Ohio Legislative Service Commission

Bill Analysis

Bethany Boyd

H.B. 6
130th General Assembly
(As Introduced)

Reps. Thompson and Green, Hill, Smith, Sprague, Huffman, Stinziano, Grossman, Ruhl, Boose, Hall, Blair, Hackett, Roegner

BILL SUMMARY

- Requires the Auditor of State to create, by rule, an agreed-upon procedure audit (AUP audit) for certain eligible political subdivisions.
- Provides that an eligible subdivision is not required to engage in an AUP audit.
- Requires the Auditor of State to adopt rules that establish criteria for determining a subdivision's eligibility for an AUP audit.
- Authorizes the Auditor of State to waive on a case-by-case basis a criterion that may disqualify a subdivision from undergoing an AUP audit.
- Requires the Auditor of State or an independent certified public accountant engaged by the Auditor to perform an AUP audit.
- Applies to an AUP-audited subdivision the existing requirement that a public office file an annual financial report with the Auditor of State.
- Eliminates the Auditor of State's exemption from filing a rule summary and fiscal analysis with proposed rules.
- Authorizes the Auditor of State to send notices of hearings on, and copies of, a proposed rule by electronic mail, as an alternative to mailing them.

CONTENT AND OPERATION

Agreed-upon procedure audit

The bill requires the Auditor of State to establish by rule an agreed-upon procedure by which local governments with annual budgeted expenditures of $5 million or less may be audited, rather than undergoing a conventional "full-blown" financial audit that is generally performed at least once every two fiscal years. Apparently, the Auditor of State has already been performing agreed-upon procedure audits, according to Auditor of State Bulletins 2012-007 and 2009-012.[1]

An eligible subdivision may, but is not required to, engage in an AUP audit. If the eligible subdivision does not engage in an AUP audit, the eligible subdivision instead must undergo a conventional financial audit.[2]

The "qualifying subdivisions" that may be eligible for the agreed-upon procedure audit (AUP audit) are agricultural societies, county boards of health, cemeteries, conservancy districts, family and children first councils, fire districts, ambulance districts, fire and ambulance districts, libraries, park or recreation districts, regional planning commissions, solid waste districts, townships, villages, water districts, sewer districts, and water and sewer districts. These qualifying subdivisions may become eligible for an AUP audit if they meet the criteria established by rule of the Auditor of State.[3]

Counties, cities, and school districts are not eligible for an AUP audit, not only because they are not "qualifying subdivisions" under the bill, but also because they are required to use generally accepted accounting principles in preparing their annual financial reports, unlike the qualifying subdivisions listed above.[4]

Eligibility criteria for AUP audit

The Auditor of State's rules must set forth the standards, procedures, guidelines, and reporting requirements for an AUP audit. At a minimum, the rules must require that, to be eligible for an AUP audit, the political subdivision must be one of the qualifying subdivisions designated above and must meet all of the following criteria:

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[1] The Bulletins are available on the Auditor of State's web site, www.auditor.state.oh.us.

[2] R.C. 117.11 and 117.114(C).

[3] R.C. 117.114(A) and (B).

[4] O.A.C. 117-2-03.

(1) The qualifying subdivision's annual budgeted expenditures do not exceed $5 million for any fiscal year for which the AUP audit will be performed;

(2) The qualifying subdivision follows the Auditor of State's regulatory cash or modified cash accounting basis;

(3) The qualifying subdivision's fiscal officer or bookkeeper did not leave office at any time during the audit period in question;

(4) The qualifying subdivision had a conventional financial audit[5] performed by the Auditor of State or by an independent certified public accountant engaged by the Auditor of State, within the prior two audit periods;

(5) In its most recent audit report, the qualifying subdivision did not experience any of the following: (a) a qualified, adverse, or disclaimer opinion, (b) a declaration under law that the qualifying subdivision was unauditable (because its accounts, records, files, or reports were improperly maintained),[6] (c) a finding for adjustment, (d) a finding for recovery that indicated fraud or theft in office, (e) a finding related to material control weaknesses, or (f) a determination that the qualifying subdivision showed a failure to demonstrate a good-faith effort to comply with budgetary laws.

(6) The qualifying subdivision is *not*: (a) under investigation by the Auditor of State's Special Investigations Unit or is not otherwise at high risk of fraud as determined by the Auditor of State, (b) in a fiscal emergency,[7] (c) required to be audited on an annual basis under the federal "Single Audit Act of 1984,"[8] or under other laws, grants, bylaws, or debt covenants, (d) a component unit of a generally accepted accounting principles entity, or (e) required to use generally accepted accounting principles in preparing its annual financial report.[9]

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[5] R.C. 117.11(A) and 117.12(A).

[6] R.C. 117.41, not in the bill.

[7] Generally, fiscal emergency conditions of municipal corporations, counties, and townships are listed in R.C. 118.03, and whether a fiscal emergency exists is determined by the Auditor of State under R.C. 118.04. The Auditor of State also must declare a school district to be in a state of fiscal emergency under R.C. Chapter 3316. if certain conditions exist. But this criterion appears to apply only to villages and townships because cities, counties, and school districts do not qualify for AUP audits.

[8] 98 Stat. 2327, 31 U.S.C. 7501 *et seq.*, as amended. The Single Audit Act applies to nonfederal entities that expend, under more than one federal program, a total amount of federal awards equal to or in excess of $300,000, or another amount specified by the Director of the federal Office of Management and Budget.

[9] R.C. 117.38, not in the bill.

(7) The qualifying subdivision does not have outstanding audit fees in arrears; and

(8) Any other criteria the Auditor of State determines the qualifying subdivision must meet to be eligible for an AUP audit.[10]

The Auditor of State, on a case-by-case basis, may determine that a qualifying subdivision that fails to meet any of the criteria established by rule is otherwise eligible for an AUP audit and may, in writing, grant a waiver of a particular criterion.[11]

Performance of an AUP audit

An AUP audit must be performed by the Auditor of State or by an independent certified public accountant under the American Institute of Certified Public Accountants' Attestation Standards section 201[12] and generally accepted government auditing standards. Eligible subdivisions may have an AUP audit in two consecutive audit periods followed by one conventional financial audit. But if the first AUP audit report includes exceptions that would make the eligible subdivision ineligible under the bill's eligibility criteria for an AUP audit, the eligible subdivision is ineligible for the AUP audit in the second audit period and must be audited under a conventional financial audit in the second audit period.[13]

Any certified public accountant engaged to perform an AUP audit must conduct the audit pursuant to the standards, procedures, guidelines, and reporting requirements the Auditor of State is required by the bill to adopt by rule.[14]

Annual financial report

An eligible subdivision that engages in an AUP audit must continue to file an annual financial report with the Auditor of State, as required by existing law.[15] In general, the financial report contains the amount of collections and receipts, and accounts due from each source; the amount of expenditures for each purpose; the income of each public service industry owned or operated by a municipal corporation,

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[10] R.C. 117.114(B)(1) to (8).

[11] R.C. 117.114(E).

[12] AT Section 201 sets forth attestation standards for accountants and provides guidelines concerning performance and reporting in agreed-upon procedures engagements.

[13] R.C. 117.114(D).

[14] R.C. 117.114(B) and 117.12.

[15] R.C. 117.114(F) and 117.38, not in the bill.

and the cost of ownership or operation; and the amount of public debt of each taxing district, the purpose for which each item of such debt was created, and the provision made for the payment of the debt.

Auditor of State's audit authority

Continuing law authorizes the Auditor of State to conduct an audit, in addition to a conventional financial audit, when receiving a complaint that a public office has violated its force account limits. The bill authorizes the Auditor of State to conduct an audit, in addition to a conventional financial audit or an AUP audit, under those circumstances.[16]

Auditor of State's rule-making requirements

Eliminate rule summary and fiscal analysis filing exemption

The bill eliminates a rule summary and fiscal analysis filing exemption granted to the Auditor of State. Generally, the Auditor of State follows a process set forth in existing law for adopting rules.[17] The process requires that the Auditor of State comply with certain requirements in R.C. 111.15, commonly called the abbreviated rule-making procedure, when filing with the Joint Committee on Agency Rule Review, the Secretary of State, and the Director of the Legislative Service Commission a proposed rule or proposed rule in revised form regarding the following subject matters:

(1) The form of the annual financial report that each pubic office, other than a state agency, must submit to the Auditor of State;[18]

(2) The standards, procedures, and guidelines a certified public accountant engaged to perform a conventional financial audit must follow;[19]

(3) Generally accepted or governmental auditing standards for auditing a public office;[20] and

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[16] R.C. 117.16(B).

[17] R.C. 117.20.

[18] R.C. 117.38, not in the bill.

[19] R.C. 117.12.

[20] R.C. 117.19, not in the bill.

(4) Requirements for accounting and financial reporting for public offices other than state agencies.[21]

But currently, the Auditor of State's rule-making procedure exempts the Auditor of State from the abbreviated rule-making procedure's requirement to file a rule summary and fiscal analysis with a proposed rule or proposed rule in revised form. The bill eliminates this exemption so that the Auditor of State must file a rule summary and fiscal analysis with a proposed rule or proposed rule in revised form regarding the above subject matters.[22] The Auditor of State also would have to file a rule summary and fiscal analysis with proposed rules establishing the AUP audit procedure and eligibility criteria.

Allow notices to be sent by electronic mail

The bill allows the Auditor of State to send notices of hearings on a proposed rule-making action and copies of a proposed rule by electronic mail, as an alternative to mailing them. Existing law states that failure to mail any notice of hearing on, or copy of, a proposed rule does not invalidate a rule, and the bill adds failure to send by electronic mail to this disclaimer.[23]

HISTORY

ACTION	DATE
Introduced	01-30-13

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[21] R.C. 117.43, not in the bill.

[22] R.C. 111.15(F), 117.20, and 127.18(F).

[23] R.C. 117.20.