



H.B. 769

123rd General Assembly
(As Introduced)

**Reps. Mettler, Netzley, Jerse, Grendell, Jacobson, Van Vyven, Peterson,
Robinson, Cates**

BILL SUMMARY

- Defines "audit" for purposes of the Public Office and Public Money Accounting Law.
- Generally requires the Auditor of State to conduct an audit of a public office at least once every two fiscal years, but requires the Auditor of State to conduct an audit of a public office each fiscal year if specified federal law mandates an annual audit.
- Permits the Auditor of State, at any time, to conduct an "additional" audit of a public office or a person receiving public money in a specified manner.
- Establishes standards that a person receiving public money must follow in accounting for the use of the public money.

CONTENT AND OPERATION

Definition of "audit"

Current law requires the Auditor of State to conduct audits of public offices and permits the Auditor of State to conduct audits of accounts of specified private entities that receive public money, but does not define the term "audit." The bill defines an "audit" for these purposes to mean (1) any examination or review of the state's or a public office's financial statements or reports, (2) any examination or review of records, documents, books, or any other evidence relating to either (a) the collection, receipt, accounting, use, or expenditure of public money by a public office or a "person" (see **COMMENT 1**) or (b) the determination by the Auditor of State, as required by current law, of whether a public office has complied with all the laws, "rules," ordinances, or orders pertaining to the public office (see **COMMENT 2**), or (3) any other type of examination or review of a public office or a person

receiving public money that is conducted according to "generally accepted governmental auditing standards" established by rule of the Auditor of State (see **COMMENT 3**). (Secs. 117.01(H) and 117.10.)

Frequency of audits by the Auditor of State

Existing law generally requires the Auditor of State to commence an audit of *each public office* not more than two years from the date of the release of the last audit report of that public office. The bill instead generally requires the Auditor of State to audit each public office *at least once every two fiscal years*. But, it does require the Auditor of State to audit a public office *each fiscal year* if the public office is required to be audited on an annual basis under the federal "Single Audit Act of 1984." If a public office is audited only once every two fiscal years, the audit must cover both fiscal years. (Sec. 117.11(A) and (C)(1).)

The bill also repeals a provision that allows the Auditor of State to waive by rule the current two-year audit requirement described above with respect to (1) public offices participating in a uniform accounting network established under existing law and (2) public offices that are not required by federal law to be audited in accordance with federal auditing standards (sec. 117.11(D)).

The bill also authorizes the Auditor of State, in addition to the required annual or biennial audit of a public office described above, to conduct an audit of a public office or *a person receiving public money at any time* (1) when so requested by a public office or (2) upon the Auditor of State's own initiative, if the Auditor of State has reasonable cause to believe that an additional audit is in the public interest (sec. 117.11(B)). (See **COMMENT 4**.)

Audits of persons receiving public moneys

Current law authorizes, but does not require, the Auditor of State (1) to audit the accounts of "private institutions, associations, boards, and corporations" receiving public money for their use and (2) to require these entities to file annual reports in the form the Auditor of State prescribes. The bill instead authorizes the Auditor of State to audit the accounts of *any person receiving public money* and requires such a person to (1) keep current and accurate records of the receipt and use of that public money, either by maintaining separate bank accounts for public money or by using other accounting conventions typically used in a fund accounting system as the Auditor of State may approve and (2) prepare financial statements that report separately on public and private money received and that contain the information pertaining to the public money that the Auditor of State prescribes by rule. The records described in item (1) above are public records subject to public inspection and copying under the Public Records Law. (Sec. 117.10(A).)

The bill limits these audits of a person receiving public money to an examination or review of the public money received, unless the public money is

commingled with private money. In that case, the Auditor of State may audit all the accounts of the person receiving that public money. (Sec. 117.10(B).)

COMMENT

1. (a) The bill substitutes the term "person" for the phrase "private institutions, associations, boards, and corporations" in a few locations in the Public Office and Public Money Accounting Law (secs. 117.10(A) and 117.13(B)(1)). "Person" is currently defined *for purposes of the entire Revised Code* in section 1.59(C) to mean an individual, corporation, business trust, estate, trust, partnership, and association.

Because that term is currently defined for the entire Revised Code, the bill's proposed definition of a "person" in section 117.01(G) is unnecessary and is inconsistent with the manner in which the vast majority of existing statutes that use the term "person" are drafted--that is, they generally do not contain a "cross-reference" definition to section 1.59(C). Thus, for conformity purposes and to preclude the need for judicial constructions of that vast majority of existing statutes, the bill's proposed "cross-reference" definition probably should be removed.

(b) The bill's language pertaining to the Public Records Law (sec. 149.43) also similarly contains surplus language. Section 117.10(A)(1) refers to the records that the bill requires "persons receiving public money" to keep as being public records under the Public Records Law and as *being subject to divisions (B) and (C)* of that law. If the records required to be maintained by "persons receiving public money" are under (that is, covered by) the Public Records Law, they are automatically subject to that law's inspection, copying, mailing, sanction, and other provisions, without the need to refer to those provisions. Thus, the unnecessary phrase--"and are subject to divisions (B) and (C) of that section"--in section 117.10(A)(1) also probably should be removed.

2. In its definition of an audit, the bill refers in section 117.01(H)(2)(b) to an Auditor of State determination, *as required by section 117.11,* of whether a public office has complied with all the laws, *rules*, ordinances, or orders pertaining to the public office. However, section 117.11 currently requires, and continues under the bill to require, an audit of a public office to look into the methods, accuracy, and legality of the accounts, financial reports, records, files, and reports of the office, "whether the *laws, ordinances, and orders* pertaining to the office have been observed, and whether the *rules of the Auditor of State* have been complied with." Thus, the bill's definition of an audit refers to "rules" in a broader sense than the "rules of the Auditor of State," the only rules referred to in section 117.11. It appears then that, for consistency purposes, either (a) the definition of an "audit" in section 117.01(H)(2)(b) needs to be amended to refer only to rules of the Auditor of State or (b) section 117.11(A), and perhaps parallel language in section 117.12, needs to be expanded to include a reference to an audit of a public office looking

into the observation of "rules," as well as laws, ordinances, and orders, pertaining to a public office.

3. In its definition of an audit, the bill also refers in section 117.01(H)(3) to any other type of examination or review of a public office or of a person receiving public money that is conducted according to "generally accepted governmental auditing standards" established by rule pursuant to section 117.19 (not in the bill). That section currently requires the Auditor of State to establish and define by rule "generally accepted or governmental auditing standards, including procedures for post-audit conferences with officials of an audited public office. It is not clear, because the bill covers "persons receiving public money" as well as public offices, whether an "or" should be included in section 117.01(H)(3) to make the phrase read "generally accepted or governmental auditing standards established by rule pursuant to section 117.19" or whether the bill's existing phraseology is adequate.

4. The bill's annual or biennial audit requirements in section 117.11(A) do not apply to persons receiving public money, only to public offices. As a result, the bill's reference in section 117.11(B) to an "additional" audit of a person receiving public money, in the sense of an audit in addition to an annual or biennial audit under section 117.11(A), is not accurate. Thus, it seems that either (a) the introductory phrase in section 117.11(B) should be expanded to refer to the audit of a person receiving public money that the Auditor of State may conduct under 117.10(A) or (b) the reference to a person receiving public money should be removed from section 117.11(B) because an audit of such a person can be performed at any time.

HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	08-31-00	pp. 2214-2215

H0769-I.123/ejs