

ORC Ann. 305.31

Current through File 132 of the 134th (2021-2022) General Assembly; acts signed as of as of July 29, 2022.

Page's Ohio Revised Code Annotated > Title 3: Counties (Chs. 301 — 355) > Chapter 305: Board of County Commissioners — Generally (§§ 305.01 — 305.99) > Referendum on Resolution of County Commissioners (§§ 305.31 — 305.99)

§ 305.31 Referendum on certain lodging taxes not submitted directly to voters.

The procedure for submitting to a referendum a resolution adopted by a board of county commissioners under division (H) of section 307.695 of the Revised Code that is not submitted to the electors of the county for their approval or disapproval; any resolution adopted by a board of county commissioners pursuant to division (D)(1) of section 307.697, section 322.02, or 322.06, sections 940.32 and 940.35, division (B)(1) of section 4301.421, section 4504.02, 5739.021, or 5739.026, division (A)(6), (A)(10), or (M) of section 5739.09, section 5741.021 or 5741.023, or division (C)(1) of section 5743.024 of the Revised Code; or a rule adopted pursuant to section 307.79 of the Revised Code shall be as prescribed by this section.

Except as otherwise provided in this paragraph, when a petition, signed by ten per cent of the number of electors who voted for governor^[1] at the most recent general election for the office of governor in the county, is filed with the county auditor within thirty days after the date the resolution is passed or rule is adopted by the board of county commissioners, or is filed within forty-five days after the resolution is passed,^[2] in the case of a resolution adopted pursuant to section 5739.021 of the Revised Code that is passed within one year after a resolution adopted pursuant to that section has been rejected or repealed by the electors, requesting that the resolution be submitted to the electors of the county for their approval or rejection, the county auditor shall, after ten days following the filing of the petition, and not later than four p.m. of the ninetieth day before the day of election, transmit a certified copy of the text of the resolution or rule to the board of elections. In the case of a petition requesting that a resolution adopted under division (D)(1) of section 307.697, division (B)(1) of section 4301.421, or division (C)(1) of section 5743.024 of the Revised Code be submitted to electors for their approval or rejection, the petition shall be signed by seven per cent of the number of electors who voted for governor at the most recent election for the office of governor in the county. The county auditor shall transmit the petition to the board together with the certified copy of the resolution or rule. The board shall examine all signatures on the petition to determine the number of electors of the county who signed the petition. The board shall return the petition to the auditor within ten days after receiving it, together with a statement attesting to the number of such electors who signed the petition. The board shall submit the resolution or rule to the electors of the county, for their approval or rejection, at the succeeding general election held in the county in any year, or on the day of the succeeding primary election held in the county in even-numbered years, occurring subsequent to ninety days after the auditor certifies the sufficiency and validity of the petition to the board of elections.

No resolution shall go into effect until approved by the majority of those voting upon it. However, a rule shall take effect and remain in effect unless and until a majority of the electors voting on the question of repeal approve the repeal. Sections 305.31 to 305.41 of the Revised Code do not prevent a county, after the passage of any resolution or adoption of any rule, from proceeding at once to give any notice or make any publication required by the resolution or rule.

The board of county commissioners shall make available to any person, upon request, a certified copy of any resolution or rule subject to the procedure for submitting a referendum under sections 305.31 to 305.42 of the Revised Code beginning on the date the resolution or rule is adopted by the board. The board may charge a fee for the cost of copying the resolution or rule.

As used in this section, “certified copy” means a copy containing a written statement attesting that it is a true and exact reproduction of the original resolution or rule.

History

132 v H 919 (Eff 12-12-67); 135 v H 662 (Eff 9-27-74); 137 v H 513 (Eff 1-12-79); 138 v H 1062 (Eff 3-23-81); 140 v S 213 (Eff 10-13-83); 141 v H 3 (Eff 3-6-86); 142 v H 274 (Eff 7-20-87); [144 v H 192](#) (Eff 10-10-91); [145 v S 150](#) (Eff 12-29-93); [146 v S 188](#) (Eff 7-19-95); [146 v H 99](#) (Eff 8-22-95); [147 v S 142](#) (Eff 3-30-99); [149 v H 338](#), Eff 10-1-2002; [152 v H 119](#), § 101.01, eff. 6-30-07; [153 v H 48](#), § 1, eff. 7-2-10; [2015 hb64](#), § 101.01, effective January 1, 2016; [2016 hb390](#), § 101.01, effective September 28, 2016; [2020 hb197](#), § 1, effective March 27, 2020; [2020 hb340](#), § 1, effective March 24, 2021.

Annotations

Notes

Amendment Notes

The 2020 amendment by HB 197 substituted “ivision (F), (J), or (U)”for “A)(6), (A)(10), or (M)”in the first paragraph.

The 2020 amendment by HB 340 substituted “sections 940.32 and 940.35” for “sections 940.31 and 940.33” in the first paragraph.

The 2016 amendment by HB 390, deleted “or 324.02” following “322.06” in the sections list of the first paragraph; and made a related change.

The 2015 amendment by HB 64, in the first paragraph, substituted “sections 940.31 and 940.33” for “sections 1515.22 and 1515.24” and “division (A)(6), (A)(10), or (M)” for “division (A)(6)”.

153 v H 48, effective July 2, 2010, in the second paragraph, substituted “ninetieth day” for “seventy-fifth day” and “ninety days” for “seventy-five days”.

152 v H 119, effective June 30, 2007, in the first paragraph, inserted “a resolution adopted by a board . . . approval or disapproval” and “division (A)(6) of section 5739.09, section” and made related changes.

Notes to Decisions

Mandamus

Referendum

Mandamus

The availability of relief in a pending declaratory judgment action is an appropriate basis for the denial of mandamus. [State ex rel. Citizens for Fair Taxation v. Board of Lucas County Comm'rs, 63 Ohio St. 3d 749, 591 N.E.2d 691, 1992 Ohio LEXIS 1678 \(Ohio 1992\)](#).

Writ of mandamus will be denied where relator allows an unreasonable length of time to elapse before bringing the action and compliance with [R.C. 305.31](#) is then impossible. [State ex rel. Lightle v. Glass, 8 Ohio St. 3d 1, 455 N.E.2d 1275, 1983 Ohio LEXIS 866 \(Ohio 1983\)](#).

Referendum

When an unverified copy of a resolution of a board of county commissioners is filed with a county auditor for the purpose of a referendum pursuant to [R.C. 305.31](#) et seq, the county auditor has no duty to take any action; however, if he does certify the referendum proceedings to the county board of elections, the referendum proceedings will not be stayed by a writ of prohibition because of the omission of the verification where the relator stipulates that the unverified document is, nevertheless, an accurate copy of the original resolution and proves no other defect in the proceedings. [State ex rel. Vanderwerf v. Warren, 20 Ohio St. 2d 9, 49 Ohio Op. 2d 106, 252 N.E.2d 164, 1969 Ohio LEXIS 292 \(Ohio 1969\)](#).

Opinion Notes

ATTORNEY GENERAL OPINIONS

[Revised Code § 305.31](#) confers no authority on a county auditor to determine the validity of referendum petition papers with respect to the requirements imposed by [R.C. 3501.38\(E\)](#); such determination must be made by the county board of elections. [1989 Ohio Op. Att'y Gen. No. 049 \(1989\)](#).

Where a board of county commissioners has by resolution enacted a county sales tax pursuant to [R.C. 5739.02.1](#) and a county use tax pursuant to [R.C. 5741.02.1](#), a referendum petition with respect to such resolutions must meet the requirements of [R.C. 305.31](#) to [305.99](#) for a referendum petition as to both of the resolutions in question. 1977 Ohio Op. Att'y Gen. No. 045 (1977).

A resolution levying a motor vehicle license tax pursuant to [R.C. 4504.02](#) does not have to be adopted each year prior to collecting such tax each year. [Such resolution] is subject to referendum as provided for by [R.C. 305.31](#), only for the thirty-day period immediately following its adoption. 1969 Ohio Op. Att'y Gen. No. 105.

A board of county commissioners may repeal by resolution a tax which was enacted pursuant to [R.C. 5739.02.1](#). The failure to hold public hearings prior to the repeal of the tax does not invalidate that repeal. 1973 Ohio Op. Att'y Gen. No. 031 (1973).

The general assembly has not authorized an initiative petition procedure for the purpose of effecting a repeal of a county-wide permissive sales and use tax adopted by a board of county commissioners pursuant to [R.C. 5739.02.1](#) and [5741.02.1](#). 1970 Ohio Op. Att'y Gen. No. 014 (1970).

Research References & Practice Aids

Cross-References to Related Sections

Charges on improved realty to pay for public safety answering points, [RC § 4931.51](#).

County cigarette sales tax, [RC § 5743.024](#).

County motor vehicle license levy, [RC § 4504.02](#).

Additional license taxes, county and municipal, [RC § 4504.15](#) et seq.

County sales tax levy, [RC § 5739.02](#).

Additional sales tax, [RC §§ 5739.021, 5739.026](#).

County use, storage tax levy, [RC § 5741.021](#).

Additional use tax, [RC § 5741.02.3](#).

Liquor tax; tax levy without election, [RC § 307.697](#).

Petition presented in separate petition papers; signature, and other requirements, [RC § 305.32](#).

Real property transfer tax; permissive levy by commissioners, [RC § 322.02](#).

Sports facility, election on tax to finance; tax levy without election, [RC § 4301.421](#).

Utility service levy, [RC § 324.02](#).

Comparative Legislation

Procedure for submission of referendum petition:

CA—[Cal Elec Code § 9145](#)

NY—NY CLS [County § 101](#)

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User Annotations

[1](#) 9,580

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[2](#) 2/26/23

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