



OHIO LEGISLATIVE SERVICE COMMISSION

Bill Analysis

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H.B. 124

132nd General Assembly
(As Introduced)

Reps. Brenner and Carfagna

BILL SUMMARY

- Authorizes a joint vocational school district (JVSD) to submit a property tax question to parts of the JVSD territory where the question was mistakenly omitted from the ballots in November 2015.
 - Limits those eligible to vote on the question to electors residing in those parts of the JVSD's territory who would have been eligible to vote on the question in 2015.
 - Excuses the JVSD from paying election costs related to the submission of that question.
 - Requires the Tax Commissioner and county auditors to consider the tax validly levied if the aggregate vote totals from the November 2015 election and the newly authorized election indicate passage of the levy.
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CONTENT AND OPERATION

Joint vocational school district renewal levy

Background

The bill authorizes an election on a multi-county JVSD property tax question that was improperly conducted in November 2015 by being submitted to only some of the electors eligible to vote on the question. Specifically, the question was submitted only to electors of the county in which the majority of the JVSD's residents live. The question did not appear on the ballots for the parts of the JVSD territory outside that county.¹

¹ Section 1(A).

The Ohio Supreme Court recently held that, in such a situation, the Tax Commissioner may refuse to authorize the levy of that tax on the grounds that the levy was not properly approved. In *State ex rel. Delaware Joint Vocational School District Board of Education v. Testa*, 2017-Ohio-796, the Tax Commissioner refused to authorize the Delaware JVSD's renewal levy on the grounds that the levy was submitted only to the JVSD's electors residing in Delaware County at the 2015 general election. Electors residing in the JVSD's territory in Franklin, Marion, Morrow, and Union Counties did not have the opportunity to vote on the question because the Delaware County Board of Elections did not submit the question to those counties' boards of elections. Ultimately, the Court upheld the Tax Commissioner's actions and found that the Commissioner had no legal duty to authorize the levy of the tax because it was not submitted to the electors in those other counties.

Resubmission of renewal levy

The bill authorizes the JVSD to resubmit the question of renewing the property tax to only those electors who were denied the opportunity to vote on the issue at the 2015 general election, provided those electors were eligible to vote in that election (see **COMMENT**). The resubmitted question may be considered at a November general election, March or May primary election, or an August special election, as specified by the JVSD. The JVSD may resubmit the renewal levy in any year, including a year that begins after the original levy expires.² (Under current law, a levy may only be renewed during the tax year it expires or the following year.³)

Election costs

The bill waives continuing law's requirement that the JVSD pay for all or a portion of the board of election's costs to place the resubmitted levy on the ballot. In general, if an issue appears on the ballot at a primary or general election, a subdivision is responsible for only the cost of ballots and advertising. But local subdivisions submitting a question at an August special election bear the entire cost of that election, which is apportioned between those subdivisions.⁴ The bill does not specify the party who will pay election costs for the resubmitted JVSD levy, but under continuing law, expenses of the board of elections not otherwise covered are paid from the county

² Section 1(B).

³ R.C. 5705.25, not in the bill.

⁴ R.C. 3501.01 and 3501.17(D), not in the bill.



treasury. Presumably, the counties within which the question is resubmitted would cover those costs.⁵

Post-election procedures

Under the bill, vote totals from the election results are added to the totals from the 2015 general election, when the question was considered by residents of the most populous county. If a majority of voters from the combined totals approve the question, the board of elections of the most populous county must certify the result to the Tax Commissioner, who must authorize the renewed levy for purposes of applying H.B. 920 tax reduction factors and the 10% and 2.5% property tax rollbacks and must direct county auditors to collect the tax for the current tax year, i.e., the tax year that includes the date the results are certified. Property tax rollbacks would apply to the renewal levy even if the tax is renewed in a year after the original levy expires.⁶ (Under continuing law, new levies are not subject to the rollbacks, but renewals of levies enacted before September 2015 continue to be so.⁷)

COMMENT

The requirement in the bill as to who qualifies as an elector for the resubmitted question might be challenged as unconstitutional on two grounds: (1) that it prevents otherwise eligible persons from voting on the levy, and (2) that it allows ineligible persons to vote.

The Ohio Constitution specifies that:

Every citizen of the United States, of the age of eighteen years, who has been a resident of the state, county, township, or ward, such time as may be provided by law, and has been registered to vote for thirty days, has the qualifications of an elector, and is entitled to vote at all elections.

A person who moved to an affected county of the JVSD, became a U.S. citizen, or turned 18 after November 2015, but who has been registered to vote in the county for 30 days before the election held under the bill, would not be able to vote in that election. As a result, a reviewing court might find that the bill violates such a person's constitutional

⁵ Section 1(B).

⁶ Section 1(B).

⁷ R.C. 319.302, not in the bill.



right to vote "at all elections." (Although the Ohio Constitution permits the legislature to extend the current law 30-day residency period, the U.S. Supreme Court has ruled that residency requirements exceeding 90 days violate the U.S. Constitution.)⁸

Conversely, it appears that a person who was eligible to vote in the JVSD in November 2015, but who is no longer eligible to vote, might be able to vote in the election held under the bill. For example, the person might have been adjudicated incompetent for the purpose of voting, which would make the person ineligible to vote under the Ohio Constitution. Or, the bill might be read to allow an incarcerated felon to vote, although the Revised Code specifies that such a person is ineligible.⁹

Finally, this provision of the bill might pose a practical problem for the boards of elections that are required to hold an election under the bill. It appears that each precinct would be required to have a current pollbook, along with a separate pollbook that reflects the voter rolls as of November 2015, in order to ensure that no electors who were not eligible as of November 2015 vote on the levy question, while allowing those electors to vote on other candidates and issues. It is not clear whether the boards would be able to produce a second, backdated set of pollbooks and ensure that each elector receives the correct ballots.

HISTORY

ACTION	DATE
Introduced	03-09-17

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⁸ Ohio Const. art. V, sec. 1; R.C. 3503.01, not in the bill; and *Dunn v. Blumstein*, 405 U.S. 330 (1972).

⁹ Ohio Const. art. V, secs. 4 and 6 and R.C. 2961.01 and 5122.301, not in the bill.

