections 133.05, 133.06, 133.07, and 133.09 of the Revised Code.

(3) "Ten-mill limit" means unvoted taxes of ten mills annually on each dollar of tax valuation of property on the general tax lists and duplicates.

(4) "One per cent limit" means unvoted taxes at such rates upon the tax value as amounts to one per cent annually of the true value in money of property that is listed on the general tax lists and duplicates.

0171

(5) "Exempt obligations" means unvoted general obligation bonds, notes, and certificates of indebtedness of a municipal corporation, school district, county, or township that are excluded, exempted, or not considered in calculating or ascertaining the direct debt limit of such a subdivision; and also includes unvoted general obligation bonds, notes, and certificates of indebtedness of a municipal corporation if the ordinance authorizing their issuance provides that the debt charges thereon, or, in the case of bond anticipation notes, the debt charges on the bonds in anticipation of which they are issued, shall be paid from lawfully available municipal income taxes to the extent needed to meet such debt charges, and contains a covenant, hereby authorized, to appropriate annually from such municipal income taxes such amount as is necessary to meet such annual debt charges, and further makes provision that any ad valorem property taxes which are provided for pursuant to section 133.22 or 133.23 of the Revised Code shall, in addition to

any other reduction permitted by those sections, be reduced by the amount of such municipal income taxes to be applied to such debt charges in compliance with such covenant.

(B) For the purposes of calculating the indirect debt limit, the debt charges on outstanding or proposed exempt obligations required to be taken into consideration in determining the indirect debt limit shall first be allocated to the computed amount of taxes in excess of the ten-mill limit that would result if ad valorem property taxes were levied to the full extent of the one per cent limit, and any balance of such debt charges shall be allocated to the ten-mill limit. This section does not enlarge the direct debt limits.

(C) Upon request of the bond issuing authority or the fiscal officer of a subdivision, the appropriate county auditor or county auditors shall promptly certify all data necessary to make the determinations under division (B) of this section and to ascertain the indirect debt limits, including, for each overlapping subdivision, the tax value and the true value in money of property on the general tax lists and duplicates of the subdivision, stated separately for each classification of property the tax value of which is determined by applying a different percentage to true value, the applicable debt charges, and such other data as is necessary for the purpose. For such purpose, the aggregate true value in money of each such classification of property may be determined by application of the appropriate mathematical factor to the aggregate tax value of such classification of property on the general tax lists and duplicates. The fiscal officer of each overlapping subdivision and the tax commissioner shall promptly provide to the county auditor such additional information as is needed by the county auditor to make the certification required by this division, including certification to the county auditor by each such fiscal officer as to the then exempt obligations of the subdivision. The certificate of the county auditor shall be conclusive as to the data therein set forth for the purposes of determining the indirect debt limit. The calculations and certifications provided for in this section relating to the one per cent limit need not be made or provided where the annual debt charges required to be taken into consideration in ascertaining the indirect debt limit will not exceed the ten-mill limit.

(D) A municipal corporation which has outstanding exempt obligations supported by municipal income taxes as provided in division (A)(5) of this section shall, to the extent necessary therefor, levy and continue to levy such income tax and apply the proceeds thereof in accordance with its covenants made in the issuance of such obligations, and to such extent such tax shall not be subject to diminution by initiative or referendum, or diminution by statute unless provision is made therein for an adequate substitute therefor, other than unvoted taxes on the general tax lists and duplicates, assigned by law to such purpose.

(E) If the tax budget or the official certificate of estimated resources of a subdivision shows that funds available for the purpose, including municipal income taxes under division (D) of this section, but excluding unvoted taxes within the ten-mill limit, will be insufficient to pay the debt charges on all outstanding obligations of the subdivision that have been shown as exempt obligations on any certificate by the fiscal officer delivered to the county auditor pursuant to division (C) of this section, whether or not qualifying as such in any subsequent certificate, sections 5705.31 and 5705.32 of the Revised Code shall be specially applied as follows with respect to the debt charges on such obligations:

(1) The amount of such debt charges and the debt charges on other unvoted general obligations of the subdivision, not otherwise provided for, shall be charged against the minimum levy of such subdivision provided pursuant to division (D) of section 5705.31 of the Revised Code to the full amount of such minimum levy, if necessary, without preserving to such subdivision any operating levy within the ten-mill limit;

(2) If the debt charges on such obligations, and on any other outstanding unvoted general obligations of the subdivision not otherwise provided for, exceed the minimum levy of such subdivision, there shall be levied millage upon the tax value of property on the general tax lists and duplicates of the subdivision in excess of the ten-mill limit, but within the one per cent limit as to any property, in such amounts as are necessary to make up such deficiency to the extent that such deficiency does not exceed the debt charges, not otherwise provided for, on the exempt obligations referred to in this division;

(3) Only if the debt charges on such exempt obligations of the subdivision are not fully provided for after application of divisions (E)(1) and (2) of this section, the balance of such debt charges shall be provided by adjustment of other minimum levies pursuant to division (D) of section 5705.31 of the Revised Code.

0173

If the subdivision is a municipal corporation that by charter provides a tax-rate limitation pursuant to section 5705.18 of the Revised Code, divisions (E)(1), (2), and (3) of this section shall be applied only in a manner consistent with the applicable charter provisions. If a levy for current operating expenses, whether or not part of a levy for other purposes, is to be provided under such charter in lieu of a minimum levy provided by division (D) of section 5705.31 of the Revised Code, as a first step, such charter levy shall be reduced by the amount of the levy for debt charges on such exempt obligations only if and to the extent provided by such charter, and if no part of such debt charges is to be paid from a levy within the limitations imposed by the charter, the full amount of such debt charges shall be considered the deficiency under division (E)(2) of this section. The levy for such debt charges under such subdivision shall not exceed any applicable charter limitation. Any references in applicable charter provisions to the limitations provided by the constitution or laws or to a ten-mill limitation of Section 2, Article XII, Ohio Constitution,

shall be viewed by the county budget commission as meaning the one per cent limit applicable under this section. Division (E)(3) of this section shall not be applied to reduce any levy within a charter tax-rate limitation.

This section does not alter the right of holders of exempt obligations to share equally in taxes levied within the ten-mill limit nor the general obligation character of such exempt obligations, and the full faith and credit of the subdivision is pledged thereto.

(F) If any levy is made under division (E)(2) of this section, the amount of millage to be applied to tax values on the general tax lists and duplicates shall be determined for each classification of property the tax value of which is computed by applying a different percentage to true value. The millage rates applied to such classifications of property shall be calculated to produce revenues in the aggregate amount to be provided under division (E)(2) of this section, provided that no such millage shall be added to the taxes on property that is already taxed to the full extent of the one per cent limit, and the millage on each other classification of property shall not result in a tax thereon in excess of the one per cent limit, but the millage amount levied under division (E)(2) of this section shall be the same as to all classifications of property which may be taxed at the same millage without exceeding the one per cent limit. In any event, the millage amount levied under division (E)(2) of this section on all land and improvements thereon in the subdivision shall be the same.

(G) Nothing in this section shall be applied to impair the authority of a municipal corporation under section 5705.18 of the Revised Code. Levies which are authorized by the charter of a municipal corporation without necessity for further vote and which are available for debt charges shall continue to be treated as levies outside the ten-mill limit and outside the one per cent limit in determining the indirect debt limit.

Effective Date: 06-03-2002

5705.59 [Repealed].

Effective Date: 10-08-1963

5705.61 Tax on use, lease or occupancy of public real property not used for public purpose.

As used in this section:

0174

(A) "Effective tax rate" means that quotient obtained by dividing the taxes charged and payable on one thousand dollars of taxable value of real property, after making the reduction required by section 319.301 of the Revised Code, by one thousand.

(B) "Taxable value of the interest" means the amount obtained as follows:

(1) Divide the true value of the property in which the interest is held by the term of years for which the interest is held. In the case of a life estate, the term of years shall be calculated on the basis of standard actuarial tables.

(2) Multiply the quotient obtained in division (B)(1) of this section by the number of years remaining in the term.

(3) Multiply the result obtained in division (B)(2) of this section by thirty-five per cent.

Any interest whereby a privilege exists to use, lease, or occupy real property not otherwise subject to taxation and belonging to the state, a political subdivision, or the United States by virtue of a conveyance from the holder of the interest and used, leased, or occupied for other than a public purpose, or other than incidental to a public purpose, as defined under sections 717.051, 725.02, 1728.10, 3735.67, 5709.08, 5709.121, 5709.41, and 5722.11 of the Revised Code, or by other statute, is subject to an annual tax, payable by the holder of the interest, for the privilege of so using, leasing, or occupying such property. Such tax is for the purpose of supplementing the general revenue funds of the taxing districts in which the real property is located. The tax imposed by this section does not apply to any interest whereby a contractor or agent has the privilege of using, leasing, or occupying the real property for the purpose of fulfilling an obligation imposed subsequent to the conveyance under a contract with the state, a political subdivision, the United States, or an instrumentality of the state, a political subdivision, or the United States.

The year for which the tax is levied commences on the first day of January and ends on the following thirty-first day of December. The tax shall be assessed by the county auditor of the county containing the taxing districts wherein the real property is located and computed by multiplying the taxable value of the interest therein by the effective tax rate of each taxing district in which the real property is located. The tax shall equal the sum of the products thus obtained.

Easements, grants, licenses, or rights-of-way of public utility companies are not subject to this section.

The amount of taxes due under this section shall be reduced by the amount of any payment in lieu of real property taxes made by the owner of the property in which the taxable interest is held.

0175

An interest in real property whereby a person sixty-four years of age or older on the first day of January of the tax year retains the privilege to occupy such property as his

homestead shall be exempt from the tax imposed by this section for such year. An owner includes one or more tenants with a right of survivorship and tenants in common.

Effective Date: 04-04-1985

5705.62 Payment of tax.

(A) As used in this section and section 5747.63 of the Revised Code, "subdivision" means a municipal corporation, township, park district, or county.

(B) At each annual regular session of the county budget commission convened pursuant to section 5705.27 of the Revised Code, each auditor shall present to the commission the certificate of the commissioner, the annual tax budget and estimates, and the records showing the action of the commission in its last preceding regular session. The commission, after extending to the representatives of each subdivision an opportunity to be heard, under oath administered by any member of the commission, and considering all the facts and information presented to it by the auditor, shall determine the amount of the undivided local government revenue assistance fund needed by and to be apportioned to each subdivision for current operating expenses, as shown in the tax budget of the subdivision. This determination shall be made pursuant to divisions (C) to (H) of this section, unless the commission has provided for a formula pursuant to section 5747.63 of the Revised Code. Nothing in this section prevents the budget commission, for the purpose of apportioning the undivided local government revenue assistance fund, from inquiring into the claimed needs of any subdivision as stated in its tax budget, or from adjusting claimed needs to reflect actual needs. For the purposes of this section, "current operating expenses" means the lawful expenditures of a subdivision, except those for permanent improvements and except payments for interest, sinking fund, and retirement of bonds, notes, and certificates of indebtedness of the subdivision.

(C) The commission shall determine the combined total of the estimated expenditures, including transfers, from the general fund and any special funds other than special funds established for road and bridge; street construction, maintenance, and repair; state highway improvement; and gas, water, sewer, and electric public utilities operated by a subdivision, as shown in the subdivision's tax budget for the ensuing calendar year.

(D) From the combined total of expenditures calculated pursuant to division (C) of this section, the commission shall deduct the following expenditures, if included in these funds in the tax budget:

(1) Expenditures for permanent improvements as defined in division (E) of section 5705.01 of the Revised Code;

(2) In the case of counties and townships, transfers to the road and bridge fund, and in the case of municipalities, transfers to the street construction, maintenance, and repair fund and the state highway improvement fund;

(3) Expenditures for the payment of debt charges;

(4) Expenditures for the payment of judgments.

(E) In addition to the deductions made pursuant to division (D) of this section, revenues accruing to the general fund and any special fund considered under division (C) of this section from the following sources shall be deducted from the combined total of expenditures calculated pursuant to division (C) of this section:

(1) Taxes levied within the ten-mill limitation, as defined in section 5705.02 of the Revised Code;

(2) The budget commission allocation of estimated county library and local government support fund revenues to be distributed pursuant to section 5747.48 of the Revised Code;

(3) Estimated unencumbered balances as shown on the tax budget as of the thirty-first day of December of the current year in the general fund, but not any estimated balance in any special fund considered in division (C) of this section;

(4) Revenue, including transfers, shown in the general fund and any special funds other than special funds established for road and bridge; street construction, maintenance, and repair; state highway improvement; and gas, water, sewer, and electric public utilities, from all other sources except those that a subdivision receives from an additional tax or service charge voted by its electorate or receives from special assessment or revenue bond collection. For the purposes of this division, where the charter of a municipal corporation prohibits the levy of an income tax, an income tax levied by the legislative authority of such municipal corporation pursuant to an amendment of the charter of that municipal corporation to authorize such a levy represents an additional tax voted by the electorate of that municipal corporation. For the purposes of this division, any measure adopted by a board of county commissioners pursuant to section 322.02, 324.02, 4504.02, or 5739.021 of the Revised Code, including those measures upheld by the electorate in a referendum conducted pursuant to section 322.021, 324.021, 4504.021, or 5739.022 of the Revised Code, shall not be considered an additional tax voted by the electorate.

0177

Subject to division (G) of section 5705.29 of the Revised Code, money in a reserve balance account established by a county, township, or municipal corporation under section 5705.13 of the Revised Code shall not be considered an unencumbered balance or revenue under division (E)(3) or (4) of this section. Money in a reserve balance account

established by a township under section 5705.132 of the Revised Code shall not be considered an unencumbered balance or revenue under division (E)(3) or (4) of this section.

If a county, township, or municipal corporation has created and maintains a nonexpendable trust fund under section 5705.131 of the Revised Code, the principal of the fund, and any additions to the principal arising from sources other than the reinvestment of investment earnings arising from such a fund, shall not be considered an unencumbered balance or revenue under division (E)(3) or (4) of this section. Only investment earnings arising from investment of the principal or investment of such additions to principal may be considered an unencumbered balance or revenue under those divisions.

(F) The total expenditures calculated pursuant to division (C) of this section, less the deductions authorized in divisions (D) and (E) of this section, shall be known as the "relative need" of the subdivision, for the purposes of this section.

(G) The budget commission shall total the relative need of all participating subdivisions in the county, and shall compute a relative need factor by dividing the total estimate of the undivided local government revenue assistance fund by the total relative need of all participating subdivisions.

(H) The relative need of each subdivision shall be multiplied by the relative need factor to determine the proportionate share of the subdivision in the undivided local government revenue assistance fund of the county, provided that the maximum proportionate share of a county shall not exceed the following maximum percentages of the total estimate of the undivided local government revenue assistance fund governed by the relationship of the percentage of the population of the county that resides within municipal corporations within the county to the total population of the county as reported in the reports on population in Ohio by the department of development as of the twentieth day of July of the year in which the tax budget is filed with the budget commission:

Percentage of municipal population within the county: Percentage share of the county shall not exceed:

Less than forty-one per cent Sixty per cent

Forty-one per cent or more but less than eighty-one per cent Fifty per cent

Eighty-one per cent or more Thirty per cent

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Where the proportionate share of the county exceeds the limitations established in this division, the budget commission shall adjust the proportionate shares determined

pursuant to this division so that the proportionate share of the county does not exceed these limitations, and it shall increase the proportionate shares of all other subdivisions on a pro rata basis. In counties having a population of less than one hundred thousand, not less than ten per cent shall be distributed to the townships therein.

(I) On the basis of such apportionment, the county auditor shall compute the percentage share of each such subdivision in the undivided local government revenue assistance fund and shall at the same time certify to the tax commissioner the percentage share of the county as a subdivision. No payment shall be made from the undivided local government revenue assistance fund, except in accordance with such percentage shares.

Within ten days after the budget commission has made its apportionment, whether conducted pursuant to this section or section 5747.63 of the Revised Code, the auditor shall publish a list of the subdivisions and the amount each is to receive from the undivided local government revenue assistance fund and the percentage share of each subdivision, in a newspaper or newspapers of countywide circulation, and send a copy of such apportionment to the tax commissioner.

The county auditor shall also send by certified mail, return receipt requested, a copy of such apportionment to the fiscal officer of each subdivision entitled to participate in the allocation of the undivided local government revenue assistance fund of the county. This copy shall constitute the official notice of the commission action referred to in section 5705.37 of the Revised Code.

All money received by a subdivision from the county undivided local government revenue assistance fund shall be paid into the subdivision's general fund and used for current operating expenses.

If any public official fails to maintain the records required by sections 5747.61 to 5747.63 of the Revised Code or by the rules issued by the tax commissioner, the auditor of state, or the treasurer of state pursuant to such sections, or fails to comply with any law relating to the enforcement of such sections, the local government revenue assistance fund money allocated to the county shall be withheld until such time as the public official has complied with such sections or such law or the rules issued pursuant thereto.

Effective Date: 03-15-1979; 09-21-2006

5705.63 Distributing tax revenue.

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The total amount of taxes and penalties collected under section 5705.62 of the Revised Code shall be distributed semiannually, at the same time distribution is made of real estate and public utility taxes, in the following manner: four per cent shall be allowed as

compensation to the county auditor for his service in assessing the taxes, and two per cent shall be allowed as compensation to the county treasurer for the services he renders as a result of the tax levied by this section. Such amounts shall be paid into the county treasury, to the credit of the county's general fund, on the warrant of the county auditor. The balance of the taxes collected shall be distributed among the taxing districts of the county in which the property in which the taxable interest is held is located and paid in the same ratio as real estate and public utility taxes are distributed for the benefit of the taxing district. The taxes levied and revenues collected under this section shall be in lieu of any general property tax.

Taxes charged on the delinquent lists of the county auditor and county treasurer for five consecutive years may be removed by the county board of revision in the manner provided in section 5719.06 of the Revised Code, if the board deems such taxes uncollectible.

Effective Date: 03-15-1979

5705.71 County levy for senior citizens services or facilities.

(A) The electors of a county may initiate the question of a tax levy for support of senior citizens services or facilities by the filing of a petition with the board of elections of that county not less than ninety days before the date of any primary or general election requesting that an election be held on such question. The petition shall be signed by at least ten per cent of the qualified electors residing in the county and voting for the office of governor at the last general election.

(B) The petition shall state the purpose for which the senior citizens tax levy is being proposed, shall specify the amount of the proposed increase in rate, the period of time during which the increase is to be in effect, and whether the levy is to be imposed in the current year. The number of years may be any number not exceeding five, except that when the additional rate is for the payment of debt charges the increased rate shall be for the life of the indebtedness.

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(C) After determination by it that such petition is valid, the board of elections shall submit the question to the electors of the county at the succeeding primary or general election.

(D) The election shall be conducted, canvassed, and certified in the same manner as regular elections in such county for county offices. Notice of the election shall be published in a newspaper of general circulation in the county once a week for two consecutive weeks, or as provided in section 7.16 of the Revised Code, prior to the election. If the board of elections operates and maintains a web site, the board of

elections shall post notice of the election on its web site for thirty days prior to the election. The notice shall state the purpose, the amount of the proposed increase in rate, and the time and place of the election.

(E) The form of the ballot cast at such election shall be prescribed by the secretary of state. If the tax is to be placed on the tax list of the current tax year, the form of the ballot shall include a statement to that effect and shall indicate the first calendar year the tax will be due. The question covered by such petition shall be submitted as a separate proposition but it may be printed on the same ballot with any other propositions submitted at the same election other than the election of officers.

(F) If a majority of electors voting on the question vote in favor of the levy, the board of county commissioners shall levy a tax, for the period and the purpose stated within the petition. If the tax is to be placed upon the tax list of the current year, as specified in the petition, the result of the election shall be certified immediately after the canvass by the board of elections to the board of county commissioners, which shall forthwith make the necessary levy and certify it to the county auditor, who shall extend it on the tax list for collection. After the first year, the tax levy shall be included in the annual tax budget that is certified to the county budget commission.

Amended by 129th General Assembly File No. 28, HB 153, § 101.01, eff. 9/29/2011.

Amended by 128th General Assembly File No. 29, HB 48, § 1, eff. 7/2/2010.

Effective Date: 08-16-1999; 06-01-2006