



Ohio Revised Code

Section 133.25 Levying property tax to debt charges on securities payable from property taxes.

Effective: November 24, 1995

Legislation: House Bill 251 - 121st General Assembly

(A) After the issuance of general obligation securities or of securities to which section 133.24 of the Revised Code applies, the taxing authority of the subdivision shall include in its annual tax budget, and levy a property tax in a sufficient amount, with any other moneys available for the purpose, to pay the debt charges on the securities payable from property taxes. The necessary property tax rate shall be included in the fiscal year tax budget that is certified by the subdivision to the county budget commission, and, if within the ten-mill limitation, shall be without diminution by reason of section 5705.313 of the Revised Code or any similar provisions.

(B) If the taxing authority determines it to be necessary or appropriate, and if not prohibited by other law, legislation relating to Chapter 133. securities may, or that legislation may provide for proceedings that may, contain or provide for any one or more or combination of the following:

(1) The pledge to the payment of debt charges of, and related covenants to levy, charge, collect, deposit, and apply, receipts of the subdivision lawfully available for the purpose, referred to in this division (B) as pledged receipts, including, without limitation, ad valorem property taxes as permitted by law, income taxes, excises, utility and service revenues, local government fund, school foundation, and moneys described in Section 5a of Article XII, Ohio Constitution, and any other receipts from taxes, excises, permits, licenses, fines, or other sources of revenue of or of revenue distributions to the subdivision, and covenants for the establishment, investment, segregation, and maintenance of any funds or reserves in connection with the securities. No pledge or covenant may be made that impairs the express contract rights of the holders of outstanding securities of the subdivision.

(2) Designation of a bank or trust company authorized to exercise corporate trust powers in this state as a fiscal agent for the securities, which fiscal agent may be a purchaser of any securities and fiscal agent for any other securities of the subdivision, and provision for the periodic deposit of pledged receipts in one or more separate bank accounts, funds, or other accounts established with the fiscal



agent, including provision for pledged receipts collected or paid by the state or another subdivision to be transferred, by the appropriate officer of the state or other subdivision having charge of the distribution of the pledged receipts to the subdivision, directly to the fiscal agent for such deposit, which officers shall transfer such pledged receipts in accordance with this division and the legislation. The fiscal agent shall disburse moneys so held in accordance with the legislation, including the transfer of moneys to paying agents or to persons providing credit enhancement facilities at the times and in the amounts required. Until needed for that purpose, and subject to any limitations in the legislation, the fiscal agent shall either deposit such moneys on behalf of the subdivision in an institution that is eligible to become a public depository pursuant to section 135.03 of the Revised Code or invest the moneys on behalf of the subdivision in obligations that are under applicable law lawful for the investment of the particular moneys. Divisions (D), (E), and (G) of section 135.04 and sections 135.08 and 135.09 of the Revised Code do not apply to any such deposits or investments. Amounts so held and received by a fiscal agent shall be accounted for in the appropriate special funds of the subdivision as if held in the treasury of the subdivision, and the fiscal agent shall provide such information to the subdivision and to the auditor of state as is necessary for the purpose.

(3) Covenants of the subdivision and other provisions to protect and safeguard the security and rights of the holders of the securities and of the providers of any credit enhancement facilities and provisions for defeasance, including, without limiting the generality of the foregoing, such covenants and provisions as to:

(a) Establishment and maintenance of the funds to be held by a fiscal agent as provided in this division, the times, amounts, and levels for deposit to such funds, and the obligations in which the proceeds of such funds may be invested pending their use, subject to limitations on investment of public funds otherwise provided for by law or charter or by the legislation;

(b) The appointment, rights, powers, and duties of the fiscal agent, and vesting in the fiscal agent all or any of those rights, powers, and duties in trust;

(c) Compliance with the provisions of this chapter and other laws applicable to the payment of debt charges on securities of the subdivision, including Chapter 5705. of the Revised Code;



(d) Conditions that would give rise to an event of default under the terms of the legislation, and actions and remedies that any fiscal agent may take or assert on behalf of the holders of the securities.

(4) As rights and remedies of the holders of securities, in addition to any other rights and remedies under law, but subject to the terms of the legislation and of any credit enhancement facility, provision that if the subdivision defaults in the payment of debt charges on the securities and such default continues for a period of thirty days, or if the subdivision fails or refuses to comply with the requirements of this chapter or the applicable proceedings, or defaults in any contract made with the holders of those securities, the holders of not less than twenty-five per cent in principal amount of the outstanding securities of that issue may appoint a trustee, who may be the fiscal agent, to represent those holders for the purposes provided in this division (B)(4). That trustee may, and upon written request of the holders of not less than twenty-five per cent in principal amount of those securities then outstanding shall, in its own name exercise all or any of the powers of such holders under division (B)(3) of this section and in addition may:

(a) Bring action for payment of any debt charges then due on the securities;

(b) By mandamus or other action or proceeding enforce all rights of the holders of the securities, including any right to require the subdivision to assess, levy, charge, collect, and apply pledged receipts adequate to carry out the provisions of the legislation and any agreement with those holders and to perform its duties under the legislation and this chapter;

(c) Bring action upon the securities;

(d) By action, require the subdivision to account as if it were the trustee of an express trust for the holders of the securities;

(e) By action, enjoin any acts or things that may be unlawful or in violation of the rights of the holders of those securities;

(f) Except in the case of securities payable from a property tax, declare all securities of the issue due and payable, and if all defaults are subsequently corrected, then, with the consent of the holders of



not less than ten per cent in principal amount of those securities then outstanding, rescind and annul that declaration and its consequences.

In addition to the foregoing, the trustee shall have all of the powers necessary or appropriate for the exercise of any functions specifically set forth in this section or the legislation or incident to the general representation of the holders of those securities in the enforcement and protection of their rights.

(5) Contracts or other arrangements for credit enhancement facilities, which may be with a fiscal agent. The costs of or under credit enhancement facilities may be paid from any moneys of the subdivision lawfully available for the purpose. The credit enhancement facility may be for the benefit of holders of the particular securities and of any other securities of the subdivision. Any such benefit conferred with respect to other securities shall not be deemed to restrict, preclude, or otherwise impair any rights that those holders otherwise may assert.

(C) Unless otherwise provided in the proceedings, the holders of not less than ten per cent in principal amount of the particular securities at the time outstanding, whether or not then due and payable or reduced to judgment and either on their own behalf or on behalf of all persons similarly situated, may:

(1) By mandamus, mandatory or other injunction, or any other order, writ, process, or decree, or by any other action or proceeding, enforce all contractual or other rights of such holders, including any right to require the subdivision to assess, levy, charge, collect, and apply the pledged receipts pledged to carry out the provisions of any agreement with such holders and perform its duties under the legislation and this chapter;

(2) In the case of default in payment of debt charges on their securities, commence an action upon their securities to require the subdivision to account as if it were the trustee of an express trust for those holders or to enjoin any acts or things that may be unlawful or in violation of the rights of those holders.

(D) The state pledges to and agrees with the holders of Chapter 133. securities that the state will not, by enacting any law or adopting any rule, repeal, revoke, repudiate, limit, alter, stay, suspend, or



otherwise reduce, rescind, or impair the power or duty of a subdivision to exercise, perform, carry out, and fulfill its responsibilities or covenants under this chapter or legislation or agreements as to its Chapter 133. securities, including a credit enhancement facility, passed or entered into pursuant to this chapter, or repeal, revoke, repudiate, limit, alter, stay, suspend, or otherwise reduce, rescind, or impair the rights and remedies of any such holders fully to enforce such responsibilities, covenants, and agreements or to enforce the pledge and agreement of the state contained in this division, or otherwise exercise any sovereign power materially impairing or materially inconsistent with the provisions of such legislation, covenants, and agreements. The general assembly determines and declares that the provisions of this chapter and the powers and duties of subdivisions authorized and imposed under this chapter are proper, reasonable, and appropriate means by which the state can and should exercise and has exercised its duties and powers under the Ohio Constitution, and that those provisions are necessary and in the public interest and a proper means to better provide for the security for, and market reception for the purchase of, those securities. This pledge and agreement shall be of no force and effect as to securities that are not outstanding. This pledge and agreement by the state may be temporarily suspended upon the declaration of martial law in the subdivision in the event of circumstances deriving directly out of a natural disaster, such as an earthquake or major conflagration or flood but not a snowstorm or civil disturbance, or out of military invasions or civil insurrections, but not strikes or crises created by financial or economic events. Payment for securities by the original and subsequent holders shall be deemed conclusive evidence of valuable consideration received by the state and subdivision for this pledge and agreement, and any action by the state contrary to or inconsistent with this division is void as applied to those securities. The state hereby grants any such benefited holder the right to sue the state and enforce this pledge and agreement, and waives all rights of defense based on sovereign immunity or sovereign power in such an action or suit, it being expressly determined and declared that the continued integrity of the contract of any such holder is essential to the continued right of the subdivision to issue and pay debt charges on securities as a subdivision of the state. Nothing in this division requires the state to continue any particular level of appropriations of moneys, or precludes the state from authorizing the subdivision to exercise, or the subdivision from exercising, subject to approval of the tax commissioner, any power provided by law to seek application of laws then in effect under the bankruptcy provisions of the United States Constitution but in any case providing for debt charges as provided in section 133.36 of the Revised Code, or to preclude the state from further exercise of any of its powers and responsibilities under the Ohio Constitution.



(E) Moneys and investments held by the subdivision or a paying agent or a fiscal agent, and all receipts of the subdivision, needed and allocated to payment of debt charges or payments by the subdivision under credit enhancement facilities, are property of the subdivision devoted to essential governmental purposes and accordingly shall not be applied to any purpose other than as provided in this chapter and in the legislation, and shall not be subject to any order, judgment, lien, execution, attachment, setoff, or counterclaim by any creditor or judgment creditor, as a result of a tort judgment or otherwise, of the subdivision other than the holders of the securities or the provider of the credit enhancement facility who are entitled thereto pursuant to this chapter and the legislation.