

2011 OSBA Board Leadership Institute

Show Me The Money! Understanding Tax Levies and Capital Funding Options

**Polaris Hilton Hotel
Columbus, Ohio
April 29, 2011**

Rick Manoloff
Squire, Sanders & Dempsey L.L.P.
4900 Key Tower, 127 Public Square
Cleveland, Ohio 44114
(216) 479-8331
RManoloff@ssd.com

© 2011

This material is not intended to, and does not, provide legal advice as to particular issues or matters, each of which should be addressed in the specific factual setting in which it arises, and reference to it is not a substitute for consultation with an attorney.

Overview

I. OPERATING LEVIES

A. PROPERTY TAX BASICS

B. PROPERTY TAXES

1. MILLAGE LEVIES

(A) TRADITIONAL (ORC § 5705.21)

(B) PHASED IN OVER TIME (ORC § 5705.212)

2. FIXED SUM LEVIES

(A) EMERGENCY/AVOID OPERATING DEFICIT (ORC §§ 5705.194 *ET SEQ.*)

(B) PHASED IN OVER TIME (ORC § 5705.213)

- WOODRIDGE & PERRYSBURG (AS OF OCTOBER 1, 2008)

(C) “SUBSTITUTE” (RELATIVELY NEW – ORC § 5705.199)

(D) “CONVERSION” (RELATIVELY NEW – ORC § 5705.219)

3. DIFFERENCES

(A) DURATION OF LEVY

(B) APPLICATION OF HB 920

(C) BORROWING AUTHORITY

(D) BOARD VOTE REQUIREMENT

(E) FILING DEADLINES

(F) RENEWAL POSSIBILITIES

(G) REDUCTION POSSIBILITIES

- C. SCHOOL DISTRICT INCOME TAXES**
 - 1. TWO DIFFERENT POSSIBLE TAX BASES**
 - (A) CANNOT MIX TAX BASES**
 - (B) REPLACEMENT OPTION**
 - 2. FILING DEADLINES**
 - 3. BALLOT ATTEMPTS**
 - 4. RESOURCES**

II. PERMANENT IMPROVEMENT LEVIES

- A. SPECIFIC PURPOSE**
 - **CAN BE CONVERTED TO “GENERAL PERMANENT IMPROVEMENTS”**
 - **BROADEN USE OF PROCEEDS**
 - **PERMIT CPT**
- B. “GENERAL PERMANENT IMPROVEMENTS”**
- C. DIFFERENCES**
 - 1. DURATION**
 - 2. DIRECT BORROWING AUTHORITY**
 - 3. INDIRECT IMPACT ON BORROWING**
 - 4. CFAP MAINTENANCE LEVY REQUIREMENT**

III. COMBINATION LEVIES

- A. OPERATING + PI (ORC § 5705.217)**
- B. OPERATING + BOND ISSUE (ORC § 5705.218)**
- C. OPERATING + BOND ISSUE + PI (ORC § 5705.218)**

- D. PI + BOND ISSUE (ORC § 5705.218)**
- E. SDIT + BOND ISSUE (ORC § 5748.08)**
- F. OSFC BOND ISSUE + VARIOUS OPTIONS (ORC § 3318.056)**

IV. OTHER LEVY TYPES

- A. “HB 530 LEVY”**
- B. SPECIFIC STATUTORY PURPOSE PROPERTY TAX LEVIES**
 - 1. EDUCATION TECHNOLOGY**
 - 2. CULTURAL CENTER OPERATIONS**
 - 3. LIBRARY SUPPORT**
 - 4. PARKS & RECREATION**
 - 5. COMMUNITY CENTER**
- C. ON THE DRAWING BOARD**

V. ELECTION DATES AND DEADLINES (SEE ATTACHED FOR 2011 AND 2012)

VI. BORROWING

- A. TIED TO VOTE**
 - 1. BOND ISSUE**
 - a. Non-OSFC**
 - (1) ORC § 133.18 – standard**
 - (2) ORC § 5705.218 – property tax; combination**
 - (a) PI levy**
 - (b) Current expense levy**
 - (c) Both**
 - (3) ORC § 5748.08 – income tax; combination**

b. OSFC

(1) ORC § 3318.06

(a) CFAP local share (and maintenance levy, as necessary)

(b) Site acquisition (ORC § 3318.06(D))

- **Bond issue**
- **Dedicated property tax levy**

(2) ORC § 3318.056 – combination

(a) Bond issue under ORC § 133.18

(b) Tax levy under ORC § 5705.21

(c) Combination under ORC § 5705.218

(d) Income tax under ORC § 5748.08 (combination)

(e) Restriction on tax for operating revenue

(3) ORC § 3318.052 – CFAP local share

2. TAX LEVY (TAX ANTICIPATION NOTES – TANS)

a. PI – PROPERTY TAX

(1) LIMITED PURPOSE

(2) “GENERAL PERMANENT IMPROVEMENTS”

b. OPERATING – PROPERTY TAX

(1) CURRENT EXPENSES

(2) EMERGENCY REQUIREMENTS

(3) NEW SUBSTITUTE LEVY

c. INCOME TAX (ORC §§ 5748.05, .08(G), 133.24)

B. NOT NECESSARILY TIED TO VOTE

1. PI

- a. GENERAL – 1/10 OF 1% OF AV**
- b. HB 264 – 9/10 OF 1% OF AV**
- c. LEASE-PURCHASE OBLIGATIONS/COPS**

2. OPERATING (CTRNs)

3. CASH ON HAND – USE OF TAX PROCEEDS

VII. DEBT LIMITATIONS

A. DIRECT

1. 9% of AV

2. 9/10 of 1% of AV

3. 1/10 of 1% of AV

4. Exempt Debt – Examples:

- a. Buses**
- b. TANs**
- c. CTRNs**
- d. CFAP Local Share, Site Acquisition and Project Agreement LFI**

5. Special Needs

B. INDIRECT

VIII. FEDERAL TAX MATTERS

A. TAX EXEMPTION GENERALLY

B. “BANK QUALIFICATION” (“QTEOs”)

C. ARBITRAGE/REBATE

Tax Levy Considerations and Options

The Long and Winding Road to the Present

A. Property Tax

1. In the beginning, there was property...and so we taxed it. In fact, in the beginning most local governmental subdivisions survived from property tax revenues. Most individuals generated their income and revenue from land; therefore most governments followed suit. As wealth began to be generated from less tangible services not directly connected to land, many governmental subdivisions branched out into other tax bases like income and sales; however, school districts remained primarily dependent on property tax.
2. According to the Lincoln Institute of Land Policy, in 2005, school funding in 37 states was heavily reliant on property taxes. In 2007, nearly half of the total property tax dollars collected in the United States were used to finance public elementary and secondary education.
3. In Ohio, pursuant to Section 2 of Article XII of the Ohio Constitution, no property may be taxed in excess of ten mills (1%) without approval by at least a majority of the electors of the taxing district, or when provided by the charter of a municipality.
 - a. Also known as the “ten-mill limitation” – RC 5705.02.
 - b. Inside millage – statutory shares.
 - c. RC 5705.03 authorizes a school district to request the levying of property taxes “outside” the ten-mill limitation for any purpose authorized by the Revised Code.
 - d. Real property in Ohio is taxed at its “assessed valuation”, which is equal to 35% of market value.

B. House Bill 920/Article XII, Section 2a

1. Beginning in the early 1970s, the court-mandated equalization of real property assessments (which increased residential home values), combined with extraordinary inflationary pressures caused real property taxes to increase rapidly for homeowners.
2. In 1976, a property tax relief charge produced HB 920, which through tax reduction factors attempted to reduce property taxes in proportion to increases in real property value.
3. In 1980, the voters of the State ratified Section 2a of Article XII of the Constitution which permits separate tax reduction factors for residential and agricultural real property (Class I), and all other real property (Class II) (essentially business related real property). In addition, and more importantly, Section 2a put the no-growth mandate in the State’s Constitution.

4. Section 2a of Article XII of the Constitution and HB 920 (codified as RC 319.301).
 - a. Do not apply to:
 - (i) Inside millage
 - (ii) Taxes provided for by municipal charter
 - (iii) Fixed dollar sum levies (emergency, substitute, conversion, incremental and levies for debt service)
 - b. “Effective Rate” is the reduced tax rate for each year after the reduction factor is applied.
 - c. Contains the “20-mill floor” (RC 319.301(E)(2)) for school districts which is a mechanism to benefit from valuation growth (1977)
 - (i) Authorized by the Ohio Constitution
 - (ii) About 2/3 of school districts are at the floor, according to a relatively recent report
 - d. The State Tax Commissioner determines the reduction factor for each class of property and certifies such factor to each County Auditor (“County Auditor” includes a County Fiscal Officer for purposes of this handout).

C. Results and Responses

1. According to a January 2009 Policy Report produced by the KnowledgeWorks Foundation:
 - a. From 1975 through 2007, nearly 9,800 school operating levies were placed on the ballot, with a 49.3% passage rate.
 - b. Ohio has more local school levies than any other state.
2. Introduction of new types of levies:
 - a. Emergency Levies (1971)
 - b. School District Income Tax Levies (1981)
 - c. Incremental Levies (millage and dollar) (1990)
 - d. Combination Levies (1997)
 - e. HB 530 Levy (2006)
 - f. Substitute Levy (2008)
 - g. Conversion Levy (2009)

Considerations in Choosing a Levy

A. Needs and Purposes

1. Current expenses
2. “Emergency requirements”/“avoid an operating deficit”
3. “Necessary requirements”
4. Permanent improvements – specific v. class v. “general”

5. More than one purpose
 6. Educational technology
 7. Operations of a cultural center
 8. Recreation
 9. Library support
 10. Maintenance
- B. Amount/Borrowing Authority
- C. Tax Base
1. Limited choices provided by the Constitution and the General Assembly
 2. Property Tax
 - a. Real
 - b. Tangible Personal
 - (i) Reductions
 - (ii) Commercial Activity Tax Revenue
 - c. Public Utility
 3. School District Income Tax
 - a. Individuals and estates
 - b. Earned income
- D. Term
1. 1-5 years
 2. 1-10 years
 3. Specified number of years
 4. Continuing
- E. Timing
1. When does the District need the money?
 2. Follow proper election deadlines
 3. Tax levy v. tax collection
 4. Consideration of other levies and/or issues on the ballot
- F. Growth and Related Problems
1. Capturing real growth
 2. 20-mill floor

- a. Already there/how to get there
 - b. Movement of inside millage
 - c. Fixed dollar sum levies
 - d. Conversion Levy
3. New options created to address growth and 20-mill floor issues
- a. Incremental Millage and Dollar Levies
 - b. Longer term Emergency Levies
 - c. Substitute Levy (capturing “real” growth)
 - d. Conversion Levy

G. What will sell to the Voters?

Options

A. CURRENT EXPENSE PROPERTY TAX – RC 5705.21 and 5705.25

- 1. Millage rate submitted for voter approval.
- 2. Length: any number of years from 1 through 5 or for continuing period of time.
- 3. Submission requirements: two board resolutions with intervening County Auditor’s certification (on DTE Form 140R) of district total current tax valuation and amount that would be generated by proposed levy – majority affirmative vote required on first resolution (see RC 5705.03(B)); $\frac{2}{3}$ affirmative vote required on second one. County Auditor has up to 10 days to provide certifications after receiving resolution requesting them. Note that at least one County Auditor’s office understands this 10 days to mean 10 *business* days.
- 4. Filing deadline: both resolutions and County Auditor’s certifications are to be filed with board of elections at least 90 days before election.
- 5. Purpose: “current expenses” – lawful expenses of school district that are not for permanent improvements or debt service (RC 5705.01(F)).
- 6. Renewal: same millage rate (unless renewal and increase, or renewal of part of existing levy); any number of authorized years; must be submitted during last collection year or preceding year’s November election; can renew multiple levies at one time.
- 7. Replacement: permitted (including replacement and increase, or replacement of portion of existing levy at lesser rate – see RC 5705.192) at any election during last year of collection or preceding year’s November election; replacements of continuing levies permitted at any election after year in which originally approved, but limited to one election per year; replacement of two levies (or any portion

thereof) at the same time is permitted, but both must be for the same purpose and both must either be for a continuing period of time or must be due to expire in the same year.

8. Attempts: no more than three elections per calendar year (RC 5705.214), but see directly above.
9. Boards of education: city, local, exempted village, cooperative education and (joint) vocational school district boards are authorized to pursue this type of levy.
10. Notice of election: once a week for two consecutive weeks in one or more newspapers of general circulation in the county (handling the election) and the school district and, if the board of elections operates and maintains a web site, posted to that site for 30 days prior to the election.
11. Ballot: largely specified by statute (RC 5705.25(B); see RC 5705.192(C) for replacement levy ballot form).
12. Borrowing: 50% of estimated collections during first year of levy can be borrowed after successful election and before first tax collection can be made.
13. Continuing period of time levies can be decreased by a vote of the people (RC 5705.261).

B. EMERGENCY PROPERTY TAX – RC 5705.194 to .197

1. Annual dollar amount submitted for voter approval – millage fluctuates to produce approved amount; millage that appears on ballot is advisory only.
2. Length: any number of years from 1 through 10.
3. Submission requirements: two board resolutions with intervening County Auditor’s certification (on DTE Form 140M) of district current tax valuation and rate that would be required to raise the dollar amount specified – majority affirmative vote required for each resolution.
4. Filing deadlines: as a practical matter, the first resolution should be filed with County Auditor at least 95 days before the election – County Auditor’s certifications are to be filed with the board of education no later than 5 days after filing – second resolution is to be filed with board of elections at least 90 days before the election (always a Wednesday).
5. Purpose: “emergency requirements of the school district” or “to avoid an operating deficit.”
6. Renewal: same dollar amount (unless renewal and increase, or renewal of part of existing levy); must be submitted during last collection year or preceding year’s

November general election or May/March primary election; can renew multiple levies at once.

7. Combination renewals: two or more existing levies can be included in single renewal levy that are not scheduled to expire in same year, provided that resolution and ballot form state that existing levies to be renewed shall not be levied after year preceding year in which renewal levy is first imposed; must be submitted during last collection year of at least one of levies to be renewed or preceding year's November general election or May/March primary election.
8. Substitution: permitted to "substitute" a levy under RC 5705.199.
9. Attempts: no more than three elections per calendar year (RC 5705.214).
10. Boards of education: city, local, exempted village, cooperative education and joint vocational school district boards are authorized to pursue this type of levy.
11. Notice of election: once a week for two consecutive weeks in one or more newspapers of general circulation in the county (handling the election) and the school district and, if the board of elections operates and maintains a web site, posted to that site for 30 days prior to the election
12. Ballot: largely specified by statute; purpose clause must be in boldface type of at least 2x size of immediately surrounding type.
13. Borrowing: 100% of estimated collections during first year of levy can be borrowed after successful election and prior to time when first tax collection can be made; must have principal payments during each year after year of issuance over period not to exceed 5 years or life of levy.

C. SUBSTITUTE LEVY – RC 5705.199

1. A substitute, growing dollar levy for all or a portion of one or more existing emergency levies (under RC 5705.194 to .197) submitted for voter approval. Amount in initial year is specified amount equal to the aggregate annual dollar amount derived from the levy or levies for which this levy is being substituted. In each subsequent year, the levy will be for a specified dollar amount, reached by adding (a) the dollar amount of the proceeds of the levy in the prior year to (b) the dollar amount derived from multiplying the total taxable value of property that is not "carryover property" by the annual levy in mills that produced the annual dollar amount of the levy in the prior year. The levy results in revenue growth from new property and improvements, not from inflation.
2. Length: any number of years from 1 through 10 or for a continuing period of time.
3. Submission requirements: Submission requirements: two board resolutions with intervening County Auditor's certification (on DTE Form 140M) of district total

current tax valuation and amount that would be generated by proposed levy – majority affirmative vote required on first resolution; $\frac{2}{3}$ affirmative vote required on second one. County Auditor has up to 10 days to provide certifications after receiving resolution requesting them. Note that at least one County Auditor’s office understands this 10 days to mean 10 *business days*.

4. Filing deadlines: generally follows the deadline scheme for emergency levies.
5. Purpose: “necessary requirements of the school district.”
6. For levies under RC 5705.194 to .197 for which this levy is substituted, this levy is treated as a renewal for purposes of payments under RC 5751.20 to .22.
7. Attempts: no more than three elections per calendar year (RC 5705.214).
8. Boards of education: city, local, exempted village, cooperative education and joint vocational school district boards are authorized to pursue this type of levy.
9. Notice of election: once a week for two consecutive weeks in one or more newspapers of general circulation in the county (handling the election) and the school district and, if the board of elections operates and maintains a web site, posted to that site for 30 days prior to the election.
10. Ballot: largely specified by statute; see RC 5705.199(C).
11. Borrowing: 50% of estimated collections during first year of levy can be borrowed after successful election and prior to time when first tax collection can be made; must have principal payments during each year after year of issuance over period not to exceed 5 years or life of levy, and may have a principal payment in the year of issuance.
12. Continuing period of time levies can be decreased by a vote of the people (RC 5705.261).

D. CONVERSION LEVY – RC 5705.219

1. Requires voter approval.
2. Length: any number of years from 1 through 10 or for continuing period of time.
3. Board proposing a conversion levy must adopt a resolution to do so between January 1, 2010 and December 31, 2014.
4. Would allow conversion of existing current expense property tax millage in excess of 20 mills into a new levy that raises a fixed amount of revenue by (a) repealing the current expense levies in excess of 20 mills, and (b) re-levying the current effective millage as a fixed-sum levy.

5. For a fixed amount each year equal to the amount that would have been raised by the repealed effective millage on Class I property if that millage were levied on all taxable property, including Class I real property, Class II property, and public utility tangible personal property.
6. Would not be considered in determining whether a school district's current expense millage equals or exceeds 20 mills.
7. School board may adopt a resolution and certify it to the Tax Commissioner. The Tax Commissioner is required to certify to the board the amount of money the levy will raise, the estimated tax rate (equal to the Class I effective millage in excess of 20 mills). The Tax Commissioner will also certify to the board the levies or portions of levies that would be repealed. Levies would be repealed in reverse chronological order. Finally, the Tax Commissioner will certify to the board a base-year revenue loss for the school district, representing the loss from repealing millage on Class II real property and public utility personal property to the extent the effective tax rate on that property exceeds the effective tax rate on Class I real property.
8. Total of three school board resolutions ultimately required, with county auditor certifications also required.
9. Renewal: allowed.
10. Boards of education: Any school district in which the aggregate fixed-rate current expense effective tax rate for residential/agricultural real property ("Class I") is greater than 20 mills per dollar.
11. Notice of election: language specified by statute; process for certifying resolution to board of elections in statute.
12. Ballot: language specified by statute; must specify the amount of revenue to be raised.

E. PERMANENT IMPROVEMENT PROPERTY TAX – RC 5705.21 and 5705.25

1. Millage rate submitted for approval.
2. Length: any number of years from 1 through 5 or, if for the purpose of "general permanent improvements", for continuing period of time.
3. Submission requirements: two board resolutions with intervening County Auditor's certification (on DTE Form 140R) of school district's total current tax valuation and amount that would be generated by proposed levy – majority affirmative vote required on first resolution (see RC 5705.03(B)); $\frac{2}{3}$ affirmative vote required on second one. County Auditor has up to 10 days to provide certifications after receiving resolution requesting them. Note that at least one County Auditor's office understands this 10 days to mean 10 *business* days.

4. Filing deadline: both resolutions and County Auditor's certifications are to be filed with board of elections at least 90 days before election.
5. Purpose: any "permanent improvements" (items having estimated life or usefulness of five years or longer – see RC 5705.01(E)) – must either be for specific permanent improvement or class of permanent improvements that could be included in a "single purpose" bond issue (RC 5705.19(F)) or, for the purpose of "general permanent improvements." If for continuing period of time, must be for purpose of "general permanent improvements"; purpose may be changed from specific purpose to "general permanent improvements" upon renewal or replacement.
6. Renewal: same millage rate (unless renewal and increase, or renewal of part of existing levy); must be submitted during last collection year or preceding year's November election; can renew multiple levies at once if they are for the same purpose.
7. Replacement: permitted (including replacement and increase, and replacement of portion of existing levy at lesser rate – see RC 5705.192) at any election during last year of collection or preceding year's November election; replacements of continuing levies permitted at any election after year in which originally approved, but limited to one election per year.
8. Attempts: no more than three elections per calendar year (RC 5705.214), but see directly above.
9. Boards of education: city, local, exempted village, cooperative education and (joint) vocational school district boards are authorized to pursue this type of levy.
10. Notice of election: once a week for two consecutive weeks in one or more newspapers of general circulation in the county (handling the election) and the school district and, if the board of elections operates and maintains a web site, posted to that site for 30 days prior to the election.
11. Ballot: largely specified by statute (RC 5705.25(B); see RC 5705.192(B) for replacement levy ballot form).
12. Borrowing (general or specific permanent improvements, temporary levy): after approval of levy, 50% of estimated remaining collections over 5 years after issuance; must have principal payments during each year after year of issuance over period not to exceed lesser of 5 years or life of levy. See also RC 5705.216.
13. Borrowing (general permanent improvements, levy for continuing period of time): after approval of levy, 50% of the estimated collections over period of up to 10 years after issuance; must have principal payments during each year after year of issuance over period not to exceed 10 years. See also RC 5705.216.
14. A continuing general permanent improvement levy can serve as the foundation for the issuance of securities for the purpose of paying the local share of an Ohio School

Facilities Commission (OSFC) Classroom Facilities Assistance Program (CFAP) project or as the required “maintenance” levy. Contact your legal advisor.

15. Continuing period of time levies under this section are subject to reduction by a vote of the people. (RC 5705.261.)

F. COMBINATION PROPERTY TAX (CURRENT OPERATING EXPENSES AND PERMANENT IMPROVEMENTS) – RC 5705.217

1. Millage rate submitted for voter approval.
2. Length: any number of years from 1 through 5 or for continuing period of time (if applicable – see below).
3. Submission requirements: two board resolutions with intervening County Auditor’s certification (on DTE Form 140R) of district total current tax valuation and amount that would be generated by proposed levy – majority affirmative vote required on first resolution (see RC 5705.03(B)); $\frac{2}{3}$ affirmative vote required on second one. County Auditor has up to 10 days to provide certifications after receiving resolution requesting them. Note that at least one County Auditor’s office understands this 10 days to mean 10 *business* days.
4. Filing deadline: both resolutions and County Auditor’s certifications filed with board of elections at least 90 days before election.
5. Purpose: current operating expenses (lawful expenses of school district that are not for permanent improvements or debt service) and permanent improvements (items having estimated life or usefulness of five years or longer); if levy is for continuing period of time, permanent improvement purpose must be for “general, on-going permanent improvements” [sic]; proceedings placing levy on ballot must apportion the annual rate between current expenses and permanent improvements, which apportionment may, but need not be, same for each year of tax.
6. Replacement: permitted (including replacement and increase, or replacement of portion of existing levy at lesser rate – see RC 5705.192) at any election during last year of collection or preceding year’s November election; replacements of continuing levies permitted at any election after year in which originally approved, but limited to one election per year.
7. Attempts: no more than three elections per calendar year (RC 5705.214), but see directly above.
8. Boards of education: city, local, and exempted village school district boards are authorized to pursue this type of levy (see also RC 3311.21 for boards of vocational and cooperative education school districts).

9. Notice of election: once a week for two consecutive weeks in a newspaper of general circulation in the school district and, if the board of elections operates and maintains a web site, posted to that site for 30 days prior to the election.
10. Ballot: RC 5705.25 generally governs form, but precise language not specified.
11. Borrowing (current expenses): 50% of estimated collections during first year of levy can be borrowed after successful election and before first tax collection can be made; must have principal payments during each year after year of issuance over period not to exceed 5 years or the life of the levy.
12. Borrowing (specific permanent improvements): after approval of levy, 50% of estimated remaining collections over 5 years after issuance; must have principal payments during each year after year of issuance over period not to exceed 5 years or the life of the levy.
13. Borrowing (general, on-going permanent improvements): after approval of levy, 50% of estimated collections over period of up to 10 years after issuance; must have principal payments during each year after year of issuance over period not to exceed 10 years or the life of the levy.
14. Continuing period of time levies under this section are subject to reduction by a vote of the people. (RC 5705.261.)

G. COMBINATION BOND ISSUE AND PROPERTY TAX LEVY/LEVIES – RC 5705.218

1. Combined question of (a) bond issue, and (b) tax levy for current operating expenses and/or tax levy for permanent improvements.
2. Process: two board resolutions (both adopted by $\frac{2}{3}$ majority) and intervening County Auditor's certification (DTE Form 130 (for bond issue); DTE Form 140R (for levy); latter resolution must apportion the annual tax rate between current expenses and permanent improvements if property taxes for both purposes are proposed, which allocation need not be same for each year of proposed tax. County Auditor has up to 10 days to provide certifications after receiving resolution requesting them. Note that at least one County Auditor's office understands this 10 days to mean 10 *business* days.
3. Filing deadline: both resolutions and County Auditor's certifications are to be filed with board of elections at least 90 days before election; additional deadlines may be applicable if the bond issue exceeds a certain size.
4. Attempts: no more than three elections per calendar year (RC 5705.214).
5. Boards of education: city, local, and exempted village school districts are authorized to pursue this type of ballot question.

6. Notice of election: once a week for two consecutive weeks in newspaper of general circulation in school district and, if the board of elections operates and maintains a web site, posted to that site for 30 days prior to the election.
7. Ballot: largely specified by statute (see RC 5705.218(D)).
8. Borrowing against tax levies: permitted – for up to five years for levies related to current expenses and specific permanent improvements, and up to 10 years for levies related to general, on-going permanent improvements. (See RC 5705.218(F)).
9. Renewals and replacements of tax levies: permitted in the same manner as taxes levied under RC 5705.21.
10. May be combined with OSFC ballot questions (see below) and may effectively constitute an OSFC ballot issue.
11. A continuing levy for general, on-going permanent improvements can serve as the foundation for the issuance of securities for the purpose of paying the local share of an OSFC CFAP project or as the required “maintenance” levy. Contact your legal advisor.
12. If submitting a bond issue to participate in the OSFC’s expedited local partnership program under this section, may add on the question of a maintenance levy prescribed in RC 3318.361.
13. Continuing period of time levies under this section are subject to reduction by a vote of the people. (RC 5705.261.)

**H. EDUCATION TECHNOLOGY OR CULTURAL CENTER OPERATIONS
PROPERTY TAX – RC 5705.21 and 5705.25**

1. Millage rate submitted for voter approval.
2. Length: any number of years from 1 through 5.
3. Submission requirements: two board resolutions with intervening County Auditor’s certification (on DTE Form 140R) of district’s total current tax valuation and amount that would be generated by proposed levy – majority affirmative vote required on first resolution (see RC 5705.03(B)); $\frac{2}{3}$ affirmative vote required on second one. County Auditor has up to 10 days to provide certifications after receiving resolution requesting them. Note that at least one County Auditor’s office understands this 10 days to mean 10 *business* days.
4. Filing deadline: both resolutions and County Auditor’s certifications are to be filed with board of elections at least 90 days before election.

5. Purpose: (a) providing “education technology”, which is defined as including, but not limited to, “computer hardware, equipment, materials, and accessories, equipment used for two-way audio or video, and software” or (b) operating “cultural center”, which is defined as “a free standing building, separate from a public school building, that is open to the public for educational, musical, artistic, and cultural purposes.”
6. Renewal: same millage rate (unless renewal and increase or renewal of part of existing levy); must be submitted during last collection year or preceding year’s November election.
7. Replacement: permitted (including replacement and increase, or replacement of portion of existing levy at lesser rate – see RC 5705.192) at any election during last year of collection or preceding year’s November election; replacements of continuing levies permitted at any election after year in which originally approved, but limited to one election per year.
8. Attempts: no more than three elections per calendar year (RC 5705.214), but see directly above.
9. Boards of education: city, local, exempted village, cooperative education and (joint) vocational school district boards are authorized to pursue this type of levy.
10. Notice of election: once a week for two consecutive weeks in one or more newspapers of general circulation in the county (handling the election) and the school district and, if the board of elections operates and maintains a web site, posted to that site for 30 days prior to the election.
11. Ballot: largely specified by statute (RC 5705.25(B); see RC 5705.192(B) for replacement levy ballot form).

I. LIBRARY SUPPORT, RECREATION, COMMUNITY CENTER PROPERTY TAX – RC 5705.21 and 5705.25

1. Millage rate submitted for voter approval.
2. Length: any number of years from 1 through 5.
3. Submission requirements: two board resolutions with intervening County Auditor’s certification (on DTE Form 140R) of school district’s total current tax valuation and amount that would be generated by proposed levy – majority affirmative vote required on first resolution (see RC 5705.03(B)); $\frac{2}{3}$ affirmative vote required on second one. County Auditor has up to 10 days to provide certifications after receiving resolution requesting them. Note that at least one County Auditor’s office understands this 10 days to mean 10 *business* days.

4. Filing deadline: both resolutions and County Auditor’s certifications are to be filed with board of elections at least 90 days before election.
5. Purpose: set by statute (see RC 5705.19(D) (“[f]or a public library of, or supported by, the subdivision under whatever law organized or authorized to be supported”), (H) (“[f]or parks and recreation purposes”) and (DD) (“[f]or the purpose of acquiring property for, constructing, operating, and maintaining community centers as provided for in section 755.16 of the Revised Code”).
6. Renewal: same millage rate (unless renewal and increase or renewal of part of existing levy); must be submitted during last collection year or preceding year’s November election.
7. Replacement: permitted (including replacement and increase, or replacement of portion of existing levy at lesser rate – see RC 5705.192) at any election during last year of collection or preceding year’s November election; replacements of continuing levies permitted at any election after year in which originally approved, but limited to one election per year.
8. Attempts: no more than three elections per calendar year (RC 5705.214), but see directly above.
9. Boards of education: city, local, exempted village, cooperative education and (joint) vocational school district boards are authorized to pursue this type of levy.
10. Notice of election: once a week for two consecutive weeks in one or more newspapers of general circulation in the county (handling the election) and the school district and, if the board of elections operates and maintains a web site, posted to that site for 30 days prior to the election.
11. Ballot: largely specified by statute (RC 5705.25(B); see RC 5705.192(B) for replacement levy ballot form).
12. If submitting a bond issue to participate in the OSFC’s expedited local partnership program under this section, may add on the question of a maintenance levy prescribed in RC 3318.361.

J. MILLAGE INCREMENTAL PROPERTY TAX – RC 5705.212

1. Up to five separate millage rates submitted for approval to be first levied in specified years; “original tax” in first year; up to four “incremental taxes” (all same rate but may be different than original tax rate) in subsequent specified years.
2. Length: any number of years from 1 through 10 from year original levy first imposed or for continuing period of time.

3. Submission requirements: two board resolutions with intervening County Auditor's certification of district's total current tax valuation and amount that would be generated by the proposed levy – majority affirmative vote required on first resolution (see RC 5705.03(B)); $\frac{2}{3}$ affirmative vote required on second one. County Auditor has up to 10 days to provide certifications after receiving resolution requesting them. Note that at least one County Auditor's office understands this 10 days to mean 10 *business* days.
4. Filing deadline: both resolutions and County Auditor's certifications are to be filed with board of elections at least 90 days before election.
5. Purpose: "current expenses" – lawful expenses of school district that are not for permanent improvements or debt service (RC 5705.01(F)).
6. Renewal: single rate combining rate of original tax and each incremental tax; must be submitted during last collection year or preceding year's November election.
7. Replacement: permitted (including replacement and increase, or replacement of portion of existing levy at lesser rate – see RC 5705.192) at any election during last year of collection or preceding year's November election; replacements of continuing levies permitted at any election after year in which originally approved, but limited to one election per year.
8. Attempts: no more than three elections per calendar year (RC 5705.214), but see directly above.
9. Boards of education: the board of "any school district" is authorized to pursue this type of levy.
10. Notice of election: once a week for two consecutive weeks in newspaper of general circulation in district and, if the board of elections operates and maintains a web site, posted to that site for 30 days prior to the election.
11. Ballot: RC 5705.251(B) generally governs form for additional and renewal levies of this sort.
12. Borrowing: 50% of estimated collections during the first year of the levy can be borrowed after the successful election and before first tax collection can be made; notes to mature in substantially equal amounts over a period not to exceed 5 years or the life of the levy (see RC 5705.212(B)).
13. Continuing period of time levies may be reduced by a vote of the people. (RC 5705.261.)

K. DOLLAR INCREMENTAL PROPERTY TAX – RC 5705.213

1. Annual dollar amounts or percentage increases over prior year – submitted for voter approval.
2. Original dollar amount in first year; dollar amount increases or percentage increases (all same amount or same percentage but may be different than original amount) in succeeding years.
3. Length: any number of years from 1 through 10 (but see below regarding renewals).
4. Submission requirements: two board resolutions with intervening County Auditor’s certification (DTE Form 140M) of district’s total current tax valuation and the tax rates required to raise the amounts specified – majority affirmative vote required on first resolution; $\frac{2}{3}$ affirmative vote required on second resolution. County Auditor has up to 5 days to provide certifications.
5. Filing deadlines: first resolution is to be filed with County Auditor at least 95 days before election – County Auditor’s calculations filed with board of education not more than 5 days after filing – second resolution filed with board of elections at least 90 days before election.
6. Purpose: “current expenses” – lawful expenses of board that are not for permanent improvements or debt service (RC 5705.01(F)).
7. Renewal: no more than amount of tax levied during last year tax is authorized to be in effect; for any number of authorized years up to 10 or for a continuing period of time; must be submitted during last collection year or preceding year’s November election.
8. Notice of election: once a week for two consecutive weeks in newspaper of general circulation in district and, if the board of elections operates and maintains a web site, posted to that site for 30 days prior to the election.
9. Attempts: no more than three elections per calendar year (RC 5705.214).
10. Ballot: largely governed by statute (see RC 5705.251(B)).
11. Borrowing: after approval of levy and prior to time first collection can be made, 50% of estimated proceeds to be collected during the first year of the levy. Notes will mature serially in substantially equal amounts over a period not to exceed 5 years or life of levy.

L. “HB 530 LEVY” – RC 5705.211

1. Purpose: “paying current operating expenses of the district.”

2. Length: any number of years (but not fewer than 5) or for a continuing period of time.
3. Rate: according to the ballot – “sufficient to offset any reduction in basic state funding caused by appreciation in real estate values”; under RC 5705.211(B) – at such a rate each tax year that the total 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 RC 319.302, 323.152, or 323.158 equals the adjusted charge-off increase (which is 2.3% of the cumulative carryover property value increase (which, in turn, is the sum of the increases in carryover value certified under RC 3317.015(B)(2) and included in a school district’s total taxable value in the computation of recognized valuation under RC 3317.015(B) for all fiscal years from the fiscal year that ends in the first tax year a levy under RC 5705.211 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)).
 - The goal appears to be to permit school boards to levy a tax, at varying rates each year, designed to counterbalance the loss of basic State revenue that is due to appreciation of real property. This loss is experienced through operation of a “chargeoff” against such basic aid. The chargeoff is basically 23 mills times recognized valuation. As recognized valuation increases through appreciation, phased in and taken into account in equal amounts over three years, the charge-off amount increases, and the amount of basic State aid decreases.
4. Cap: “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 percent of the sums levied from the tax against carryover property in the preceding year.”
5. Boards of education: city, local, or exempted village school districts are authorized to pursue this type of levy.
6. Ballot: largely governed by statute (see RC 5705.211(D)).
7. Notice of election: once a week for four consecutive weeks in newspaper of general circulation in district.
8. Filing deadline: a copy of the resolution is to be filed with the board of elections at least 90 days before election.
9. Contact your legal advisor.

M. SCHOOL DISTRICT INCOME TAX – RC 5748.01 to .06

1. Income tax rate submitted for approval (whole increments of 0.25%).

2. At board's option, levied on either (1) taxable income of district residents and estates, *or* (2) earned income of individuals residing in the school district. *A school district cannot impose both types of school district income tax simultaneously.*
3. Length: any number of years or for continuing period of time.
4. Submission requirements: two board resolutions with intervening State Tax Commissioner certification of income tax rate and property tax rate required to generate the proposed amount – majority affirmative vote required for each resolution.
5. Filing deadlines: first resolution filed with State Tax Commissioner at least 100 days prior to election – Commissioner's calculation filed with board no later than 10 days after filing – second resolution filed with board of elections at least 90 days before election.
6. Attempts: no more than twice in any calendar year and, if twice, one attempt must be made at general election (RC 5748.02(D)).
7. Purpose: any purpose for which property tax can be submitted (including the combined purposes authorized by RC 5705.217, namely, current operating expenses and permanent improvements).
8. Coupled with property tax reduction: permitted (but not required) only if income tax is for current expenses and for continuing period of time and property taxes to be reduced are also for current expenses and for continuing period of time; many technical requirements for filing with Tax Commissioner.
9. Notice of election: published in one or more newspapers of general circulation in the county (handling the election) once a week for two consecutive weeks prior to the election and, if the board of elections operates and maintains a web site, posted to that site for 30 days prior to the election.
10. The form for the ballot is prescribed in RC 5748.03.
11. Borrowing: after approval of levy, 50% of the total estimated proceeds of the tax to be collected for its first year of collection, as estimated by the State Tax Commissioner; must have principal payments during each year after year of issuance over period not to exceed 5 years. The legislation authorizing the borrowing may also provide for the annual levy of ad valorem taxes to pay debt service (RC 5748.05).
12. Replacement Option (RC 5748.021 and 5748.081)
 - a. Tax levied on taxable income of district residents and estates (i.e., the traditional base) can be replaced with a tax levied on the earned income of individuals residing in the school district, for the same purpose as the tax being replaced.

- b. The form for ballots for replacement levies is described in RC 5748.021.
 - c. Amount to be generated from replacement tax can be increased or decreased.
 - d. If election fails, board continues to levy tax on traditional base.
13. Repeal or Reduction: The income tax rate may be repealed by voters (under RC 5748.04), or a school board may adopt a simple resolution reducing the rate of the school district income tax by a multiple of 0.25% (RC 5748.022).

N. SHARED MUNICIPAL INCOME TAX – RC 718.09 *et seq.*

- 1. Municipal corporation (provided, generally, not more than 5% of its territory is outside school district, and vice versa – NB: exception exists) may pass municipal income tax (*on resident individuals only*) and share revenue with school district occupying same territory.
- 2. Agreement required between district and municipal corporation specifying (1) tax rate, (2) percentage of tax and revenue to be paid to district (which must not be less than 25%), (3) purpose(s) for which tax revenue is to be used, (4) first year tax will be levied, (5) date of election on question of tax, and (6) method and schedule of payment from municipal corporation to district.
- 3. Process: statute requires agreement between the school district and the municipal corporation, then adoption of resolution by municipal corporation, with specific requirements; tax proposed to voters generally in same manner as other municipal income taxes.
- 4. Filing deadline: certified copies of both ordinance and resolution are to be filed with board of elections at least 90 days before election.
- 5. Shared municipal income tax option also exists where group of two or more municipal corporations, taken together, share the same territory as single school district (with essentially same 5% limitation as described above); majority of voters in each municipal corporation must approve identical tax.

O. COMBINATION BOND ISSUE AND SCHOOL DISTRICT INCOME TAX LEVY – RC 5748.08

- 1. Combined question of (a) bond issue, and (b) school district income tax levy for any purposes(s).
- 2. Process: board adopts first resolution (by $\frac{2}{3}$ vote) and submits it, at least 90 days before election, to State Tax Commissioner and County Auditor, who then have 10 days to make certain certifications; upon receipt of such certifications, board adopts

second resolution (among other things, specifying duration and purpose of income tax levy – also by $\frac{2}{3}$ vote).

3. Filing deadline: both resolutions and Tax Commissioner's and County Auditor's certifications are to be filed with board of elections at least 90 days before election; additional deadlines may be applicable if the bond issue exceeds a certain size.
4. Attempts: no more than twice in any calendar year and, if twice, one attempt must be made at general election (RC 5748.08(I)).
5. Boards of education: city, local, and exempted village school districts are authorized to pursue this type of ballot question.
6. Notice of election: published in one or more newspapers of general circulation in the school district once a week for two consecutive weeks prior to the election and, if the board of elections operates and maintains a web site, posted to that site for 30 days prior to the election.
7. Ballot: largely specified by statute (see RC 5748.08(D)).
8. Borrowing against income tax: permitted (see RC 5748.08(G)).
9. May serve as the foundation for an unvoted, general obligation bond issue ultimately paid by school district income tax proceeds only. Contact your legal advisor.

P. TAXES WITHIN THE TEN-MILL LIMITATION – Ohio Constitution Article XII, § 2; RC 5705.02 and 5705.03

1. Levied without a vote of electors.
2. Generally levy statutory share of millage – RC 5705.31(D).
3. Purpose: any proper school district purpose – current expenses, permanent improvements, debt service; levy for debt service on unvoted debt mandatory and comes first.
4. Moving inside millage from a current expense purpose to any other purpose under circumstances where the result would be an unvoted increase in property taxes (because a school district has reached the 20-mill floor) requires a public hearing (see RC 5705.314). Contact your legal advisor.

Q. COMBINING TAX LEVIES WITH OSFC PROJECTS – RC 3318.056

1. OSFC ballot questions can be combined with any of the following:
 - (a) bond issue (under RC 133.18);
 - (b) tax levy (under RC 5705.21);

- (c) combined bond issue/tax levy (under RC 5705.218);
- (d) school district income tax (under RC 5748.01).

2. Caveat: add-ons must be for the purpose of either paying for any “permanent improvement” (as defined in RC 133.01), or “generating operating revenue specifically for the facilities acquired under the school district’s project under Chapter 3318 of the Revised Code,” or for both.

Common Potholes Along the Tax Levy Superhighway

Timing

- “Intermediate deadlines” for initial resolution
 - 105th day prior to election – conversion levies and combination bond/school district income tax levy
 - 100th day prior to election – school district income tax levies
 - emergency and substitute levies
- Renewal elections in advance of levy expiration
 - PI and current expense levies – general election in the year prior to the last year of collection, and any election during the last year of collection
 - Emergency levies – primary and general election in the year prior to the last year of collection, and any election during the last year of collection
- Permissible elections
 - Not more than three elections in any calendar year to include question of emergency, substitute, PI, current expense, conversion, incremental, combination PI/current expense or combination bond/property tax levy
 - Not more than two elections in any calendar year, and if two, one of the two must be the general election – school district income tax levies and bond/school district income tax levy
 - Only primary or general election – conversion levies

Permissible Term

- PI and current expense levies – any number of years up to five or for a continuing period of time (assuming PI levy is for “general permanent improvements”)
- Emergency levies – any number of years up to 10
- Incremental, substitute and conversion levies – any number of years up to 10 or for a continuing period of time (for dollar incremental levy, renewals only)
- School district income taxes – a specified number of years or for a continuing period of time

Voting Threshold

- At least two-thirds affirmative vote on second resolution – PI, current expense and substitute levies
- At least two-thirds affirmative vote on initial resolution – conversion levies
- At least two-thirds affirmative vote on both resolutions – combination bond issue/property tax levy [RC 5705.218] and bond/school district income tax levy [RC 5748.08]
- At least a majority affirmative vote – all others

“Conversion”

- Emergency levies – initial resolution will state a dollar amount to be levied – certification will *convert* dollars to mills
- School district income tax levies – initial resolution will state a dollar amount to be levied – certification will *convert* dollars to an income tax rate rounded to nearest one-fourth of one percent
- As such, it pays to inquire in advance of Board’s consideration of proceedings

Certifications

- County Auditor/Fiscal Officer – ad valorem property tax levies of all types
- State Department of Taxation – school district income tax levies and conversion levies
- Rounding concerns
- Timing/turnaround concerns

2011 ELECTION DEADLINES

OHIO SCHOOL DISTRICT ISSUE ELECTIONS

Deadline Changes. Under Amended Substitute House Bill 48, effective July 2, 2010, the deadlines for school district election proceedings for issue elections in 2011 will be 15 days earlier than under prior law. For most proceedings for such elections, except those for emergency tax levies, school district income taxes and certain bond issues discussed below, the only specific deadline will be a requirement that all the proper materials be completed and filed with the Board of Elections at least 90 days before the date of the election.

Emergency Levies. In the case of emergency tax levies, the only change made by Amended Substitute House Bill 48 was to extend to 90 days (from 75 days) the deadline for filing all proceedings with the Board of Elections. However, as a practical matter, the first resolution will need to be adopted and the County Auditor's millage certification obtained sufficiently in advance of the 90-day deadline to permit the requisite filing to be made on that date. (Under current law, the deadline for adoption of the first resolution and its delivery to the County Auditor is 80 days; under both current law and the provisions of the Bill, the County Auditor has five days after receiving the first resolution to make the millage certification.)

School District Income Taxes. In the case of school district income taxes, the first resolution will be required to be adopted and filed with the State Tax Commissioner no later than the 100th day prior to the election. The remaining proceedings will be required to be taken and filings made with the Board of Elections no later than the 90th day prior to the election.

Certain Bond Issues. In the case of school districts intending to submit a bond issue requiring the consents of the State Superintendent of Public Instruction and the State Tax Commissioner because, after the issuance of those bonds, the school district's net indebtedness would exceed 4% of its tax valuation, the following will be required to be filed with the Department of Education and the Department of Taxation no later than the 120th day prior to the election: (i) a letter requesting the 4% consents, (ii) a statement of net bonded indebtedness on (recently revised) DTE Form 131 (if the board of education has not yet adopted its resolution of necessity for the bond issue as of that date, a draft DTE Form 131 may be submitted) and (iii) a "general certificate" setting forth certain specific information about the school district. Additional materials necessary to apply for 4% consents will be filed with both Departments no later than the 98th day before the election. The resolution of necessity, County Auditor's millage certifications and resolution to proceed will be required to be filed with the Board of Elections no later than the 90th day prior to the election.

Further filings may be required if, after the issuance of the bonds, the school district's net indebtedness would exceed 9% of its tax valuation.

Election Dates and Deadlines for 2011. Set forth below are the deadlines for the submission of most ballot issues, including property tax levies, school district income taxes and bond issues, for the two remaining election dates in 2011: August 2 and November 8.

<p style="text-align: center;">SPECIAL ELECTION – AUGUST 2, 2011</p> <p style="text-align: center;">120th day prior to election is April 4, 2011 (Monday) 100th day prior to election is April 24, 2011 (Sunday) 98th day prior to election is April 26, 2011 (Tuesday) 95th day prior to election is April 29, 2011 (Friday) 90th day prior to election is May 4, 2011 (Wednesday)</p>
<p style="text-align: center;">GENERAL ELECTION – NOVEMBER 8, 2011</p> <p style="text-align: center;">120th day prior to election is July 11, 2011 (Monday) 100th day prior to election is July 31, 2011 (Sunday) 98th day prior to election is August 2, 2011 (Tuesday) 95th day prior to election is August 5, 2011 (Friday) 90th day prior to election is August 10, 2011 (Wednesday)</p>

The purpose of this Report is to provide general information. Certain levies, such as the conversion levy, have deadlines associated with those not discussed in this brief report. Also, please note that certain County Auditor's may have additional requirements as to timing and documentation that applicable school districts need to be aware of. Please call the attorney with whom you work prior to undertaking any election proceedings for assistance in making certain that all of the proper steps are taken and deadlines are met.

2012 ELECTION DEADLINES

OHIO SCHOOL DISTRICT ISSUE ELECTIONS

Election Dates and Deadlines for 2012. Set forth below are the deadlines for the submission of most ballot issues, including property tax levies, school district income taxes and bond issues, for the three election dates in 2012: March 6*, August 7 and November 6. For many proceedings for such elections, excluding, for example, those for emergency tax levies, school district income taxes and certain bond issues discussed below, the only specific deadline will be a requirement that all the proper materials be completed and filed with the Board of Elections at least 90 days before the date of the election.

Emergency Levies. In the case of emergency tax levies, as a practical matter, the first resolution must be adopted sufficiently in advance (we recommend at least 95 days prior to the election) to permit (i) delivery of the first resolution to the County Auditor and obtaining the County Auditor's millage certification, (ii) adoption of the second resolution and (iii) the requisite filing to be made with the Board of Elections, all no later than the 90th day prior to the election.

School District Income Taxes. In the case of school district income taxes, the first resolution will be required to be adopted and filed with the State Tax Commissioner no later than the 100th day prior to the election. The remaining proceedings will be required to be taken and filings made with the Board of Elections no later than the 90th day prior to the election.

Certain Bond Issues. In the case of school districts intending to submit a bond issue requiring the consents of the State Superintendent of Public Instruction and the State Tax Commissioner because, after the issuance of those bonds, the school district's net indebtedness would exceed 4% of its tax valuation, the following will be required to be filed with the Department of Education and the Department of Taxation no later than the 120th day prior to the election: (i) a letter requesting the 4% consents, (ii) a statement of net bonded indebtedness on DTE Form 131 (if the board of education has not yet adopted its resolution of necessity for the bond issue as of that date, a draft DTE Form 131 may be submitted) and (iii) a "general certificate" setting forth certain specific information about the school district. Additional materials necessary to apply for 4% consents will need to be filed with both Departments no later than the 98th day before the election. The resolution of necessity, County Auditor's millage certifications and resolution to proceed will be required to be filed with the Board of Elections no later than the 90th day prior to the election.

Further filings may be required if, after the issuance of the bonds, the school district's net indebtedness would exceed 9% of its tax valuation.

* Reflects current law as of the date of this Report; it is unclear whether the State of Ohio will complete necessary legislative and Congressional redistricting in time to hold its primary on this date.

PRIMARY ELECTION – MARCH 6, 2012*

120th day prior to election is November 7, 2011 (Monday)
100th day prior to election is November 27, 2011 (Sunday)
98th day prior to election is November 29, 2011 (Tuesday)
95th day prior to election is December 2, 2011 (Friday)
90th day prior to election is December 7, 2011 (Wednesday)

SPECIAL ELECTION – AUGUST 7, 2012

120th day prior to election is April 9, 2012 (Monday)
100th day prior to election is April 29, 2012 (Sunday)
98th day prior to election is May 1, 2012 (Tuesday)
95th day prior to election is May 4, 2012 (Friday)
90th day prior to election is May 9, 2012 (Wednesday)

GENERAL ELECTION – NOVEMBER 6, 2012

120th day prior to election is July 9, 2012 (Monday)
100th day prior to election is July 29, 2012 (Sunday)
98th day prior to election is July 31, 2012 (Tuesday)
95th day prior to election is August 3, 2012 (Friday)
90th day prior to election is August 8, 2012 (Wednesday)

The purpose of this Report is to provide general information. Certain levies, such as the conversion levy, have additional deadlines not discussed in this brief report. Also, please note that certain County Auditor's may have additional requirements as to timing and documentation that applicable school districts need to be aware of. Please call us prior to undertaking any election proceedings so that we can assist in making certain that all of the proper steps are taken and deadlines are met.

* Reflects current law as of the date of this Report; it is uncertain whether the State of Ohio will complete necessary legislative and Congressional redistricting in time to hold the primary election on this date.

Capital Funding – An Overview

I. DEBT LIMITS

A. Direct Debt Limits

1. “Exempt” debt examples:
 - a. Current tax revenue notes
 - b. Tax anticipation notes
 - c. School bus notes and bonds
2. Unvoted
 - a. One-Tenth of One Percent (1/10%) of assessed value for general capital purposes
 - b. Nine-Tenths of One Percent (9/10%) for energy conservation purposes (Revised Code § 133.06)
3. Voted 9% Limit
 - a. OSFC Program Exceptions for School District Portion of Basic Project Cost (and Required LFIs and Site Acquisition) under Revised Code Chapter 3318
 - b. Special Needs Exception

B. Ten-Mill “Indirect” Debt Limit

1. Based on the following provisions of the Ohio Constitution:

a. *Article XII, Section 11*

“No bonded indebtedness of the state, or any political subdivision 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 in amounts sufficient to pay the interest on said bonds, and to provide a sinking fund for their final redemption at maturity.”

b. *Article XII, Section 2*

“No property, taxed according to value, shall be so taxed in excess of 1% 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 that proposition, or when provided for by the charter of a municipal corporation.”

c. *Article XII, Section 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.”

2. Supplemental Financial Statement Evidencing Compliance with Ten-Mill Limit (see following page)

**SUPPLEMENTAL FINANCIAL STATEMENT
(UNVOTED GENERAL OBLIGATION BONDS AND NOTES)**

I, County Auditor of _____ County, Ohio, certify in connection with the following proposed issue of Bonds/Notes: Issuer: _____ School District.
Principal amount \$ _____, Dated _____, 20__, that:

The tax rates required to produce an amount to pay the highest annual aggregate debt charges for the proposed issue and all other general obligation securities of the Issuer and the subdivisions overlapping it, which are payable from taxes subject to the 10-mill limitation of Article XII, Section 2, Ohio Constitution and applicable Revised Code provisions, based on the facts set forth below *and assuming that all levies were to be made for those debt charges* on the general tax list and duplicate, are as follows:

Overlapping Subdivisions	Tax Valuation	Bonds and Notes Outstanding Payable from Taxes Inside 10-Mill Limitation	Present Principal Amount	Debt charges for calendar year in which <u>they</u> will be the highest (20__)		Required Tax Rate in Mills for Two Previous Columns
				For Principal	For Interest	
County	\$	(a)Special Assessment Bonds and Notes. (b)All other Bonds and Notes.	\$	\$	\$	
City Or Village	\$	(a)Special Assessment Bonds and Notes. (b)All other Bonds and Notes.	\$	\$	\$	
School District	\$	Bonds and Notes.	\$	\$	\$	
Township (if any)	\$	(a)Special Assessment Bonds and Notes. (b)All other Bonds and Notes.	\$	\$	\$	
(other)	\$	Bonds and Notes.	\$	\$	\$	
			Proposed Issue	\$	\$	
					Total	

- INSTRUCTIONS:
1. When Notes constitute the proposed issue or are otherwise included above, use the estimated debt charges for the Bonds anticipated by the Notes as described in the note legislation.
 2. If the Issuer is a county, the information should relate to the county, and the combination of overlapping city/village, school district, township and other political subdivisions requiring the highest millage for debt charges inside the 10-mill limitation.
 3. Do not include voted bonds or notes.
 4. Fill in all blanks, using the word "NONE" where applicable.
 5. Include all required millage for debt charges even though no taxes are currently levied for those debt charges.

The date of this Statement is _____, 20__.

_____ County Auditor

II. GENERAL OBLIGATION BONDS AND NOTES

A. VOTED BONDS

1. May be submitted at any election.
 - a. Three election dates in presidential primary year; four election dates in other years.
 - b. Bond issue may be combined with a tax levy (see, e.g., Revised Code §§ 5705.218, 5748.08).
2. Maximum maturity cannot exceed estimated or statutory life of items being acquired or constructed.
 - a. Basic concept: Don't pay for something over a longer period of time than its useful life.
3. Proceeds must be used for stated purpose and for items having a usefulness of five years or more.
4. Non-exempt principal amount of all permanent improvement debt outstanding cannot exceed direct debt limits.
5. Voter approval means:
 - a. Bonds may be issued (money may be borrowed) up to amount approved; and
 - b. Taxes may be levied at whatever rate is necessary to pay debt service (principal and interest) on the bonds and any notes issued in anticipation of the bonds.
6. Advantage is that a new source of revenue is available to retire debt (including interest) – no effect on other funds.
7. Requires two Board of Education resolutions, intervening certification by County Auditor and delivery to Board of Elections at least 90 days prior to election.
8. Notice of election must be published at least ten days prior to date of election (under Revised Code §133.18).
9. If amount proposed would make total non-exempt debt of District exceed 4% of total assessed valuation, then (generally) consents of the State

Superintendent of Public Instruction and State Tax Commissioner must be obtained prior to election.

- a. Exception for certain CFAP-related bond issues (Revised Code §133.06(I)).
- b. Deadlines for submittal = 120 and 98 (the latter not statutory) days before election.
 - 120-day deadline submittals
 - Letter requesting consents
 - DTE 131 (statement of net bonded indebtedness) – at least draft
 - General certificate

10. If amount proposed would make total (non-exempt) debt of District exceed the 9% direct debt limitation, then (generally) special needs status approval must also be obtained.

- a. Exception for certain CFAP-related bond issues (Revised Code §133.06(I)).
- b. Deadlines for submittal (to State Superintendent of Public Instruction) = 120 and 98 (the latter not statutory) days before election.
 - 120-day deadline submittals
 - Cover letter
 - Special needs resolution
 - DTE 131 – at least draft
 - General certificate
 - Assessed valuation history/projection (certified)
 - Enrollment history/projection
 - Statement of project needs and associated cost report

BOND ISSUE ELECTION DECISIONS AND PROCEDURES

In connection with the submission of a bond issue to the electors, there are a number of decisions that a board of education will need to make within certain prescribed time periods.

When a bond issue is submitted, the electors are asked to authorize: (1) that the District may borrow up to the principal amount proposed on the ballot; and (2) that the Board may levy an additional tax at whatever rate is necessary to pay the principal of and interest on that borrowing.

The relevant election procedures and requirements, which are set forth in the Ohio Revised Code, generally authorize the Board of Education to submit the question of a bond issue in any amount which does not exceed the Board's borrowing "leeway", which is generally 9% of the School District's assessed valuation less the amount of any outstanding debt.

The first formal step in the required bond issue election procedure is the adoption of a resolution (commonly referred to as the "*resolution of necessity*") which declares that it is necessary to submit the bond issue and fixes five important pieces of information with regard to that issue. Those five pieces of information are:

- The election at which the bond issue is to be submitted
- The principal amount of the bond issue
- The number of years over which the bonds will be retired
- The estimated interest rate which the bonds will bear
- The "purpose" for which the bonds will be issued

Upon adoption of this resolution by the affirmative vote of at least three members of the Board of Education, a copy must be filed with the County Auditor's office.

Using certain information contained in that resolution (bullet nos. 2, 3 and 4 above), the County Auditor will calculate the "average annual millage" estimated to be required to retire the bond issue. This millage rate is an estimate of the average tax rate which would be levied to retire the principal of and interest on the proposed bonds and is based upon certain legally required assumptions which probably will not be correct when the bonds are issued. The calculation assumes, among other things, that the debt will be retired in equal annual principal installments.

The estimate of average annual millage that appears on the ballot is a function of the principal amount of the bond issue, the number of years over which the bonds will be retired, the estimated interest rate on the bonds and the School District's assessed valuation (as calculated for this particular purpose under Revised Code Section 133.18(C)). As indicated above, the principal amount of the bond issue, the number of years over which the bonds will be retired, and the estimated interest rate are all within the control of and set by the School District in the resolution of necessity.

The estimated interest rate can be set as low as possible in light of current and foreseeable interest rate conditions in the bond market (and, under a recent statutory amendment, may reflect adjustments for any anticipated direct payments expected to be received by the district from the federal government relating to the bonds and the effect of any federal tax credits anticipated to be available to owners of all or a portion of the bonds), and the useful life of the bond issue can be set as long as possible based on information obtained from the project architect. While there is some risk in being overly aggressive in this area (if one is too aggressive one may have difficulty keeping

one's actual annual bond issue millage at or under the estimate that appears on the ballot), that risk is moderated if one has experienced consistent assessed valuation growth and expects that growth to continue.

The actual tax which will be levied in any year the bonds are outstanding will be that rate which is required to raise the number of dollars which a board of education is committed to pay during that year. It may be higher or lower than the average millage, which appears on the ballot. The actual retirement schedule for the bonds can also be adjusted to try to minimize significant swings in the tax rate.

Following receipt of the County Auditor's calculations, the Board must then consider and adopt a second resolution (called the "*resolution to proceed*") and file it, together with the resolution of necessity and the County Auditor's calculations, with the County Board of Elections on or before the 90th day prior to the election. Because two resolutions must be adopted and an intervening certification received from the County Auditor prior to filing with the Board of Elections, sufficient lead time must be scheduled to complete all of these actions within the time prescribed by law. If statutory consents are required (as discussed above in this outline), even more lead time is needed to meet those deadlines.

To assist the Board in determining the information to be included in the resolution of necessity, the following is a formula providing an estimate of the millage rate, which the County Auditor will calculate. Some County Auditors use a slightly different formula than this one so it is possible the result may differ slightly from that which will be obtained from using this formula, but this formula should provide a reasonable estimate.

The formula is as follows:

$$M = \frac{[(N+1)(P)(I) + (2)(P)] \times 1000}{(2)(N)(A)}$$

Where:

- M = Average annual millage;**
- P = Principal amount of bond issue;**
- I = Estimated interest rate (expressed as a decimal, i.e. 4 3/4% = .0475);**
- N = Number of years over which the bonds will be retired; and**
- A = Assessed valuation of the District (which should be obtained from the County Auditor for this particular purpose).**

In considering the "purpose" for which the bonds will be submitted, care should be taken to make certain that two criteria are satisfied. First, the purpose clause cannot be misleading, although it may be possible to "fit" the purpose to particular circumstances by either specifically naming or describing the project which is to be constructed or by phrasing that project description in general terms. The Board may be the best judge of exactly how the purpose clause should be worded to obtain a maximum number of votes. Second, the purpose clause must include all of the items for

which the Board intends to spend the proceeds of the bonds, since expenditure of the bond proceeds will be limited to those items and areas described.

B. OSFC BOND ISSUES – Chapter 3318

1. Classroom Facilities Assistance Program (CFAP – Revised Code §§ 3318.01-.20)
 - a. Equity list (adjusted per pupil valuation)
 - Alternative rankings (HB 562 – 2008)
 - b. ½-mill maintenance levy, or permitted equivalent, required
 - c. “LFIs” – can be required or not required
 - d. Immediate co-funding
 - e. Fund 010/Fund 034
 - f. Investment income (Revised Code § 3318.12)
 - i. Relatively recent amendments to Revised Code § 3318.12 provide a variety of options for deposit of investment earnings on the portion of the project fund attributable to the district’s local share – contact your legal advisor
 - g. Unvoted general obligation securities options (Revised Code § 3318.052(E)).
 - h. Segmenting permitted (after HB 562 – 2008)
2. Expedited Local Partnership Program (ELPP – Revised Code § 3318.36)
 - a. At least two fiscal years away from CFAP
 - b. District-wide master facilities plan developed; discrete portion pursued; qualifying expenditures deducted from local share
 - c. ½-mill maintenance levy may be delayed
 - d. Delayed co-funding
3. Exceptional Needs Program (ENP – Revised Code § 3318.37)
 - a. To protect health and safety of students

- b. Generally at least fiscal three years away from CFAP
- c. Equity list ranking at or lower than 75th percentile (low wealth) or with a territory greater than 300 square miles (large land area)
- d. Single-building orientation (as opposed to district-wide)
- e. Immediate co-funding
- f. Later participation in CFAP

C. UNVOTED BONDS – Revised Code § 133.06

- 1. Principal amount outstanding at any one time cannot exceed direct debt limits.
- 2. No new tax authorized - must be retired from existing resources.
- 3. Requires at least one Board resolution (majority vote).

D. BOND ANTICIPATION NOTES – Revised Code § 133.22

- 1. Maximum maturity - 20 years from date of original issuance (if permanent improvements to be constructed or acquired will last at least 15 years).
- 2. If notes are outstanding longer than five years from date of original issue, then must subtract each year over five years from maximum maturity of bonds and must pay down principal:
 - a. No later than if bonds had been issued at end of five years; and
 - b. No less in amount than if bonds had been issued at end of five years.
- 3. If anticipating voted bonds, then Board can use voter-approved tax levy to support and retire.
- 4. If anticipating unvoted bonds, then must use existing sources to retire.
- 5. Requires at least one Board resolution (majority vote).

E. ENERGY CONSERVATION (“HB 264”) BORROWING – Revised Code §§ 133.06(G) and 3313.372

1. Board must contract with an “architect, professional engineer, or other person experienced in the design and implementation of energy conservation measures”.
2. That person reports to the Board recommending those measures which the person believes will significantly reduce energy consumption in buildings owned by the Board, with estimates of the costs of the proposed project and energy savings.
3. If the Board determines savings are likely to exceed the cost of pursuing energy conservation measures over next *fifteen* years, the Board can submit its findings to OSFC for approval.
4. If OSFC gives approval the Board can issue unvoted general obligation debt not to exceed 9/10 of 1% of total assessed valuation (see “Unvoted Bonds” above) or obligations subject to the 1% debt limit.
5. Board must annually monitor energy savings.

F. PERMANENT IMPROVEMENT TAX ANTICIPATION NOTES – Revised Code §§ 133.24 & 5705.21, § 5705.216

1. Anticipates a voted tax.
2. Maturity: generally up to number of years tax to be levied or five whichever is less, except can be for up to 10 years for “general permanent improvements”; level principal or level debt service; can be across fiscal year-end.
3. Maximum Amount:
 - Special Permanent Improvement – ½ estimated collections over 5 years
 - General Permanent Improvements – ½ estimated collections over 10 years
 - Income Tax – ½ first year’s estimated collection
4. Debt service paid from portion of the anticipated levy annually diverted to the Bond Retirement Fund.

5. Prerequisites to borrowing: voter-approved tax levy and proceedings relating thereto, together with at least one additional Board resolution (majority vote required).

III. LEASE-PURCHASE FINANCING OF EQUIPMENT AND SCHOOL BUILDINGS (Revised Code §§ 3313.37, .371 & .375)

A. Subject-to-Appropriation Financing

1. Essentiality
2. Less secure
3. Higher cost

B. No New Tax Levy as Source of Payment

C. Eligible Improvements

1. Office Equipment & Hardware and Software for Instructional Purposes
 - a. Five-year limit
2. Land
 - a. Five-year limit
3. Lease-Purchase Financing of School Buildings and Building Improvements

Lease-purchasing is a financing tool that has been available to public sector borrowers for many years. Properly structured, lease-purchase agreements permit governmental bodies to pay for capital improvements over time, at tax-exempt interest rates, without being subject to statutory and constitutional debt restrictions. Ohio school districts are accustomed to using lease-purchasing as a means for financing computer systems, office and maintenance equipment and motor vehicles. In recent years, following the General Assembly's enactment of a series of legislative amendments, Ohio school districts and educational service centers have used lease-purchasing to finance building improvements. As used in this section of the outline, the term "school" includes Ohio school districts and educational service centers, and the term "board" includes boards of education of school districts and governing boards of educational service centers.

A lease-purchase arrangement is in substance an installment sale agreement. The school makes installment payments that have a principal and interest component, and, at the end of the lease term, title to the leased

property transfers to the school. In order to satisfy certain statutory requirements and avoid characterization as a debt, a lease-purchase for school buildings or building improvements must be structured as a series of one-year obligations, renewable for up to 30 years. The annual renewal must be conditioned upon the appropriation of funds by the board for that fiscal year's lease payments.

The primary advantage to an Ohio school district of lease-purchasing over a traditional note or bond issue is that lease financing does not require voter approval and is not subject to the very restrictive 1/10th of 1% limit on unvoted school district general obligation debt. The other side of this coin, however, is that the school district may not levy additional taxes to cover the rent installments. Thus, the first consideration in lease-purchasing is to identify a predictable and secure source of funds that will not be needed for other purposes during the lease term. This task is particularly difficult in light of the uncertainties regarding school funding in Ohio. However, some school districts do have resources and opportunities for generating revenue for this purpose.

School districts should be aware that lease-purchasing may result in somewhat higher interest and transactional costs than bond financing. The interest rate is likely to be somewhat higher because of the greater credit risk involved in a lease-purchase. Unlike general obligation bonds, payment of a lease-purchase is subject to the school district's right not to appropriate funds and not to renew the agreement. Transactional costs may be higher because the structure of a lease-purchase arrangement is typically more complex and involves more parties than a general obligation bond issue. The extent to which interest rate and transactional costs exceed those for bonds may vary depending on factors such as (1) the essentiality of the facility to the school district's operations, (2) community support for the project and (3) the school district's financial condition. A financial advisor or investment banker can assist the board in analyzing the cost differential for a particular project.

Lease-purchase financing is an essential financing tool for educational service centers, which are not authorized to incur general obligation debt.

Lease-purchase arrangements are marketable securities that may be directly purchased by financial institutions, privately placed with a limited number of investors, or sold in a public offering. Short-term leases are sometimes purchased by one institution, often with provision for an interest rate adjustment after three to five years. However, for larger financings, and where the principal component is to be amortized over more than ten years, the lease may be marketed in the form of "certificates of participation" (or "COPs") to multiple investors. The "lessor" (often a shell corporation established solely for this purpose) assigns its right to the rent to a corporate trustee and directs the trustee to issue the participation certificates. The school district pays rent to the trustee, and the trustee distributes the rent to the certificate holders. The sale of the certificates provides the funds for construction of the building.

Revised Code Section 3313.375 authorizes schools to enter into lease-purchase agreements "for the construction, enlarging or other improvement, furnishing and equipping, lease, and eventual acquisition of

a building or improvements to a building for any school district, educational service center or community school purpose.”

In spite of its limitations, costs and complexities, lease-purchasing has been done successfully by many Ohio school districts. The leased facilities have included new school buildings, community centers and administration buildings for educational service centers, major renovations or additions to existing buildings, telecommunications systems, media centers, athletic facilities and bus garages. Each of these transactions has involved unique circumstances relating to the facilities or revenue sources of the schools, and for those schools lease-purchasing has provided a flexible, efficient means for financing building construction over a period of years without asking the voters to raise taxes.

V. FEDERAL TAX MATTERS

A. Tax Exemption Matters

1. Exclusion of Interest from Gross Income for Federal Income Tax Purposes
2. Qualified Tax-Exempt Obligations (QTEOs)
 - a. Attractiveness to Financial Institutions
 - i. Deductibility of Interest Carrying Cost (in addition to exclusion of interest from gross income)
 - b. \$10,000,000 per year and per issue limitation (currently)
 - i. Compare rebate exception below
3. State Income Tax Exemption
4. Municipal and School District Income Tax Exemptions

B. Arbitrage and Rebate Matters

1. Arbitrage is basically investing the proceeds of tax-exempt securities at a taxable yield in excess of the yield on those securities
 - a. School districts are not taxpayers
 - b. Requirement is to “rebate” positive arbitrage to federal treasury, subject to exceptions below
 - c. Negative arbitrage environment
2. Reasonable Expectations Test at Time of Issuance
 - a. Within 6 months of the issuance date, the school district will incur substantial binding obligations to third parties to expend at least 5% of the net sale proceeds on the project costs;
 - b. At least 85% of the net sale proceeds will be allocated to expenditures on the project by the end of three years; and
 - c. Completion of the project and allocation of the Net Sale Proceeds to expenditures on the project will proceed with due diligence to completion.

3. Exceptions to Requirement to Pay Rebate
 - a. Aggregate \$15,000,000 “Small Issuer Exception” for capital expenditures for the construction of public school facilities
 - b. 24-Month Spend-Down Exception:

<u>From Issuance Date to the Close of the Following</u>	<u>Cumulative Available Construction Proceeds Required to be Spent</u>
6 months	10%
12 months	45%
18 months	75%
24 months	100%

C. Refundings under Federal Tax Law

1. Current refundings
 - a. Pay off “refunded securities” within 90 days of issuance of “refunding securities”
 - i. Examples: BANs to BANs, BANs to Bonds and Bonds subject to current redemption.
 - b. Unlimited as to number.
2. Advance refundings
 - a. Refunding securities issued more than 90 days in advance of payment of refunded securities.
 - i. Favorable market conditions but outstanding bonds not subject to redemption.
 - ii. Customary escrow arrangements.
 - b. Limit of one tax-exempt advance refunding

D. Qualified Zone Academy Bonds (QZABs)

1. Need underlying authority to issue obligations
 - Bonds, notes, leases
2. Use of proceeds

- Renovating, providing equipment to, developing course materials for use at, or providing training in “academies”, namely:
 - Public schools providing education and training below college level;
 - Operating special academic program in cooperation with business to enhance curriculum and increase graduation/employment rates; and
 - Either:
 - Located in empowerment zone or enterprise community; or
 - Have at least 35% of their students reasonably expected to be eligible for free/reduced-cost lunches under National School Lunch Act
3. Certain terms set by federal government
 4. Recent federal laws
 - American Reinvestment and Recovery Act of 2009: made no substantive changes to QZAB law, but increased QZAB allocation to \$1.4 billion in each of 2009 and 2010 – up from \$400 million in 2009; 2011 QZAB allocation is back to \$400 million nationwide
 - Emergency Economic Stabilization Act of 2008: provides that 100% of available proceeds of new QZABs must be spent on qualifying purposes within 3 years; and provides that tax credit may be claimed by any taxpayer (not just certain financial institutions)
 5. Other requirements
 - Private entity must promise contribution equal to at least 10% of QZAB proceeds toward equipment, technical assistance or training, employee services, etc.

