



Phil Mullin

Bill Analysis

Legislative Service Commission

H.B. 598

126th General Assembly
(As Introduced)

Reps. Sykes, Beatty, Cassell, Key, Skindell, Chandler, S. Patton, Otterman, Fende, Williams, Strahorn, Brown, Yates, Harwood, Mason, S. Smith, Barrett

BILL SUMMARY

- Eliminates provisions specifying that certain records made by a certified public accountant or a public accountant incident to an audit of a public office or private entity are not public records.

CONTENT AND OPERATION

Overview of the Public Records Law

The Public Records Law (R.C. 149.43) generally requires every public office to promptly prepare all public records and make them available for inspection at all reasonable times during regular business hours. Upon request, a public office or person responsible for public records generally must make copies available at cost within a reasonable period of time. (R.C. 149.43(B)(1)--not in the bill.) A "public office" includes any state agency, public institution, political subdivision, or other organized body, office, agency, institution, or entity established by Ohio law for the exercise of any function of government (R.C. 149.011(A)--not in the bill).¹

Current law defines "records" as including any document, device, or item, regardless of physical form or characteristic, including an electronic record, created or received by or coming under the jurisdiction of any public office of the

¹ "State agency" includes every department, bureau, board, commission, office, or other organized body established by the Constitution and laws of Ohio for the exercise of any function of state government, including any state-supported institution of higher education, the General Assembly, any legislative agency, any court or judicial agency, or any political subdivision or agency of a political subdivision (R.C. 149.011(B)--not in the bill).

state or its political subdivisions which serves to document the organization, functions, policies, decisions, procedures, operations, or other activities of the office (R.C. 149.011(G)--not in the bill). And, a "public record" generally means *records kept* by any public office, including, but not limited to, state, county, city, village, township, and school district units, and records pertaining to the delivery of education services by an alternative school in Ohio kept by the nonprofit or for-profit entity operating the school (R.C. 149.43(A)(1)--not in the bill). But, the Public Records Law lists types of records that are *not included* within the definition of a "public record." In addition, there are express provisions of law outside the Public Records Law that create exemptions from the definition of a "public record," thereby excluding the record in question from the treatment afforded under the Public Records Law.

Express exclusion for certain accountants' records

Existing law

Current law provides an express exclusion from the Public Records Law for the statements, records, schedules, working papers, and memoranda made by a certified public accountant or public accountant incident to or in the course of performing an audit of a public office or private entity.² This provision of law also exempts those documents made in a certified public accountant's or public accountant's audit of a public office or private entity--when they are in the possession of the Auditor of State--from the definition of a "public record." (R.C. 4701.19(B).)

Changes proposed by the bill

The bill removes these exemptions and expresses a legislative intent to recognize, in that removal, the holding of the Ohio Supreme Court in *State ex rel. Mazzaro v. Ferguson* (1990), 49 Ohio St.3d 37: that a public office, including the office of the Auditor of State, is required under the Public Records Law to make available for copying and inspection audit records to which it has access and that were made by a certified public accountant or public accountant incident to or in the course of performing an audit of any public office. In addition, the *Mazzaro* Court and the bill's legislative intent statement recognize that "when a private entity carries out the duties or responsibilities of a public office and the public office has a right of access to records documenting this, the records are within the public office's jurisdiction and the public office must make them available for public inspection. . . ." (R.C. 4701.19(B) and Section 3 of the bill.)

² *Reports submitted by a certified public accountant or public accountant to the client public office or private entity are public records when R.C. 149.43 applies.*

HISTORY

ACTION

DATE

Introduced

05-17-06

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