

AN ACT

To amend sections 111.15, 117.01, 117.10, 117.11, 117.12, 117.16, 117.20, 127.18, 187.01 and 187.04 and to enact sections 117.114 and 117.431 of the Revised Code to create an agreed-upon procedure audit for certain eligible political subdivisions, to eliminate the Auditor of State's exemption from filing a rule summary and fiscal analysis with proposed rules, to exclude from public moneys subject to audit by the Auditor of State any 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 transferred or conveyed by a public office to the person pursuant to an agreement under which the public office received consideration, to specify which JobsOhio revenues are not public moneys subject to audit by the Auditor of State, to clarify by whom JobsOhio is to be audited and which audit records are public records, and to provide for annual compliance and control reviews of JobsOhio.

Be it enacted by the General Assembly of the State of Ohio:

SECTION 1. That sections 111.15, 117.01, 117.10, 117.11, 117.12, 117.16, 117.20, 127.18, 187.01, and 187.04 be amended and sections 117.114 and 117.431 of the Revised Code be enacted to read as follows:

Sec. 111.15. (A) As used in this section:

(1) "Rule" includes any rule, regulation, bylaw, or standard having a general and uniform operation adopted by an agency under the authority of the laws governing the agency; any appendix to a rule; and any internal management rule. "Rule" does not include any guideline adopted pursuant to

section 3301.0714 of the Revised Code, any order respecting the duties of employees, any finding, any determination of a question of law or fact in a matter presented to an agency, or any rule promulgated pursuant to Chapter 119., section 4141.14, division (C)(1) or (2) of section 5117.02, or section 5703.14 of the Revised Code. "Rule" includes any amendment or rescission of a rule.

(2) "Agency" means any governmental entity of the state and includes, but is not limited to, any board, department, division, commission, bureau, society, council, institution, state college or university, community college district, technical college district, or state community college. "Agency" does not include the general assembly, the controlling board, the adjutant general's department, or any court.

(3) "Internal management rule" means any rule, regulation, bylaw, or standard governing the day-to-day staff procedures and operations within an agency.

(4) "Substantive revision" has the same meaning as in division (J) of section 119.01 of the Revised Code.

(B)(1) Any rule, other than a rule of an emergency nature, adopted by any agency pursuant to this section shall be effective on the tenth day after the day on which the rule in final form and in compliance with division (B)(3) of this section is filed as follows:

(a) The rule shall be filed in electronic form with both the secretary of state and the director of the legislative service commission;

(b) The rule shall be filed in electronic form with the joint committee on agency rule review. Division (B)(1)(b) of this section does not apply to any rule to which division (D) of this section does not apply.

An agency that adopts or amends a rule that is subject to division (D) of this section shall assign a review date to the rule that is not later than five years after its effective date. If no review date is assigned to a rule, or if a review date assigned to a rule exceeds the five-year maximum, the review date for the rule is five years after its effective date. A rule with a review date is subject to review under section 119.032 of the Revised Code. This paragraph does not apply to a rule of a state college or university, community college district, technical college district, or state community college.

If all filings are not completed on the same day, the rule shall be effective on the tenth day after the day on which the latest filing is completed. If an agency in adopting a rule designates an effective date that is later than the effective date provided for by division (B)(1) of this section, the rule if filed as required by such division shall become effective on the

later date designated by the agency.

Any rule that is required to be filed under division (B)(1) of this section is also subject to division (D) of this section if not exempted by division (D)(1), (2), (3), (4), (5), (6), (7), or (8) of this section.

If a rule incorporates a text or other material by reference, the agency shall comply with sections 121.71 to 121.76 of the Revised Code.

(2) A rule of an emergency nature necessary for the immediate preservation of the public peace, health, or safety shall state the reasons for the necessity. The emergency rule, in final form and in compliance with division (B)(3) of this section, shall be filed in electronic form with the secretary of state, the director of the legislative service commission, and the joint committee on agency rule review. The emergency rule is effective immediately upon completion of the latest filing, except that if the agency in adopting the emergency rule designates an effective date, or date and time of day, that is later than the effective date and time provided for by division (B)(2) of this section, the emergency rule if filed as required by such division shall become effective at the later date, or later date and time of day, designated by the agency.

An emergency rule becomes invalid at the end of the ninetieth day it is in effect. Prior to that date, the agency may file the emergency rule as a nonemergency rule in compliance with division (B)(1) of this section. The agency may not refile the emergency rule in compliance with division (B)(2) of this section so that, upon the emergency rule becoming invalid under such division, the emergency rule will continue in effect without interruption for another ninety-day period.

(3) An agency shall file a rule under division (B)(1) or (2) of this section in compliance with the following standards and procedures:

(a) The rule shall be numbered in accordance with the numbering system devised by the director for the Ohio administrative code.

(b) The rule shall be prepared and submitted in compliance with the rules of the legislative service commission.

(c) The rule shall clearly state the date on which it is to be effective and the date on which it will expire, if known.

(d) Each rule that amends or rescinds another rule shall clearly refer to the rule that is amended or rescinded. Each amendment shall fully restate the rule as amended.

If the director of the legislative service commission or the director's designee gives an agency notice pursuant to section 103.05 of the Revised Code that a rule filed by the agency is not in compliance with the rules of the legislative service commission, the agency shall within thirty days after

receipt of the notice conform the rule to the rules of the commission as directed in the notice.

(C) All rules filed pursuant to divisions (B)(1)(a) and (2) of this section shall be recorded by the secretary of state and the director under the title of the agency adopting the rule and shall be numbered according to the numbering system devised by the director. The secretary of state and the director shall preserve the rules in an accessible manner. Each such rule shall be a public record open to public inspection and may be transmitted to any law publishing company that wishes to reproduce it.

(D) At least sixty-five days before a board, commission, department, division, or bureau of the government of the state files a rule under division (B)(1) of this section, it shall file the full text of the proposed rule in electronic form with the joint committee on agency rule review, and the proposed rule is subject to legislative review and invalidation under division (I) of section 119.03 of the Revised Code. If a state board, commission, department, division, or bureau makes a substantive revision in a proposed rule after it is filed with the joint committee, the state board, commission, department, division, or bureau shall promptly file the full text of the proposed rule in its revised form in electronic form with the joint committee. The latest version of a proposed rule as filed with the joint committee supersedes each earlier version of the text of the same proposed rule. ~~Except as provided in division (F) of this section, a~~ A state board, commission, department, division, or bureau shall also file the rule summary and fiscal analysis prepared under section 127.18 of the Revised Code in electronic form along with a proposed rule, and along with a proposed rule in revised form, that is filed under this division. If a proposed rule has an adverse impact on businesses, the state board, commission, department, division, or bureau also shall file the business impact analysis, any recommendations received from the common sense initiative office, and the associated memorandum of response, if any, in electronic form along with the proposed rule, or the proposed rule in revised form, that is filed under this division.

As used in this division, "commission" includes the public utilities commission when adopting rules under a federal or state statute.

This division does not apply to any of the following:

- (1) A proposed rule of an emergency nature;
- (2) A rule proposed under section 1121.05, 1121.06, 1155.18, 1163.22, 1349.33, 1707.201, 1733.412, 4123.29, 4123.34, 4123.341, 4123.342, 4123.40, 4123.411, 4123.44, or 4123.442 of the Revised Code;
- (3) A rule proposed by an agency other than a board, commission, department, division, or bureau of the government of the state;

(4) A proposed internal management rule of a board, commission, department, division, or bureau of the government of the state;

(5) Any proposed rule that must be adopted verbatim by an agency pursuant to federal law or rule, to become effective within sixty days of adoption, in order to continue the operation of a federally reimbursed program in this state, so long as the proposed rule contains both of the following:

(a) A statement that it is proposed for the purpose of complying with a federal law or rule;

(b) A citation to the federal law or rule that requires verbatim compliance.

(6) An initial rule proposed by the director of health to impose safety standards and quality-of-care standards with respect to a health service specified in section 3702.11 of the Revised Code, or an initial rule proposed by the director to impose quality standards on a facility listed in division (A)(4) of section 3702.30 of the Revised Code, if section 3702.12 of the Revised Code requires that the rule be adopted under this section;

(7) A rule of the state lottery commission pertaining to instant game rules.

If a rule is exempt from legislative review under division (D)(5) of this section, and if the federal law or rule pursuant to which the rule was adopted expires, is repealed or rescinded, or otherwise terminates, the rule is thereafter subject to legislative review under division (D) of this section.

(E) Whenever a state board, commission, department, division, or bureau files a proposed rule or a proposed rule in revised form under division (D) of this section, it shall also file the full text of the same proposed rule or proposed rule in revised form in electronic form with the secretary of state and the director of the legislative service commission. ~~Except as provided in division (F) of this section, a~~ A state board, commission, department, division, or bureau shall file the rule summary and fiscal analysis prepared under section 127.18 of the Revised Code in electronic form along with a proposed rule or proposed rule in revised form that is filed with the secretary of state or the director of the legislative service commission.

~~(F) Except as otherwise provided in this division, the auditor of state or the auditor of state's designee is not required to file a rule summary and fiscal analysis along with a proposed rule, or proposed rule in revised form, that the auditor of state proposes under section 117.12, 117.19, 117.38, or 117.43 of the Revised Code and files under division (D) or (E) of this section.~~

Sec. 117.01. As used in this chapter:

(A) "Color of office" means actually, purportedly, or allegedly done under any law, ordinance, resolution, order, or other pretension to official right, power, or authority.

(B) "Public accountant" means any person who is authorized by Chapter 4701. of the Revised Code to use the designation of certified public accountant or who was registered prior to January 1, 1971, as a public accountant.

(C) "Public money" means any money received, collected by, or due a public official under color of office, as well as any money collected by any individual on behalf of a public office or as a purported representative or agent of the public office.

"Public money" does not include either of the following:

(1) Money or revenue earned by or from a person's ownership, operation, or use of an asset, whether tangible or intangible, 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;

(2) With respect to the transfer described in Chapter 4313. of the Revised Code and the operation of the enterprise acquisition project, revenues or receipts of or from the enterprise acquisition project in the hands of the nonprofit corporation formed under section 187.01 of the Revised Code or of a nonprofit entity the sole member of which is that nonprofit corporation, but does include any taxes collected on the spirituous liquor sales and then due the department of taxation and amounts then due to the state general revenue fund pursuant to section 4301.12 of the Revised Code. As used in this division, "enterprise acquisition project" has the meaning defined in section 4313.01 of the Revised Code.

(D) "Public office" means any state agency, public institution, political subdivision, other organized body, office, agency, institution, or entity established by the laws of this state for the exercise of any function of government. "Public office" does not include the nonprofit corporation formed under section 187.01 of the Revised Code.

(E) "Public official" means any officer, employee, or duly authorized representative or agent of a public office.

(F) "State agency" means every organized body, office, agency, institution, or other entity established by the laws of the state for the

exercise of any function of state government.

(G) "Audit" means any of the following:

(1) Any examination, analysis, or inspection of the state's or a public office's financial statements or reports;

(2) Any examination, analysis, or inspection of records, documents, books, or any other evidence relating to either of the following:

(a) The collection, receipt, accounting, use, or expenditure of public money by a public office or by a private institution, association, board, or corporation;

(b) The determination by the auditor of state, as required by section 117.11 of the Revised Code, of whether a public office has complied with all the laws, rules, ordinances, or orders pertaining to the public office.

(3) Any other type of examination, analysis, or inspection of a public office, or of the specific funds or accounts of a private institution, association, board, or corporation receiving into which public money has been placed or deposited, that is conducted according to generally accepted or governmental auditing standards established by rule pursuant to section 117.19 of the Revised Code.

(H) "Person" has the meaning defined in section 1.59 of the Revised Code.

Sec. 117.10. (A) The auditor of state shall audit all public offices as provided in this chapter. The auditor of state also may audit the specific funds or accounts of private institutions, associations, boards, and corporations receiving into which has been placed or deposited public money for their use from a public office and may require of them annual reports in such form as the auditor of state prescribes. The auditor of state may audit some or all of the other 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 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, in violation of section 117.431 of the Revised Code;

(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.

(B) If the auditor of state performs or contracts for the performance of an audit, including a special audit, of the public employees retirement system, school employees retirement system, state teachers retirement system, state highway patrol retirement system, or Ohio police and fire pension fund, the auditor of state shall make a timely report of the results of the audit to the Ohio retirement study council.

(C) The auditor of state may audit the accounts of any provider as defined in section 5111.06 of the Revised Code.

(D) If a public office has been audited by an agency of the United States government, the auditor of state may, if satisfied that the federal audit has been conducted according to principles and procedures not contrary to those of the auditor of state, use and adopt the federal audit and report in lieu of an audit by the auditor of state's own office.

(E) Within thirty days after the creation or dissolution or the winding up of the affairs of any public office, that public office shall notify the auditor of state in writing that this action has occurred.

(F) Nothing in this section precludes 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 section 117.18 of the Revised Code if the subpoena and compulsory process is in furtherance of an audit the auditor of state is authorized by law to perform.

Sec. 117.11. (A) Except as otherwise provided in this division and in sections 117.112 ~~and~~, 117.113, ~~and~~ 117.114 of the Revised Code, the auditor of state shall audit each public office at least once every two fiscal years. The auditor of state shall audit a public office each fiscal year if that public office is required to be audited on an annual basis pursuant to "The Single Audit Act of 1984," 98 Stat. 2327, 31 U.S.C.A. 7501 et seq., as amended. In the annual or biennial audit, inquiry shall be made into the methods, accuracy, and legality of the accounts, financial reports, records, files, and reports of the office, whether the laws, rules, ordinances, and orders pertaining to the office have been observed, and whether the requirements and rules of the auditor of state have been complied with. Except as otherwise provided in this division or where auditing standards or procedures dictate otherwise, each audit shall cover at least one fiscal year. If a public office is audited only once every two fiscal years, the audit shall cover both fiscal years.

(B) In addition to the annual or biennial audit provided for in division

(A) of this section or in section 117.114 of the Revised Code, the auditor of state may conduct an audit of a public office at any time when so requested by the public office or upon the auditor of state's own initiative if the auditor of state has reasonable cause to believe that an additional audit is in the public interest.

(C)(1) The auditor of state shall identify any public office in which the auditor of state will be unable to conduct an audit at least once every two fiscal years as required by division (A) of this section and shall provide immediate written notice to the clerk of the legislative authority or governing board of the public office so identified. Within six months of the receipt of such notice, the legislative authority or governing board may engage an independent certified public accountant to conduct an audit pursuant to section 117.12 of the Revised Code.

(2) When the chief fiscal officer of a public office notifies the auditor of state that an audit is required at a time prior to the next regularly scheduled audit by the auditor of state, the auditor of state shall either cause an earlier audit to be made by the auditor of state or authorize the legislative authority or governing board of the public office to engage an independent certified public accountant to conduct the required audit. The scope of the audit shall be as authorized by the auditor of state.

(3) The auditor of state shall approve the scope of an audit under division (C)(1) or (2) of this section as set forth in the contract for the proposed audit before the contract is executed on behalf of the public office that is to be audited. The independent accountant conducting an audit under division (C)(1) or (2) of this section shall be paid by the public office.

(4) The contract for attest services with an independent accountant employed pursuant to this section or section 115.56 of the Revised Code may include binding arbitration provisions, provisions of Chapter 2711. of the Revised Code, or any other alternative dispute resolution procedures to be followed in the event a dispute remains between the state or public office and the independent accountant concerning the terms of or services under the contract, or a breach of the contract, after the administrative provisions of the contract have been exhausted.

(D) If a uniform accounting network is established under section 117.101 of the Revised Code, the auditor of state or a certified public accountant employed pursuant to this section or section 115.56 or 117.112 of the Revised Code shall, to the extent practicable, utilize services offered by the network in order to conduct efficient and economical audits of public offices.

(E) The auditor of state ~~shall~~, in accordance with division (A)(3) of

section 9.65 of the Revised Code and this section, may audit an annuity program for volunteer fire fighters established by a political subdivision under section 9.65 of the Revised Code. As used in this section, "volunteer fire fighters" and "political subdivision" have the same meanings as in division (C) of section 9.65 of the Revised Code.

Sec. 117.114. (A) As used in this section:

(1) "Qualifying subdivision" means an agricultural society, county board of health, cemetery, conservancy district, family and children first council, fire district, ambulance district, fire and ambulance district, library, park or recreation district, regional planning commission, solid waste district, township, village, water district, sewer district, or water and sewer district, or a political subdivision determined by the auditor of state on a case-by-case basis to be a qualifying subdivision.

(2) "Eligible subdivision" means a qualifying subdivision that meets the criteria specified in this section and the criteria established by rule of the auditor of state.

(B) The auditor of state shall establish by rule an agreed-upon procedure by which eligible subdivisions may be audited. The rules shall set forth the standards, procedures, guidelines, and reporting requirements for an agreed-upon procedure audit. At a minimum, the rules shall require that, to be eligible for an agreed-upon procedure audit, a political subdivision must be a qualifying subdivision that meets all of the following criteria:

(1) The qualifying subdivision's annual budgeted expenditures do not exceed five million dollars for any fiscal year for which the agreed-upon procedure audit will be performed;

(2) The qualifying subdivision follows the auditor of state's regulatory, cash, or modified cash accounting basis;

(3) The fiscal officer or bookkeeper of the qualifying subdivision did not leave office at any time during the audit period in question;

(4) The qualifying subdivision had an audit performed under division (A) of section 117.11 or division (A) of section 117.12 of the Revised Code 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 section 117.41 of the Revised Code that the qualifying subdivision was unauditale;

(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; or

(c) Required to be audited on an annual basis under "The Single Audit Act of 1984," 98 Stat. 2327, 31 U.S.C. 7501 et seq., as amended, 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 agreed-upon procedure audit.

(C) An eligible subdivision may, but is not required to, engage in an agreed-upon procedure audit. If the eligible subdivision does not engage in an agreed-upon procedure audit under this section and the rules adopted thereunder, the eligible subdivision instead shall undergo an audit under division (A) of section 117.11 or division (A) of section 117.12 of the Revised Code.

(D) An agreed-upon procedure audit shall 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 agreed-upon procedure audit in two consecutive audit periods followed by one audit performed under division (A) of section 117.11 or division (A) of section 117.12 of the Revised Code.

(E) The auditor of state, on a case-by-case basis, may determine that a qualifying subdivision that fails to meet any one of the criteria established by rule under division (B) of this section is otherwise eligible for an agreed-upon procedure audit and may, in writing, grant a waiver of a particular criterion.

(F) An eligible subdivision that engages in an agreed-upon procedure audit shall continue to file an annual financial report as required under section 117.38 of the Revised Code.

Sec. 117.12. (A) Any certified public accountant engaged to perform an audit pursuant to division (C) of section 117.11 of the Revised Code shall conduct the audit pursuant to the standards, procedures, and guidelines of the auditor of state for such audits. The auditor of state shall establish these standards, procedures, and guidelines by rule. The audit shall cover the period beginning with the termination date of the most recent audit conducted under this section or under section 117.11 or 117.114 of the Revised Code, and ending on the date specified by the auditor of state. The

accountant shall inquire into the methods, accuracy, and legality of the accounts, records, files, and reports of the public office and shall note whether, in the accountant's opinion, the laws, rules, ordinances, and orders pertaining to the public office have been complied with. ~~The~~

(B) Any certified public accountant engaged to perform an agreed-upon procedure audit pursuant to section 117.114 of the Revised Code shall conduct the audit pursuant to the standards, procedures, guidelines, and reporting requirements adopted by rule of the auditor of state pursuant to that section.

(C) The certified public accountant shall have no authority to make formal findings of illegality, malfeasance, or gross neglect under this ~~division~~ section or section 117.23 of the Revised Code.

Sec. 117.16. (A) The auditor of state shall do all of the following:

(1) Develop a force account project assessment form that each public office that undertakes force account projects shall use to estimate or report the cost of a force account project. The form shall include costs for employee salaries and benefits, any other labor costs, materials, freight, fuel, hauling, overhead expense, workers' compensation premiums, and all other items of cost and expense, including a reasonable allowance for the use of all tools and equipment used on or in connection with such work and for the depreciation on the tools and equipment.

(2) Make the form available to public offices by any cost-effective, convenient method accessible to the auditor of state and the public offices;

(3) When conducting an audit under this chapter of a public office that undertakes force account projects, examine the forms and records of a sampling of the force account projects the public office completed since an audit was last conducted, to determine compliance with its force account limits.

(B) If the auditor of state receives a complaint from any person that a public office has violated the force account limits established for that office, the auditor of state may conduct an audit in addition to the audit provided in section 117.11 or 117.114 of the Revised Code if the auditor of state has reasonable cause to believe that an additional audit is in the public interest.

(C)(1) If the auditor of state finds that a county, township, or municipal corporation violated the force account limits established for that political subdivision, the auditor of state, in addition to any other action authorized by this chapter, shall notify the political subdivision that, for a period of one year from the date of the notification, the force account limits for the subdivision are reduced as follows:

(a) For a county, the limits shall be ten thousand dollars per mile for

construction or reconstruction of a road and forty thousand dollars for construction, reconstruction, maintenance, or repair of a bridge or culvert;

(b) For a township, the limit shall be fifteen thousand dollars for maintenance and repair of a road or five thousand per mile for construction or reconstruction of a township road;

(c) For a municipal corporation, the limit shall be ten thousand dollars for the construction, reconstruction, widening, resurfacing, or repair of a street or other public way.

(2) If the auditor of state finds that a county, township, or municipal corporation violated the force account limits established for that political subdivision a second or subsequent time, the auditor of state, in addition to any other action authorized by this chapter, shall notify the political subdivision that, for a period of two years from the date of the notification, the force account limits for the subdivision are reduced in accordance with division (C)(1)(a), (b), or (c) of this section.

(3) If the auditor of state finds that a county, township, or municipal corporation violated the force account limits established for that political subdivision a third or subsequent time, the auditor of state shall certify to the tax commissioner an amount the auditor of state determines to be twenty per cent of the total cost of the force account project that is the basis of the violation. Upon receipt of this certification, the tax commissioner shall withhold the certified amount from any funds under the tax commissioner's control that are due or payable to that political subdivision. The tax commissioner shall promptly deposit this withheld amount to the credit of the local transportation improvement program fund created by section 164.14 of the Revised Code.

If the tax commissioner determines that no funds are due and payable to the violating political subdivision or that insufficient amounts of such funds are available to cover the entire certified amount, the tax commissioner shall withhold and deposit to the credit of the local transportation improvement program fund any amount available and certify the remaining amount to be withheld to the county auditor of the county in which the political subdivision is located. The county auditor shall withhold from that political subdivision any amount, up to that certified by the tax commissioner, that is available from any funds under the county auditor's control, that is due or payable to that political subdivision, and that can be lawfully withheld. The county auditor shall promptly pay that withheld amount to the tax commissioner for deposit into the local transportation improvement program fund.

The payments required under division (C)(3) of this section are in

addition to the force account limit reductions described in division (C)(2) of this section and also are in addition to any other action authorized by this chapter.

(D) If the auditor of state finds that a county, township, or municipal corporation violated its force account limits when participating in a joint force account project, the auditor of state shall impose the reduction in force account limits under division (C) of this section on all entities participating in the joint project.

(E) As used in this section, "force account limits" means any of the following, as applicable:

(1) For a county, the amounts established in section 5543.19 of the Revised Code;

(2) For a township, the amounts established in section 5575.01 of the Revised Code;

(3) For a municipal corporation, the amount established in section 723.52 of the Revised Code;

(4) For the department of transportation, the amount established in section 5517.02 of the Revised Code.

Sec. 117.20. (A) In adopting rules pursuant to Chapter 117. of the Revised Code, the auditor of state or the auditor of state's designee shall do both of the following:

(1) Before adopting any such rule, except a rule of an emergency nature, do each of the following:

(a) At least thirty-five days before any public hearing on the proposed rule-making action, mail or send by electronic mail notice of the hearing to each public office and to each statewide organization that the auditor of state or designee determines will be affected or that represents persons who will be affected by the proposed rule-making action;

(b) Mail or send by electronic mail a copy of the proposed rule to any person or organization that requests a copy within five days after receipt of the request;

(c) Consult with appropriate state and local government agencies, or with persons representative of their interests, including statewide organizations of local government officials, and consult with accounting professionals and other interested persons;

(d) Conduct, on the date and at the time and place designated in the notice, a public hearing at which any person affected by the proposed rule, including statewide organizations of local government officials, may appear and be heard in person, by attorney, or both, and may present the person's or organization's position or contentions orally or in writing.

~~(2) Except as otherwise provided in division (A)(2) of this section, Comply with divisions (B) to (E) of section 111.15 of the Revised Code. The auditor of state is not required to file a rule summary and fiscal analysis along with any copy of a proposed rule, or proposed rule in revised form, that is filed with the joint committee on agency rule review, the secretary of state, or the director of the legislative service commission under division (D) or (E) of section 111.15 of the Revised Code.~~

(B) The auditor of state shall diligently discharge the duties imposed by divisions (A)(1)(a), (b), and (c) of this section, but failure to mail or send by electronic mail any notice or copy of a proposed rule, or to consult with any person or organization, shall not invalidate any rule.

(C) Notwithstanding any contrary provision of the Revised Code, the auditor of state may prepare and disseminate, to public offices and other interested persons and organizations, advisory bulletins, directives, and instructions relating to accounting and financial reporting systems, budgeting procedures, fiscal controls, and the constructions by the auditor of state of constitutional and statutory provisions, court decisions, and opinions of the attorney general. The bulletins, directives, and instructions shall be of an advisory nature only.

(D) As used in this section, "rule" includes the adoption, amendment, or rescission of a rule.

Sec. 117.431. Public money in the possession of any private institution, association, board, or corporation shall 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 shall be separately and independently accounted for.

Sec. 127.18. (A) As used in this section:

(1) "Rule-making agency" has the same meaning as in division (I) of section 119.01 of the Revised Code.

(2) "Rule" includes the adoption, amendment, or rescission of a rule.

(3) "Proposed rule" means the original version of a proposed rule, and each revised version of the same proposed rule, that is filed with the joint committee on agency rule review under division (D) of section 111.15 or division (H) of section 119.03 of the Revised Code.

(B) A rule-making agency shall prepare, in the form prescribed by the joint committee on agency rule review under division (E) of this section, a complete and accurate rule summary and fiscal analysis of each proposed rule that it files under division (D) of section 111.15 or division (H) of section 119.03 of the Revised Code. The rule summary and fiscal analysis shall include all of the following information:

(1) The name, address, and telephone number of the rule-making agency, and the name and telephone number of an individual or office within the agency designated by that agency to be responsible for coordinating and making available information in the possession of the agency regarding the proposed rule;

(2) The Ohio Administrative Code rule number of the proposed rule;

(3) A brief summary of, and the legal basis for, the proposed rule, including citations identifying the statute that prescribes the procedure in accordance with which the rule-making agency is required to adopt the proposed rule, the statute that authorizes the agency to adopt the proposed rule, and the statute that the agency intends to amplify or implement by adopting the proposed rule;

(4) An estimate, in dollars, of the amount by which the proposed rule would increase or decrease revenues or expenditures during the current biennium;

(5) A citation identifying the appropriation that authorizes each expenditure that would be necessitated by the proposed rule;

(6) A summary of the estimated cost of compliance with the rule to all directly affected persons;

(7) The reasons why the rule is being proposed;

(8) If the rule has a fiscal effect on school districts, counties, townships, or municipal corporations, an estimate in dollars of the cost of compliance with the rule, or, if dollar amounts cannot be determined, a written explanation of why it was not possible to ascertain dollar amounts;

(9) If the rule has a fiscal effect on school districts, counties, townships, or municipal corporations and is the result of a federal requirement, a clear explanation that the proposed state rule does not exceed the scope and intent of the requirement, or, if the state rule does exceed the minimum necessary federal requirement, a justification of the excess cost, and an estimate of the costs, including those costs for local governments, exceeding the federal requirement;

(10) If the rule has a fiscal effect on school districts, counties, townships, or municipal corporations, a comprehensive cost estimate that includes the procedure and method of calculating the costs of compliance and identifies major cost categories including personnel costs, new equipment or other capital costs, operating costs, and indirect central service costs related to the rule. The fiscal analysis shall also include a written explanation of the agency's and the affected local government's ability to pay for the new requirements and a statement of any impact the rule will have on economic development.

(11) If the rule incorporates a text or other material by reference, and the agency claims the incorporation by reference is exempt from compliance with sections 121.71 to 121.74 of the Revised Code because the text or other material is generally available to persons who reasonably can be expected to be affected by the rule, an explanation of how the text or other material is generally available to those persons;

(12) If the rule incorporates a text or other material by reference, and it was infeasible for the agency to file the text or other material electronically, an explanation of why filing the text or other material electronically was infeasible;

(13) If the rule is being rescinded and incorporates a text or other material by reference, and it was infeasible for the agency to file the text or other material, an explanation of why filing the text or other material was infeasible;

(14) Any other information the joint committee on agency rule review considers necessary to make the proposed rule or the fiscal effect of the proposed rule fully understandable.

(C) The rule-making agency shall file the rule summary and fiscal analysis in electronic form along with the proposed rule that it files under divisions (D) and (E) of section 111.15 or divisions (B) and (H) of section 119.03 of the Revised Code. The joint committee on agency rule review shall not accept any proposed rule for filing unless a copy of the rule summary and fiscal analysis of the proposed rule, completely and accurately prepared, is filed along with the proposed rule.

(D) The joint committee on agency rule review shall review the fiscal effect of each proposed rule that is filed under division (D) of section 111.15 or division (H) of section 119.03 of the Revised Code.

(E) The joint committee on agency rule review shall prescribe the form in which each rule-making agency shall prepare its rule summary and fiscal analysis of a proposed rule.

~~(F) This section does not require the auditor of state or the auditor of state's designee to prepare or attach a rule summary and fiscal analysis to any copy of a rule proposed under section 117.12, 117.19, 117.38, or 117.43 of the Revised Code.~~

Sec. 187.01. As used in this chapter, "JobsOhio" means the nonprofit corporation formed under this section, and includes any subsidiary of that corporation. In any section of law that refers to the nonprofit corporation formed under this section, reference to the corporation includes reference to any such subsidiary unless otherwise specified or clearly appearing from the context.

The governor is hereby authorized to form a nonprofit corporation, to be named "JobsOhio," with the purposes of promoting economic development, job creation, job retention, job training, and the recruitment of business to this state. Except as otherwise provided in this chapter, the corporation shall be organized and operated in accordance with Chapter 1702. of the Revised Code. The governor shall sign and file articles of incorporation for the corporation with the secretary of state. The legal existence of the corporation shall begin upon the filing of the articles.

In addition to meeting the requirements for articles of incorporation in Chapter 1702. of the Revised Code, the articles of incorporation for the nonprofit corporation shall set forth the following:

(A) The designation of the name of the corporation as JobsOhio;

(B) The creation of a board of directors consisting of nine directors, to be appointed by the governor, who satisfy the qualifications prescribed by section 187.02 of the Revised Code;

(C) A requirement that the governor make initial appointments to the board within sixty days after the filing of the articles of incorporation. Of the initial appointments made to the board, two shall be for a term ending one year after the date the articles were filed, two shall be for a term ending two years after the date the articles were filed, and five shall be for a term ending four years after the date the articles were filed. The articles shall state that, following the initial appointments, the governor shall appoint directors to terms of office of four years, with each term of office ending on the same day of the same month as did the term that it succeeds. If any director dies, resigns, or the director's status changes such that any of the requirements of division (C) of section 187.02 of the Revised Code are no longer met, that director's seat on the board shall become immediately vacant. The governor shall forthwith fill the vacancy by appointment for the remainder of the term of office of the vacated seat.

(D) A requirement that the governor appoint one director to be chairperson of the board and procedures for electing directors to serve as officers of the corporation and members of an executive committee;

(E) A provision for the appointment of a chief investment officer of the corporation by the recommendation of the board and approval of the governor. The chief investment officer shall serve at the pleasure of the board and shall have the power to execute contracts, spend corporation funds, and hire employees on behalf of the corporation. If the position of chief investment officer becomes vacant for any reason, the vacancy shall be filled in the same manner as provided in this division.

(F) Provisions requiring the board to do all of the following:

(1) Adopt one or more resolutions providing for compensation of the chief investment officer;

(2) Approve an employee compensation plan recommended by the chief investment officer;

(3) Approve a contract with the director of development services for the corporation to assist the director and the development services agency with providing services or otherwise carrying out the functions or duties of the agency, including the operation and management of programs, offices, divisions, or boards, as may be determined by the director of development services in consultation with the governor;

(4) Approve all major contracts for services recommended by the chief investment officer;

(5) Establish an annual strategic plan and standards of measure to be used in evaluating the corporation's success in executing the plan;

(6) Establish a conflicts of interest policy that, at a minimum, complies with section 187.06 of the Revised Code;

(7) Hold a minimum of four board of directors meetings per year at which a quorum of the board is physically present, and such other meetings, at which directors' physical presence is not required, as may be necessary. Meetings at which a quorum of the board is required to be physically present are subject to divisions (C), (D), and (E) of section 187.03 of the Revised Code.

(8) Establish a records retention policy and present the policy, and any subsequent changes to the policy, at a meeting of the board of directors at which a quorum of the board is required to be physically present pursuant to division (F)(7) of this section;

(9) Adopt standards of conduct for the directors.

(G) A statement that directors shall not receive any compensation from the corporation, except that directors may be reimbursed for actual and necessary expenses incurred in connection with services performed for the corporation;

(H) A provision authorizing the board to amend provisions of the corporation's articles of incorporation or regulations, except provisions required by this chapter;

(I) Procedures by which the corporation would be dissolved and by which all corporation rights and assets would be distributed to the state or to another corporation organized under this chapter. These procedures shall incorporate any separate procedures subsequently set forth in this chapter for the dissolution of the corporation. The articles shall state that no dissolution shall take effect until the corporation has made adequate

provision for the payment of any outstanding bonds, notes, or other obligations.

(J) A provision establishing an audit committee to be comprised of directors. The articles shall require that the audit committee hire ~~an a firm of~~ independent certified public ~~accountant~~ accountants, selected in consultation with the auditor of state, to perform, once each year, a financial audit of the corporation at least once every year and of any nonprofit entity the sole member of which is JobsOhio. The articles also shall require all of the following:

(1) Commencing with JobsOhio's fiscal year beginning July 1, 2012, the financial statements 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 of independent certified public accountants 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; and

(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.

(K) A provision authorizing a majority of the disinterested directors to remove a director for misconduct, as that term may be defined in the articles or regulations of the corporation. The removal of a director under this division creates a vacancy on the board that the governor shall fill by appointment for the remainder of the term of office of the vacated seat.

Sec. 187.04. (A) The director of development services, as soon as practical after February 18, 2011, shall execute a contract with JobsOhio for the corporation to assist the director and the development services agency with providing services or otherwise carrying out the functions or duties of the agency, including the operation and management of programs, offices, divisions, or boards, as may be determined by the director in consultation with the governor. The approval or disapproval of awards involving public money shall remain functions of the agency. All contracts for grants, loans, and tax incentives involving public money shall be between the agency and the recipient and shall be enforced by the agency. JobsOhio may not execute contracts obligating the agency for loans, grants, tax credits, or incentive awards recommended by JobsOhio to the agency. Prior to execution, all contracts between the director and JobsOhio entered into under this section that obligate the agency to pay JobsOhio for services rendered are subject to

controlling board approval.

The term of an initial contract entered into under this section shall not extend beyond June 30, 2013. Thereafter, the director and JobsOhio may renew the contract for subsequent fiscal biennia, but at no time shall a particular contract be effective for longer than a fiscal biennium of the general assembly.

JobsOhio's provision of services to the agency as described in this section shall be pursuant to a contract entered into under this section. If at any time the director determines that the contract with JobsOhio may not be renewed for the subsequent fiscal biennium, the director shall notify JobsOhio of the director's decision not later than one hundred twenty days prior to the end of the current fiscal biennium. If the director does not provide such written notice to JobsOhio prior to one hundred days before the end of the current fiscal biennium, the contract shall be renewed upon such terms as the parties may agree, subject to the requirements of this section.

(B) A contract entered into under this section shall include all of the following:

(1) Terms assigning to the corporation the duties of advising and assisting the director in the director's evaluation of the agency and the formulation of recommendations under section 187.05 of the Revised Code;

(2) Terms designating records created or received by JobsOhio that shall be made available to the public under the same conditions as are public records under section 149.43 of the Revised Code. Documents designated to be made available to the public pursuant to the contract shall be kept on file with the agency.

Among records to be designated under this division shall be the following:

(a) The corporation's federal income tax returns;

(b) The report of expenditures described in division (B)(3) of section 187.03 of the Revised Code. The records shall be filed with the agency at such times and frequency as agreed to by the corporation and the agency, which shall not be less frequently than quarterly.

(c) The annual total compensation paid to each officer and employee of the corporation;

(d) A copy of the ~~audit~~ report for each financial audit of the corporation and of each supplemental compliance and control review of the corporation performed by a firm of independent certified public accountants pursuant to division (J) of section 187.01 of the Revised Code.

(e) Records of any fully executed incentive proposals, to be filed

annually;

(f) Records pertaining to the monitoring of commitments made by incentive recipients, to be filed annually;

(g) A copy of the minutes of all public meetings described in division (C) of section 187.03 of the Revised Code not otherwise closed to the public.

(3) The following statement acknowledging that JobsOhio is not acting as an agent of the state:

"JobsOhio shall have no power or authority to bind the state or to assume or create an obligation or responsibility, expressed or implied, on behalf of the state or in its name, nor shall JobsOhio represent to any person that it has any such power or authority, except as expressly provided in this contract."

(C)(1) Records created by JobsOhio are not public records for the purposes of Chapter 149. of the Revised Code, regardless of who may have custody of the records, unless the record is designated to be available to the public by the contract under division (B)(2) of this section.

(2) Records received by JobsOhio from any person or entity that is not subject to section 149.43 of the Revised Code are not public records for purposes of Chapter 149. of the Revised Code, regardless of who may have custody of the records, unless the record is designated to be available to the public by the contract under division (B)(2) of this section.

(3) Records received by JobsOhio from a public office as defined in section 149.011 of the Revised Code that are not public records under section 149.43 of the Revised Code when in the custody of the public office are not public records for the purposes of section 149.43 of the Revised Code regardless of who has custody of the records.

(4) Division (B) of section 4701.19 of the Revised Code applies to any work papers of the firm of independent certified public accountants engaged to perform the annual financial audit and the supplemental compliance and control review described in division (J) of section 187.01 of the Revised Code, and to 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 under division (B)(2) of this section.

(D) Any contract executed under authority of this section shall not negate, impair, or otherwise adversely affect the obligation of this state to pay debt charges on securities executed by the director or issued by the treasurer of state, Ohio public facilities commission, or any other issuing authority under Chapter 122., 151., 165., or 166. of the Revised Code to fund economic development programs of the state, or to abide by any pledge

or covenant relating to the payment of those debt charges made in any related proceedings. As used in this division, "debt charges," "proceedings," and "securities" have the same meanings as in section 133.01 of the Revised Code.

(E) Nothing in this section, other than the requirement of controlling board approval, shall prohibit the agency from contracting with JobsOhio to perform any of the following functions:

- (1) Promoting and advocating for the state;
- (2) Making recommendations to the agency;
- (3) Performing research for the agency;
- (4) Establishing and managing programs or offices on behalf of the agency, by contract;
- (5) Negotiating on behalf of the state.

(F) Nothing in this section, other than the requirement of controlling board approval, shall prohibit the agency from compensating JobsOhio from funds currently appropriated to the agency to perform the functions described in division (E) of this section.

SECTION 2. That existing sections 111.15, 117.01, 117.10, 117.11, 117.12, 117.16, 117.20, 127.18, 187.01, and 187.04 of the Revised Code are hereby repealed.

Speaker _____ *of the House of Representatives.*

President _____ *of the Senate.*

Passed _____, 20____

Approved _____, 20____

Governor.

Am. S. B. No. 67

130th G.A.

The section numbering of law of a general and permanent nature is complete and in conformity with the Revised Code.

Director, Legislative Service Commission.

Filed in the office of the Secretary of State at Columbus, Ohio, on the ____ day of _____, A. D. 20____.

Secretary of State.

File No. _____ Effective Date _____