

As Passed by the House

135th General Assembly

Regular Session

2023-2024

Sub. S. B. No. 91

Senator Schaffer

Cosponsors: Senators Cirino, Romanchuk, Antonio, Blessing, Brenner, Craig, DeMora, Gavarone, Hackett, Hoagland, Huffman, S., Johnson, Kunze, Lang, Manning, O'Brien, Reineke, Reynolds, Roegner, Smith, Sykes, Wilkin

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A BILL

To amend sections 4113.52 and 5705.41 of the Revised Code regarding fraud, waste, and abuse of public funds and to prohibit the expenditure of local tax revenues upon a vote of residents or without an appropriation.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO:

Section 1. That sections 4113.52 and 5705.41 of the Revised Code be amended to read as follows:

Sec. 4113.52. (A) (1) (a) All state officials and employees employed by or appointed to a state agency as defined in division (D) of section 121.41 of the Revised Code shall report alleged fraud, theft in office, or the misuse or

misappropriation of public money by a state official or employee 12
to the inspector general. All other state employees and elected 13
officials shall report fraud, theft in office, or the misuse or 14
misappropriation of public money to the auditor of state's 15
fraud-reporting system under section 117.103 of the Revised 16
Code. 17

(b) A person is required to make a report under division 18
(A) (1) (c) of this section if the person meets any of the 19
following: 20

(i) The person is elected to local public office. 21

(ii) The person is appointed to or within a local public 22
office. 23

(iii) The person has a fiduciary duty to a local public 24
office. 25

(iv) The person holds a supervisory position within a 26
local public office. 27

(v) The person is employed in the department or office 28
responsible for processing any revenue or expenses of the local 29
public office. 30

(c) If a person identified in division (A) (1) (b) of this 31
section, during the person's term of office or in the course of 32
the person's employment, becomes aware of fraud, theft in 33
office, or the misuse or misappropriation of public money, the 34
person shall timely notify the auditor of state via the auditor 35
of state's fraud-reporting system under section 117.103 of the 36
Revised Code or via other means. 37

(d) A person who serves as legal counsel, or who is 38
employed as legal counsel, for a local public office or a state 39

official or employee employed by or appointed to a state agency 40
is not required to make a report under division (A) (1) (a) or (c) 41
of this section concerning any communication received from a 42
client in an attorney-client relationship. 43

(e) Divisions (A) (1) (a), (b), and (c) of this section do 44
not apply to a prosecuting attorney, director of law, village 45
solicitor, or similar chief legal officer of a municipal 46
corporation, or to any employee of the prosecuting attorney, 47
director of law, village solicitor, or similar chief legal 48
officer of a municipal corporation. 49

(f) If an ~~employee~~ a person becomes aware in the course of 50
the ~~employee's~~ person's employment of a violation of any state 51
or federal statute or any ordinance or regulation of a political 52
subdivision that the ~~employee's~~ person's employer has authority 53
to correct, and the ~~employee~~ person reasonably believes that the 54
violation is a criminal offense that is likely to cause an 55
imminent risk of physical harm to persons or a hazard to public 56
health or safety, a felony, or an improper solicitation for a 57
contribution, the ~~employee~~ person orally shall notify the 58
~~employee's~~ person's supervisor or other responsible officer of 59
the ~~employee's~~ person's employer of the violation and 60
subsequently shall file with that supervisor or officer a 61
written report that provides sufficient detail to identify and 62
describe the violation. If the employer does not correct the 63
violation or make a reasonable and good faith effort to correct 64
the violation within twenty-four hours after the oral 65
notification or the receipt of the report, whichever is earlier, 66
the ~~employee~~ person may file a written report that provides 67
sufficient detail to identify and describe the violation with 68
the prosecuting authority of the county or municipal corporation 69
where the violation occurred, with a peace officer, with the 70

inspector general if the violation is within the inspector 71
general's jurisdiction, with the auditor of state's fraud- 72
reporting system under section 117.103 of the Revised Code if 73
applicable, or with any other appropriate public official or 74
agency that has regulatory authority over the employer and the 75
industry, trade, or business in which the employer is engaged. 76

~~(b)~~ (g) If ~~an employee~~ a person makes a report under 77
division ~~(A) (1) (a)~~ (A) (1) (f) of this section, the employer, 78
within twenty-four hours after the oral notification was made or 79
the report was received or by the close of business on the next 80
regular business day following the day on which the oral 81
notification was made or the report was received, whichever is 82
later, shall notify the ~~employee~~ person, in writing, of any 83
effort of the employer to correct the alleged violation or 84
hazard or of the absence of the alleged violation or hazard. 85

(2) If ~~an employee~~ a person becomes aware in the course of 86
the ~~employee's~~ person's employment of a violation of ~~chapter~~ 87
Chapter 3704., 3734., 6109., or 6111. of the Revised Code that 88
is a criminal offense, the ~~employee~~ person directly may notify, 89
either orally or in writing, any appropriate public official or 90
agency that has regulatory authority over the employer and the 91
industry, trade, or business in which the employer is engaged. 92

(3) If ~~an employee~~ a person becomes aware in the course of 93
the ~~employee's~~ person's employment of a violation by a fellow 94
employee of any state or federal statute, any ordinance or 95
regulation of a political subdivision, or any work rule or 96
company policy of the ~~employee's~~ person's employer and the 97
~~employee~~ person reasonably believes that the violation is a 98
criminal offense that is likely to cause an imminent risk of 99
physical harm to persons or a hazard to public health or safety, 100

a felony, or an improper solicitation for a contribution, the 101
~~employee-person~~ orally shall notify the ~~employee's-person's~~ 102
supervisor or other responsible officer of the ~~employee's-~~ 103
~~person's~~ employer of the violation and subsequently shall file 104
with that supervisor or officer a written report that provides 105
sufficient detail to identify and describe the violation. 106

(4) The reporting requirements under division (A) of this 107
section are not intended to infringe, and should not be 108
interpreted as infringing on, the constitutional right against 109
self-incrimination. 110

(B) Except as otherwise provided in division (C) of this 111
section, no employer shall take any disciplinary or retaliatory 112
action against an ~~employee-person~~ for making any report 113
authorized by division (A) (1) or (2) of this section, or as a 114
result of the ~~employee's-person's~~ having made any inquiry or 115
taken any other action to ensure the accuracy of any information 116
reported under either such division. No employer shall take any 117
disciplinary or retaliatory action against ~~an employee-a person~~ 118
for making any report authorized by division (A) (3) of this 119
section if the ~~employee-person~~ made a reasonable and good faith 120
effort to determine the accuracy of any information so reported, 121
or as a result of the ~~employee's-person's~~ having made any 122
inquiry or taken any other action to ensure the accuracy of any 123
information reported under that division. For purposes of this 124
division, disciplinary or retaliatory action by the employer 125
includes, without limitation, doing any of the following: 126

(1) Removing or suspending the ~~employee-person~~ from 127
employment; 128

(2) Withholding from the ~~employee-person~~ salary increases 129
or employee benefits to which the ~~employee-person~~ is otherwise 130

entitled;	131
(3) Transferring or reassigning the employee <u>person</u> ;	132
(4) Denying the employee <u>person</u> a promotion that otherwise would have been received;	133 134
(5) Reducing the employee <u>person</u> in pay or position.	135
(C) An employee <u>A person</u> shall make a reasonable and good faith effort to determine the accuracy of any information reported under division (A) (1) or (2) of this section. If the employee <u>person</u> who makes a report under either division fails to make such an effort, the employee <u>person</u> may be subject to disciplinary action by the employee's <u>person's</u> employer, including suspension or removal, for reporting information without a reasonable basis to do so under division (A) (1) or (2) of this section.	136 137 138 139 140 141 142 143 144
(D) If an employer takes any disciplinary or retaliatory action against an employee <u>person</u> as a result of the employee's <u>person's</u> having filed a report under division (A) of this section, the employee <u>person</u> may bring a civil action for appropriate injunctive relief or for the remedies set forth in division (E) of this section, or both, within one hundred eighty days after the date the disciplinary or retaliatory action was taken, in a court of common pleas in accordance with the Rules of Civil Procedure. A civil action under this division is not available to an employee <u>a person</u> as a remedy for any disciplinary or retaliatory action taken by an appointing authority against the employee <u>person</u> as a result of the employee's <u>person's</u> having filed a report under division (A) of section 124.341 of the Revised Code.	145 146 147 148 149 150 151 152 153 154 155 156 157 158
(E) The court, in rendering a judgment for the employee	159

person in an action brought pursuant to division (D) of this 160
section, may order, as it determines appropriate, reinstatement 161
of the ~~employee-person~~ to the same position that the ~~employee-~~ 162
person held at the time of the disciplinary or retaliatory 163
action and at the same site of employment or to a comparable 164
position at that site, the payment of back wages, full 165
reinstatement of fringe benefits and seniority rights, or any 166
combination of these remedies. The court also may award the 167
prevailing party all or a portion of the costs of litigation 168
and, if the ~~employee-person~~ who brought the action prevails in 169
the action, may award the prevailing ~~employee-person~~ reasonable 170
attorney's fees, witness fees, and fees for experts who testify 171
at trial, in an amount the court determines appropriate. If the 172
court determines that an employer deliberately has violated 173
division (B) of this section, the court, in making an award of 174
back pay, may include interest at the rate specified in section 175
1343.03 of the Revised Code. 176

(F) Any report filed with the inspector general under this 177
section shall be filed as a complaint in accordance with section 178
121.46 of the Revised Code. 179

(G) As used in this section: 180

(1) "Contribution" has the same meaning as in section 181
3517.01 of the Revised Code. 182

(2) "Improper solicitation for a contribution" means a 183
solicitation for a contribution that satisfies all of the 184
following: 185

(a) The solicitation violates division (B), (C), or (D) of 186
section 3517.092 of the Revised Code; 187

(b) The solicitation is made in person by a public 188

official or by an employee who has a supervisory role within the public office;

(c) The public official or employee knowingly made the solicitation, and the solicitation violates division (B), (C), or (D) of section 3517.092 of the Revised Code;

(d) The employee reporting the solicitation is an employee of the same public office as the public official or the employee with the supervisory role who is making the solicitation.

(3) "Misappropriation of public money" means knowingly using public money or public property for an unauthorized, improper, or unlawful purpose to serve a private or personal benefit or interest.

(4) "Misuse of public money" means knowingly using public money or public property in a manner not authorized by law.

(5) "Public office" has the same meaning as in section 117.01 of the Revised Code.

(H) Nothing in this section shall be construed to limit the authority of an auditor to make inquiries or interview state or local government employees or officials or otherwise perform audit procedures related to fraud during the course of an audit or attestation engagement.

Sec. 5705.41. No subdivision or taxing unit shall:

(A) Make any appropriation of money except as provided in Chapter 5705. of the Revised Code; provided, that the authorization of a bond issue shall be deemed to be an appropriation of the proceeds of the bond issue for the purpose for which such bonds were issued, but no expenditure shall be made from any bond fund until first authorized by the taxing

authority;	217
(B) <u>(B) (1) Make any expenditure of money unless it has the</u>	218
<u>fiscal officer of the subdivision or taxing authority has</u>	219
<u>certified that all of the following apply:</u>	220
<u>(a) The expenditure has been appropriated as provided in</u>	221
<u>such chapterChapter 5705. of the Revised Code;</u>	222
<u>(b) The expenditure has been appropriated by the</u>	223
<u>subdivision's or taxing unit's legislative authority;</u>	224
<u>(c) The expenditure is not compelled by a process</u>	225
<u>authorizing management, control, distribution, or disbursement</u>	226
<u>of an appropriation or expenditure by a vote of the</u>	227
<u>subdivision's or taxing unit's residents.</u>	228
<u>(2) Nothing in division (B) (1) of this section prohibits a</u>	229
<u>subdivision or taxing unit from doing either of the following:</u>	230
<u>(a) Authorizing a bond issue otherwise permitted by law;</u>	231
<u>(b) Soliciting public input related to the management,</u>	232
<u>control, distribution, or disbursement of funds.</u>	233
(C) Make any expenditure of money except by a proper	234
warrant drawn against an appropriate fund;	235
(D) (1) Except as otherwise provided in division (D) (2) of	236
this section and section 5705.44 of the Revised Code, make any	237
contract or give any order involving the expenditure of money	238
unless there is attached thereto a certificate of the fiscal	239
officer of the subdivision that the amount required to meet the	240
obligation or, in the case of a continuing contract to be	241
performed in whole or in part in an ensuing fiscal year, the	242
amount required to meet the obligation in the fiscal year in	243
which the contract is made, has been lawfully appropriated for	244

such purpose and is in the treasury or in process of collection 245
to the credit of an appropriate fund free from any previous 246
encumbrances. This certificate need be signed only by the 247
subdivision's fiscal officer. Every such contract made without 248
such a certificate shall be void, and no warrant shall be issued 249
in payment of any amount due thereon. If no certificate is 250
furnished as required, upon receipt by the taxing authority of 251
the subdivision or taxing unit of a certificate of the fiscal 252
officer stating that there was at the time of the making of such 253
contract or order and at the time of the execution of such 254
certificate a sufficient sum appropriated for the purpose of 255
such contract and in the treasury or in process of collection to 256
the credit of an appropriate fund free from any previous 257
encumbrances, such taxing authority may authorize the drawing of 258
a warrant in payment of amounts due upon such contract, but such 259
resolution or ordinance shall be passed within thirty days after 260
the taxing authority receives such certificate; provided that, 261
if the amount involved is less than one hundred dollars in the 262
case of counties or three thousand dollars in the case of all 263
other subdivisions or taxing units, the fiscal officer may 264
authorize it to be paid without such affirmation of the taxing 265
authority of the subdivision or taxing unit, if such expenditure 266
is otherwise valid. 267

(2) The board of county commissioners may adopt a 268
resolution exempting county purchases of one thousand dollars or 269
less from the requirement of division (D)(1) of this section 270
that a certificate be attached to any contract or order 271
involving the expenditure of money. The resolution shall state 272
the dollar amount that is exempted from the certificate 273
requirement and whether the exemption applies to all purchases, 274
to one or more specific classes of purchases, or to the purchase 275

of one or more specific items. Prior to the adoption of the 276
resolution, the board shall give written notice to the county 277
auditor that it intends to adopt the resolution. The notice 278
shall state the dollar amount that is proposed to be exempted 279
and whether the exemption would apply to all purchases, to one 280
or more specific classes of purchases, or to the purchase of one 281
or more specific items. The county auditor may review and 282
comment on the proposal, and shall send any comments to the 283
board within fifteen days after receiving the notice. The board 284
shall wait at least fifteen days after giving the notice to the 285
auditor before adopting the resolution. A person authorized to 286
make a county purchase in a county that has adopted such a 287
resolution shall prepare and file with the county auditor, 288
within three business days after incurring an obligation not 289
requiring a certificate, or within any other period of time the 290
board of county commissioners specifies in the resolution, a 291
written or electronically transferred document specifying the 292
purpose and amount of the expenditure, the date of the purchase, 293
the name of the vendor, the specific appropriation items from 294
which the expenditures are to be made, and any additional 295
information as the auditor of state may prescribe. 296

(3) Upon certification by the auditor or other chief 297
fiscal officer that a certain sum of money, not in excess of an 298
amount established by resolution or ordinance adopted by a 299
majority of the members of the legislative authority of the 300
subdivision or taxing unit, has been lawfully appropriated, 301
authorized, or directed for a certain purpose and is in the 302
treasury or in the process of collection to the credit of a 303
specific line-item appropriation account in a certain fund free 304
from previous and then outstanding obligations or 305
certifications, then for such purpose and from such line-item 306

appropriation account in such fund, over a period not extending 307
beyond the end of the fiscal year, expenditures may be made, 308
orders for payment issued, and contracts or obligations calling 309
for or requiring the payment of money made and assumed; 310
provided, that the aggregate sum of money included in and called 311
for by such expenditures, orders, contracts, and obligations 312
shall not exceed the sum so certified. Such a certification need 313
be signed only by the fiscal officer of the subdivision or the 314
taxing district and may, but need not, be limited to a specific 315
vendor. An itemized statement of obligations incurred and 316
expenditures made under such certificate shall be rendered to 317
the auditor or other chief fiscal officer before another such 318
certificate may be issued, and not more than one such 319
certificate shall be outstanding at a time. 320

In addition to providing the certification for 321
expenditures as specified in this division, a subdivision also 322
may make expenditures, issue orders for payment, and make 323
contracts or obligations calling for or requiring the payment of 324
money made and assumed for specified permitted purposes from a 325
specific line-item appropriation account in a specified fund for 326
a sum of money upon the certification by the fiscal officer of 327
the subdivision that this sum of money has been lawfully 328
appropriated, authorized, or directed for a permitted purpose 329
and is in the treasury or in the process of collection to the 330
credit of the specific line-item appropriation account in the 331
specified fund free from previous and then-outstanding 332
obligations or certifications; provided that the aggregate sum 333
of money included in and called for by the expenditures, orders, 334
and obligations shall not exceed the certified sum. The purposes 335
for which a subdivision may lawfully appropriate, authorize, or 336
issue such a certificate are the services of an accountant, 337

architect, attorney at law, physician, professional engineer, 338
construction project manager, consultant, surveyor, or appraiser 339
by or on behalf of the subdivision or contracting authority; 340
fuel oil, gasoline, food items, roadway materials, and 341
utilities; and any purchases exempt from competitive bidding 342
under section 125.04 of the Revised Code and any other specific 343
expenditure that is a recurring and reasonably predictable 344
operating expense. Such a certification shall not extend beyond 345
the end of the fiscal year or, in the case of a board of county 346
commissioners that has established a quarterly spending plan 347
under section 5705.392 of the Revised Code, beyond the quarter 348
to which the plan applies. Such a certificate shall be signed by 349
the fiscal officer and may, but need not, be limited to a 350
specific vendor. An itemized statement of obligations incurred 351
and expenditures made under such a certificate shall be rendered 352
to the fiscal officer for each certificate issued. More than one 353
such certificate may be outstanding at any time. 354

In any case in which a contract is entered into upon a per 355
unit basis, the head of the department, board, or commission for 356
the benefit of which the contract is made shall make an estimate 357
of the total amount to become due upon such contract, which 358
estimate shall be certified in writing to the fiscal officer of 359
the subdivision. Such a contract may be entered into if the 360
appropriation covers such estimate, or so much thereof as may be 361
due during the current year. In such a case the certificate of 362
the fiscal officer based upon the estimate shall be a sufficient 363
compliance with the law requiring a certificate. 364

Any certificate of the fiscal officer attached to a 365
contract shall be binding upon the political subdivision as to 366
the facts set forth therein. Upon request of any person 367
receiving an order or entering into a contract with any 368

political subdivision, the certificate of the fiscal officer 369
shall be attached to such order or contract. "Contract" as used 370
in this section excludes current payrolls of regular employees 371
and officers. 372

(E) Taxes and other revenue in process of collection, or 373
the proceeds to be derived from authorized bonds, notes, or 374
certificates of indebtedness sold and in process of delivery, 375
shall for the purpose of this section be deemed in the treasury 376
or in process of collection and in the appropriate fund. This 377
section applies neither to the investment of sinking funds by 378
the trustees of such funds, nor to investments made under 379
sections 731.56 to 731.59 of the Revised Code. 380

No district authority shall, in transacting its own 381
affairs, do any of the things prohibited to a subdivision by 382
this section, but the appropriation referred to shall become the 383
appropriation by the district authority, and the fiscal officer 384
referred to shall mean the fiscal officer of the district 385
authority. 386

Section 2. That existing sections 4113.52 and 5705.41 of 387
the Revised Code are hereby repealed. 388