Ohio Legislative Service Commission

Bill Analysis

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Sub. H.B. 10*

130th General Assembly
(As Reported by S. Public Safety, Local Government, and Veterans Affairs)

Reps. C. Hagan, Anielski, Boose, Brenner, Burkley, Damschroder, DeVitis, Duffey, Hackett, Huffman, Maag, Perales, Pillich, Retherford, Ruhl, Terhar, Thompson, Young

BILL SUMMARY

Removal procedures

- Establishes procedures for removing "fiscal officers" (i.e., county auditors, county treasurers, township fiscal officers, and fiscal officers of municipal corporations) from office for purposely, knowingly, or recklessly failing to perform a fiscal duty expressly imposed by law, or for purposely, knowingly, or recklessly committing any act expressly prohibited by law, with respect to the fiscal duties of the office.

- Authorizes specific individuals, as the first step in the removal process, to submit to the Auditor of State a sworn affidavit alleging a violation, along with supporting evidence; a removal action cannot be filed directly with the court under the bill's removal procedures.

- Requires the Auditor of State to review the allegations and weigh the evidence against the fiscal officer to determine whether clear and convincing evidence exists to support the allegations, and if the Auditor of State so finds, the determination is to be submitted to the Attorney General for the same review.

- Requires the Attorney General to file a removal action against the fiscal officer if the Attorney General finds by clear and convincing evidence that an allegation is supported by the evidence.

- Affords the fiscal officer a hearing in the court of common pleas.

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* This analysis was prepared before the report of the Senate Public Safety, Local Government, and Veterans Affairs Committee appeared in the Senate Journal. Note that the list of co-sponsors and the legislative history may be incomplete.

- Declares that if a municipal corporation's charter establishes a procedure for removal of officers that conflicts with the bill's removal procedures, the procedure in the charter prevails.

- Unless otherwise provided by law, prohibits any individual removed from office under the bill's procedures from holding another public office for four years, and from holding any public office until repayment or restitution required by the court is satisfied.

- Increases from a first degree misdemeanor to a third degree felony the penalty for falsification for a person making a false statement in a sworn affidavit for purposes of a removal action.

- Provides for an automatic stay of removal proceedings during the pendency of a criminal action related to the conduct in office of the person charged.

Education programs and continuing education

- Establishes initial education programs, taken before assuming office or during the first year of a term, and continuing education requirements, taken after assuming office, for township fiscal officers, city auditors, city treasurers, village fiscal officers, village clerk-treasurers, village clerks, and similar fiscal officers designated by the charter of a chartered municipal corporation.

- Requires the Auditor of State, instead of the County Auditors Association of Ohio, to issue a certificate of completion or notice of failure to complete to county auditors regarding their continuing education courses.

Fiscal accountability for public schools

- Creates fiscal accountability requirements for public schools that have been declared unauditable by the Auditor of State, including requiring them to submit an audit completion plan.

- Requires the treasurer of a public school or a science, technology, engineering, and mathematics (STEM) school, and the fiscal officer of a community (charter) school or a public college-preparatory boarding (CPB) school (collectively, public schools), to be suspended when the public school is declared unauditable, until the Auditor of State or a public accountant has completed a financial audit of the public school.

- Requires the Department of Education to cease making payments to a public school declared unauditable, if the school fails to make progress to bring its accounts into auditable condition, until receiving notice that a financial audit was completed.

- Requires the sponsor of a community school to provide to the governing authority and fiscal officer of the school a written report regarding the review of the financial and enrollment records of the school not later than ten days after each monthly review.

- Prohibits a community school, on or after the bill's effective date, from opening for operation in any school year unless the governing authority of the school has posted a surety bond or cash deposit as a cash guarantee in the amount of $50,000 with the Auditor of State.

- Requires that each public CPB school have a designated fiscal officer who may be required by rule of the Auditor of State to execute a bond before entering upon duties as a fiscal officer.

Other "fiscal officer" matters

- Except as otherwise provided by law, bars a public servant who is a fiscal officer, including a school fiscal officer, and who is convicted of or pleads guilty to dereliction of duty from holding any public office, employment, or position of trust in Ohio for four years, and from holding any public office until repayment or restitution by the court is satisfied.

- Requires that whenever a county auditor or county treasurer fails to perform the duties of office for 30 consecutive days, instead of the current 90 days, the office must be deemed vacant, except in the case of sickness or injury confirmed by the filing of a physician's certificate.

Acting officers and interim replacement officials

- Authorizes the board of county commissioners to appoint an acting officer to perform the duties of a suspended elected *county* official between the time the judgment suspending the elected county official is entered and the time at which the interim replacement official is appointed and takes office.

- Requires the acting officer to give bond and take the oath of office.

- Revises the procedure for appointing, and the entity that makes the appointment of, an interim replacement official to perform the duties of a suspended elected *county* official for the duration of the suspension.

- Requires that an acting officer appointed under the bill, or any interim replacement official appointed under continuing law, be certified to the county board of elections and the Secretary of State by the county central committee, probate judge of the

court of common pleas, or board of county commissioners that made the appointment.

- Requires that a person appointed as an acting officer or interim replacement official for the office of prosecuting attorney, sheriff, coroner, or county engineer meet the requirements to hold that office.

Miscellaneous

- Reduces the required number of Board of Deposit meetings from 12 to at least one annually.

- Authorizes two board members, at any time, to jointly request a meeting of the board and requires the chairperson to call a meeting within 30 days after receipt of such a request.

- Requires the chairperson of the Board of Deposit to provide the Board with a monthly report of the notifications the Treasurer of State must provide the Board when the Treasurer classifies public moneys as interim moneys; also requires the chairperson to post that report monthly on the Treasurer of State's website.

- Expands the allowable subject matter for the continuing education required for a qualified project manager.

- Corrects errors and omissions in S.B. 3 of the 130th General Assembly (effective September 17, 2014) by clarifying provisions, improving the workability of provisions, removing obsolete and repetitive provisions, improving consistency between provisions, and adjusting cross references.

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CONTENT AND OPERATION

Removing county, township, and municipal fiscal officers from public office

Background and general description

Removal procedures in continuing law generally authorize the removal of persons holding a public office in Ohio or any political subdivision thereof for misconduct in office,[1] or, in the case of a municipal corporation that does not have a removal procedure in a charter, for certain violations of law, including misfeasance or malfeasance in office.[2] The statutory grounds in continuing law are generally for willful and flagrant exercises of authority or power not authorized by law, or refusal or willful neglect to perform any official duty imposed by law, gross neglect of duty, gross immorality, drunkenness, misfeasance, malfeasance, or nonfeasance. A complaint and

[1] R.C. 3.07 to 3.10, not in the bill.

[2] R.C. 733.72 to 733.77, not in the bill.

hearing is required for forfeiture of office. Continuing law does not preclude "other methods of removal authorized by law."[3]

The bill establishes removal procedures that apply specifically to county auditors, county treasurers, township fiscal officers, village fiscal officers, village clerk-treasurers, village clerks, city auditors, city treasurers, and fiscal officers of chartered municipal corporations who, by virtue of the charter, have duties and functions similar to the aforementioned city or village officers, with regard to their official duties.[4] The bill provides that if a municipal corporation's charter establishes a procedure for the removal of officers from office that conflicts with the removal procedures established by the bill, the charter provision prevails.[5] This is consistent with the common law view of municipal removal authority being a matter of local self-government under Ohio Constitution, Article XVIII, Sec. 3.

The standard for removal under the bill is purposeful, knowing, or reckless failure to perform a fiscal duty expressly imposed by law with respect to the fiscal duties of the office, or purposeful, knowing, or reckless commission of any act expressly prohibited by law with respect to the fiscal duties of the office. The bill's removal procedures may be used as an alternative to other procedures prescribed by law, including R.C. 3.07 to 3.10.[6]

The bill eliminates an existing statute for removal of a county auditor from office for dereliction of duty; instead, the procedures discussed below apply to the removal of a county auditor from office.[7] The statute being eliminated by the bill, which requires immediate suspension of the county auditor when a complaint is filed or a hearing is held, is similar to a statute for the removal of a county treasurer that was ruled unconstitutional by the Ohio Supreme Court because the statute was incompatible with the complaint and hearing requirements of Ohio Constitution, Art. II, Sec. 38.[8] Article II,

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[3] R.C. 3.07.

[4] R.C. 319.26 for removal of county auditors, R.C. 321.37 for removal of county treasurers, R.C. 507.13 for removal of township fiscal officers, and R.C. 733.78 for removal of village fiscal officers, village clerk-treasurers, village clerks, city auditors, and city treasurers.

[5] R.C. 733.78(F).

[6] Under R.C. 3.08, proceedings for removal are commenced by the filing of a written complaint specifically setting forth the charge and signed by qualified electors of a township, county, or municipal corporation not less in number than 15% of the total vote cast for Governor at the most recent election for that office. The officer sought to be removed is served with a copy of the complaint at least ten days before the hearing; the hearing must occur within 30 days from the date the electors filed the complaint.

[7] R.C. 319.26(A)(1) and repeal of R.C. 319.25.

[8] *Ziegler v. Zumbar*, 129 Ohio St.3d 240 (2011).

Section 38 provides that laws may be passed for the prompt removal of public officers, *upon a complaint and hearing*, for misconduct involving moral turpitude or for other cause provided by law. The Due Process requirements of a complaint and hearing must be afforded to a public officer before removal from office.

The bill also amends and consolidates an existing statute and repeals another for the removal of county treasurers from office, to afford a county treasurer a hearing before removal from office, as discussed below.[9]

Alleging a violation

If a county auditor, county treasurer, township fiscal officer, or fiscal officer of a municipal corporation purposely, knowingly, or recklessly fails to perform a fiscal duty expressly imposed by law with respect to the fiscal duties of the office, or purposely, knowingly, or recklessly commits any act expressly prohibited by law with respect to the fiscal duties of the office, the following persons may submit a sworn affidavit alleging such a violation, together with evidence supporting the allegations, to the Auditor of State:[10]

(1) In the case of a county auditor, the county treasurer or a county commissioner;

(2) In the case of a county treasurer, a county commissioner or the county auditor;

(3) In the case of a township fiscal officer, four residents[11] of the township; and

(4) In the case of a village or city fiscal officer, a member of the legislative authority of the municipal corporation.[12]

The sworn affidavit and supporting evidence must be submitted to the Auditor of State in the format that the bill requires the Auditor of State to establish by rule.[13]

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[9] R.C. 321.37 and repeal of R.C. 321.38.

[10] R.C. 319.26, 321.37, 507.13, and 733.78.

[11] Presumably, one or more of the township trustees could be among the four township residents because the provision does not expressly exclude the trustees, who are also residents of the township (R.C. 507.13(A)).

[12] R.C. 319.26(A), 321.37(A), 507.13(A), and 733.78(B).

[13] R.C. 117.45.

Review of the affidavit and evidence by the Auditor of State

The Auditor of State must review the sworn affidavit and the evidence submitted. Unless, for good cause, additional time is required, within ten business days after receiving the sworn affidavit and evidence the Auditor of State must determine whether clear and convincing evidence[14] supports the allegations against the fiscal officer. If the Auditor of State finds that no allegation is supported by clear and convincing evidence, the Auditor of State must submit those findings in writing to the fiscal officer and the person, or persons in the case of a township fiscal officer, who initiated the sworn affidavit.

If the Auditor of State finds that an allegation is supported by clear and convincing evidence, the Auditor of State must submit those findings in writing[15] to the Attorney General, the person who initiated the sworn affidavit, and the fiscal officer. The findings must include a copy of the affidavit and the evidence submitted with it.[16]

Review of the affidavit and evidence by the Attorney General

The Attorney General must review the Auditor of State's findings and the sworn affidavit and evidence. Unless, for good cause, additional time is required, within ten business days after receiving the affidavit and evidence the Attorney General must determine whether clear and convincing evidence supports the allegations. If the Attorney General finds that no allegation is supported by clear and convincing evidence, the Attorney General, by certified mail, must notify the Auditor of State, the person who initiated the affidavit, and the fiscal officer that no complaint for the removal of the fiscal officer from public office will be filed.

If the Attorney General finds that an allegation is supported by clear and convincing evidence, the Attorney General, by certified mail, must notify the Auditor of State, the person who initiated the affidavit, and the fiscal officer of that fact, and must

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[14] Clear and convincing evidence is the standard required at common law and under the general statutory removal provisions, R.C. 3.07 to 3.10, to show a substantial departure from the faithful performance of official duties. This burden of proof is a degree of proof that is more than a mere preponderance of the evidence, but is not as high a burden as is required by the beyond a reasonable doubt standard in criminal cases. *In re Removal of Kuehnle*, 161 Ohio App.3d 399 (2005).

[15] Apparently, this written finding need not be sent by certified mail as is the case for the Attorney General's findings.

[16] R.C. 319.26(A), 321.37(A), 507.13(A), and 733.78(B).

commence an action against the fiscal officer by filing a complaint for the officer's removal from public office.[17]

Filing the removal action; hearing

The removal action must be commenced not later than 45 days after the Attorney General sends to the fiscal officer and the other specified persons a notice that clear and convincing evidence supports the allegation against the officer. If any money is due, the Attorney General must join the sureties on the fiscal officer's bond as parties.

The bill states that nothing in its removal procedures is intended to limit the authority of the Attorney General to enter into mediation, settlement, or resolution of any alleged violation before or following the commencement of a removal action under the bill.

The court of common pleas of the county in which the fiscal officer holds office has exclusive original jurisdiction of the action. The action must proceed *de novo* as in the trial of a civil action and is governed by the Rules of Civil Procedure. The court is not restricted to the evidence that was presented to the Auditor of State and the Attorney General before the action was filed.

If the court finds by clear and convincing evidence that the fiscal officer purposely, knowingly, or recklessly failed to perform a fiscal duty expressly imposed by law with respect to the fiscal duties of the office, or purposely, knowingly, or recklessly committed any act expressly prohibited by law with respect to the fiscal duties of the office, the court must issue an order removing the fiscal officer from office and any order necessary for the preservation or restitution of public funds.[18]

Prior to or at the hearing, upon a showing of good cause, the court may issue an order restraining the fiscal officer from entering the office and from conducting the affairs of the office pending the hearing on the complaint. If that order is issued, the court may continue the order until the conclusion of the hearing and any appeals.

The board of county commissioners, board of township trustees, or legislative authority of the municipal corporation, as fitting, is responsible for the payment of reasonable attorney's fees for counsel for the fiscal officer. If judgment is entered against the fiscal officer, the court must order the officer to reimburse the appropriate board or legislative authority for attorney's fees and costs up to a reasonable amount, as determined by the court. Expenses incurred by the board of county commissioners or of

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[17] R.C. 319.26(A), 321.37(A), 507.13(A), and 733.78(B).

[18] R.C. 319.26(B), 321.37(B), 507.13(B), and 733.78(C).

township trustees in a removal action must be paid out of the general fund of the county or township as appropriate. The bill does not require a municipality to pay expenses out of its general fund.

The judgment of the court is final and conclusive unless reversed, vacated, or modified on appeal.[19]

Appeals

An appeal may be taken by any party, and must proceed as in the case of appeals in civil actions and in accordance with the Rules of Appellate Procedure. Upon the filing of a notice of appeal by any party to the proceedings, the court of appeals must hear the case as an expedited appeal under Rule 11.2 of the Rules of Appellate Procedure. The fiscal officer has the right of review or appeal to the Ohio Supreme Court.

Culpable mental states

The bill sets forth the following culpable mental states that apply to the bill's removal procedures:

(1) A person acts purposely when it is the person's specific intention to cause a certain result, or when the gist of the offense is a prohibition against conduct of a certain nature, regardless of what the person intends to accomplish thereby, it is the person's specific intention to engage in conduct of that nature.

(2) A person acts knowingly, regardless of the person's purpose, when the person is aware that the person's conduct will probably cause a certain result or will probably be of a certain nature. A person has knowledge of circumstances when the person is aware that such circumstances probably exist.

(3) A person acts recklessly when, with heedless indifference to the consequences, the person perversely disregards a known risk that the person's conduct is likely to cause a certain result or is likely to be of a certain nature. A person is reckless with respect to circumstances when, with heedless indifference to the consequences, the person perversely disregards a known risk that such circumstances are likely to exist.[20]

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[19] R.C. 319.26(B) and (C), 321.37(B) and (C), 507.13(B) and (C), and 733.78(C) and (D).

[20] R.C. 319.26(E), 321.37(E), 507.13(E), and 733.78(G).

Enhanced penalty for falsification

The bill states that a person who makes a false statement in a sworn affidavit, for purposes of a removal action, is guilty of falsification under the existing falsification law. Falsification is generally a misdemeanor of the first degree, but for purposes of the bill's removal proceedings, it is a felony of the third degree.[21]

Automatic stay of removal proceedings during pendency of criminal action

The bill provides that an action for removal from office is stayed during the pendency of any criminal action concerning a violation of a law or ordinance that is substantially equivalent to any criminal violation in Title 29 of the Revised Code related to conduct in office, if the person charged in the criminal action committed the violation while serving as the fiscal officer and the conduct constituting the violation was related to the duties of the office or to the person's actions as the fiscal officer. The stay may be lifted upon motion of the prosecuting attorney in the related criminal action.[22]

Filling vacancies after final judgment for removal

If a final judgment for removal from public office is entered against a fiscal officer, the office must be deemed vacated,[23] and the vacancy must be filled as provided in continuing law.[24]

Suspension of township fiscal officer

The bill authorizes the board of township trustees to appoint a deputy fiscal officer to discharge the township fiscal officer's duties if the court orders the suspension of the township fiscal officer under the bill's removal procedures.[25]

Ban on holding public office

The bill generally provides that, except as otherwise provided by law, any individual removed from public office under the bill's removal procedures is not entitled to hold another public office for four years following the date of the final judgment, and is not entitled to hold any public office until any repayment or

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[21] R.C. 319.26(A), 321.27(A), 507.13(A), 773.78(B), and 2921.13.

[22] R.C. 319.26(B), 321.37(B), 507.13(B), and 733.78(C).

[23] R.C. 319.26(D), 321.37(D), 507.13(D), and 733.78(E).

[24] R.C. 305.02 for county auditors and county treasurers, R.C. 503.24 for township fiscal officers, and R.C. 733.31 for city or village fiscal officers, none of which is in the bill.

[25] R.C. 507.02.

restitution required by the court is satisfied. Exceptions in existing law include, for example, the rule that conviction of a felony forever bars an individual from holding public office.[26] Similarly, a conviction for theft in office and embezzlement (two specific felonies) bars one from holding a public office.[27]

A similar ban applies to any fiscal officer of a local government or public school who is convicted of or pleads guilty to dereliction of duty.[28]

Education programs and continuing education for fiscal officers

For county auditors

Currently, a county auditor must attend and successfully complete at least 24 hours of continuing education courses, 16 hours of which must be completed during the first year of the auditor's term of office, and eight hours of which must be completed by the end of the four-year term. At least two hours of ethics and substance-abuse training must be included in the total 24 hours of required courses. A course must be approved by the County Auditors Association of Ohio (CAAO), which also records and verifies completion of required course work for each county auditor and sends the number of hours completed to the Auditor of State and the Tax Commissioner, or issues a "notice of failure" if course work is not completed.

The bill does not change this continuing education requirement, except that the bill requires the Auditor of State, rather than the CAAO, to issue a certificate of completion to each county auditor who completes the continuing education courses, and to issue a notice of failure to any county auditor who fails to complete at least 16 hours of those courses during the first year of the term of office or to complete a total of at least 24 hours of those courses by the end of that term. Continuing law provides that this notice is for informational purposes only, and does not affect any individual's ability to hold the office of county auditor.[29]

For county treasurers

Continuing law requires that newly elected county treasurers complete 13 hours of education programs *before* taking office, and, after completing one year in office, take

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[26] R.C. 2961.01 (felony conviction makes one incompetent to hold office of honor, trust, or profit); Ohio Constitution, Article V, Sec. 4 (General Assembly has authority to exclude from the privilege of voting, or being eligible to hold office, any person convicted of a felony).

[27] R.C. 2921.41 (theft in office); Ohio Constitution, Article II, Sec. 5 (embezzlement).

[28] Also discussed at page 19.

[29] R.C. 319.04.

not less than 24 hours of continuing education during each biennial cycle. The bill does not revise any of these requirements for county treasurers, but the bill does clarify the distinction between initial education programs, taken before or during the first year of office, and continuing education courses, taken after completing one year in office.[30]

For fiscal officers of townships and municipal corporations

The bill requires that township fiscal officers and municipal fiscal officers (city auditors, city treasurers, village fiscal officers, village clerk-treasurers, village clerks, and, in the case of a municipal corporation with a charter that designates an officer with similar duties and functions, the officer so designated) complete education programs and continuing education courses.[31] To enhance the background and working knowledge of these township or municipal fiscal officers in government accounting, budgeting and financing, financial report preparation, and the Auditor of State's rules, the bill requires the Auditor of State to conduct education programs and continuing education courses for individuals elected or appointed for the first time to the office of township fiscal officer, or to one of the municipal fiscal offices, and to conduct continuing education courses for individuals who continue to hold that office in a subsequent term. The bill permits the Ohio Township Association (OTA) and the Ohio Municipal League (OML), respectively, to conduct the education programs and continuing education courses if approved by the Auditor of State. The Auditor of State, in conjunction with the OTA or OML, as appropriate, must determine the manner and content of the initial education programs and continuing education courses.

Initial education programs for newly elected or appointed fiscal officers

Newly elected or appointed township or municipal fiscal officers must complete at least six hours of initial education programs before commencing, or during the first year of, office. A township or municipal fiscal officer who participates in a permissive training or educational program for new township fiscal officers, city auditors, or village clerks held by the Auditor of State under continuing law[32] may apply those hours taken *before* commencing office to the six hours of required initial education programs.[33]

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[30] R.C. 321.46; R.C. 321.47, not in the bill.

[31] R.C. 507.12 and 733.81.

[32] R.C. 117.44, not in the bill.

[33] R.C. 507.12(B) and 733.81(C).

Continuing education courses

In addition to the six hours of initial education: (1) a newly elected township or municipal fiscal officer must complete at least 18 continuing education hours during the officer's first term of office, and (2) a township or municipal fiscal officer who is elected to a subsequent term of office must complete 12 hours of continuing education courses in each subsequent term of office. Under (1) and (2), at least two hours of ethics instruction must be included in the continuing education hours required by the bill.

A township or municipal fiscal officer who participates in a three-hour training program or seminar established by the Attorney General[34] regarding a public official's duty to provide access to public records under the Public Records Act may apply the three hours of training to the bill's required continuing education hours.[35]

A certified public accountant who serves as a township or municipal fiscal officer may apply, to the required continuing education hours, any hours of continuing education taken to fulfill the Accountancy Board's existing continuing education requirements,[36] if completed *after* being elected or appointed as a township or municipal fiscal officer. Similarly, a township or municipal fiscal officer may apply, to the required hours of continuing education, any hours of continuing education provided by the Treasurer of State under an existing continuing education program[37] if the hours are completed *after* being elected or appointed as a township or municipal fiscal officer.

A township or municipal fiscal officer who teaches an approved continuing education course is entitled to credit for the course in the same manner as if the township or municipal fiscal officer had attended the course.[38]

Auditor of State's rules; certificates of completion or failure to complete notices

The Auditor of State must adopt rules specifying the initial education programs and continuing education courses that are required for a township or municipal fiscal officer who has been appointed to fill a vacancy. The requirements must be proportionally equivalent, based on the time remaining in the vacated office, to the requirements for a newly elected township or municipal fiscal officer.

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[34] As required by R.C. 109.43, not in the bill.

[35] R.C. 507.12(C) and 733.81(D).

[36] R.C. 4701.11, not in the bill.

[37] R.C. 135.22, not in the bill.

[38] R.C. 507.12(D) and 733.81(E).

The Auditor of State also must adopt rules verifying the completion of initial education programs and continuing education courses for the township fiscal officer and for each category of municipal fiscal officers. The Auditor of State must issue a certificate of completion to each township or municipal fiscal officer who completes the initial education programs and continuing education courses. And the Auditor of State must issue a "failure to complete" notice to any township or municipal fiscal officer who is required to complete initial education programs and continuing education courses, but who fails to do so. The notice is for informational purposes only and does not affect any individual's ability to hold the office of township or municipal fiscal officer.[39]

Covering the costs of fiscal officer's education

For a township fiscal officer, each board of township trustees, and for a municipal fiscal officer, the legislative authority of the municipal corporation, must approve a reasonable amount requested by the fiscal officer to cover the costs the officer is required to incur to meet the bill's education requirements, including registration fees, lodging and meal expenses, and travel expenses.[40]

Fiscal accountability for public schools

Declaration that public school is unauditable

Continuing law authorizes the Auditor of State or a public accountant auditing a public office to declare the public office unauditable if its accounts, records, files, or reports have been improperly maintained.[41] The bill requires that if a school district, a community (charter) school, a science, technology, engineering, and mathematics (STEM) school, or a college-preparatory boarding school (CPB school) has been declared unauditable under that continuing law, the Auditor of State must post notice of the unauditability on the Auditor's website and provide written notice of the unauditability to the following:

(1) For a school district, to the district and Department of Education.

(2) For a community school, to the community school, the school's sponsor, and the Department of Education.

(3) For a STEM school, to the school and the Department of Education.

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[39] R.C. 507.12(C) and (E) and 733.81(D) and (F).

[40] R.C. 507.12(F) and 733.81(G).

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

(4) For a CPB school, to the school and the Department of Education.[42]

Uncodified law already requires that the Auditor of State provide written notification of a declaration that a community school is unauditable. The bill makes that law permanent by placing it in the Revised Code and amends the declaration procedure, as described below.[43]

For purposes of this analysis, school districts, community (charter) schools, STEM schools, and public CPB schools will be referred to as "public schools" and the district board of education of a school district, the sponsor of a community school, the governing body of a STEM school, and the board of trustees of a CPB school will be referred to as the "governing body."

Suspension of public school treasurer or fiscal officer

If a school district's current treasurer, a community school's current fiscal officer, a STEM school's current treasurer, or a CPB school's current fiscal officer held that position during the period for which the respective school is unauditable, upon receipt of the notice of unauditability, the governing body of the public school must suspend the treasurer or fiscal officer until the Auditor of State or a public accountant has completed an audit of the public school, except that if a community school or CPB school has an operator and the operator employs the fiscal officer, the operator must suspend the fiscal officer for that period.[44]

Suspension of a treasurer or fiscal officer may be with or without pay, as determined by the governing body imposing the suspension, based on the circumstances that prompted the Auditor of State's declaration of unauditability. The governing body imposing the suspension must appoint a person to assume the duties of the treasurer or fiscal officer during the period of the suspension. If the appointee is not licensed as a school district treasurer by the State Board of Education under existing law,[45] the appointee must be approved by the Superintendent of Public Instruction before assuming the duties of the treasurer or fiscal officer. The State Board of Education may take action under its continuing authority[46] to suspend, revoke, or limit the license of a treasurer or fiscal officer who has been suspended in this manner.

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[42] R.C. 3313.30, 3314.51, 3326.211, and 3328.37.

[43] R.C. 3314.51; repeal of Section 267.50.70 of Am. Sub. H.B. 153 of the 129th General Assembly.

[44] R.C. 3313.30(B), 3314.51(B), 3326.211(B), and 3328.37(B).

[45] R.C. 3301.074, not in the bill.

[46] R.C. 3319.31, not in the bill.

No community (charter) school contracts

Notwithstanding any provision of law to the contrary, the sponsor of a community school declared unauditable is prohibited under continuing law from entering into contracts with any additional community schools. The bill applies this prohibition to a period beginning 90 days after the date of the declaration and ending on the date the Auditor of State or a public accountant has completed the financial audit, rather than from the date of declaration until the financial audit is completed.[47]

Written response

Not later than 45 days after receiving a notice that a public school has been declared unauditable, the governing body of the public school must provide a written response to the Auditor of State that includes all of the following:

♦ An overview of the process the governing body will use to review and understand the circumstances that led to the public school becoming unauditable.

♦ A plan for providing to the Auditor of State documentation necessary to complete an audit of the public school, and for ensuring that all financial documents are available in the future.

♦ The actions the governing body will take to ensure that the plan is implemented.[48]

Withholding funding

If the public school fails to make reasonable efforts and continuing progress to bring its accounts, records, files, or reports into an auditable condition within 90 days after being declared unauditable, the Auditor of State, in addition to requesting that legal action be filed by the Attorney General under continuing law,[49] must notify the school and the Department of Education of that failure.

If the Auditor of State or a public accountant subsequently is able to complete a financial audit of the public school, the Auditor of State must notify the school and the Department of Education that the audit has been completed.

Notwithstanding any provision of law to the contrary, upon notification by the Auditor of State that a public school has failed to make reasonable efforts and

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[47] R.C. 3314.51(C).

[48] R.C. 3313.30(C), 3314.51(D), 3326.211(C), and 3328.37(C).

[49] R.C. 117.42, not in the bill.

continuing progress to bring its accounts, records, files, or reports into an auditable condition, the Department must immediately cease all payments to the public school until receiving subsequent notification from the Auditor of State that a public accountant or the Auditor of State was able to complete a financial audit of the public school, at which time the Department must release all funds withheld from the public school.[50]

Community (charter) schools

Written reports of record reviews

Continuing law requires that a representative of the sponsor of a community (charter) school meet with the governing body or fiscal officer of the school and review the financial and enrollment records of the school at least once a month. The bill requires the sponsor to provide the governing body and fiscal officer with a written report regarding the review not later than ten days after each review.[51]

Posting of surety bond

The bill prohibits a community school, on or after the bill's effective date, from opening for operation in any school year unless the governing authority of the school has posted a surety bond in the amount of $50,000 with the Auditor of State. In lieu of a surety bond, a community school governing authority may deposit with the Auditor of State $50,000 cash as a guarantee of payment. The bond or cash guarantee must be used, in the event the school closes, to pay the Auditor of State any moneys owed by the school for the costs of any audits conducted by the Auditor of State or a public accountant.

Immediately upon the filing of a surety bond or the deposit of cash, the Auditor of State must deliver the bond or cash to the Treasurer of State, who must hold it in trust. The Treasurer of State is responsible for the safekeeping of all surety bonds filed or cash deposited. The Auditor of State must notify the Department of Education when the school's governing authority has filed the bond or deposited the cash guarantee.

When the Auditor of State finds that a community school has closed and cannot pay for the costs of audits, the Auditor of State must declare the surety bond or cash deposit forfeited. The Auditor of State must certify the amount of forfeiture to the Treasurer of State, who must pay money from the named surety or from the school's

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[50] R.C. 3313.30(E), 3314.51(F), 3326.211(E), and 3328.37(E); codification of Section 267.50.70 of Am. Sub. H.B. 153 of the 129th General Assembly.

[51] R.C. 3314.023.

cash deposit as needed to reimburse the Auditor of State or public accountant for costs incurred in conducting audits of the school.[52]

Fiscal officer requirement for public CPB schools

The bill requires each public CPB school to have a designated fiscal officer. The Auditor of State may require by rule that the fiscal officer of any public CPB school, before entering upon duties as fiscal officer, execute a bond in an amount and with surety to be approved by the school's board of trustees, payable to the state, conditioned for the faithful performance of all the official duties required of the fiscal officer. The bond must be deposited with the school's board of trustees, and a copy of the bond must be certified by the board and filed with the county auditor.

Before assuming the duties of fiscal officer, the fiscal officer of a public CPB school must be licensed by the State Board of Education as a treasurer under continuing law.[53] A public CPB school cannot allow a person to serve as fiscal officer who is not so licensed.[54]

Disqualification from holding public office for dereliction of duty

Continuing law prohibits public servants, among other officials, from failing to perform duties expressly imposed by law. Whoever violates the law is guilty of dereliction of duty.

The bill provides that, except as otherwise provided by law, a public servant who is a county treasurer; county auditor; township fiscal officer; city auditor; city treasurer; village fiscal officer; village clerk-treasurer; village clerk; an officer who by virtue of a municipal charter has similar duties and functions to those of the city and village fiscal officers; school district treasurer; fiscal officer of a community (charter) school; treasurer of a STEM school; or fiscal officer of a public CPB school, and who is convicted of or pleads guilty to dereliction of duty is disqualified from holding any public office, employment, or position of trust in Ohio for four years following the date of conviction or of entry of the plea, and is not entitled to hold any public office until any repayment or restitution required by the court is satisfied. If such a person is also convicted of a felony, existing law forever bars that person from holding a public office.[55] The bill

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[52] R.C. 3314.50.

[53] R.C. 3301.074, not in the bill.

[54] R.C. 3328.16.

[55] R.C. 2961.01, not in the bill (felony conviction renders one incompetent to hold an office of honor, trust, or profit); see also Ohio Constitution, Art. V, Sec. 4 (General Assembly has authority to exclude from the privilege of voting, or being eligible to hold office, any person convicted of a felony).

includes in the definition of "public servant" a fiscal officer employed by the operator of a community school or by the operator of a public CPB school.[56]

Vacancy in county auditor or county treasurer's office

The bill requires that whenever any county auditor or county treasurer fails to perform the duties of office for 30 consecutive days, except in the case of sickness or injury, the office must be deemed vacant. Continuing law requires the county auditor and county treasurer to cause to be filed with the board of county commissioners a physician's certificate of the officer's sickness or injury. The bill requires that if the certificate is not filed with the board within ten days after the expiration of 30 consecutive days, the office must be deemed vacant.[57]

Acting officer or interim replacement official for suspended public official charged with a felony

Appointment of acting officer

Under continuing law, when an elected public official of a political subdivision is charged with a felony, the official can be suspended from office. For the duration of the suspension, an interim replacement official is appointed to carry out the duties of the suspended public official. The bill authorizes the appointment of an acting officer to perform the duties of a suspended *county* official *before* an interim replacement official is appointed.[58] Under the bill, the board of county commissioners may appoint a person in the official's office as the acting officer to perform the suspended county official's duties between the date of the signing and filing of the judgment entry suspending the county official and the time at which the appointed interim replacement official qualifies and takes the office.[59] The bill requires the acting officer to give bond and take the oath of office.[60]

Appointment of an interim replacement official

The bill revises the procedure for appointing an interim replacement official. If the suspended public official is an elected county official, existing law requires the interim replacement official to be appointed by the county central committee of the

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[56] R.C. 2921.44(G) and (H).

[57] R.C. 305.03.

[58] R.C. 3.16.

[59] R.C. 3.16(E)(2).

[60] R.C. 3.16(E)(5).

political party that nominated the suspended public official. The bill requires the county central committee to meet and appoint the interim replacement official not less than five nor more than 45 days after the suspension of the elected county official. Not less than four days before the date of the meeting, the chairperson or secretary of the county central committee must send by first class mail to each member of the committee a written notice that states the time and place of the meeting and the purpose thereof. The approval of a majority of the county central committee's members present at the meeting is required to appoint the interim replacement official.

The bill also revises who appoints the interim replacement official under certain circumstances. If the suspended public official is an elected county official, except for a county commissioner, who was elected as an independent candidate, the board of county commissioners must appoint the interim replacement official. But if the suspended public official is a county commissioner who was elected as an independent candidate, the prosecuting attorney and the remaining county commissioners, by a majority vote, must appoint the interim replacement official.[61]

Certification and qualifications of acting officers or interim replacement officials

The bill requires that an acting officer appointed under the bill, or any interim replacement official appointed under continuing law, including an interim replacement official appointed by the probate judge of the court of common pleas if the suspended public official is an elected official of a municipal corporation, township, school district, or other political subdivision, be certified to the county board of elections and the Secretary of State by the county central committee, probate judge, or board of county commissioners that made the appointment.[62]

The bill also requires that a person appointed as an acting or interim replacement prosecuting attorney meet the qualifications of a prosecuting attorney under existing law, i.e., a candidate must be an attorney at law licensed to practice law in Ohio, and a prosecuting attorney cannot be a member of the General Assembly or mayor of a municipal corporation.[63] A person appointed as an acting or interim replacement sheriff must meet the requirements to hold the office of sheriff prescribed by existing law, which are numerous and include that the person must have been a resident of the county for at least one year immediately prior to the qualification date.[64] A person

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[61] R.C. 3.16(E)(3).

[62] R.C. 3.16(E)(5).

[63] R.C. 309.02, not in the bill.

[64] R.C. 311.01, not in the bill.

appointed as an acting or interim replacement coroner must meet the requirements to hold the office of coroner prescribed by existing law,[65] which requires that the person has held a license to practice as a physician in Ohio for a period of at least two years immediately preceding election or appointment as a coroner. And a person appointed as an acting or interim replacement county engineer must meet existing law's requirements[66] to hold the office of county engineer, which is that the person must be a registered professional engineer and a registered surveyor licensed to practice in Ohio, and no person holding the office of clerk of the court of common pleas, sheriff, county treasurer, or county recorder is eligible to hold the office of county engineer.[67]

Miscellaneous

Board of Deposit

The bill eliminates the requirement for monthly meetings of the Board of Deposit and replaces it with a requirement for at least one annually. Additional meetings must be called within 30 days after the chairperson receives a request from *two* members of the board.

Under ongoing law, the Treasurer of State or the Treasurer's representative serves as the chairperson of the Board. The bill requires the chairperson to provide a monthly report, albeit not necessarily at a meeting, to the Board of Deposit consisting of the notifications the Treasurer of State is required to send to the Board when the Treasurer classifies public money as interim funds; it also requires the chairperson to post that report monthly to a website maintained by the Treasurer of State.[68]

Continuing education for qualified project manager

A qualified project manager is a person who plans, manages, coordinates, and controls the execution of a mass appraisal project under the direction of the county auditor and meets specified requirements in continuing law. Among those requirements is one requiring the completion of at least seven hours of continuing education courses in mass appraisal during the two-year period immediately succeeding the year in which the person passed the examination required after completion of 30 hours of instruction in specified subject areas, and during each two-

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[65] R.C. 313.02, not in the bill.

[66] R.C. 315.02, not in the bill.

[67] R.C. 3.16(F).

[68] R.C. 135.02.

year period thereafter. The bill expands the subject matter of this seven-hour continuing education requirement to include "real property" in addition to mass appraisal.

Correction of errors and omissions in S.B. 3

The bill corrects errors and omissions in provisions recently amended or enacted by S.B. 3 of the 130th General Assembly (effective September 17, 2014). S.B. 3 generally revised and reformed rule-making procedures. The corrections are explained in the following paragraphs.

(1) The bill clarifies that the time for legislative review and invalidation of a proposed or existing rule more accurately expires with reference to the General Assembly's adoption of an invalidating concurrent resolution, rather than with reference to the recommendation of an invalidating concurrent resolution by the Joint Committee on Agency Rule Review (JCARR).[69]

(2) The bill clarifies that seven members of JCARR (two-thirds) must concur to recommend a concurrent resolution invalidating an existing rule under the Periodic Review of Rules Act.[70]

(3) The bill revises the statute under which JCARR, as an alternative to recommending adoption of a concurrent resolution invalidating a proposed rule, may authorize the agency in writing to revise and refile the proposed rule and its rule summary and fiscal analysis.[71] The revisions, which fall into three areas, are explained in the following paragraphs:

First, the bill specifies that JCARR, in order to make such an authorization, must have found that it nevertheless would be worthwhile to afford the agency an opportunity to revise the proposed rule instead of recommending its invalidation.

Second, the bill specifies, when JCARR makes such an authorization, that it must explain in the authorization why it has found it nevertheless to be worthwhile to afford the agency an opportunity to revise the proposed rule.

And finally, the bill specifies, when JCARR approves such an authorization, that the running of the time within which an invalidating concurrent resolution may be adopted is tolled (stops running) until the 31st day after the day on which the

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[69] R.C. 106.02, 106.023, 106.05, 119.03(C) and (E), and 121.83(B)(2).

[70] R.C. 101.35 (3rd paragraph) and 106.031(E). The Periodic Review of Rules Act, R.C. 106.03 and 106.031, requires an agency to review each of its existing rules once every five years.

[71] R.C. 106.022.

authorization was approved. If, during the tolling period, the agency revises and refiles the proposed rule, the time within which an invalidating concurrent resolution may be adopted resumes running and expires on the 31st day after the day the proposed rule was refiled. But if, during the tolling period, the agency neither withdraws nor revises and refiles the proposed rule, the time within which an invalidating concurrent resolution may be adopted resumes running and expires on the 31st day after the day the tolling period ended.

(4) The bill requires an agency to file its report of its public hearing on a rule proposed under the Administrative Procedure Act with JCARR before JCARR holds its public hearing on the proposed rule. Under current law, the hearing report has to be filed with JCARR when the proposed rule is filed or when it "becomes available." It is unlikely a hearing report will be available when a proposed rule is filed with JCARR.[72]

(5) The bill removes a superfluous, duplicated reference to the Common Sense Initiative Office from the law establishing the electronic rule filing system,[73] removes an obsolete provision contemplating emergency rule-making filings not being completed on the same day, which is unlikely to happen under the electronic rule filing system,[74] and removes superfluous parentheses from the provision governing when an agency files its report of its public hearing on a proposed rule.[75]

(6) The bill conforms a reference to the temporary duration of an emergency rule to make it reflect S.B. 3's extension of the emergency rule durational period to 120 days.[76]

(7) And finally, the bill conforms cross references in continuing law to make them reflect the reorganization achieved by S.B. 3.[77]

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[72] R.C. 119.03(B) (6th paragraph) and (C) (4th paragraph). A rule that is proposed under the Administrative Procedure Act, R.C. Chapter 119., is given a public hearing. R.C. 119.03(A). After the hearing, the agency prepares a hearing report. The hearing report explains, with regard to each issue that was raised with regard to the proposed rule at the hearing, how the issue is reflected or not in the proposed rule. R.C. 119.03(D).

[73] R.C. 103.0511(A).

[74] R.C. 119.03(G) (1st paragraph).

[75] R.C. 119.03(C) (4th paragraph).

[76] R.C. 106.022 (last paragraph).

[77] R.C. 121.83(A) and 5101.09(A)(2) and (3).

HISTORY

ACTION	DATE
Introduced	01-30-13
Reported, H. State and Local Government	06-04-14
Passed House (87-8)	06-04-14
Reported, S. Public Safety, Local Gov't & Veterans Affairs	---

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