

As Passed by the Senate

127th General Assembly

Regular Session

2007-2008

Sub. H. B. No. 166

Representative Schindel

**Cosponsors: Representatives Adams, Bubp, Combs, DeWine, Flowers,
Gibbs, Seitz, Stebelton, Widener, Zehringer, Aslanides, Bacon, Batchelder,
Blessing, Coley, Collier, Daniels, Dolan, Evans, Fessler, Hagan, J., Hite,
Hottinger, Huffman, Hughes, McGregor, R., Patton, Schneider, Setzer,
Uecker, Wachtmann, Wagner, Wagoner, Widowfield
Senators Niehaus, Cates, Miller, D., Gardner, Faber, Padgett, Spada, Austria,
Buehrer, Carey, Goodman, Grendell, Harris, Mumper, Roberts, Seitz,
Schaffer, Schuler, Schuring, Stivers**

—

A B I L L

To amend sections 124.341 and 5703.21 and to enact 1
sections 126.45 to 126.48 of the Revised Code to 2
create an Office of Internal Auditing within the 3
Office of Budget and Management, to establish the 4
State Audit Committee, and to prescribe their 5
respective and interrelated functions. 6

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO:

Section 1. That sections 124.341 and 5703.21 be amended and 7
sections 126.45, 126.46, 126.47, and 126.48 of the Revised Code be 8
enacted to read as follows: 9

Sec. 124.341. (A) If an employee in the classified or 10
unclassified civil service becomes aware in the course of 11
employment of a violation of state or federal statutes, rules, or 12

regulations or the misuse of public resources, and the employee's 13
supervisor or appointing authority has authority to correct the 14
violation or misuse, the employee may file a written report 15
identifying the violation or misuse with the supervisor or 16
appointing authority. In addition to or instead of filing a 17
written report with the supervisor or appointing authority, the 18
employee may file a written report with the office of internal 19
auditing created under section 126.45 of the Revised Code. 20

If the employee reasonably believes that a violation or 21
misuse of public resources is a criminal offense, the employee, in 22
addition to or instead of filing a written report with the 23
supervisor ~~or~~, appointing authority, or the office of internal 24
auditing, may report it to a prosecuting attorney, director of 25
law, village solicitor, or similar chief legal officer of a 26
municipal corporation, to a peace officer, as defined in section 27
2935.01 of the Revised Code, or, if the violation or misuse of 28
public resources is within the jurisdiction of the inspector 29
general, to the inspector general in accordance with section 30
121.46 of the Revised Code. In addition to that report, if the 31
employee reasonably believes the violation or misuse is also a 32
violation of Chapter 102., section 2921.42, or section 2921.43 of 33
the Revised Code, the employee may report it to the appropriate 34
ethics commission. 35

(B) Except as otherwise provided in division (C) of this 36
section, no officer or employee in the classified or unclassified 37
civil service shall take any disciplinary action against an 38
employee in the classified or unclassified civil service for 39
making any report authorized by division (A) of this section, 40
including, without limitation, doing any of the following: 41

(1) Removing or suspending the employee from employment; 42

(2) Withholding from the employee salary increases or 43
employee benefits to which the employee is otherwise entitled; 44

(3) Transferring or reassigning the employee;	45
(4) Denying the employee promotion that otherwise would have been received;	46 47
(5) Reducing the employee in pay or position.	48
(C) An employee in the classified or unclassified civil service shall make a reasonable effort to determine the accuracy of any information reported under division (A) of this section. The employee is subject to disciplinary action, including suspension or removal, as determined by the employee's appointing authority, for purposely, knowingly, or recklessly reporting false information under division (A) of this section.	49 50 51 52 53 54 55
(D) If an appointing authority takes any disciplinary or retaliatory action against a classified or unclassified employee as a result of the employee's having filed a report under division (A) of this section, the employee's sole and exclusive remedy, notwithstanding any other provision of law, is to file an appeal with the state personnel board of review within thirty days after receiving actual notice of the appointing authority's action. If the employee files such an appeal, the board shall immediately notify the employee's appointing authority and shall hear the appeal. The board may affirm or disaffirm the action of the appointing authority or may issue any other order as is appropriate. The order of the board is appealable in accordance with Chapter 119. of the Revised Code.	56 57 58 59 60 61 62 63 64 65 66 67 68
(E) As used in this section:	69
(1) "Purposely," "knowingly," and "recklessly" have the same meanings as in section 2901.22 of the Revised Code.	70 71
(2) "Appropriate ethics commission" has the same meaning as in section 102.01 of the Revised Code.	72 73
(3) "Inspector general" means the inspector general appointed	74

under section 121.48 of the Revised Code. 75

Sec. 126.45. (A) As used in sections 126.45 to 126.48 of the 76
Revised Code, "state agency" means the administrative departments 77
listed in section 121.02 of the Revised Code, the department of 78
taxation, and the bureau of workers' compensation. 79

(B) The office of internal auditing is hereby created in the 80
office of budget and management to conduct internal audits of 81
state agencies or divisions of state agencies to improve their 82
operations in the areas of risk management, internal controls, and 83
governance. The director of budget and management, with the 84
approval of the governor, shall appoint for the office of internal 85
auditing a chief internal auditor who meets the qualifications 86
specified in division (C) of this section. The chief internal 87
auditor shall serve at the director's pleasure and be responsible 88
for the administration of the office of internal auditing 89
consistent with sections 126.45 to 126.48 of the Revised Code. 90

The office of internal auditing shall conduct programs for 91
the internal auditing of state agencies. The programs shall 92
include an annual internal audit plan, reviewed by the state audit 93
committee, that utilizes risk assessment techniques and identifies 94
the specific audits to be conducted during the year. The programs 95
also shall include periodic audits of each state agency's major 96
systems and controls, including those systems and controls 97
pertaining to accounting, administration, and electronic data 98
processing. Upon the request of the office of internal auditing, 99
each state agency shall provide office employees access to all 100
records and documents necessary for the performance of an internal 101
audit. 102

The director of budget and management shall assess a charge 103
against each state agency for which the office of internal 104
auditing conducts internal auditing programs under sections 126.45 105

to 126.48 of the Revised Code so that the total amount of these 106
charges is sufficient to cover the costs of the operation of the 107
office of internal auditing. 108

(C) The chief internal auditor of the office of internal 109
auditing shall hold at least a bachelor's degree and be one of the 110
following: 111

(1) A certified internal auditor, a certified government 112
auditing professional, or a certified public accountant, who also 113
has held a PA registration or a CPA certificate authorized by 114
Chapter 4701. of the Revised Code for at least four years and has 115
at least six years of auditing experience; 116

(2) An auditor who has held a PA registration or a CPA 117
certificate authorized by Chapter 4701. of the Revised Code for at 118
least four years and has at least ten years of auditing 119
experience. 120

(D) The chief internal auditor, subject to the direction and 121
control of the director of budget and management, may appoint and 122
maintain any staff necessary to carry out the duties assigned by 123
sections 126.45 to 126.48 of the Revised Code to the office of 124
internal auditing or to the chief internal auditor. 125

Sec. 126.46. (A)(1) There is hereby created the state audit 126
committee, consisting of the following five members: one public 127
member appointed by the governor; two public members appointed by 128
the speaker of the house of representatives, one of which may be a 129
person who is recommended by the minority leader of the house of 130
representatives; and two public members appointed by the president 131
of the senate, one of which may be a person who is recommended by 132
the minority leader of the senate. Not more than two of the four 133
members appointed by the speaker of the house of representatives 134
and the president of the senate shall belong to or be affiliated 135
with the same political party. The member appointed by the 136

governor shall be a person who is external to the management 137
structure associated with the preparation of financial statements 138
of state government and shall have the program and management 139
expertise required to perform the duties of the committee's 140
chairperson. 141

Each member of the committee shall serve a three-year term, 142
except for the initial members. With respect to the initial 143
appointments of the members, the first member appointed by the 144
speaker of the house of representatives shall serve a one-year 145
term, the second member appointed by the speaker of the house of 146
representatives shall serve a three-year term, the initial members 147
appointed by the president of the senate shall serve two-year 148
terms, and the initial member appointed by the governor shall 149
serve a three-year term. Members may be reappointed to serve one 150
additional term. 151

The committee shall include one member who is a financial 152
expert; one member who is an active, inactive, or retired 153
certified public accountant; one member who is familiar with 154
governmental financial accounting; and one member who is a 155
representative of the public. 156

Any vacancy on the committee shall be filled in the same 157
manner as provided in this division, and, when applicable, the 158
person appointed to fill a vacancy shall serve the remainder of 159
the predecessor's term. 160

(2) Members of the committee shall receive reimbursement for 161
actual and necessary expenses incurred in the discharge of their 162
duties. 163

(3) The member of the committee appointed by the governor 164
shall serve as the committee's chairperson. 165

(4) Initial appointments of committee members shall be made 166
not later than thirty days after the effective date of this 167

<u>section.</u>	168
<u>(5) Members of the committee shall be subject to the disclosure statement requirements of section 102.02 of the Revised Code.</u>	169 170 171
<u>(B) The state audit committee shall do all of the following:</u>	172
<u>(1) Ensure that the internal audits conducted by the office of internal auditing in the office of budget and management conform to the institute of internal auditors' international standards for the professional practice of internal auditing and to the institute of internal auditors' code of ethics;</u>	173 174 175 176 177
<u>(2) Review and comment on the process used by the office of budget and management to prepare its annual budgetary financial report and the state's comprehensive annual financial report required under division (A)(9) of section 126.21 of the Revised Code;</u>	178 179 180 181 182
<u>(3) Review and comment on unaudited financial statements submitted to the auditor of state and communicate with external auditors as required by government auditing standards;</u>	183 184 185
<u>(4) Perform the additional functions imposed upon it by section 126.47 of the Revised Code.</u>	186 187
<u>(C) As used in this section, "financial expert" means a person who has all of the following:</u>	188 189
<u>(1) An understanding of generally accepted accounting principles and financial statements;</u>	190 191
<u>(2) The ability to assess the general application of those principles in connection with accounting for estimates, accruals, and reserves;</u>	192 193 194
<u>(3) Experience preparing, auditing, analyzing, or evaluating financial statements presenting accounting issues that generally are of comparable breadth and level of complexity to those likely</u>	195 196 197

to be presented by a state agency's financial statements, or 198
experience actively supervising one or more persons engaged in 199
those activities; 200

(4) An understanding of internal controls and procedures for 201
financial reporting; and 202

(5) An understanding of audit committee functions. 203

Sec. 126.47. (A) The state audit committee created by section 204
126.46 of the Revised Code shall ensure that the office of 205
internal auditing in the office of budget and management has an 206
annual internal audit plan that identifies the internal audits of 207
state agencies or divisions of state agencies scheduled for the 208
next fiscal year. The chief internal auditor of the office of 209
internal auditing shall submit the plan to the state audit 210
committee for review and comment before the beginning of each 211
fiscal year. The chief internal auditor may submit a revised 212
internal audit plan for review and comment at any time the 213
director of budget and management believes there is reason to 214
modify the previously submitted plan for a fiscal year. 215

(B) To determine the state agencies or divisions of state 216
agencies that are to be internally audited, the office of internal 217
auditing, in the formulation of an annual or revised internal 218
audit plan, and the state audit committee, in reviewing a 219
submitted annual or revised internal audit plan, shall consider 220
the following factors: 221

(1) The risk for fraud, waste, or abuse of public money 222
within an agency or division; 223

(2) The length of time since an agency or division was last 224
subject to an internal audit; 225

(3) The size of an agency or division, and the amount of time 226
and resources necessary to audit it; 227

(4) Any other factor the state audit committee determines to 228
be relevant. 229

(C) All internal audits shall be conducted only by employees 230
of the office of internal auditing. 231

(D) After the conclusion of an internal audit, the chief 232
internal auditor shall submit a preliminary report of the internal 233
audit's findings and recommendations to the state audit committee 234
and to the director of the state agency involved. The state agency 235
or division of the state agency covered by the preliminary report 236
shall be provided an opportunity to respond within thirty days 237
after receipt of the preliminary report. The response shall 238
include a corrective action plan for any recommendations in the 239
preliminary report that are not disputed by the agency or 240
division. Any response received by the office of internal auditing 241
within that thirty-day period shall be included in the office's 242
final report of the internal audit's findings and recommendations. 243
The final report shall be issued by the office of internal 244
auditing within thirty days after the termination of the 245
thirty-day response period. Copies of the final report shall be 246
submitted to the state audit committee, the governor, and the 247
director of the state agency involved. The state audit committee 248
shall determine an appropriate method for making the preliminary 249
and final reports available for public inspection in a timely 250
manner. 251

Any suspected fraud or other illegal activity discovered by 252
the office of internal auditing during the conduct of an internal 253
audit shall be reported immediately to the state audit committee, 254
the director of the state agency in which the fraud or illegal 255
activity is suspected to have occurred, and the auditor of state. 256

(E) The chief internal auditor shall prepare an annual report 257
and submit the report to the governor, the president of the 258
senate, the speaker of the house of representatives, and the 259

auditor of state. The office of budget and management shall make 260
the report available to the public by posting it on the office's 261
web site before the first of July of each year. 262

Sec. 126.48. Any preliminary or final report of an internal 263
audit's findings and recommendations which is produced by the 264
office of internal auditing in the office of budget and management 265
and all work papers of the internal audit are confidential and are 266
not public records under section 149.43 of the Revised Code until 267
the final report of an internal audit's findings and 268
recommendations is submitted to the state audit committee, the 269
governor, and the director of the state agency involved. 270

Sec. 5703.21. (A) Except as provided in divisions (B) and (C) 271
of this section, no agent of the department of taxation, except in 272
the agent's report to the department or when called on to testify 273
in any court or proceeding, shall divulge any information acquired 274
by the agent as to the transactions, property, or business of any 275
person while acting or claiming to act under orders of the 276
department. Whoever violates this provision shall thereafter be 277
disqualified from acting as an officer or employee or in any other 278
capacity under appointment or employment of the department. 279

(B)(1) For purposes of an audit pursuant to section 117.15 of 281
the Revised Code, or an audit of the department pursuant to 282
Chapter 117. of the Revised Code, or an audit, pursuant to that 283
chapter, the objective of which is to express an opinion on a 284
financial report or statement prepared or issued pursuant to 285
division (A)(7) or (9) of section 126.21 of the Revised Code, the 286
officers and employees of the auditor of state charged with 287
conducting the audit shall have access to and the right to examine 288
any state tax returns and state tax return information in the 289
possession of the department to the extent that the access and 290

examination are necessary for purposes of the audit. Any 291
information acquired as the result of that access and examination 292
shall not be divulged for any purpose other than as required for 293
the audit or unless the officers and employees are required to 294
testify in a court or proceeding under compulsion of legal 295
process. Whoever violates this provision shall thereafter be 296
disqualified from acting as an officer or employee or in any other 297
capacity under appointment or employment of the auditor of state. 298

(2) For purposes of an internal audit pursuant to section 299
126.45 of the Revised Code, the officers and employees of the 300
office of internal auditing in the office of budget and management 301
charged with conducting the internal audit shall have access to 302
and the right to examine any state tax returns and state tax 303
return information in the possession of the department to the 304
extent that the access and examination are necessary for purposes 305
of the internal audit. Any information acquired as the result of 306
that access and examination shall not be divulged for any purpose 307
other than as required for the internal audit or unless the 308
officers and employees are required to testify in a court or 309
proceeding under compulsion of legal process. Whoever violates 310
this provision shall thereafter be disqualified from acting as an 311
officer or employee or in any other capacity under appointment or 312
employment of the office of internal auditing. 313

(3) As provided by section 6103(d)(2) of the Internal Revenue 314
Code, any federal tax returns or federal tax information that the 315
department has acquired from the internal revenue service, through 316
federal and state statutory authority, may be disclosed to the 317
auditor of state or the office of internal auditing solely for 318
purposes of an audit of the department. 319

(C) Division (A) of this section does not prohibit any of the 320
following: 321

(1) Divulging information contained in applications, 322

complaints, and related documents filed with the department under	323
section 5715.27 of the Revised Code or in applications filed with	324
the department under section 5715.39 of the Revised Code;	325
(2) Providing information to the office of child support	326
within the department of job and family services pursuant to	327
section 3125.43 of the Revised Code;	328
(3) Disclosing to the board of motor vehicle collision repair	329
registration any information in the possession of the department	330
that is necessary for the board to verify the existence of an	331
applicant's valid vendor's license and current state tax	332
identification number under section 4775.07 of the Revised Code;	333
(4) Providing information to the administrator of workers'	334
compensation pursuant to sections 4123.271 and 4123.591 of the	335
Revised Code;	336
(5) Providing to the attorney general information the	337
department obtains under division (J) of section 1346.01 of the	338
Revised Code;	339
(6) Permitting properly authorized officers, employees, or	340
agents of a municipal corporation from inspecting reports or	341
information pursuant to rules adopted under section 5745.16 of the	342
Revised Code;	343
(7) Providing information regarding the name, account number,	344
or business address of a holder of a vendor's license issued	345
pursuant to section 5739.17 of the Revised Code, a holder of a	346
direct payment permit issued pursuant to section 5739.031 of the	347
Revised Code, or a seller having a use tax account maintained	348
pursuant to section 5741.17 of the Revised Code, or information	349
regarding the active or inactive status of a vendor's license,	350
direct payment permit, or seller's use tax account;	351
(8) Releasing invoices or invoice information furnished under	352
section 4301.433 of the Revised Code pursuant to that section;	353

(9) Providing to a county auditor notices or documents 354
concerning or affecting the taxable value of property in the 355
county auditor's county. Unless authorized by law to disclose 356
documents so provided, the county auditor shall not disclose such 357
documents; 358

(10) Providing to a county auditor sales or use tax return or 359
audit information under section 333.06 of the Revised Code. 360

Section 2. That existing sections 124.341 and 5703.21 of the 361
Revised Code are hereby repealed. 362

Section 3. (A) It is the intent of the General Assembly in 363
the enactment of section 126.45 of the Revised Code that the 364
primary internal audit function of state agencies as defined in 365
that section will be carried out by the Office of Internal 366
Auditing of the Office of Budget and Management. 367

(B) Before May 1, 2008, the Director of Budget and 368
Management, in consultation with the Director of Administrative 369
Services and the State Audit Committee created in section 126.46 370
of the Revised Code, shall develop a plan to commence operations 371
of the Office of Internal Auditing. The plan shall do all of the 372
following: 373

(1) Identify those existing employees within state agencies 374
as defined in section 126.45 of the Revised Code who perform the 375
function of an internal auditor and who will be transferred to the 376
Office of Internal Auditing; 377

(2) Establish funds and appropriation authority that is 378
necessary for the efficient and effective operation of the Office 379
of Internal Auditing; 380

(3) Provide for a method to assess charges against the 381
various state agencies for which the Office of Internal Auditing 382
conducts internal auditing programs under sections 126.45 to 383

126.48 of the Revised Code so that the total amount of these 384
charges is sufficient to cover the costs of the operation of the 385
Office of Internal Auditing; 386

(4) Provide for the appropriate reduction in the 387
appropriation authority of the state agencies from which existing 388
employees who perform the function of internal auditor are 389
transferred. 390

(C) The Controlling Board shall approve the plan before the 391
Office of Budget and Management implements it. 392

(D) Subject to the layoff and displacement provisions of 393
Chapter 124. of the Revised Code, all state agency employees who 394
are identified by the plan as performing duties necessary to 395
comply with sections 126.45 to 126.48 of the Revised Code shall be 396
transferred, upon the approval of the Controlling Board, to the 397
Office of Internal Auditing and shall retain their positions, 398
compensation, and associated fringe benefits. 399

Section 4. Section 5703.21 of the Revised Code is presented 400
in this act as a composite of the section as amended by both Am. 401
Sub. H.B. 530 and Am. Sub. S.B. 7 of the 126th General Assembly. 402
The General Assembly, applying the principle stated in division 403
(B) of section 1.52 of the Revised Code that amendments are to be 404
harmonized if reasonably capable of simultaneous operation, finds 405
that the composite is the resulting version of the section in 406
effect prior to the effective date of the section as presented in 407
this act. 408