



Ohio Legislative Service Commission

Bill Analysis

Bethany Boyd

Am. S.B. 67*

130th General Assembly

(As Reported by H. State and Local Government)

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

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 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.
- 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.
- 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

* This analysis was prepared before the report of the House State and Local Government Committee appeared in the House Journal. Note that the list of co-sponsors and the legislative history may be incomplete.

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.
- 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.
- 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.
- 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.

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

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 (AUP 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 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.³

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.⁴

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.



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;

(4) The qualifying subdivision had a conventional financial audit⁵ 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 unauditible (because its accounts, records, files, or reports were improperly maintained),⁶ (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,⁷ or (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.

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.



(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.⁹

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.¹⁰

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.¹¹

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.¹²

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.¹³ 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 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

⁹ R.C. 117.114(B)(1) to (8).

¹⁰ R.C. 117.114(E).

¹¹ R.C. 117.114(D).

¹² R.C. 117.114(B) and 117.12.

¹³ R.C. 117.114(F) and 117.38, not in the bill.

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.¹⁴

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.¹⁵ 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 public office, other than a state agency, must submit to the Auditor of State;¹⁶

(2) The standards, procedures, and guidelines a certified public accountant engaged to perform a conventional financial audit must follow;¹⁷

(3) Generally accepted or governmental auditing standards for auditing a public office;¹⁸ and

(4) Requirements for accounting and financial reporting for public offices other than state agencies.¹⁹

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

¹⁴ R.C. 117.16(B).

¹⁵ R.C. 117.20.

¹⁶ R.C. 117.38, not in the bill.

¹⁷ R.C. 117.12.

¹⁸ R.C. 117.19, not in the bill.

¹⁹ R.C. 117.43, not in the bill.



above subject matters.²⁰ 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.²¹

Auditor of State's authority to audit private persons

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

The bill 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.²² Existing 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. 187.01.²³

The bill defines "person" as an individual, corporation, business trust, estate, trust, partnership, or association.²⁴ 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.

²⁰ R.C. 111.15(F), 117.20, and 127.18(F).

²¹ R.C. 117.20.

²² R.C. 117.01(C)(1).

²³ R.C. 117.01(D).

²⁴ R.C. 117.01(H).



The bill 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. Current law includes in the definition of "audit" any type of examination, analysis, or inspection of a private institution, association, board, or corporation receiving public money, and does not limit the audit to specific funds or accounts into which has been placed or deposited public money from a public office.²⁵

Auditing private institutions, associations, boards, and corporations

Current law authorizes the Auditor of State to audit the accounts of private institutions, associations, boards, and corporations receiving public money. The bill 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 bill 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 bill 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.²⁶

²⁵ R.C. 117.01(G)(3).

²⁶ R.C. 117.10(A).



The bill 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.²⁷

Accounting for public money

The bill 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.²⁸

Audits of JobsOhio

Exclusion of certain JobsOhio revenues

The bill limits, with respect to the transfer and operation of the "enterprise acquisition project," 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.²⁹ 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.³⁰ "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," i.e., the capital and other assets of the spirituous liquor distribution and merchandising operations of the Division of Liquor Control.³¹

Under continuing law, the "enterprise acquisition project" encompasses all or any portion of the capital or other assets of the spirituous liquor distribution and

²⁷ R.C. 117.10(F); R.C. 117.18, not in the bill.

²⁸ R.C. 117.431.

²⁹ R.C. 4301.12, not in the bill.

³⁰ R.C. 117.01(C)(2).

³¹ R.C. 4301.01, not in the bill, and R.C. Chapter 187.



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 agreement, and all necessary appurtenances thereto, or leasehold interests therein, and the assets and liabilities of the Facilities Establishment Fund.³²

Performing audits and compliance reviews of JobsOhio

The bill 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. Current law requires that an independent certified public accountant be hired to perform a financial audit at least once every year.³³

The bill also requires 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 bill exempts from the Public Records Act the work papers of the firm of independent certified public accountants engaged to perform the annual financial audit

³² R.C. 4313.01, not in the bill.

³³ R.C. 187.01(J).



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.³⁴ Under continuing law, the 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 bill 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.³⁵

Auditing volunteer firefighter annuity programs

The bill makes it permissive for the Auditor of State to audit an annuity program for volunteer firefighters established by a political subdivision. Under current law, the Auditor of State is required to audit those programs.³⁶

HISTORY

ACTION	DATE
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	-----

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³⁴ R.C. 187.04(C)(4); R.C. 4701.19(B), not in the bill.

³⁵ R.C. 187.04(B)(2).

³⁶ R.C. 117.11(E).

