

# AN ACT

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 to the inspector general. All other state employees and elected officials shall report fraud, theft in office, or the misuse or misappropriation of public money to the auditor of state's fraud-reporting system under section 117.103 of the Revised Code.

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

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

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

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

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

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

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

(d) A person who serves as legal counsel, or who is employed as legal counsel, for a local public office or a state official or employee employed by or appointed to a state agency is not required to make a report under division (A)(1)(a) or (c) of this section concerning any communication received from a client in an attorney-client relationship.

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

of a municipal corporation.

~~(f) If an employee-a person~~ becomes aware in the course of the ~~employee's-person's~~ employment of a violation of any state or federal statute or any ordinance or regulation of a political subdivision that the ~~employee's-person's~~ employer has authority to correct, and the ~~employee-person~~ reasonably believes that the violation is a criminal offense that is likely to cause an imminent risk of physical harm to persons or a hazard to public health or safety, a felony, or an improper solicitation for a contribution, the ~~employee-person~~ orally shall notify the ~~employee's-person's~~ supervisor or other responsible officer of the ~~employee's-person's~~ employer of the violation and subsequently shall file with that supervisor or officer a written report that provides sufficient detail to identify and describe the violation. If the employer does not correct the violation or make a reasonable and good faith effort to correct the violation within twenty-four hours after the oral notification or the receipt of the report, whichever is earlier, the ~~employee-person~~ may file a written report that provides sufficient detail to identify and describe the violation with the prosecuting authority of the county or municipal corporation where the violation occurred, with a peace officer, with the inspector general if the violation is within the inspector general's jurisdiction, with the auditor of state's fraud-reporting system under section 117.103 of the Revised Code if applicable, or with any other appropriate public official or agency that has regulatory authority over the employer and the industry, trade, or business in which the employer is engaged.

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

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

(3) If ~~an employee-a person~~ becomes aware in the course of the ~~employee's-person's~~ employment of a violation by a fellow employee of any state or federal statute, any ordinance or regulation of a political subdivision, or any work rule or company policy of the ~~employee's-person's~~ employer and the ~~employee-person~~ reasonably believes that the violation is a criminal offense that is likely to cause an imminent risk of physical harm to persons or a hazard to public health or safety, a felony, or an improper solicitation for a contribution, the ~~employee-person~~ orally shall notify the ~~employee's-person's~~ supervisor or other responsible officer of the ~~employee's-person's~~ employer of the violation and subsequently shall file with that supervisor or officer a written report that provides sufficient detail to identify and describe the violation.

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

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

- (1) Removing or suspending the ~~employee-person~~ from employment;
- (2) Withholding from the ~~employee-person~~ salary increases or employee benefits to which the ~~employee-person~~ is otherwise entitled;
- (3) Transferring or reassigning the ~~employee-person~~;
- (4) Denying the ~~employee-person~~ a promotion that otherwise would have been received;
- (5) Reducing the ~~employee-person~~ in pay or position.

(C) ~~An employee-A person~~ 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-person~~ who makes a report under either division fails to make such an effort, the ~~employee-person~~ may be subject to disciplinary action by the ~~employee's-person's~~ employer, including suspension or removal, for reporting information without a reasonable basis to do so under division (A)(1) or (2) of this section.

(D) If an employer takes any disciplinary or retaliatory action against an ~~employee-person~~ as a result of the ~~employee's-person's~~ having filed a report under division (A) of this section, the ~~employee-person~~ 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-a person~~ as a remedy for any disciplinary or retaliatory action taken by an appointing authority against the ~~employee-person~~ as a result of the ~~employee's-person's~~ having filed a report under division (A) of section 124.341 of the Revised Code.

(E) The court, in rendering a judgment for the ~~employee-person~~ in an action brought pursuant to division (D) of this section, may order, as it determines appropriate, reinstatement of the ~~employee-person~~ to the same position that the ~~employee-person~~ held at the time of the disciplinary or retaliatory action and at the same site of employment or to a comparable position at that site, the

payment of back wages, full reinstatement of fringe benefits and seniority rights, or any combination of these remedies. The court also may award the prevailing party all or a portion of the costs of litigation and, if the ~~employee-person~~ who brought the action prevails in the action, may award the prevailing ~~employee-person~~ reasonable attorney's fees, witness fees, and fees for experts who testify at trial, in an amount the court determines appropriate. If the court determines that an employer deliberately has violated division (B) of this section, the court, in making an award of back pay, may include interest at the rate specified in section 1343.03 of the Revised Code.

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

(G) As used in this section:

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

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

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

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

~~(B)~~(B)(1) Make any expenditure of money unless it has the fiscal officer of the subdivision or taxing authority has certified that all of the following apply:

(a) The expenditure has been appropriated as provided in such ~~chapter~~Chapter 5705. of the

Revised Code;

(b) The expenditure has been appropriated by the subdivision's or taxing unit's legislative authority;

(c) The expenditure is not compelled by a process authorizing management, control, distribution, or disbursement of an appropriation or expenditure by a vote of the subdivision's or taxing unit's residents.

(2) Nothing in division (B)(1) of this section prohibits a subdivision or taxing unit from doing either of the following:

(a) Authorizing a bond issue otherwise permitted by law;

(b) Soliciting public input related to the management, control, distribution, or disbursement of funds.

(C) Make any expenditure of money except by a proper warrant drawn against an appropriate fund;

(D)(1) Except as otherwise provided in division (D)(2) of this section and section 5705.44 of the Revised Code, make any contract or give any order involving the expenditure of money unless there is attached thereto a certificate of the fiscal officer of the subdivision that the amount required to meet the obligation or, in the case of a continuing contract to be performed in whole or in part in an ensuing fiscal year, the amount required to meet the obligation in the fiscal year in which the contract is made, has been lawfully appropriated for such purpose and is in the treasury or in process of collection to the credit of an appropriate fund free from any previous encumbrances. This certificate need be signed only by the subdivision's fiscal officer. Every such contract made without such a certificate shall be void, and no warrant shall be issued in payment of any amount due thereon. If no certificate is furnished as required, upon receipt by the taxing authority of the subdivision or taxing unit of a certificate of the fiscal officer stating that there was at the time of the making of such contract or order and at the time of the execution of such certificate a sufficient sum appropriated for the purpose of such contract and in the treasury or in process of collection to the credit of an appropriate fund free from any previous encumbrances, such taxing authority may authorize the drawing of a warrant in payment of amounts due upon such contract, but such resolution or ordinance shall be passed within thirty days after the taxing authority receives such certificate; provided that, if the amount involved is less than one hundred dollars in the case of counties or three thousand dollars in the case of all other subdivisions or taxing units, the fiscal officer may authorize it to be paid without such affirmation of the taxing authority of the subdivision or taxing unit, if such expenditure is otherwise valid.

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

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

(3) Upon certification by the auditor or other chief fiscal officer that a certain sum of money, not in excess of an amount established by resolution or ordinance adopted by a majority of the members of the legislative authority of the subdivision or taxing unit, has been lawfully appropriated, authorized, or directed for a certain purpose and is in the treasury or in the process of collection to the credit of a specific line-item appropriation account in a certain fund free from previous and then outstanding obligations or certifications, then for such purpose and from such line-item appropriation account in such fund, over a period not extending beyond the end of the fiscal year, expenditures may be made, orders for payment issued, and contracts or obligations calling for or requiring the payment of money made and assumed; provided, that the aggregate sum of money included in and called for by such expenditures, orders, contracts, and obligations shall not exceed the sum so certified. Such a certification need be signed only by the fiscal officer of the subdivision or the taxing district and may, but need not, be limited to a specific vendor. An itemized statement of obligations incurred and expenditures made under such certificate shall be rendered to the auditor or other chief fiscal officer before another such certificate may be issued, and not more than one such certificate shall be outstanding at a time.

In addition to providing the certification for expenditures as specified in this division, a subdivision also may make expenditures, issue orders for payment, and make contracts or obligations calling for or requiring the payment of money made and assumed for specified permitted purposes from a specific line-item appropriation account in a specified fund for a sum of money upon the certification by the fiscal officer of the subdivision that this sum of money has been lawfully appropriated, authorized, or directed for a permitted purpose and is in the treasury or in the process of collection to the credit of the specific line-item appropriation account in the specified fund free from previous and then-outstanding obligations or certifications; provided that the aggregate sum of money included in and called for by the expenditures, orders, and obligations shall not exceed the certified sum. The purposes for which a subdivision may lawfully appropriate,

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

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

Any certificate of the fiscal officer attached to a contract shall be binding upon the political subdivision as to the facts set forth therein. Upon request of any person receiving an order or entering into a contract with any political subdivision, the certificate of the fiscal officer shall be attached to such order or contract. "Contract" as used in this section excludes current payrolls of regular employees and officers.

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

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

SECTION 2. That existing sections 4113.52 and 5705.41 of the Revised Code are hereby repealed.

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*Speaker* \_\_\_\_\_ *of the House of Representatives.*

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*President* \_\_\_\_\_ *of the Senate.*

Passed \_\_\_\_\_, 20\_\_\_\_

Approved \_\_\_\_\_, 20\_\_\_\_

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*Governor.*



Sub. S. B. No. 91

135th G.A.

The section numbering of law of a general and permanent nature is complete and in conformity with the Revised Code.

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*Director, Legislative Service Commission.*

Filed in the office of the Secretary of State at Columbus, Ohio, on the \_\_\_\_ day of \_\_\_\_\_, A. D. 20 \_\_\_\_.

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*Secretary of State.*

File No. \_\_\_\_\_ Effective Date \_\_\_\_\_