Ohio Legislative Service Commission

Bill Analysis

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H.B. 2*

129th General Assembly
(As Reported by H. State Government and Elections
and Re-referred to H. Finance and Appropriations)

Reps. Snitchler and Stautberg, Boose, McClain, McKenney, Huffman, J. Adams, Uecker, Gardner, Mecklenborg, Pillich, Thompson, Kozlowski, Derickson, Amstutz, Murray, Beck, Stinziano, Blair, Balderson, Roegner, Newbold, Baker, Sears, Maag, Dovilla, Grossman, Henne, Hayes, R. Adams, Stebelton

BILL SUMMARY

- Requires the Auditor of State to conduct performance audits of at least four state agencies each biennium.
- Exempts the Attorney General, Auditor of State, Governor, Secretary of State, Treasurer of State, and agencies of the legislative and judicial branches from the performance audits.
- Requires an audited state agency to accept comments regarding a performance audit from interested parties.
- Requires a state agency to implement the recommendations of a performance audit and to file a report and provide testimony if it does not do so.
- Creates the Leverage for Efficiency, Accountability, and Performance (LEAP) Fund, to be administered by the Auditor of State.
- Authorizes the Auditor to make loans from the Fund to state agencies and local public offices to pay for performance audits.

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

CONTENT AND OPERATION

Auditor of State to conduct performance audits

Under the bill, each biennium, the Auditor of State must conduct performance audits of a minimum of four state agencies. At least two of the audits must be of any of the following administrative agencies: the Office of Budget and Management; the Environmental Protection Agency; or the Departments of Education, Commerce, Administrative Services, Transportation, Agriculture, Natural Resources, Health, Job and Family Services, Public Safety, Mental Health, Developmental Disabilities, Insurance, Development, Youth Services, Rehabilitation and Correction, Aging, Alcohol and Drug Addiction Services, or Veterans Services. The remaining performance audits are required to be of state agencies other than those listed. The Offices of the Attorney General, Auditor of State, Governor, Secretary of State, and Treasurer of State and agencies of the legislative and judicial branches are not subject to the performance audits.[1]

The Auditor must select each agency to be audited and must determine whether to audit the entire agency or a portion of the agency by auditing one or more programs, offices, boards, councils, or other entities within that agency. The Auditor must make the selection and determination in consultation with the Governor and the Speaker and Minority Leader of the House of Representatives and President and Minority Leader of the Senate.

An audit of a portion of an agency is to be considered an audit of one agency. The authority to audit a portion of an agency in no way limits the Auditor's ability to audit an entire agency if it is in the best interest of the state. Performance audits under the bill must be conducted in the same manner as audits conducted by the Auditor under continuing law. Additionally, the Auditor is to determine the scope of the audit, but is to consider, if appropriate, supervisory and subordinate level operations in the agency.[2]

Initial performance audits

The initial performance audits conducted by the Auditor are to be of the Department of Education, the Department of Job and Family Services, the Department of Transportation, and one other state agency not listed above as an administrative agency. This requirement is met if an agency not listed above as an administrative

[1] R.C. 117.46.

[2] R.C. 117.46.

agency requests an audit. The Governor must select an agency not listed above as an administrative agency if no such agency requests an audit. The Auditor must conduct an audit of every agency that requests an audit and the agency selected by the Governor.

The Auditor must commence the initial four agency audits within 90 days of the bill's effective date. Audits of additional agencies that request an audit are to commence as soon as practicable as determined by the Auditor.[3]

Audit of Department of Transportation

In conducting the audit of the Department of Transportation, the Auditor is to analyze and comment on the realignment of all transportation districts. Currently the state is divided into 12 transportation districts, which are to manage activities in the district, including transportation planning, intermodal coordination, design, operation, and maintenance of highways and bridges, and any associated administrative activities. The Director is to pay for the audit with money that is available to the Department and that may be used for that purpose. However, money appropriated from the General Revenue Fund may not be used to pay for the audit.[4]

Comment period

The bill requires every state agency audited under the bill to accept comments regarding the performance audit from interested parties and to determine how to accept those comments. The comment period is to begin on the day following the release date of the audit and conclude at the end of the 14th day following the release date. The agency is to make all comments available to the public on the 21st day following the release date of the audit.[5]

Implementation of performance audit recommendations

The bill requires a state agency to implement the recommendations of a performance audit conducted under the bill. If an agency does not commence implementation of the recommendations within three months after the end of the comment period for the audit, the agency must do both of the following:

(1) File a report, which is to include the comments submitted to the agency by interested parties, explaining why the agency has not commenced implementation of

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[3] Section 2.

[4] Section 2, R.C. 5501.14 (not in the bill).

[5] R.C. 117.461.

the recommendations with the Governor, Auditor, Speaker and Minority Leader of the House of Representatives, and President and Minority Leader of the Senate;

(2) Provide testimony explaining why the agency has not commenced implementation of the recommendations to the House and Senate committees dealing primarily with the programs and activities of the agency.

If an agency does not fully implement an audit recommendation within one year after the end of the comment period for the audit, the agency must file a report with the Governor, Auditor, Speaker and Minority Leader of the House of Representatives, and President and Minority Leader of the Senate justifying why the recommendation has not or will not be implemented.[6]

LEAP Fund and loan program for performance audits

The bill creates the Leverage for Efficiency, Accountability, and Performance (LEAP) Fund to make loans to state agencies and local public offices to pay for performance audits.

Loan amounts

The amount of the loan must be equal to the amount charged by the Auditor for a standard audit plus interest.[7] The amount charged for an audit of a state agency is based on the allowable rates set by the Auditor's indirect cost allocation plan approved by the U.S. Department of Health and Human Services. In state fiscal year 2011, the billable hourly rate charged for audits to state agencies is $62.64.[8]

The amount charged for an audit of a local public office differs slightly from that charged to a state agency. The public office must be charged for all of the following:

- Total amount of compensation paid to Assistant Auditors of State and their expenses;
- The costs of employees assigned to assist the Assistant Auditors;
- The costs of experts employed to assist in the audit;
- The cost of typing, reviewing, and copying reports;

[6] R.C. 117.462.

[7] R.C. 117.471.

[8] R.C. 117.471. See also R.C. 117.13 (not in the bill), Ohio Administrative Code 117-4-01, and Legislative Service Commission, Sub. H.B. 2 Fiscal Note in House State Government and Elections, February 1, 2011.

- If needed, the costs associated with issuing subpoenas or analyzing reports of audits conducted by public accountants;
- If needed, the costs associated with the participation of an Assistant Auditor, employee, or expert employed by the Auditor in any legal proceedings related to the audit.

In fiscal year 2009, the billable hourly rate charged for audits of local public offices was $37.[9]

The amount charged to a state agency or local public office for a performance audit must also include any accrued interest. The interest is accrued from the date the audit is completed until the date payment is received by the Auditor. The interest rate must be equivalent to the average of the monthly yields for the State Treasury Asset Reserve Fund for the time period during which the interest is accruing.[10]

Loan statement

The bill requires the Auditor of State to provide each recipient of a loan under this program with a statement of the amount due and the date on which the loan must be repaid. Payment for performance audits must be made within one year after the audit is completed. Each loan statement to a local public office must include the percentage of the total cost chargeable to each fund subject to the performance audit.[11]

Failure to repay loans

The bill provides that if a state agency fails to repay the loan amount by the payment deadline, the Auditor must certify the loan amount, plus interest, to the Director of Budget and Management. The Director is required to withhold the certified amount from funds under the Director's control that may be used to repay the loan and that belong to or are lawfully payable or due to the state agency. The Director must promptly pay the withheld amount to the Auditor. If the Director determines that no funds or insufficient funds are available to withhold to repay the loan amount, the

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[9] R.C. 117.471. See also R.C. 117.13 (not in the bill), O.A.C. 117-4-02, and Legislative Service Commission, LSC Redbook, Auditor of State, March 2009, available at: http://www.lsc.state.oh.us/fiscal/redbooks128/aud.pdf, last visited January 26, 2011.

[10] R.C. 117.471(B). Interest rates for the State Treasury Asset Reserve Fund may be found at: http://www.tos.ohio.gov/ForGovernment/Default.aspx?Section=Star%20Ohio, last visited February 8, 2011.

[11] R.C. 117.471(C).

Director must withhold and pay the Auditor the amounts available and continue to withhold funds until the full amount is repaid.

With regards to local public offices, the bill provides that if an office fails to repay the loan amount by the payment deadline, the Auditor of State must certify the loan amount, plus interest, to the county auditor. The county auditor must withhold the certified amount from funds under the county auditor's control that may be used to repay the loan and that belong to or are lawfully payable or due to the local public office. The county auditor must promptly pay the withheld amount to the Auditor. If the county auditor determines that no funds or insufficient funds are available to withhold to repay the loan amount, the county auditor must withhold and pay the Auditor the amounts available and continue to withhold funds until the full amount is repaid.[12]

Local public office to obtain prior approval

The bill requires the office of a county elected official seeking a loan for a performance audit to obtain prior approval for the loan from the board of county commissioners of the county in which the office is located. The bill provides that the reason for the prior approval is to ensure that the county office being audited and the board of county commissioners are notified that the costs of the loan must be repaid.[13]

Leverage for Efficiency, Accountability, and Performance Fund

The bill requires the Auditor of State to use the LEAP Fund to make loans to state agencies and local public offices to pay the costs associated with performance audits. The Fund is to consist of money appropriated to it plus the repayments of principal and interest on loans made from the Fund. Interest earned on Fund moneys must be credited to the Fund.[14]

Appropriations

The bill appropriates $1.5 million in fiscal year 2011 to the LEAP Fund to be used to provide loans to state agencies and local public offices to pay the cost of performance audits. The bill requires the Director of Budget and Management to transfer $1.5

[12] R.C. 117.472(A) and (B).

[13] R.C. 117.471(D).

[14] R.C. 117.47, 117.471(E), and 117.472(C).

million from the Uniform Accounting Network Fund to the LEAP Fund to fund this appropriation.[15]

Effective date

Because the bill contains an appropriation for current expenses, it is not subject to the referendum and therefore, goes into immediate effect.[16]

HISTORY

ACTION	DATE
Introduced	01-11-11
Reported, H. State Gov't & Elections	---
Re-referred to H. Finance & Appropriations, H. Rules & Reference	---

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[15] Sections 3 and 4.

[16] Section 5.