

LOCAL GOVERNMENT PROPERTY TAX LEVY AND COLLECTION OVERVIEW

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I. INTRODUCTION

This outline is intended for educational purposes, and should not be construed as legal advice. Because the nuances of statutes and the particulars of certain local government types dictate the exact language required for a levy alternative, each should consult with counsel to select the alternative appropriate for its particular needs.

A. Constitutional Principles. Two principles from the Ohio Constitution are key in the property tax area:

1. Uniformity of Taxation. This principle is found in Ohio Constitution Article XII, Section 2. This principle is particularly important for townships which may have township-wide property tax levies, e.g. fire, as well as levies confined to a particular, typically unincorporated subset, e.g. police districts. Regardless of the taxing district in question, the tax rate is to be uniform across such taxing district.
2. Levies in Excess of the Ten Mill Limitation. Ohio Constitution Article XII, Section 2 also provides that up to ten mills of property tax may be levied on Ohio property on an unvoted basis. This millage, commonly referred to as “inside millage,” is divided among the overlapping political subdivisions pursuant to a statutory formula in R.C. 5705.31(D). In most areas of Ohio, the full ten mills is levied annually.

Millage in excess of a local government’s share of the ten mills must be voted, unless the local government is a municipality exercising its home rule authority.

B. Municipal Home Rule. Ohio municipalities have constitutional "home rule" power under Ohio Constitution XIII, Section 3. This may be exercised via specific legislation (police powers or substantive powers of local self-government) or comprehensively via a charter. Home rule powers include the power of local self-government, the exercise of certain police powers and the ownership and operation of public utilities under Ohio Constitution Article XVIII, Section 7.

1. Charter Millage. Property tax millage may be authorized in a municipal charter or amendment thereto as millage in excess of the ten-mill limitation under R.C. 5705.18. Such millage is approved as part of the charter or charter amendment approval.
2. Advisory Elections. Advisory elections are only available to municipalities, as a substantive power of local self-government, e.g. “Would you support a property tax or an income tax?” State, ex rel. City of Bedford v. Cuyahoga Cty. Bd. of Elections, 62 Ohio State 3d 17 (1991).

C. Township Home Rule. Townships have statutory “limited home rule” under R.C. Chapter 504.

II. R.C. 5705.19 – TRADITIONAL PROPERTY TAX LEVY

R.C. 5705.19 permits local governments to submit to the voters a property tax levy that specifies a rate of millage. That rate and renewals or replacements thereof are subject to the reduction factor of R.C. 319.301 (H.B. 920); after approval, local governments will only benefit from new construction, not from the inflationary growth of their tax base over the life of the levy.

- A. Purpose. The levy may serve any of the following purposes:
1. current expenses;
 2. a public library of or supported by the local government;
 3. for a municipal university, not to exceed two mills over the limitation of one mill prescribed in R.C. 3349.13;
 4. a specific permanent improvement¹ or class of permanent improvements that the local government may include in a single bond issue;
 5. for the general construction, reconstruction, resurfacing, and repair of streets, roads, and bridges in municipal corporations, counties, or townships²;
 6. parks and recreational purposes³;
 7. 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 R.C. 145.48 or R.C. 742.34 or the purchase of ambulance equipment, or the provision of ambulance, paramedic, or other emergency medical services operated by a fire department or firefighting company⁴;
 8. 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 R.C. 145.48 or R.C. 742.33, 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 department⁴;

¹ R.C. 5705.01 defines "permanent improvement" as any capital asset with a useful life, as determined by the fiscal officer, of five years or more.

² Streets, roads and bridges may be combined with sidewalks, trails and bicycle paths.

³ Parks and recreational purposes may be combined with greenspace.

⁴ A township may place any or all of the purposes in this division on the ballot.

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9. for maintaining and operating a county home or detention facility;
10. for a subdivision's share of maintaining and operating detention facilities;
11. for providing for flood defense, providing and maintaining a flood wall or pumps, and other purposes to prevent floods;
12. for maintaining and operating sewage disposal plants and facilities;
13. for a county transit system;
14. for the prevention, control, and abatement of air pollution;
15. for maintaining and operating cemeteries;
16. for providing ambulance service, emergency medical service, or both;
17. for providing for the collection and disposal of garbage or refuse, including yard waste;
18. for providing or maintaining senior citizens services or facilities as authorized by R.C. 307.694, 307.85, 505.70, or R.C. 505.706 or division (EE) of R.C. 717.01;
19. for the maintenance and operation of a free public museum of art, science, or history;
20. for the establishment and operation of a 9-1-1 system, as defined in R.C. 128.01;
21. 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 R.C. 4981.01. This division applies only to a county, township, or municipal corporation;
22. for the purpose of acquiring property for, constructing, operating, and maintaining community centers as provided for in R.C. 755.16;
23. for creation and operation of an economic development office, single or joint;
24. 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 R.C. 505.15;
25. for the purpose of costs incurred by a township as a result of a contract made with a county pursuant to R.C. 505.263 in order to pay all or any part of the cost of constructing, maintaining, repairing, or operating a water supply improvement;
26. 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 thousand⁵.

27. for a county’s countywide public safety communications system;⁶
28. county support of criminal justice services;
29. maintaining and operating a jail or other detention facility;
30. county agricultural fair facilities and expenses
31. for constructing, rehabilitating, repairing, or maintaining sidewalks, walkways, trails, bicycle pathways, or similar improvements, or acquiring ownership interests in land necessary for the foregoing improvements⁷;
32. for a municipal corporation, county or township to acquire agricultural easements, as defined in R.C. 5301.67, and to supervise and enforce the easements;
33. county land reutilization corporations;
34. county support of Ohio State University extension;
35. municipal transit systems;
36. any combination by a county of support for agricultural fairs, soil and water conservation district improvements and expenses and Ohio State University extension.

B. Term. Levies for the following purposes may be for a continuing period of time:

⁵ Greenspace may be combined with parks and recreational purposes.

⁶ A county may combine 9-1-1 with a countywide public safety communication system. Additionally, HB 277 passed in May, 2016 would allow properties already served to be excluded, that otherwise would pay twice for the same service.

⁷ Sidewalks, trails and bicycle paths may be combined with streets, roads and bridges.

1. detention facilities;
2. fire and/or emergency medical;
3. police and/or emergency medical;
4. ambulance and/or emergency medical;
5. countywide public safety communications systems.

Levies for the following purposes may be for any specified number of years or a continuing period of time:

1. public library;
2. streets, roads and bridges;
3. parks and recreational purposes;
4. cemeteries;
5. rail property or rail service;
6. streets, roads, bridges, sidewalks, trails and bicycle pathways.

All other levies may be any number of years not exceeding five, except a county sewer levy may be in effect for a maximum of twenty years.

C. Election proceedings. The procedural steps to place a levy under R.C. 5705.19 on the ballot are as follows:

1. Resolution of necessity - The legislative authority declares the necessity of the levy for the specific purpose; specifies whether additional, renewal or replacement; specifies Revised Code section authorizing submission; specifies mills and amount per hundred dollars of valuation; and specifies election date. Two-thirds vote of all members of the legislative authority required.
2. County Auditor's certification – Under R.C. 5705.03, the County Auditor determines the total current tax valuation and the dollar amount of revenue the levy will generate in the first year of collection.

Resolution to proceed - The legislative authority determines to proceed with the levy; reiterates foregoing information; provides ballot form, including specific language if imposed in the current tax year, e.g. "commencing in _____, first due in calendar year _____." Two-thirds vote of all members of the legislative authority required.

All of the foregoing documents must be certified to the Board of Elections not less than ninety (90) days prior to the date of the election.⁸

- D. Anticipatory Notes. R.C. 5705.191 provides for the issue and sale of tax anticipation notes following voter approval of the new levy. For current expense purposes, the maximum amount available to be borrowed is fifty percent of the estimated proceeds of the levy throughout the term of the levy⁹. For a continuing levy, the maximum amount available to be borrowed is fifty percent of the levy's proceeds over a maximum of ten years, less any amount previously anticipated. For a levy for a fixed period not for current expenses, the maximum amount available to be borrowed is fifty percent of the levy's proceeds throughout the remaining life of the levy, less any amount previously anticipated.
- E. Renewals. An existing levy under R.C. 5705.19 may be renewed in whole or in part, or coupled with an increase, at the general election prior to the last year of collection or at any election in the last year of collection.¹⁰ A time-limited levy may be renewed for a different term if the original purpose qualified for such term. A renewal levy reimposes the effective rate of the existing levy.
- F. Replacements. Under R.C. 5705.192, an existing levy may be replaced in whole or in part, or coupled with an increase, at the general election prior to the last year of collection or at any election in the last year of collection.¹¹ A time-limited levy may be replaced for a different term if the original purpose qualified for such term. Replacement of a continuing levy may be at any election in any year after the year the levy is first approved, but only one such election can be held during any calendar year. Failure of replacement of a continuing levy does not terminate the existing continuing levy. A replacement levy reimposes the voted rate of the existing levy, subject to the reduction factor of R.C. 319.301 in the first year just as a new levy would be.
- G. Rollback. Under R.C. 319.302, the state reimburses School Districts and other political subdivisions for real property taxes for "qualifying levies" as follows: (1) Non-Business Credit – 10% reduction in tax for residential and agricultural property; and (2) Owner Occupancy Credit – an additional 2½% reduction in tax for owner occupied residential property. After September 29, 2013, the following levies are not "qualifying levies" within the meaning of R.C. 319.302: (1) new levies; (2) replacement levies; and (3) the increase portion of a renewal levy combined with an increase.

III. R.C. 5705.191 – SUPPLEMENTAL PROPERTY TAX LEVY

R.C. 5705.191 also permits local governments to submit to the voters a property tax levy that specifies a rate of millage. Such levies are also subject to the reduction factor (H.B. 920).

⁸ R.C. 3501.01 provides that election dates generally are the first Tuesday after the first Monday in May (Primary), August (Special) and November (General). In presidential election years, the May election is moved to the second Tuesday in March. Prepayment for 65% of the cost of a special election is required. Note that the May election could be a special election if there are no contested candidate races.

⁹ Such borrowing must be done prior to the time when the first tax collection from the levy can be made.

¹⁰ This limitation does not apply to a levy under R.C. 5705.191.

¹¹ This limitation does not apply to a levy under R.C. 5705.191.

- A. Purpose. The levy may serve any of the following purposes:
 - 1. any of the purposes permitted under R.C. 5705.19;
 - 2. supplementing the general fund for appropriations for one or more of the following: public assistance; human or social services; relief; welfare; hospitalization; health; and support of general hospitals.
- B. Term: A levy to supplement the general fund may not be for a period longer than ten years. All other levies may not be for longer than five years, unless a longer period is permitted under R.C. 5705.19.
- C. Election proceedings. The procedural steps are similar to those for a levy under R.C. 5705.19, except only one special election for the submission of such question may be held in a calendar year and a special election may be held on the same day a primary is held.
- D. Anticipatory Notes. Similar to R.C. 5705.19.
- E. Renewals. Similar to R.C. 5705.19.
- F. Replacements. Similar to R.C. 5705.19.

IV. R.C. 319.302 - “QUALIFYING LEVIES” FOR ROLLBACK REIMBURSEMENT

- A. Rollback Defined. The state reimburses political subdivisions for real property taxes as follows:
 - 1. Non-Business Credit – 10% reduction in tax for residential and agricultural property.
 - 2. Owner Occupancy Credit – an additional 2 ½% reduction in tax for owner occupied residential property.
- B. “Qualifying Levies.” The following levies will *not* qualify for rollback reimbursement after *September 29, 2013*:
 - 1. New levies approved by the voters.
 - 2. Replacement levies.
 - 3. The increase portion of a renewal levy combined with an increase.

V. R.C. 321.34 – ADVANCES

A local government may request advance payment of taxes collected and held by the county treasurer pending final settlement. Such requests must be made by resolution certified to the county auditor.

VI. R.C. CHAPTER 323 – COLLECTIONS AND DELIQUENCIES

- A. Payment of Taxes. R.C. 323.12 provides that property taxes are to be paid either in full on or before December 31 or one-half of the current taxes (together with all delinquent taxes)

by December 31 and the remaining half on or before June 20. The state tax commissioner may delay these dates.

- B. Delinquency Procedures. Property tax delinquency procedures under Ohio law vary in implementation amount Ohio counties. Generally, if real estate taxes and special assessments are not paid in the year in which they are due, they are to be certified by the county auditor's office as delinquent to the county treasurer and county prosecutor. If the property owner so requests, a payment plan is arranged with the county treasurer. If such a payment plan is not adhered to or none is arranged, foreclosure proceedings may be initiated by the county. Proceeds from foreclosure sales of delinquent property become part of the current collection and are distributed as current collections.

VII. R.C. 5705.261 - REPEALS

The ability of local government electors to propose change by petition is extremely limited, particularly when viewed in comparison to the myriad of taxpayer-driven municipal proposals permitted by statute or charter. The Ohio Revised Code uses varying terminology in its discussion of taxpayer action by petition, including "initiative," "referendum" and the descriptive word "repeal." See, e.g., R.C. 5748.04. However, for clarity and ease of discussion, voter actions to reduce tax levies by petition are classified here as reductions.

- A. Reduction in Property Tax Levy. R.C. 5705.19 and 5705.261 set forth the procedure for initiating a decrease of a property tax levy that was approved for *a continuing period* the following purposes: streets, roads and bridges; fire and/or emergency medical; police and/or emergency medical; and ambulance and/or emergency medical.
1. The petition must propose the question of decreasing (not eliminating) the increased rate of a property tax levy.
 - a) The Ohio Supreme Court held in State ex rel. Choices for South-Western City Schools v. Anthony, 108 Ohio St. 3d 1 (2005), that *a referendum under R.C. 5705.261 cannot completely eliminate a continuing property tax levy.* As the dissent noted, the Court's logic presumably means that voters could petition for a reduction to .000001 mills as long as the levy was not completely eliminated.
 - b) The Ohio Supreme Court held in State ex rel. Taxpayers for Westerville Schools v. Franklin Cty. Bd. Of Elections, 133 Ohio St. 3d 153 (2012), that a replacement levy at the same original rate was not an "increased rate of levy" for purposes of R.C. 5705.261. Rate of levy refers to the *rate of millage approved* by taxpayers, not the *effective rate*.
 2. The petition must state the amount of the proposed decrease in the property tax levy.

3. The petition must be signed by "qualified electors"¹² equal in number to at least ten percent of the votes cast in the local government for the governor at the most recent election for the governor's office.¹³
 - a) If a county board of elections miscalculates the number of signatures required to meet the ten percent requirement and thus refuses to place the petition on the ballot, the petition may still be placed on the ballot of a later election, even if the election at which the petition was originally to be voted on has already occurred. State ex rel. Citizens for Responsible Taxation v. Scioto County Board of Elections, 67 Ohio St. 3d 134 (1993). To preserve this option, however, supporters of the petition must file a writ of mandamus prior to the earlier election, and the board of elections must stipulate to its error. State ex rel. Residents' Initiative Voting Alliance v. Cuyahoga County Board of Elections, 108 Ohio St. 3d 125 (2005).
4. The petition must then be filed with the county board of elections at least ninety (90) days¹⁴ before the *general election*.¹⁵ If it determines that the petition is valid and proper in all respects, the board of elections must place the issue on the ballot at the next general election.
5. R.C. 5705.261 requires the Ohio Secretary of State to prescribe the form of the ballot for a reduction of a property tax levy. In practice, this means that the county board of elections submits a proposed form of the ballot to the Secretary of State, and the form of the ballot is then approved or denied.¹⁶
6. If the reduction in a property tax levy is approved, the county auditor must begin collecting the levy at the reduced rate *after the current tax year*.
 - a) This means that a reduction in a property tax levy will not go into effect until a year after the election where it was reduced. For example, if a property tax levy is passed in November 2006, it may go on the property tax bills for the current tax year (sent out in December 2006) if provided for in the ballot language. However, if the same levy is reduced at the following general election in November 2007, the reduction will not be reflected on tax bills until December 2008. See 1986 Ohio Op. Atty Gen. No. 21 (1986).
 - b) Exception If notes have been issued in anticipation of the collection of a property tax levy that is subsequently reduced by referendum, the county auditor must continue to levy and collect (under authority of the election authorizing the original levy) such amounts as will be sufficient to pay the

¹² Defined in R.C. 3501.01(N) as those persons entitled to vote under Ohio law.

¹³ R.C. 3501.38 and 3501.39 contain the procedural requirements for a proper petition as well as the method for challenging a petition before a county board of elections.

¹⁴ The petition must be filed by 4:00 p.m. ninety (90) days before the day of the general election. R.C. 3501.02(F).

¹⁵ A "general election" is the election held on the first Tuesday after the first Monday of each November. R.C. 3501.01(A).

¹⁶ The Secretary of State's practice of approving ballot language, as opposed to prescribing ballot language, was permitted in Youngstown Board of Township Trustees v. Mahoning County Board of Elections, 1989 Ohio App. LEXIS 4950, 22 (7th Dist. 1989). While not explicitly condoning the practice, the court refused to reject a petition on these grounds.

principal of and interest on such anticipation notes as they come due. The remainder of the property tax levy is reduced.

7. *Only one such petition to reduce a property tax levy may be filed during each five-year period following the election at which the levy was approved.*

a) Because of this restriction, some political subdivisions have initiated levy reductions as a defensive measure. For example, a township might circulate a petition to reduce a property tax levy by .000001 mills. If the township can successfully place the issue on the ballot, it will prevent voters from asking for a larger reduction during that same five-year period, even if the reduction fails to win voter approval.

8. The Revised Code provides no exception for the reduction of a levy with proceeds intended for non-operating purposes.

B. Five-year limitation. Under R.C. 5705.261, only one such petition under each section may be filed with the county board of elections during a five-year period. There is currently no clear guidance in Ohio law on whether this five-year limitation is triggered simply by filing a petition (even if the board of elections rules it to be invalid and refuses to place the petition on the ballot) or if it means that a petition must be valid to be considered "filed." Each individual county board of elections must decide what to do when faced with this dilemma, and the Ohio Secretary of State's advice to boards of elections is that they should consult with their county prosecutor and follow his or her advice. It is therefore possible that a county board of elections would refuse to place a valid petition on the ballot because a defective petition had already been filed in the five-year period.¹⁷

¹⁷ Note that the county board of elections can only accept petitions that are facially valid. Therefore, a petition that was clearly short of the required number of signatures or that possessed another facially obvious defect could not even be filed with a board of elections. Such a facially invalid petition would not serve to trigger the five-year limitation.