

As Introduced

**129th General Assembly
Regular Session
2011-2012**

H. B. No. 201

Representatives Rosenberger, Beck

Cosponsors: Representatives Adams, J., Boose, Maag, Martin, Thompson

—

A B I L L

To amend sections 117.13 and 131.02 and to enact 1
sections 117.60 to 117.70 of the Revised Code to 2
require the Auditor of State to perform recovery 3
audits for overpayments made to vendors by certain 4
state agencies and to permit the Auditor to 5
contract with independent audit consultants to 6
conduct those audits. 7

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

Section 1. That sections 117.13 and 131.02 be amended and 8
sections 117.60, 117.61, 117.62, 117.63, 117.64, 117.65, 117.66, 9
117.67, 117.68, 117.69, and 117.70 of the Revised Code be enacted 10
to read as follows: 11

Sec. 117.13. (A) ~~The~~ Except as otherwise provided for 12
recovery audits under sections 117.63 to 117.69 of the Revised 13
Code, the costs of audits of state agencies shall be recovered by 14
the auditor of state in the following manner: 15

(1) The costs of all audits of state agencies shall be paid 16
to the auditor of state on statements rendered by the auditor of 17
state. Money so received by the auditor of state shall be paid 18
into the state treasury to the credit of the public audit expense 19

fund--intrastate, which is hereby created, and shall be used to 20
pay costs related to such audits. The costs of audits of a state 21
agency shall be charged to the state agency being audited. The 22
costs of any assistant auditor, employee, or expert employed 23
pursuant to section 117.09 of the Revised Code called upon to 24
testify in any legal proceedings in regard to any audit, or called 25
upon to review or discuss any matter related to any audit, may be 26
charged to the state agency to which the audit relates. 27

(2) The auditor of state shall establish by rule rates to be 28
charged to state agencies for recovering the costs of audits of 29
state agencies. 30

(B) As used in this division, "government auditing standards" 31
means the government auditing standards published by the 32
comptroller general of the United States general accounting 33
office. 34

(1) Except as provided in divisions (B)(2) and (3) of this 35
section, any costs of an audit of a private institution, 36
association, board, or corporation receiving public money for its 37
use shall be charged to the public office providing the public 38
money in the same manner as costs of an audit of the public 39
office. 40

(2) If an audit of a private child placing agency or private 41
noncustodial agency receiving public money from a public children 42
services agency for providing child welfare or child protection 43
services sets forth that money has been illegally expended, 44
converted, misappropriated, or is unaccounted for, the costs of 45
the audit shall be charged to the agency being audited in the same 46
manner as costs of an audit of a public office, unless the 47
findings are inconsequential, as defined by government auditing 48
standards. 49

(3) If such an audit does not set forth that money has been 50

illegally expended, converted, misappropriated, or is unaccounted 51
for or sets forth findings that are inconsequential, as defined by 52
government auditing standards, the costs of the audit shall be 53
charged as follows: 54

(a) One-third of the costs to the agency being audited; 55

(b) One-third of the costs to the public children services 56
agency that provided the public money to the agency being audited; 57

(c) One-third of the costs to the department of job and 58
family services. 59

(C) The costs of audits of local public offices shall be 60
recovered by the auditor of state in the following manner: 61

(1) The total amount of compensation paid assistant auditors 62
of state, their expenses, the cost of employees assigned to assist 63
the assistant auditors of state, the cost of experts employed 64
pursuant to section 117.09 of the Revised Code, and the cost of 65
typing, reviewing, and copying reports shall be borne by the 66
public office to which such assistant auditors of state are so 67
assigned, except that annual vacation and sick leave of assistant 68
auditors of state, employees, and typists shall be financed from 69
the general revenue fund. The necessary traveling and hotel 70
expenses of the deputy inspectors and supervisors of public 71
offices shall be paid from the state treasury. Assistant auditors 72
of state shall be compensated by the taxing district or other 73
public office audited for activities undertaken pursuant to 74
division (B) of section 117.18 and section 117.24 of the Revised 75
Code. The costs of any assistant auditor, employee, or expert 76
employed pursuant to section 117.09 of the Revised Code called 77
upon to testify in any legal proceedings in regard to any audit, 78
or called upon to review or discuss any matter related to any 79
audit, may be charged to the public office to which the audit 80
relates. 81

(2) The auditor of state shall certify the amount of such 82
compensation, expenses, cost of experts, reviewing, copying, and 83
typing to the fiscal officer of the local public office audited. 84
The fiscal officer of the local public office shall forthwith draw 85
a warrant upon the general fund or other appropriate funds of the 86
local public office to the order of the auditor of state; 87
provided, that the auditor of state is authorized to negotiate 88
with any local public office and, upon agreement between the 89
auditor of state and the local public office, may adopt a schedule 90
for payment of the amount due under this section. Money so 91
received by the auditor of state shall be paid into the state 92
treasury to the credit of the public audit expense fund--local 93
government, which is hereby created, and shall be used to pay the 94
compensation, expense, cost of experts and employees, reviewing, 95
copying, and typing of reports. 96

(3) At the conclusion of each audit, or analysis and report 97
made pursuant to section 117.24 of the Revised Code, the auditor 98
of state shall furnish the fiscal officer of the local public 99
office audited a statement showing the total cost of the audit, or 100
of the audit and the analysis and report, and the percentage of 101
the total cost chargeable to each fund audited. The fiscal officer 102
may distribute such total cost to each fund audited in accordance 103
with its percentage of the total cost. 104

(4) The auditor of state shall provide each local public 105
office a statement or certification of the amount due from the 106
public office for services performed by the auditor of state under 107
this or any other section of the Revised Code, as well as the date 108
upon which payment is due to the auditor of state. Any local 109
public office that does not pay the amount due to the auditor of 110
state by that date may be assessed by the auditor of state for 111
interest from the date upon which the payment is due at the rate 112
per annum prescribed by section 5703.47 of the Revised Code. All 113

interest charges assessed by the auditor of state may be collected 114
in the same manner as audit costs pursuant to division (D) of this 115
section. 116

(D) If the auditor of state fails to receive payment for any 117
amount due, including, but not limited to, fines, fees, and costs, 118
from a public office for services performed under this or any 119
other section of the Revised Code, the auditor of state may seek 120
payment through the office of budget and management. (Amounts due 121
include any amount due to an independent public accountant with 122
whom the auditor has contracted to perform services, all costs and 123
fees associated with participation in the uniform accounting 124
network, and all costs associated with the auditor's provision of 125
local government services.) Upon certification by the auditor of 126
state to the director of budget and management of any such amount 127
due, the director shall withhold from the public office any amount 128
available, up to and including the amount certified as due, from 129
any funds under the director's control that belong to or are 130
lawfully payable or due to the public office. The director shall 131
promptly pay the amount withheld to the auditor of state. If the 132
director determines that no funds due and payable to the public 133
office are available or that insufficient amounts of such funds 134
are available to cover the amount due, the director shall withhold 135
and pay to the auditor of state the amounts available and, in the 136
case of a local public office, certify the remaining amount to the 137
county auditor of the county in which the local public office is 138
located. The county auditor shall withhold from the local public 139
office any amount available, up to and including the amount 140
certified as due, from any funds under the county auditor's 141
control and belonging to or lawfully payable or due to the local 142
public office. The county auditor shall promptly pay any such 143
amount withheld to the auditor of state. 144

Sec. 117.60. As used in sections 117.60 to 117.70 of the 145

Revised Code, "overpayment" means a duplicate payment made by a 146
state agency to a vendor for a single invoice or any payment made 147
to a vendor that meets any of the following: 148

(A) It represents an amount above the required payment minus 149
any available discounts applied to result in a deduction in the 150
required payment. 151

(B) It includes a late payment penalty that was improperly 152
applied. 153

(C) It was collected to cover shipping costs that were 154
incorrectly computed or incorrectly included in an invoice. 155

(D) It was paid for state sales tax. 156

(E) It was paid for a good or service that the vendor did not 157
provide. 158

(F) It was paid as a result of an invoice error. 159

(G) It was paid as a result of a pricing error. 160

(H) Its amount fails to reflect the appropriate discounts, 161
rebates, or other allowances. 162

(I) It fails to comply with the purchasing agreement. 163

Sec. 117.61. (A) Subject to division (B) of this section, the 164
auditor of state shall, once a biennium, perform a recovery audit 165
for overpayments made to vendors by each state agency that, during 166
the most recently concluded biennium, had total expenditures that 167
exceeded twenty-five million dollars or that, during the current 168
biennium, has appropriations in excess of twenty-five million 169
dollars. 170

(B) The auditor of state may exempt from a recovery audit any 171
state agency that meets the criteria established under division 172
(B) of section 117.70 of the Revised Code. 173

(C) The recovery audits required by this section are 174

supplemental to public office audits required under section 117.11 175
of the Revised Code. 176

Sec. 117.62. The auditor of state may contract with one or 177
more overpayment-recovery-audit consultants on behalf of a state 178
agency to conduct the recovery audits required under section 179
117.61 of the Revised Code. The consultants shall have 180
recovery-audit expertise. Recovery audits conducted by such 181
consultants are subject to sections 117.63 to 117.69 of the 182
Revised Code. 183

Sec. 117.63. A contract with an overpayment-recovery-audit 184
consultant executed under section 117.62 of the Revised Code shall 185
specify the scope of the recovery audit. To allow for the 186
completion of any existing internal auditing procedures of the 187
state agency, the contract shall not permit an audit to be 188
performed on payments during the one-hundred-eighty-day period 189
after the date on which the payments were made. 190

Sec. 117.64. An overpayment-recovery-audit consultant shall 191
conduct a recovery audit required under section 117.61 of the 192
Revised Code pursuant to the standards, procedures, and guidelines 193
established by the auditor of state under section 117.70 of the 194
Revised Code. Each state agency subject to a recovery audit shall 195
provide the consultant with all information necessary for the 196
audit. 197

Sec. 117.65. The auditor of state or a state agency subject 198
to a recovery audit required under section 117.61 of the Revised 199
Code may provide the overpayment-recovery-audit consultant and the 200
consultant's employees with any confidential information in the 201
auditor's or agency's custody that is necessary for the audit's 202
performance or the recovery of an overpayment, to the extent that 203

the auditor or agency is not prohibited from sharing the 204
information under an agreement with another state or the federal 205
government. The consultant, and each employee or agent of the 206
consultant, is subject to all prohibitions against the disclosure 207
of confidential information obtained from the state in connection 208
with the contract that applies to the auditor, the agency, or an 209
employee of the auditor or the agency. A consultant, or an 210
employee or agent of the consultant, who discloses any such 211
confidential information is subject to the same sanctions and 212
penalties that would apply to the auditor, the agency, or an 213
employee of the auditor or the agency. 214

Sec. 117.66. A contract for a recovery audit executed under 215
section 117.62 of the Revised Code may provide for reasonable 216
compensation for services provided under the contract, including 217
compensation determined by the application of a percentage, 218
specified in the contract, of the total amount recovered because 219
of the overpayment-recovery-audit consultant's audit activities or 220
recommendations, as a fee for services. The state agency subject 221
to a recovery audit shall pay, from recovered money, the 222
consultant conducting the audit and responsible for identifying 223
the overpayment. 224

Sec. 117.67. Any portion of an overpayment recovered that is 225
not paid to the overpayment-recovery-audit consultant under 226
section 117.66 of the Revised Code shall be credited to the fund 227
or account from which the payment originated. A state agency shall 228
expend or return to the federal government any federal money 229
recovered through a recovery audit. The state agency shall expend 230
or return the federal money in accordance with the rules of the 231
federal program through which the agency received the federal 232
money. 233

Sec. 117.68. An overpayment-recovery-audit consultant shall 234
submit a written audit report for each recovery audit the 235
consultant conducts to the state agency subject to the audit and 236
the auditor of state. The auditor, within seven days after receipt 237
of these reports, shall provide copies of them to the governor, 238
the speaker of the house of representatives, and the president of 239
the senate. 240

The auditor shall notify the attorney general in writing of 241
every recovery-audit report received that sets forth that an 242
overpayment of public money exists and has not been collected, and 243
of the date that the auditor received the report. 244

Not later than the first day of January of each even-numbered 245
year, the auditor shall issue a report to the general assembly 246
summarizing the contents of all written recovery-audit reports 247
received under this section during the state biennium ending the 248
thirtieth day of June of the previous year. 249

Sec. 117.69. When a recovery-audit report sets forth that an 250
overpayment of public money exists and has not been collected, the 251
overpayment-recovery-audit consultant may, during the 252
forty-five-day period following the issuance of the report, 253
continue attempting to recover the overpayment. The head officer 254
of the state agency receiving the report shall proceed to collect 255
the amount in accordance with section 131.02 of the Revised Code. 256
For purposes of division (A) of section 131.02 of the Revised 257
Code, the amount is to be considered due when the report is 258
received by the officer. 259

Sec. 117.70. The auditor of state shall adopt rules that do 260
both of the following: 261

(A) Establish, for the conduct of recovery audits, standards, 262
procedures, and guidelines that are designed to detect and recover 263

overpayments made by a state agency to a vendor and to recommend 264
improved state-agency-accounting operations; 265

(B) Establish criteria for determining whether a state agency 266
may be exempted from a recovery audit. The criteria shall include 267
consideration of the likely costs and benefits of performing the 268
audit. 269

Sec. 131.02. (A) Except as otherwise provided in section 270
4123.37 and division (K) of section 4123.511 of the Revised Code, 271
whenever any amount is payable to the state, the officer, 272
employee, or agent responsible for administering the law under 273
which the amount is payable shall immediately proceed to collect 274
the amount or cause the amount to be collected and shall pay the 275
amount into the state treasury or into the appropriate custodial 276
fund in the manner set forth pursuant to section 113.08 of the 277
Revised Code. Except as otherwise provided in this division, if 278
the amount is not paid within forty-five days after payment is 279
due, the officer, employee, or agent shall certify the amount due 280
to the attorney general, in the form and manner prescribed by the 281
attorney general, and notify the director of budget and management 282
thereof. In the case of an amount payable by a student enrolled in 283
a state institution of higher education, the amount shall be 284
certified within the later of forty-five days after the amount is 285
due or the tenth day after the beginning of the next academic 286
semester, quarter, or other session following the session for 287
which the payment is payable. The attorney general may assess the 288
collection cost to the amount certified in such manner and amount 289
as prescribed by the attorney general. 290

For the purposes of this section, the attorney general and 291
the officer, employee, or agent responsible for administering the 292
law under which the amount is payable shall agree on the time a 293
payment is due, and that agreed upon time shall be one of the 294

following times:	295
(1) If a law, including an administrative rule, of this state prescribes the time a payment is required to be made or reported, when the payment is required by that law to be paid or reported.	296 297 298
(2) If the payment is for services rendered, when the rendering of the services is completed.	299 300
(3) If the payment is reimbursement for a loss, when the loss is incurred.	301 302
(4) In the case of a fine or penalty for which a law or administrative rule does not prescribe a time for payment, when the fine or penalty is first assessed.	303 304 305
(5) If the payment arises from a legal finding, judgment, or adjudication order, when the finding, judgment, or order is rendered or issued.	306 307 308
(6) If the payment arises from an overpayment of money by the state to another person, when the overpayment is discovered.	309 310
(7) The date on which the amount for which an individual is personally liable under section 5735.35, section 5739.33, or division (G) of section 5747.07 of the Revised Code is determined.	311 312 313
(8) Upon proof of claim being filed in a bankruptcy case.	314
(9) Any other appropriate time determined by the attorney general and the officer, employee, or agent responsible for administering the law under which the amount is payable on the basis of statutory requirements or ordinary business processes of the state agency to which the payment is owed.	315 316 317 318 319
(B)(1) The attorney general shall give immediate notice by mail or otherwise to the party indebted of the nature and amount of the indebtedness.	320 321 322
(2) If the amount payable to this state arises from a tax levied under Chapter 5733., 5739., 5741., 5747., or 5751. of the	323 324

Revised Code, the notice also shall specify all of the following:	325
(a) The assessment or case number;	326
(b) The tax pursuant to which the assessment is made;	327
(c) The reason for the liability, including, if applicable, that a penalty or interest is due;	328 329
(d) An explanation of how and when interest will be added to the amount assessed;	330 331
(e) That the attorney general and tax commissioner, acting together, have the authority, but are not required, to compromise the claim and accept payment over a reasonable time, if such actions are in the best interest of the state.	332 333 334 335
(C) The attorney general shall collect the claim or secure a judgment and issue an execution for its collection.	336 337
(D) Each claim shall bear interest, from the day on which the claim became due, at the rate per annum required by section 5703.47 of the Revised Code.	338 339 340
(E) The attorney general and the chief officer of the agency reporting a claim, acting together, may do any of the following if such action is in the best interests of the state:	341 342 343
(1) Compromise the claim;	344
(2) Extend for a reasonable period the time for payment of the claim by agreeing to accept monthly or other periodic payments. The agreement may require security for payment of the claim.	345 346 347 348
(3) Add fees to recover the cost of processing checks or other draft instruments returned for insufficient funds and the cost of providing electronic payment options.	349 350 351
(F)(1) Except as provided in division (F)(2) of this section, if the attorney general finds, after investigation, that any claim	352 353

due and owing to the state is uncollectible, the attorney general, 354
with the consent of the chief officer of the agency reporting the 355
claim, may do the following: 356

(a) Sell, convey, or otherwise transfer the claim to one or 357
more private entities for collection; 358

(b) Cancel the claim or cause it to be canceled. 359

(2) The attorney general shall cancel or cause to be canceled 360
an unsatisfied claim on the date that is forty years after the 361
date the claim is certified. 362

(3) No initial action shall be commenced to collect any tax 363
payable to the state that is administered by the tax commissioner, 364
whether or not such tax is subject to division (B) of this 365
section, or any penalty, interest, or additional charge on such 366
tax, after the expiration of the period ending on the later of the 367
dates specified in divisions (F)(3)(a) and (b) of this section, 368
provided that such period shall be extended by the period of any 369
stay to such collection or by any other period to which the 370
parties mutually agree. If the initial action in aid of execution 371
is commenced before the later of the dates specified in divisions 372
(F)(3)(a) and (b) of this section, any and all subsequent actions 373
may be pursued in aid of execution of judgment for as long as the 374
debt exists. 375

(a) Seven years after the assessment of the tax, penalty, 376
interest, or additional charge is issued. 377

(b) Four years after the assessment of the tax, penalty, 378
interest, or additional charge becomes final. For the purposes of 379
division (F)(3)(b) of this section, the assessment becomes final 380
at the latest of the following: upon expiration of the period to 381
petition for reassessment, or if applicable, to appeal a final 382
determination of the commissioner or decision of the board of tax 383
appeals or a court, or, if applicable, upon decision of the United 384

States supreme court. 385

For the purposes of division (F)(3) of this section, an 386
initial action to collect a tax debt is commenced at the time when 387
any action, including any action in aid of execution on a 388
judgment, commences after a certified copy of the tax 389
commissioner's entry making an assessment final has been filed in 390
the office of the clerk of court of common pleas in the county in 391
which the taxpayer resides or has its principal place of business 392
in this state, or in the office of the clerk of court of common 393
pleas of Franklin county, as provided in section 5739.13, 5741.14, 394
5747.13, or 5751.09 of the Revised Code or in any other applicable 395
law requiring such a filing. If an assessment has not been issued 396
and there is no time limitation on the issuance of an assessment 397
under applicable law, an action to collect a tax debt commences 398
when the action is filed in the courts of this state to collect 399
the liability. 400

(4) If information contained in a claim that is sold, 401
conveyed, or transferred to a private entity pursuant to this 402
section is confidential pursuant to federal law or a section of 403
the Revised Code that implements a federal law governing 404
confidentiality, such information remains subject to that law 405
during and following the sale, conveyance, or transfer. 406

(G) Except as provided in section 117.69 of the Revised Code, 407
this section does not apply to overpayments discovered and 408
collected by an overpayment-recovery-audit consultant under 409
contract with the auditor of state pursuant to section 117.62 of 410
the Revised Code. 411

Section 2. That existing sections 117.13 and 131.02 of the 412
Revised Code are hereby repealed. 413