Fiscal Note & Local Impact Statement

127 th General Assembly of Ohio

Ohio Legislative Service Commission
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BILL: **Am. Sub. S.B. 126** DATE: **May 21, 2007**

STATUS: **As Passed by the Senate** SPONSOR: **Sen. Stivers**

LOCAL IMPACT STATEMENT REQUIRED: **No — No local cost**

CONTENTS: **To require the Auditor of State to perform recovery audits and authorize the Auditor to contract with independent audit consultants to recover overpayments made by certain state agencies to vendors**

State Fiscal Highlights

STATE FUND	FY 2008	FY 2009	FUTURE YEARS
Public Audit Expense – Intrastate (Fund 109) – Auditor			
Revenues	Potential gain in recovered overpayments to vendors	Potential gain in recovered overpayments to vendors	Potential gain in recovered overpayments to vendors
Expenditures	Potential increase in recovery audit costs and court costs for bringing forth civil actions	Potential increase in recovery audit costs and court costs for bringing forth civil actions	Potential increase in recovery audit costs and court costs for bringing forth civil actions
GRF and Other State and Federal Funds – Various Agencies			
Revenues	Potential gain in recovered overpayments to vendors	Potential gain in recovered overpayments to vendors	Potential gain in recovered overpayments to vendors
Expenditures	Potential increase in recovery audit costs and court costs for bringing forth civil actions	Potential increase in recovery audit costs and court costs for bringing forth civil actions	Potential increase in recovery audit costs and court costs for bringing forth civil actions

Note: The state fiscal year is July 1 through June 30. For example, FY 2007 is July 1, 2006 – June 30, 2007.

- ***Biennial Recovery Audits.*** Requires the Auditor of State to biennially perform recovery audits, and authorizes the Auditor to contract with independent audit consultants to recover overpayments made by certain state agencies to vendors. The agencies being audited are responsible for the costs of these recovery audits.

- ***Recovery Audit Contract Costs.*** Under the bill, the Auditor of State would be required to negotiate the terms of the recovery audits that are contracted out, resulting in potential new administrative costs to that office.

- ***Exemption.*** The bill gives the Auditor rule-making authority to exempt agencies from the recovery audit process. Presumably, exemptions would apply in situations where the cost of conducting the recovery audit would likely exceed the overpayments and other funds that could be recouped.

- ***Recovered Funds*.** The bill requires that recovered funds be used to pay for the cost of these audits. The recovered amounts remaining are to be returned to the fund which they were originally disbursed, whether they be GRF, state, or federal funds.

Local Fiscal Highlights

- No direct fiscal effect on political subdivisions.

Detailed Fiscal Analysis

Recovery audit requirements

The bill requires the Auditor of State to biennially perform recovery audits, and authorizes the Auditor to contract with consultants to conduct recovery audits for overpayments made to vendors by any state agency that (1) during the most recently concluded biennium had total expenditures that exceeded $100 million or (2) during the most recent biennium has appropriations in excess of $100 million. There are 23 state agencies that had expenditures in the last biennium that exceeded $100 million. As part of the requirement, the Auditor would be responsible for establishing guidelines and procedures that explain how these audits are to be conducted and must also recommend improved accounting procedures geared towards avoiding overpayment in the first place.

Additionally, the Auditor is required to establish, by rule, criteria for determining whether a state agency may be exempted from a recovery audit, taking into consideration the likely costs and benefits of performing such audits for agencies that make relatively few or small payments to vendors. Because exemption criteria would have to be developed, it is not known which agencies would be granted an audit exemption as allowed in the bill.

Payment of audit consultants

The bill requires that payment of a recovery audit consultant is the responsibility of the state agency subject to the audit. Such compensation may be determined by the application of a specified percentage of the total amount recovered because of the consultant's audit activities or recommendations as a fee for services. See "Recovery Audit Contracts" for a discussion of what typical contract terms might be. The agency is to pay, from the recovered money, the consultant responsible for identifying the overpayment. Any portion of a recovered overpayment that is not paid to the consultant must be credited to the fund or account from which the payment was originally made.

Reporting requirements

The bill requires that a recovery consultant submit a written report to the Auditor of State for each audit conducted, as well as to each state agency audited. The Auditor must provide copies of those reports to the Governor within seven days of their receipt, and where applicable, must also notify the Attorney General in writing of each audit report that states an overpayment of public money exists and has not been collected. The bill also requires the Auditor, no later than January 1 of each even-numbered year, to issue a report to the General Assembly summarizing the contents of all recovery audit reports received during the state biennium ending June 30 of the previous year.

Uncollected overpayments

If a recovery audit report states that an overpayment of public money exists and has not been collected, the auditing consultant may continue to try and collect that money during the 45-day period following the issuance of the report. The state agency being audited can proceed to try and collect the money in accordance with section 131.02 of the Revised Code.

Affected agencies

As indicated above, there are 23 state agencies with appropriations or expenditures that exceeded $100 million in the FY 2006-2007 biennium. These agencies are the: Department of Administrative Services (DAS), and the Employee Benefits Funds (PAY) that contain amounts to be distributed to various providers for health, dental, and vision care, managed by DAS, Department of Aging (AGE), Department of Alcohol and Drug Addiction Services (ADA), Attorney General (AGO), Department of Commerce (COM), Department of Development (DEV), Department of Education (EDU), Environmental Protection Agency (EPA), Department of Health (DOH), Department of Job and Family Services (JFS), Judiciary/Supreme Court (JSC), Lottery Commission (LOT), Department of Mental Health (DMH), Department of Mental Retardation and Developmental Disabilities (DMR), Department of Natural Resources (DNR), Public Works Commission (PWC), Board of Regents (BOR), Department of Rehabilitation and Correction (DRC), Rehabilitation Services Commission (RSC), School Facilities Commission (SFC), Department of Taxation (TAX), and Department of Youth Services (DYS).

Agency Exemptions

The bill gives the Auditor of State the authority to adopt rules that would allow agencies to be exempted from having these recovery audits performed. Presumably, such exemptions would apply when there is a likelihood that the costs of undergoing the recovery audit are greater than the amount of money that could be recouped. However, at the moment it is unknown what methodology the Auditor would take to determine those exemptions.

Recovery Audit Contracts

Generally, recovery audit firms use similar techniques for discovering overpayments, generally using proprietary software to detect duplicate payments, pricing errors, and payments for goods or services not received. Firms use data from various sources, including accounting systems, purchasing systems, receiving charts, vendor files, client files, and any data relevant to procuring, receiving, or paying for goods and services. Firms rarely include statistical sampling as a method for discovering overpayments. Therefore, in order to provide payment data in an auditable form, state agencies could incur some administrative costs to produce the necessary data for either the Auditor of State, or the contracted auditing firm to perform the recovery audit. Recovery audit contract payments are negotiated so that the firm is either paid a negotiated flat fee, or a contingency fee based upon the amount of recovery. In conducting research for this bill, LSC found that the state of Texas's recovery audit program pays the contracting entity a contingency fee of 13.5%.

Other fiscal effects

Each individual agency is responsible for the cost of the recovery audit. These costs will be determined by the terms of the individual contracts negotiated by the Auditor of State, or by the actual cost to the Auditor's office to perform the audit. Presumably, the recoveries made through conducting these audits will equal or surpass the costs of conducting the audits, thereby resulting in revenue recouped for the individual agencies. The Auditor of State's office, however, may experience some administrative costs for submitting requests for proposals (RFPs) and negotiating the terms of the recovery audit contracts. Such costs would be borne by the Public Audit Expense-Intrastate Fund (Fund 109).

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