

**As Concurred by the Senate**

**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, Sykes, Wilkin**

**Representatives Barhorst, Brennan, Brown, Carruthers, Claggett, Click, Cross, Dell'Aquila, Demetriou, Dobos, Fowler Arthur, Galonski, Gross, Hall, Hillyer, Holmes, Hoops, Humphrey, Johnson, Jones, LaRe, Loychik, Mathews, McClain, Merrin, Miller, J., Miller, K., Miller, M., Mohamed, Oelslager, Patton, Pavliga, Peterson, Plummer, Richardson, Robb Blasdel, Roemer, Rogers, Santucci, Schmidt, Seitz, Swearingen, Sweeney, Thomas, C., Wiggam, Williams, Willis, Young, T.**

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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 <del>employee</del> <u>person</u> ;	132
(4) Denying the <del>employee</del> <u>person</u> a promotion that otherwise would have been received;	133 134
(5) Reducing the <del>employee</del> <u>person</u> in pay or position.	135
(C) <del>An employee</del> <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 <del>employee</del> <u>person</u> who makes a report under either division fails to make such an effort, the <del>employee</del> <u>person</u> may be subject to disciplinary action by the <del>employee's</del> <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 <del>employee</del> <u>person</u> as a result of the <del>employee's</del> <u>person's</u> having filed a report under division (A) of this section, the <del>employee</del> <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 <del>employee</del> <u>a person</u> as a remedy for any disciplinary or retaliatory action taken by an appointing authority against the <del>employee</del> <u>person</u> as a result of the <del>employee's</del> <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 <del>employee</del>	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
<del>(B)</del> <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 <del>chapter</del>Chapter 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