

Memorandum

To: Ohio Association of County Boards of DD/Bridget Gargan, Erich Bittner
From: Bricker & Eckler LLP/Rebecca Princehorn, Daniel May
Date: March 10, 2021
Re: H.B. 140/Potential for Legal Challenges to Ballot Language

You have asked us to evaluate the potential for legal challenges to ballot language proposed by H.B. 140. We believe the ballot language is open to challenge due to its misleading nature in several key areas (emphasized below):

*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 the county auditor's appraised 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)?*

Estimated Annual Collections—The County Auditor's estimates are just that, estimates. In Stark County, Nexus Gas Transmission LLC only paid half of their most recent property tax bill, which was already reduced due to a valuation reduction appeal. The phrase is misleading.

Taxable Value—Taxable value 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. This is confusing as it is different from appraised value.

\$100,000—This benchmark is too high for ballot purposes for much of Ohio thus contradictory.

County Auditor's Appraised Value—This is defined as true value in money of real property only.

While the avowed purpose of H.B. 140 is "transparency," the foregoing language assumes all taxpayers are residential/agricultural property owners and does not acknowledge rollbacks and the recently expanded homestead exemption. Additionally, use of an existing levy's "effective rate" under R.C. 319.301 in the renewal context to mitigate inconsistent definitions of value is further confusing.

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). 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). Here the language really applies to only one class of voter, not all, and is confusing and difficult to implement.