

ADVISORY 2008-21

August 27, 2008

To: ALL COUNTY BOARDS OF ELECTIONS

Re: Am. Sub. HB 562: Amendments affecting School District Tax Levies under R.C. 5705.194 and 5705.199.

On June 24, 2008, Amended Substitute House Bill No. 562 was signed into law. The new law affects, among other things, two provisions of Revised Code Chapter 5705 relating to school district tax levies. These legislative changes will become effective on September 23, 2008. The purpose of this advisory is to apprise the boards of elections of these changes, which affect tax levies that may be certified to the boards for submission to the voters at future elections. The online version of Am. Sub. H.B. 562 may be accessed at:

www.legislature.state.oh.us/BillText127/127_HB_562_EN_N.html.

Amendment of R.C. 5705.194

The new law amends a provision of an existing statute, R.C. 5705.194, governing the number of years that the board of education of a city, local, exempted village, cooperative education, or joint vocational school district may propose to levy a tax “for the emergency requirements of the school district or to avoid an operating deficit.” The amendment increases from five to ten the number of years the tax may be levied: “the number of years in which the millage is to be in effect *** may be any number not exceeding ten.” The rest of the statute is unchanged.

Enactment of R.C. 5705.199

- **“Substitute levy” – R.C. 5705.119(A)**

Am. Sub. H.B. 562 enacts a new statute, R.C. 5705.199, which provides for a new tax levy. Under this new provision, the board of education of a city, local, exempted village, cooperative education, or joint vocational school district may propose at any time to levy a tax for the purpose of providing for the necessary requirements of the school district. Such a levy is required to be proposed as a substitute for all or a portion of one or more existing levies imposed under R.C. 5705.194 to 5705.197, or under R.C. 5705.199, subject to the following requirements:

“(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.”

Additionally, R.C. 5705.199(G) provides as follows:

“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.”

- **Resolution requirements – R.C. 5705.199(B)**

The requirements for a resolution proposing the substitute levy are set forth in division (B) of R.C. 5705.199:

“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 seventy-five 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.”

- **Form of the ballots – R.C. 5705.199(C)**

Division (C) of R.C. 5705.199 prescribes the form of the ballot to be used at the election on the question of a levy under R.C. 5705.199, 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

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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)."

- **Restrictions on number of submissions to voters in a year – R.C. 5705.199(D)**

In accordance with division (D) of R.C. 5705.199, the submission of questions to the electors under this new section of law is subject to the limitation on the number of election dates established by R.C. 5705.214.¹ Consequently, issues authorized by R.C. 5705.199 may be submitted to the electors of a school district a maximum of three times during any calendar year.

- **Substitute levy adopted for a continuing period of time may be subject to reduction – R.C. 5705.199(F)**

Division (F) of R.C. 5705.199 provides that a levy for a continuing period of time may be decreased pursuant to R.C. 5705.261. Form No. 6-R ("Petition for Election on the Decrease of an Increased Rate of Levy Approved a Continuing Period of Time"), prescribed by the Secretary of State's office, may be used for this purpose. In contrast, a levy proposed under R.C. 5705.199 that is approved for a specified number of years is not subject to reduction.

If you have any questions concerning this advisory, please contact your assigned elections attorney at 614-466-2585.

Sincerely,

Jennifer Brunner

¹ R.C. 5705.214 provides: "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, 5705.21, 5705.212, 5705.213, 5705.217, and 5705.218 of the Revised Code."