

## Memorandum

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**To:** Ohio Association of County Boards of DD/Bridget Gargan, Erich Bittner  
**From:** Bricker & Eckler LLP/Rebecca Princehorn, Daniel May  
**Date:** December 7, 2020  
**Re:** Sub. H.B. 76/Potential for Legal Challenges to Ballot Language

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You have asked us to evaluate the potential for legal challenges to ballot language proposed by Sub. H.B. 76. We believe the ballot language is open to challenge due to its misleading nature.

Tax valuation varies by type of property. Not all property is assessed for taxation at 35% of appraised value, only residential and agricultural property. Different percentages are applied to agricultural property qualified for current agricultural use value (CAUV), commercial/industrial property, forested land, manufactured homes and public utility personal property, among others.

Sub. H.B. 76 proposes the following general ballot language:

*Shall a levy be imposed by the \_\_\_\_\_ for the purpose of \_\_\_\_\_, that the county auditor estimates will collect \$ \_\_\_\_\_ annually, at a rate not exceeding \_\_\_\_\_ mills for each \$1 of taxable value which amounts to \$ \_\_\_\_\_ for each \$100,000 of true value, for \_\_\_\_\_ (insert the number of years the levy is to be imposed, or that it will be levied for a continuing period of time), beginning \_\_\_\_\_ (insert first year the tax is to be levied), which will first be payable in calendar year \_\_\_\_\_ (insert the first calendar year in which the tax would be payable)?*

While the avowed purpose of Sub. H.B. 76 is “transparency,” the foregoing language assumes all taxpayers are residential/agricultural property owners. Use of the “effective rate” under H.B. 920 to mitigate overstated value is confusing. Additionally, the foregoing language is particularly inapplicable to bond issues, where the amount to be collected is not known until the bonds are sold. Under current law, that would be five months after the filing deadline at the earliest. A bond issue is totally different than a levy.

Regarding \$100,000 of true or appraised value, 24 of Ohio’s 88 counties have a median home value of less than \$100,000,<sup>1</sup> including 11 counties represented by members of the Senate General Government and Agency Review Committee.

Language that misleads, deceives or defrauds voters is subject to legal challenge. *State ex rel. Voters First v. Ohio Ballot Bd.*, 133 Ohio St. 3d 257 (2012). Here the language applies to only one class of voter, not all, and is simply wrong for bond issues. More recently, the Ohio Supreme Court has ruled the cumulative effect of technical defects in ballot language is fatal to its validity. *State ex rel. Schuck v. City of Columbus*, 152 Ohio St. 3d 590 (2018).

Regardless of the motivations behind Sub. H.B. 76, its language is defective and subject to legal challenge.

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<sup>1</sup> *Cleveland Plain Dealer*, Census Snapshot, January 11, 2019.  
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