



# Ohio Legislative Service Commission

## Final Analysis

Bethany Boyd

### Am. S.B. 67

130th General Assembly  
(As Passed by the General Assembly)

**Sens.** Peterson, Obhof, Seitz, Hughes, Beagle, Hite, Balderson, Coley, Eklund, Faber, Gardner, LaRose, Manning, Oelslager, Patton, Widener

**Reps.** Amstutz, Beck, Buchy, Dovilla, Hackett, Hall, Henne, Huffman, Johnson, Maag, McClain, McGregor, Scherer, Sprague, Terhar, Young, Batchelder

**Effective date:** September 4, 2013

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## ACT SUMMARY

### Agreed-upon procedure audit

- 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 criteria 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.

### Auditor of State rule-making

- 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.

## **Authority to audit private persons**

- Excludes from the public moneys the Auditor of State may audit, money or revenue earned by or from a person's ownership, operation, or use of a tangible or intangible asset that was sold, was leased, was licensed, was the granting of a franchise, or was otherwise transferred or conveyed by a public office to the person under an agreement, for consideration.
- Revises the definition of "audit" to specify that only specific funds or accounts of a private institution, association, board, or corporation into which public money has been placed or deposited qualifies for an "audit."
- Limits the Auditor of State's audits to the specific funds or accounts of private institutions, associations, boards, and corporations into which has been placed or deposited public money from a public office.
- Authorizes the Auditor of State to audit some or all of the other nonpublic-money funds or accounts of a private institution, association, board, or corporation that has received public money from a public office only if one or more criteria apply.

## **Accounting for public money**

- Requires public money in the possession of any private institution, association, board, or corporation to be accounted for separately and independently from the private organization's other funds and accounts.
- Authorizes the Auditor of State to adopt rules establishing the manner in which the public money must be separately and independently accounted for.

## **Audits of JobsOhio**

- Limits the public moneys the Auditor of State may audit, with respect to the transfer to and operation of the enterprise acquisition project by JobsOhio, to only taxes collected on spirituous liquor sales that are then due to the Department of Taxation, and amounts then due to the state General Revenue Fund.
- Requires JobsOhio's articles of incorporation to require that a firm of independent certified public accountants perform a financial audit of JobsOhio and the nonprofit entity the sole member of which is JobsOhio once each year, rather than an independent certified public accountant performing the audit of JobsOhio at least once every year.
- Requires other changes to JobsOhio's articles of incorporation, including a requirement that a supplemental compliance and control review be conducted



pursuant to a written agreement by and among the accounting firm, the Auditor of State, JobsOhio, and any nonprofit entity the sole member of which is JobsOhio.

- Requires a copy of the financial audit report and the report of the compliance and control review results to be provided to the Governor, Auditor of State, Speaker of the House of Representatives, and President of the Senate.
- Exempts from the Public Records Act, certain working papers of the firm auditing JobsOhio and the nonprofit entity the sole member of which is JobsOhio, and the financial audit report and any report of the supplemental compliance and control review, except for a record designated as being available to the public in the contract between the Director of Development Services and JobsOhio.

### **Auditing volunteer firefighter annuity programs**

- Allows, rather than requires, the Auditor of State to audit annuity programs for volunteer firefighters.

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## **TABLE OF CONTENTS**

Agreed-upon procedure audit.....	3
Eligibility criteria for AUP audit .....	4
Performance of an AUP audit.....	6
Annual financial report.....	6
Auditor of State's audit authority.....	6
Auditor of State rule-making.....	6
Auditor of State's authority to audit private persons.....	7
Exclusion for money or revenue from transfer or conveyance of an asset.....	7
Auditing private institutions, associations, boards, and corporations .....	8
Accounting for public money .....	9
Audits of JobsOhio.....	9
Exclusion of certain JobsOhio revenues.....	9
Performing audits and compliance reviews of JobsOhio.....	10
Public Records Act exemption for certain JobsOhio audit records.....	10
Auditing volunteer firefighter annuity programs .....	11

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## **CONTENT AND OPERATION**

### **Agreed-upon procedure audit**

The act 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 already has been performing agreed-upon procedure audits (AUP audits), according to Auditor of State Bulletins 2012-007 and 2009-012.<sup>1</sup>

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.<sup>2</sup>

The "qualifying subdivisions" that may be eligible for the 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, or a political subdivision the Auditor of State determines, on a case-by-case basis, to be a qualifying subdivision. These qualifying subdivisions may become eligible for an AUP audit if they meet the criteria established by rule of the Auditor of State.<sup>3</sup>

Presumably, counties, cities, and school districts are not eligible for an AUP audit because they are required to use generally accepted accounting principles in preparing their annual financial reports, unlike the qualifying subdivisions listed above.<sup>4</sup>

### **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:

(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;

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<sup>1</sup> The Bulletins are available on the Auditor of State's web site, [www.auditor.state.oh.us](http://www.auditor.state.oh.us).

<sup>2</sup> R.C. 117.11 and 117.114(C).

<sup>3</sup> R.C. 117.114(A) and (B).

<sup>4</sup> Ohio Administrative Code (O.A.C.) 117-2-03.



(4) The qualifying subdivision had a conventional financial audit<sup>5</sup> 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 unauditabile (because its accounts, records, files, or reports were improperly maintained),<sup>6</sup> (c) a finding for recovery that indicated fraud or theft in office, or (d) a finding related to material control weaknesses.

(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,<sup>7</sup> or (c) required to be audited on an annual basis under the federal Single Audit Act of 1984,<sup>8</sup> or under other laws, grants, bylaws, or debt covenants.

(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.<sup>9</sup>

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.<sup>10</sup>

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<sup>5</sup> R.C. 117.11(A) and 117.12(A).

<sup>6</sup> R.C. 117.41, not in the act.

<sup>7</sup> Generally, whether a fiscal emergency exists in a municipal corporation, county, or township is determined by the Auditor of State under R.C. 118.03 and 118.04. The Auditor of State also must declare a fiscal emergency in a school district 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.

<sup>8</sup> 31 U.S.C. 7501 *et seq.* The Single Audit Act applies to nonfederal entities that expend, under more than one federal program, total federal awards of \$300,000 or more, or another amount specified by the Director of the federal Office of Management and Budget.

<sup>9</sup> R.C. 117.114(B)(1) to (8).

<sup>10</sup> R.C. 117.114(E).

## **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 attestation standards established by the American Institute of Certified Public Accountants. Eligible subdivisions may have an AUP audit in two consecutive audit periods followed by one conventional financial audit.<sup>11</sup>

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 act to adopt by rule.<sup>12</sup>

## **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.<sup>13</sup> In general, the financial report identifies 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, 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 provisions 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 act authorizes the Auditor of State to conduct an audit, in addition to a conventional financial audit or an AUP audit, under those circumstances.<sup>14</sup>

## **Auditor of State rule-making**

The act eliminates the special exception that excused the Auditor of State from preparing a rule summary and fiscal analysis (RSFA) of proposed auditing rules, thereby bringing the procedure for adopting auditing rules into conformity with general rule-making procedures, which require an RSFA to be prepared.<sup>15</sup> An RSFA is a

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<sup>11</sup> R.C. 117.114(D).

<sup>12</sup> R.C. 117.114(B) and 117.12.

<sup>13</sup> R.C. 117.114(F); R.C. 117.38, not in the act.

<sup>14</sup> R.C. 117.16(B).

<sup>15</sup> R.C. 111.15 and 117.20(A)(2).



form that is completed in the course of preparing a proposed rule. The RSFA is filed along with the proposed rule, and assists the public and the Joint Committee on Agency Rule Review in reviewing the proposed rule.

The act authorizes the Auditor of State to send notices of the public hearing on proposed auditing rules and to transmit copies of proposed auditing rules by electronic mail. Under prior law, the notices of proposed rules had to be sent by mail.<sup>16</sup>

## **Auditor of State's authority to audit private persons**

### **Exclusion for money or revenue from transfer or conveyance of an asset**

The act limits the public moneys the Auditor of State may audit under the auditing law (R.C. Chapter 117.), by excluding from the definition of "public money," money or revenue earned by or from a person's ownership, operation, or use of a tangible or intangible asset that either in whole or in part was sold, was leased, was licensed, was the granting of a franchise, or was otherwise transferred or conveyed by a public office to the person pursuant to an agreement, authorized by law, between the person and the public office in which the public office received consideration from the person for the asset that was sold, leased, licensed, franchised, or otherwise transferred or conveyed.<sup>17</sup> Continuing law broadly defines a "public office" as any state agency, public institution, political subdivision, other organized body, office, agency, institution, or entity established by Ohio laws for the exercise of any function of government, but "public office" does not include the nonprofit corporation known as JobsOhio, formed under R.C. 187.01.<sup>18</sup>

The act defines "person" as an individual, corporation, business trust, estate, trust, partnership, or association.<sup>19</sup> This definition also would apply to the "person" discussed in the immediately preceding paragraph, as well as wherever that term is used throughout the Auditor of State's auditing law.

The act also changes part of the definition of "audit" to specify that only specific funds or accounts of a private institution, association, board, or corporation into which public money has been placed or deposited may be audited. Prior law included in the definition of "audit" any type of examination, analysis, or inspection of a private institution, association, board, or corporation receiving public money, and did not limit

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<sup>16</sup> R.C. 117.20.

<sup>17</sup> R.C. 117.01(C)(1).

<sup>18</sup> R.C. 117.01(D).

<sup>19</sup> R.C. 117.01(H).



the audit to specific funds or accounts into which has been placed or deposited public money from a public office.<sup>20</sup>

### **Auditing private institutions, associations, boards, and corporations**

Prior law authorized the Auditor of State to audit the accounts of private institutions, associations, boards, and corporations receiving public money. The act limits the audits to the specific funds or accounts of private institutions, associations, boards, and corporations into which has been placed or deposited public money from a public office.

The act provides that the Auditor of State may audit some or all of the other funds or accounts (those into which public money has not been placed or deposited) of a private institution, association, board, or corporation that has received public money from a public office only if one or more of the following applies:

- (1) The audit is specifically required or authorized by the Revised Code;
- (2) The private institution, association, board, or corporation requests that the Auditor of State audit some or all of its other funds or accounts;
- (3) All of the revenue of the private institution, association, board, or corporation is composed of public money;
- (4) The private institution, association, board, or corporation failed to separately and independently account for the public money in its possession, which the act requires (see "**Accounting for public money**," below);
- (5) The Auditor of State has a reasonable belief that the private institution, association, board, or corporation illegally expended, converted, misappropriated, or otherwise cannot account for the public money it received from a public office and that it is necessary to audit its other funds or accounts to make that determination.<sup>21</sup>

The act provides that the private entity audit limitations do not preclude the Auditor of State from issuing to a private institution, association, board, or corporation a subpoena and compulsory process for the attendance of witnesses or the production of records under existing law if the subpoena and compulsory process is in furtherance of an audit the Auditor of State is authorized by law to perform.<sup>22</sup>

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<sup>20</sup> R.C. 117.01(G)(3).

<sup>21</sup> R.C. 117.10(A).

<sup>22</sup> R.C. 117.10(F); R.C. 117.18, not in the act.



## Accounting for public money

The act requires public money in the possession of any private institution, association, board, or corporation to be accounted for separately and independently from its other funds and accounts. The Auditor of State may adopt rules establishing the manner in which the public money must be separately and independently accounted for.<sup>23</sup>

## Audits of JobsOhio

### Exclusion of certain JobsOhio revenues

The act limits, with respect to the transfer and operation of the "enterprise acquisition project" (i.e., the transfer to JobsOhio of the capital and other assets of the spirituous liquor distribution and merchandising operations of the Division of Liquor Control), the public moneys the Auditor of State may audit to only taxes collected on the spirituous liquor sales that are then due to the Department of Taxation, and amounts then due to the state General Revenue Fund under existing law.<sup>24</sup> The Auditor of State may not audit revenues or receipts of or from the enterprise acquisition project in the hands of JobsOhio or of a nonprofit entity the sole member of which is JobsOhio.<sup>25</sup> "JobsOhio" includes the nonprofit corporation known as JobsOhio and any subsidiary of that nonprofit corporation unless otherwise specified or clearly implied from the context, together with any successor or assignee of that corporation or any such subsidiary if and to the extent permitted by the JobsOhio Corporation Law or the transfer agreement entered into between the state and JobsOhio providing for the transfer of the "enterprise acquisition project."<sup>26</sup>

Under continuing law, the "enterprise acquisition project" encompasses all or any portion of the capital or other assets of the spirituous liquor distribution and merchandising operations of the Division of Liquor Control, including inventory, real property rights, equipment, furnishings, the spirituous liquor distribution system including transportation, the monetary management system, warehouses, contract rights, rights to take assignment of contracts and related receipts and revenues, accounts receivable, the exclusive right to manage and control spirituous liquor distribution and merchandising and to sell spirituous liquor in Ohio subject to the control of the Division of Liquor Control pursuant to the terms of the transfer

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<sup>23</sup> R.C. 117.431.

<sup>24</sup> R.C. 4301.12, not in the act.

<sup>25</sup> R.C. 117.01(C)(2).

<sup>26</sup> R.C. 4301.01, not in the act, and R.C. Chapter 187.



agreement, and all necessary appurtenances thereto, or leasehold interests therein, and the assets and liabilities of the Facilities Establishment Fund.<sup>27</sup>

### **Performing audits and compliance reviews of JobsOhio**

The act requires that the articles of incorporation for JobsOhio must require that the directors who comprise the audit committee hire a firm of independent certified public accountants, selected in consultation with the Auditor of State, to perform, once each year, a financial audit of JobsOhio and of any nonprofit entity the sole member of which is JobsOhio. Former law required that an independent certified public accountant be hired to perform a financial audit at least once every year.<sup>28</sup>

The act also mandates that the articles of incorporation require all of the following:

(1) Commencing with JobsOhio's fiscal year beginning July 1, 2012, the financial statements that are to be audited are to be prepared in accordance with accounting principles and standards set forth in all applicable pronouncements of the Governmental Accounting Standards Board;

(2) The firm hired is to conduct a supplemental compliance and control review pursuant to a written agreement by and among the firm, the Auditor of State, JobsOhio, and any nonprofit entity the sole member of which is JobsOhio;

(3) A copy of each financial audit report and each report of the results of the compliance and control review are to be provided to the Governor, the Auditor of State, the Speaker of the House of Representatives, and the President of the Senate.

### **Public Records Act exemption for certain JobsOhio audit records**

The act exempts from the Public Records Act the work papers of the firm of independent certified public accountants engaged to perform the annual financial audit and the supplemental compliance and control review of JobsOhio and any nonprofit entity the sole member of which is JobsOhio, and the financial audit report and any report of the supplemental compliance and control review, unless the record is designated to be available to the public by the contract entered into between the Director of Development Services and JobsOhio for JobsOhio to assist the Director and the Development Services Agency with providing services.<sup>29</sup> Under continuing law, the

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<sup>27</sup> R.C. 4313.01, not in the act.

<sup>28</sup> R.C. 187.01(J).

<sup>29</sup> R.C. 187.04(C)(4); R.C. 4701.19(B), not in the act.



contract must designate that a copy of the audit report for each financial audit of JobsOhio must be made available to the public under the same conditions as are public records. The act adds that a copy of each supplemental compliance and control review of JobsOhio must be made available to the public under the same conditions as are public records.<sup>30</sup>

### **Auditing volunteer firefighter annuity programs**

The act makes it permissive for the Auditor of State to audit an annuity program for volunteer firefighters established by a political subdivision. Under prior law, the Auditor of State was required to audit those programs.<sup>31</sup>

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## **HISTORY**

<b>ACTION</b>	<b>DATE</b>
Introduced	03-12-13
Reported, S. State Gov't Oversight & Reform	05-16-13
Passed Senate (33-0)	05-22-13
Reported, H. State and Local Government	05-29-13
Passed House (62-35)	05-29-13
Senate concurred in House amendments (22-10)	05-30-13

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<sup>30</sup> R.C. 187.04(B)(2).

<sup>31</sup> R.C. 117.11(E).

