



Ohio Legislative Service Commission

Bill Analysis

Wendy H. Gridley

Sub. S.B. 6*

130th General Assembly

(As Reported by S. Public Safety, Local Government, and Veterans Affairs)

Sens. Schaffer, Jordan, LaRose, Smith, Brown, Uecker, Lehner, Widener

BILL SUMMARY

- Establishes procedures for removing county auditors, county treasurers, township fiscal officers, and fiscal officers of nonchartered municipal corporations for purposely, knowingly, or recklessly failing to perform a duty expressly imposed by law with respect to the office or purposely, knowingly, or recklessly committing any act expressly prohibited by law with respect to the office (R.C. 319.26, 321.37, 507.13, and 733.78).
- Declares that if a municipal corporation's charter establishes a procedure for removal of officers that conflicts with the bill's removal procedure, the procedure in the charter prevails (R.C. 733.78(F)).
- Unless otherwise provided by law, prohibits any individual removed from office under the bill's procedures from holding another public office for four years, and specifies that such an individual is not entitled to hold another public office until repayment or restitution required by the court is satisfied (R.C. 319.26(D), 321.37(D), 507.13(D), 733.78(E), and 2921.44(G)).
- Creates fiscal accountability requirements for public schools that have been declared unauditably by the Auditor of State, including requiring them to submit an audit completion plan (R.C. 3313.30, 3314.51, and 3328.37).
- Provides authority for the treasurer of a public school or a STEM school, and the fiscal officer of a community school or a college-preparatory boarding school, to be suspended when the Auditor of State or a public accountant declares a school

* This analysis was prepared before the report of the Senate Public Safety, Local Government, and Veterans Affairs Committee appeared in the Senate Journal. Note that the list of co-sponsors and the legislative history may be incomplete.

district, STEM school, community school, or college-preparatory boarding school (collectively referred to as public schools) to be unauditible until the Auditor of State or a public accountant has completed an audit of the public school (R.C. 3313.30(B), 3314.51(B), 3326.211(B), and 3328.37(B)).

- Requires the Department of Education to cease making payments to a public school declared unauditible, if the school fails to make progress to bring its accounts into auditable condition, until receiving notice that a financial audit was completed (R.C. 3313.30, 3326.211, and 3328.37).
- Except as otherwise provided by law, bars a public servant who is a fiscal officer, including a school fiscal officer, and who is convicted of or pleads guilty to dereliction of duty from holding any public office, employment, or position of trust in Ohio for four years, and specifies that such a public servant is not entitled to hold another public office until repayment or restitution by the court is satisfied (R.C. 2921.44).
- Establishes initial education programs, taken before assuming office or during the first year of a term, and continuing education requirements, taken after assuming office, for township fiscal officers, city auditors, city treasurers, village fiscal officers, village clerk-treasurers, and similar fiscal officers designated by the charter of a chartered municipal corporation (R.C. 507.12 and 733.81).
- Requires the Auditor of State, instead of the County Auditors Association of Ohio, to issue a certificate of completion or notice of failure to complete to county auditors regarding their continuing education courses (R.C. 319.04).
- Requires that before assuming the duties of fiscal officer for a school district, STEM, college-preparatory boarding, or community school, the fiscal officer must be licensed by the State Board of Education as a treasurer, or, in the case of an appointee serving during another's suspension who is not so licensed, must be approved by the Superintendent of Public Instruction (R.C. 3313.30, 3314.51, 3326.211, and 3328.37).
- Requires the sponsor of a community school to provide to the governing authority and fiscal officer of the school a written report regarding the review of the financial and enrollment records of the school not later than ten days after each monthly review (R.C. 3314.023).
- Prohibits a community school, on or after the bill's effective date, from opening for operation in any school year unless the governing authority of the school has posted



a surety bond or cash deposit as a cash guarantee in the amount of \$50,000 with the Auditor of State (R.C. 3314.50).

- Requires that each college-preparatory boarding school have a designated fiscal officer who may be required by rule of the Auditor of State to execute a bond before entering upon duties as a fiscal officer (R.C. 3328.16).
- Requires that whenever a county auditor or county treasurer fails to perform the duties of office for 30 consecutive days, instead of the current 90 days, the office must be deemed vacant, except in the case of sickness or injury confirmed by the filing of a physician's certificate (R.C. 305.03).

TABLE OF CONTENTS

Removing fiscal officers from office.....	4
Background and general description	4
Removal procedure for fiscal officer misconduct: county, township, and nonchartered municipal fiscal officers	5
Enhanced penalty for falsification.....	7
Automatic stay of removal proceedings during pendency of criminal action	7
Filling vacancies after final decision for removal.....	8
Ban on holding public office	8
Education programs and continuing education for fiscal officers	8
For county auditors	8
For county treasurers	9
For fiscal officers of townships and municipal corporations	9
Unauditable public schools.....	11
Declaration.....	11
Suspension of public school treasurer or fiscal officer	12
No community school contracts.....	12
Written response	13
Withholding funding.....	13
Community schools.....	14
Fiscal officer to be licensed as treasurer	14
Written reports of record reviews.....	14
Posting of surety bond.....	14
Fiscal officer requirement for college-preparatory boarding schools.....	15
Disqualification from holding public office for dereliction of duty	15
Vacancy in county auditor or county treasurer's office.....	16
Removal procedure in detail for county, township, and municipal fiscal officers	16
County Auditor (R.C. 319.26)	17
County Treasurer (R.C. 321.37).....	19
Township Fiscal Officer (R.C. 507.13).....	19
City or Village Fiscal Officers (R.C. 733.78)	20



CONTENT AND OPERATION

Removing fiscal officers from office

Background and general description

Removal procedures in continuing law generally authorize the removal of persons holding a public office in the state or any political subdivision of the state for misconduct in office,¹ or, in the case of a municipal corporation that does not have a removal procedure in a charter, for certain violations of law, including misfeasance or malfeasance in office.² The statutory grounds in continuing law are generally for willful and flagrant exercises of authority or power not authorized by law, or refusal or willful neglect to perform any official duty imposed by law, gross neglect of duty, gross immorality, drunkenness, misfeasance, malfeasance, or nonfeasance. A complaint and hearing is required resulting in the forfeiture of office.³

The bill establishes a removal procedure for the actions of county auditors, county treasurers, township fiscal officers, village fiscal officers, village clerk-treasurers, city auditors, and city treasurers with regard to their official duties.⁴ The standard for removal under the bill is purposeful, knowing, or reckless failure to perform a duty expressly imposed by law with respect to the office or purposeful, knowing, or reckless commission of any act expressly prohibited by law with respect to the office. Current law does not preclude "other methods of removal authorized by law."⁵ The bill's removal procedures may be used as an alternative to other procedures provided by law, including R.C. 3.07 to 3.10.⁶

¹ R.C. 3.07 to 3.10, not in the bill.

² R.C. 733.72 to 733.77, not in the bill.

³ R.C. 3.07.

⁴ R.C. 319.26 for removal of county auditors, R.C. 321.37 for removal of county treasurers, R.C. 507.13 for removal of township fiscal officers, and R.C. 733.78 for removal of village fiscal officers, village clerk-treasurers, city auditors, and city treasurers.

⁵ R.C. 3.07.

⁶ Under R.C. 3.08, proceedings for removal are commenced by the filing of a written or printed complaint specifically setting forth the charge and signed by qualified electors of the township, county, or municipal corporation not less in number than fifteen per cent of the total vote cast for governor at the most recent election for the office of governor. The officer sought to be removed is served a copy of the complaint at least ten days before the hearing on the complaint; the hearing must occur within 30 days from the date of filing the complaint by the electors.



The bill provides that if a municipal corporation's charter establishes a procedure for the removal of officers from office that conflicts with the removal procedures established by the bill, the charter provision prevails.⁷ This is consistent with the common law view of municipal removal authority being a matter of local self-government under Ohio Constitution article XVIII, sec. 3.

The bill eliminates an existing provision of a statute for removal of county auditors from office for dereliction of duty;⁸ instead, the procedures discussed below apply to the removal of a county auditor from office. The provision being eliminated by the bill, which requires immediate suspension of the county auditor before a complaint is filed or a hearing is held, is similar to a statute for the removal of a county treasurer that was ruled unconstitutional by the Ohio Supreme Court because it is incompatible with the complaint and hearing requirements of Ohio Constitution, art. II, sec. 38.⁹ The Due Process requirements of a complaint and hearing must be afforded to an officer before removal from office.

The bill also amends an existing statute and repeals another for the removal of county treasurers and affords a county treasurer a hearing before removal from office, as discussed below.¹⁰

Removal procedure for fiscal officer misconduct: county, township, and nonchartered municipal fiscal officers

The bill provides a removal procedure for county auditors, county treasurers, township fiscal officers, and fiscal officers of nonchartered municipal corporations for purposely, knowingly, or recklessly failing to perform a duty expressly imposed by law with respect to the office or purposely, knowingly, or recklessly committing any act expressly prohibited by law with respect to the office.¹¹

The procedure generally involves the ability for specified persons to file a sworn affidavit and evidence with the Auditor of State, who must issue findings within ten days unless, for good cause, additional time is required, to indicate whether there is

⁷ R.C. 733.78(F).

⁸ R.C. 319.26(A) and repeal of R.C. 319.25.

⁹ *Ziegler v. Zumbar*, 129 Ohio St.3d 240 (2011).

¹⁰ R.C. 321.37 and repeal of R.C. 321.38.

¹¹ R.C. 319.26, 321.37, 507.13, and 733.78.



clear and convincing¹² evidence to support the allegations. (See **COMMENT 1** for persons specified to file the sworn affidavits and receive notice throughout the process.) If the Auditor of State determines that there is clear and convincing evidence, the Attorney General then must review the evidence and make similar determinations within a ten day period unless, for good cause, additional time is required. If the Attorney General determines, by clear and convincing evidence, that there is evidence to support the allegations, the bill provides that the Attorney General has a cause of action for the removal of the fiscal officer. That cause of action must commence no later than 45 days after the Attorney General makes the findings and provides notice to the officer and other specified persons.

The bill provides that the removal action must proceed de novo as in the trial of a civil action. The court is not restricted to the evidence that was presented to the Auditor of State and the Attorney General before the action was filed. If the court finds the specified wrongdoing by clear and convincing evidence, the court must issue an order removing the officer from office and any order necessary for the preservation or restitution of public funds.

The fiscal officer is provided the right to appeal the matter, but a final judgment for removal against the officer, results in the office being vacated.

For purposes of this procedure, the Auditor of State is required to establish by rule the format for submitting a sworn affidavit and supporting evidence.¹³

The court of common pleas in the county where the applicable county, township, or municipal corporation is located has exclusive jurisdiction of the action. The action is governed by the Rules of Civil Procedure.¹⁴ The court is authorized to issue an order restraining the fiscal officer from entering the office and conducting business during the pending removal action and appeals.¹⁵

¹² Clear and convincing evidence is the standard required at common law and under the general statutory provisions, R.C. 3.07 to 3.10, to show a substantial departure from the faithful performance of official duties. This burden of proof is that measure or degree of proof that is more than a mere preponderance of the evidence but is not as high a burden as the extent of such certainty as is required by beyond a reasonable doubt in criminal cases. *In re Removal of Kuehnle*, 161 Ohio App.3d 399 (May 16, 2005).

¹³ R.C. 117.45.

¹⁴ R.C. 507.13(B)(1).

¹⁵ R.C. 319.26(B)(2), 321.37(B)(2), 507.13(B)(2), and 733.78(C)(2).



The bill provides that the applicable legislative authority is responsible for the payment of reasonable attorney's fees for counsel for the fiscal officer. If judgment is entered against the fiscal officer, the court must order the fiscal officer to reimburse the board for attorney's fees and costs up to a reasonable amount, as determined by the court. Expenses incurred by the board in the removal action must be paid out of the general fund of the applicable county, township, or municipal corporation.¹⁶

The removal proceeding set forth in the bill may be used for local fiscal officers as an alternative to the removal proceedings in R.C. 3.07 to 3.10 or other methods of removal authorized by law.¹⁷ Ohio Constitution article II, section 38 provides that laws may be passed for the prompt removal of public officers, *upon a complaint and hearing*, for misconduct involving moral turpitude or for other cause provided by law. Accordingly, all of the provisions authorizing removal under the bill provide for a complaint and hearing as is required by the Constitution. Similarly, R.C. 3.07 to 3.10 satisfies the complaint and hearing requirements and those sections may be used instead of the bill's procedure for local fiscal officers.

Enhanced penalty for falsification

The bill states that a person who makes a false statement in a sworn affidavit, for purposes of a removal action, is guilty of falsification under the current law for the offense of falsification. Falsification is generally a misdemeanor of the first degree, but for purposes of the bill, it is a felony of the third degree.¹⁸

Automatic stay of removal proceedings during pendency of criminal action

The bill provides that an action for removal from office is stayed during the pendency of any criminal action concerning a violation of a law or ordinance that is substantially equivalent to any criminal violation in Title 29 of the Revised Code related to conduct in office if the person charged in the criminal action committed the violation while serving as the fiscal officer and the conduct constituting the violation was related to the duties of the office or to the person's actions as the fiscal officer. The stay may be lifted upon motion of the prosecuting attorney in the related criminal action.

¹⁶ R.C. 319.26(B)(3), 321.37(B)(3), 507.13(B)(3), and 733.78(C)(3).

¹⁷ R.C. 319.26(G), 321.37(G), 507.13(G), and 733.78(G).

¹⁸ R.C. 319.26, 321.27, 507.13, 773.78, and 2921.13.



Filling vacancies after final decision for removal

A vacancy must be filled as provided in continuing law immediately following a final decision that an offending fiscal officer must be removed from office.¹⁹

Ban on holding public office

The bill generally provides that, except as otherwise provided by law, any individual removed from office under the bill's procedures is not entitled to hold another public office for four years following the date of the final decision, and is not entitled to hold another public office until settlement is made or the money is paid over as required by the court. Existing law provides exceptions; for example, conviction of a felony forever bars an individual from holding public office.²⁰ Similarly, a conviction for theft in office and embezzlement (two specific felonies) bars one from holding a public office.²¹

Education programs and continuing education for fiscal officers

For county auditors

Currently, a county auditor must attend and successfully complete at least 24 hours of continuing education courses, 16 hours of which must be completed during the first year of the auditor's term of office, and eight hours of which must be completed by the end of the four-year term. At least two hours of ethics and substance-abuse training must be included in the total 24 hours of required courses. A course must be approved by the County Auditors Association of Ohio (CAAO), which also records and verifies completion of required course work for each county auditor and sends the number of hours completed to the Auditor of State and the Tax Commissioner.

The bill does not change this continuing education requirement, except that the bill requires the Auditor of State, rather than the CAAO, to issue a certificate of completion to each county auditor who completes the continuing education courses, and to issue a notice of failure to complete to any county auditor who fails to complete at least 16 hours of those courses during the first year of the term of office or to complete a total of at least 24 hours of those courses by the end of that term. Continuing

¹⁹ R.C. 305.02 for county auditors and county treasurers, R.C. 503.24 for township officers, R.C. 733.31 for municipal fiscal officers, none of which is in the bill.

²⁰ R.C. 2961.01 (felony conviction makes one incompetent to hold office of honor, trust, or profit); Ohio Constitution, Article V, sec. 4 (General Assembly has authority to exclude from the privilege of voting, or being eligible to hold office, any person convicted of a felony).

²¹ R.C. 2921.41 (theft in office); Ohio Constitution, Article II, sec. 5 (embezzlement).



law provides that this notice is for informational purposes only, and does not affect any individual's ability to hold the office of county auditor.²²

For county treasurers

Continuing law requires that newly elected county treasurers complete 13 hours of education programs *before* taking office, and, after completing one year in office, take not less than 24 hours of continuing education during each biennial cycle. The bill does not revise any of these requirements for county auditors and treasurers; they are presented here solely for purposes of comparison to the other education programs and continuing education requirements established by the bill.²³

For fiscal officers of townships and municipal corporations

The bill requires that township fiscal officers and municipal fiscal officers (city auditors, city treasurers, village fiscal officers, village clerk-treasurers, and, in the case of a municipal corporation with a charter that designates an officer with similar duties and functions, the officer so designated) successfully complete education programs and continuing education courses.²⁴ To enhance the background and working knowledge of these township or municipal fiscal officers in governmental finance, the bill requires that the Auditor of State conduct education programs for individuals elected or appointed for the first time to the office of township fiscal officer, or elected or appointed for the first time to one of the municipal fiscal offices, and conduct biennial continuing education courses for individuals who continue to hold that office in a subsequent term. The bill permits the Ohio Township Association (OTA) and the Ohio Municipal League (OML), respectively, to conduct the education programs and biennial continuing education courses if approved by the Auditor of State. The Auditor of State, in conjunction with the OTA or OML, as appropriate, must determine the manner and content of the education programs and continuing education courses in governmental finance.

Newly elected or appointed township or municipal fiscal officers must take at least six hours of education programs before commencing or during the first year of office. A township or municipal fiscal officer who participates in a permissive training or educational program for new township fiscal officers, city auditors, or village clerks

²² R.C. 319.04.

²³ R.C. 321.46, and 321.47, not in the bill.

²⁴ R.C. 507.12 and 733.81.



held by the Auditor of State under continuing law²⁵ may apply those hours taken *before* taking office to the six hours of required initial education programs.

The bill requires each township or municipal fiscal officer who is newly elected or newly appointed to attend and successfully complete at least six hours of continuing education courses before commencing or during the first year of the officer's term of office, and, if newly elected, to complete at least another 18 hours of continuing education courses by the end of that term. A township or municipal fiscal officer must include at least two hours of ethics instruction in the total 24 hours of required courses. Each township or municipal fiscal officer who is elected or appointed to a subsequent term of office must attend and successfully complete 12 hours of continuing education courses in each subsequent term of office.²⁶ To be counted toward the required hours, a course must be approved or conducted by the OTA or OML, as appropriate, or be conducted by the Auditor of State. A township or municipal fiscal officer who teaches an approved course is entitled to credit for the course in the same manner as if the officer had attended the course.

A certified public accountant who serves as a township or municipal fiscal officer may apply, to the required hours of continuing education, any hours of continuing education taken to fulfill the Accountancy Board's existing continuing education requirements,²⁷ if completed *after* being elected or appointed as a township or municipal fiscal officer. Similarly, a township or municipal fiscal officer may apply, to the required hours of continuing education, any hours of continuing education provided by the Treasurer of State under an existing continuing education program²⁸ if the hours are completed *after* being elected or appointed as a township or municipal fiscal officer.

The Auditor of State, during the regular financial audit of a township or municipal corporation, must verify the completion of education programs (taken before or during the first year of office) and of continuing education courses (taken thereafter) for the township fiscal officer or for each of the municipal corporation's fiscal officers. The Auditor of State must issue a certificate of completion to each township or municipal fiscal officer who completes the education programs and continuing education courses. The Auditor of State must issue a "failure to complete" notice to any township or municipal fiscal officer who is required to complete education programs and continuing education courses, but who fails to do so. The notice is for informational

²⁵ R.C. 117.44, not in the bill.

²⁶ It appears that ethics instruction is not required for the 12 hours required in subsequent terms of office.

²⁷ R.C. 4701.11, not in the bill.

²⁸ R.C. 135.22, not in the bill.



purposes only and does not affect any individual's ability to hold the office of township or municipal fiscal officer.²⁹

For a township fiscal officer, each board of township trustees, and for a municipal fiscal officer, the legislative authority of the municipal corporation, must approve a reasonable amount requested by the fiscal officer to cover the costs the officer is required to incur to meet the bill's requirements, including registration fees, lodging and meal expenses, and travel expenses.³⁰

Unauditable public schools

Declaration

Continuing law authorizes the Auditor of State or a public accountant auditing a public office to declare the public office unauditable if its accounts, records, files, or reports have been improperly maintained.³¹ If a school district; a community school; a science, technology, engineering, and mathematics (STEM) school; or a college-preparatory boarding school (CPB school) has been declared unauditable under that continuing law, the bill requires that the Auditor of State post notice of the unauditability on the Auditor's web site and provide written notice of the unauditability to the following:

(1) For a school district, to the district and Department of Education.

(2) For a community school, to the community school, the school's sponsor, and the Department of Education.

(3) For a STEM school, to the school and the Department of Education.

(4) For a CPB school, to the school and the Department of Education.³²

Uncodified law already requires that the Auditor of State provide written notification of a declaration that a community school is unauditable. The bill makes that law permanent by placing it in the Revised Code and amends the declaration procedure as described below.³³

²⁹ R.C. 507.12(E) and 733.81(F).

³⁰ R.C. 507.12(F) and 733.81(G).

³¹ R.C. 117.41, not in the bill.

³² R.C. 3313.30, 3314.51, and 3328.37.

³³ R.C. 3314.51; repeal of Section 267.50.70 of Am. Sub. H.B. 153 of the 129th General Assembly.



For purposes of this analysis, school districts, community schools, STEM schools, and CPB schools will be referred to as "public schools" and the district board of a school district, the sponsor of a community school, the governing body of a STEM school, and the board of trustees of a CPB school will be referred to as the "governing body."

Suspension of public school treasurer or fiscal officer

If a school district's current treasurer, a community school's current fiscal officer, a STEM school's current treasurer, or a CPB school's current fiscal officer held that position during the period for which the respective school is unauditably, upon receipt of the notification, the district board of education of the school district, the governing authority of the community school, the governing body of the STEM school, or the board of trustees of the CPB school may suspend the treasurer or fiscal officer until the Auditor of State or a public accountant has completed an audit of the public school, except that if a community school has an operator and the operator employs the fiscal officer or if the fiscal officer is employed by the CPB school's operator, the operator may suspend the fiscal officer for that period.³⁴

Suspension of a treasurer or fiscal officer may be with or without pay, as determined by the entity imposing the suspension, based on the circumstances that prompted the Auditor of State's declaration of unauditability. The entity imposing the suspension must appoint a person to assume the duties of the treasurer or fiscal officer during the period of the suspension. If the appointee is not licensed as a school district treasurer by the State Board of Education under existing law,³⁵ the appointee must be approved by the Superintendent of Public Instruction before assuming the duties of the treasurer or fiscal officer. The State Board of Education may take action under its continuing authority³⁶ to suspend, revoke, or limit the license of a treasurer or fiscal officer who has been suspended in this manner.

No community school contracts

Notwithstanding any provision of law to the contrary, the sponsor of a community school declared unauditably is prohibited under continuing law from entering into contracts with any additional community schools. The bill applies this prohibition to a period beginning 90 days after the date of the declaration and ending

³⁴ R.C. 3313.30(B), 3314.51(B), 3326.211(B), and 3328.37(B).

³⁵ R.C. 3301.074, not in the bill; R.C. 3313.30(B).

³⁶ R.C. 3319.31, not in the bill.



on the date the Auditor of State or a public accountant has completed the financial audit, rather than from the date of declaration until the financial audit is completed.³⁷

Written response

Not later than 45 days after receiving a notice that a public school has been declared unauditible, the governing body of the public school must provide a written response to the Auditor of State that includes all of the following:

- ◆ An overview of the process the governing body will use to review and understand the circumstances that led to the public school becoming unauditible.

- ◆ A plan for providing to the Auditor of State documentation necessary to complete an audit of the public school, and for ensuring that all financial documents are available in the future.

- ◆ The actions the governing body will take to ensure that the plan is implemented.

Withholding funding

If the public school fails to make reasonable efforts and continuing progress to bring its accounts, records, files, or reports into an auditible condition within 90 days after being declared unauditible, the Auditor of State, in addition to requesting that legal action be filed by the Attorney General under continuing law,³⁸ must notify the district and the Department of Education of that failure.

If the Auditor of State or a public accountant subsequently is able to complete a financial audit of the public school, the Auditor of State must notify the district and the Department of Education that the audit has been completed.

Notwithstanding any provision of law to the contrary, upon notification by the Auditor of State that a public school has failed to make reasonable efforts and continuing progress to bring its accounts, records, files, or reports into an auditible condition following a declaration that the public school is unauditible, the Department must immediately cease all payments to the public school until receiving subsequent notification from the Auditor of State that a public accountant or the Auditor of State

³⁷ R.C. 3314.51(C).

³⁸ R.C. 117.42, not in the bill.



was able to complete a financial audit of the public school, at which time the Department must release all funds withheld from the public school.³⁹

Community schools

Fiscal officer to be licensed as treasurer

The bill requires that before assuming the duties of fiscal officer for a community school, the fiscal officer must be licensed by the State Board of Education as a treasurer under existing law, except that if a person is appointed by the district board to serve as fiscal officer of a community school during the period of a treasurer's suspension as explained above and the appointee is not so licensed, the appointee must be approved by the Superintendent of Public Instruction before assuming the duties of treasurer.⁴⁰

Written reports of record reviews

Continuing law requires that a representative of the sponsor of a community school meet with the governing body or fiscal officer of the school and review the financial and enrollment records of the school at least once a month. The bill requires the sponsor to provide the governing body and fiscal officer with a written report regarding the review not later than ten days after each review.⁴¹

Posting of surety bond

The bill prohibits a community school, on or after the bill's effective date, from opening for operation in any school year unless the governing body of the school has posted a surety bond in the amount of \$50,000 with the Auditor of State. In lieu of a surety bond, a community school governing body may deposit with the Auditor of State \$50,000 cash as a guarantee of payment. The bond or cash guarantee must be used, in the event the school closes, to pay the Auditor of State any moneys owed by the school for the costs of any types of audits conducted by the Auditor of State or a public accountant.

Immediately upon the filing of a surety bond or the deposit of cash, the Auditor of State must deliver the bond or cash to the Treasurer of State, who must hold it in trust. The Treasurer of State is responsible for the safekeeping of all surety bonds filed

³⁹ R.C. 3313.30, 3314.51, 3326.211, and 3328.37; codification of Section 267.50.70 of Am. Sub. H.B. 153 of the 129th General Assembly.

⁴⁰ R.C. 3301.074, not in the bill; R.C. 3313.30(B).

⁴¹ R.C. 3314.023.



or cash deposited. The Auditor of State must notify the Department of Education when the school's governing body has filed the bond or deposited the cash guarantee.

When the Auditor of State finds that a community school has closed and cannot pay for the costs of audits, the Auditor of State must declare the surety bond or cash deposit forfeited. The Auditor of State must certify the amount of forfeiture to the Treasurer of State, who must pay money from the named surety or from the school's cash deposit as needed to reimburse the Auditor of State or public accountant for costs incurred in conducting audits of the school.⁴²

Fiscal officer requirement for college-preparatory boarding schools

The bill requires that each college-preparatory boarding school have a designated fiscal officer. The Auditor of State may require by rule that the fiscal officer of any college-preparatory boarding school, before entering upon duties as fiscal officer, execute a bond in an amount and with surety to be approved by the school's board of trustees, payable to the state, conditioned for the faithful performance of all the official duties required of the fiscal officer. The bond must be deposited with the school's board of trustees, and a copy of the bond must be certified by the board and filed with the county auditor.

Before assuming the duties of fiscal officer, the fiscal officer of a college-preparatory boarding school must be licensed by the State Board of Education as a treasurer under continuing law. A college-preparatory boarding school cannot allow a person to serve as fiscal officer who is not so licensed.⁴³

Disqualification from holding public office for dereliction of duty

Continuing law prohibits public servants, among other officials, from failing to perform specific duties listed in the law. Whoever violates the law is guilty of dereliction of duty.

The bill provides that except as otherwise provided by law, a public servant who is a county treasurer, county auditor, township fiscal officer, city auditor, city treasurer, village fiscal officer, village clerk-treasurer, village clerk, an officer who by virtue of a municipal charter has similar duties and functions to those of the city and village fiscal officers, school district treasurer, fiscal officer of a community school established under the Community School Law,⁴⁴ treasurer of a science, technology, engineering, and

⁴² R.C. 3314.50.

⁴³ R.C. 3328.16.

⁴⁴ R.C. Chapter 3314.



mathematics school established under the STEM School Law,⁴⁵ or fiscal officer of a college-preparatory boarding school established under the College Preparatory Boarding School Law,⁴⁶ and who is convicted of or pleads guilty to dereliction of duty is disqualified from holding any public office, employment, or position of trust in Ohio for four years following the date of conviction or of entry of the plea, and is not entitled to hold another public office until any repayment or restitution required by the court is satisfied. If such person is also convicted of a felony, existing law forever bars that person from holding a public office.⁴⁷ The bill includes in the definition of "public servant" a fiscal officer employed by the operator of a community school or by the operator of a college-preparatory boarding school.⁴⁸

Vacancy in county auditor or county treasurer's office

The bill requires that whenever any county auditor or county treasurer fails to perform the duties of office for 30 consecutive days, except in the case of sickness or injury, the office must be deemed vacant. Continuing law requires the county auditor and county treasurer to cause to be filed with the board of county commissioners a physician's certificate of the officer's sickness or injury. The bill requires that if the certificate is not filed with the board within ten days after the expiration of 30 consecutive days, the office must be deemed vacant.⁴⁹

COMMENT

Removal procedure in detail for county, township, and municipal fiscal officers

For the removal procedure set forth in the bill for county, township, and nonchartered municipal fiscal officers, the bill specifies who may submit a sworn affidavit of alleged wrongdoing and who may receive notices from the Attorney General and/or the Auditor of State.

⁴⁵ R.C. Chapter 3326.

⁴⁶ R.C. Chapter 3328.

⁴⁷ R.C. 2961.01 (felony conviction renders one incompetent to hold an office of honor, trust, or profit); see also Ohio Constitution, Art. V, sec. 4 (General Assembly has authority to exclude from the privilege of voting, or being eligible to hold office, any person convicted of a felony).

⁴⁸ R.C. 2921.44(G) and (H).

⁴⁹ R.C. 305.03.



County Auditor (R.C. 319.26)

In the case of a **county auditor**, a member of the board of county commissioners or the county treasurer may submit a sworn affidavit alleging the violation, together with evidence supporting the allegations, to the Auditor of State. The Auditor of State must review the sworn affidavit and evidence.

Within ten business days after receiving the sworn affidavit, unless, for good cause, additional time is required, the Auditor of State must determine whether clear and convincing evidence supports the allegations. If the Auditor of State finds by clear and convincing evidence that no allegation is supported by the evidence, the Auditor of State must submit those findings "in writing"⁵⁰ to the county auditor or the person who initiated the complaint (a county commissioner or the county treasurer). If the Auditor of State finds, by clear and convincing evidence, that an allegation is supported by the evidence, the Auditor of State must submit those findings in writing to the Attorney General, the county auditor, and the person who initiated the sworn affidavit. The findings must include a copy of the sworn affidavit and the evidence.

The Attorney General then must review the Auditor of State's findings and the sworn affidavit and evidence. Within ten business days after receiving them, unless, for good cause, additional time is required, the Attorney General must determine whether clear and convincing evidence supports the allegations. If the Attorney General finds, by clear and convincing evidence, that no allegation is supported by the evidence, the Attorney General, by certified mail, must notify the Auditor of State, the county auditor, and the person who initiated the sworn affidavit that no complaint for the removal of the county auditor from public office will be filed.

If the Attorney General finds by clear and convincing evidence that an allegation is supported by the evidence, the Attorney General, by certified mail, must notify the Auditor of State, the county auditor, and the person who initiated the sworn affidavit of that fact, and must commence an action for the removal of the county auditor from public office.

The bill does not limit the authority of the Attorney General to enter into mediation, settlement, or resolution of any alleged violation before or following the commencement of an action.

The Attorney General has a cause of action for removal of a county auditor who purposely, knowingly, or recklessly fails to perform a duty expressly imposed by law

⁵⁰ Apparently, this written finding need not be sent by certified mail as is the case for the findings of the Attorney General.



with respect to the office or purposely, knowingly, or recklessly commits any act expressly prohibited by law with respect to the office of county auditor. Not later than 45 days after sending a notice that an allegation is supported by clear and convincing evidence, the Attorney General must cause an action to be commenced against the county auditor by filing a complaint for the removal of the county auditor from public office. If any money is due, the Attorney General must join the sureties on the county auditor's bond as parties. The court of common pleas of the county in which the county auditor holds office has exclusive original jurisdiction of the action. The action is governed by the Rules of Civil Procedure and it proceeds de novo as in the trial of a civil action; the court is not restricted to the evidence that was presented to the Auditor of State and the Attorney General before the action was filed.

Prior to or at the hearing, upon a showing of good cause, the court may issue an order restraining the county auditor from entering the office and from conducting the affairs of the office pending the hearing on the complaint. If such order is issued, the court may continue the order until the conclusion of the hearing and any appeals.

The board of county commissioners is responsible for the payment of reasonable attorney's fees for counsel for the county auditor. If judgment is entered against the county auditor, the court must order the county auditor to reimburse the board for attorney's fees and costs up to a reasonable amount, as determined by the court. Expenses incurred by the board in a removal action are to be paid out of the county general fund.

The judgment of the court of common pleas is final and conclusive unless reversed, vacated, or modified on appeal. The appeal may be taken by any party and shall proceed as in the case of appeals in civil actions and in accordance with the Rules of Appellate Procedure. Upon the filing of a notice of appeal by any party to the proceedings, the court of appeals will hear the case as an expedited appeal under Rule 11.2 of the Rules of Appellate Procedure. The county auditor has the right of review or appeal to the Supreme Court.

If a final judgment for removal from public office is entered against the county auditor, the office is to be deemed vacated, and the vacancy is to be filled as provided in the section of County Law concerning filling vacancies, R.C. 305.02.

Except as otherwise provided by law, any individual removed from public office under this section is not entitled to hold any public office for four years following the date of the final judgment, and is not entitled to hold any public office until any repayment or restitution required by the court is satisfied.



County Treasurer (R.C. 321.37)

In the case of a **county treasurer** purposely, knowingly, or recklessly failing to perform a duty expressly imposed by law with respect to the office or purposely, knowingly, or recklessly committing any act expressly prohibited by law respect to that office, the county auditor or a county commissioner may submit a sworn affidavit alleging the violation, together with evidence supporting the allegations, to the Auditor of State.

If the Auditor of State finds by clear and convincing evidence that no allegation is supported by the evidence, the Auditor of State must submit those findings in writing to the county treasurer and the person who initiated the sworn affidavit. If the Auditor of State finds by clear and convincing evidence that an allegation is supported by the evidence, the Auditor of State must submit those findings in writing to the Attorney General, the county treasurer, and the person who initiated the sworn affidavit.

If the Auditor of State found the allegations to be supported by the evidence, the Attorney General must review the Auditor of State's findings and the sworn affidavit and evidence. Within ten business days after receiving them, unless, for good cause, additional time is required, the Attorney General must determine whether clear and convincing evidence supports the allegations. If the Attorney General finds by clear and convincing evidence that no allegation is supported by the evidence, the Attorney General, by certified mail, must notify the Auditor of State, the county treasurer, and the person who initiated the sworn affidavit that no complaint for the removal of the county treasurer from public office will be filed.

If the Attorney General finds by clear and convincing evidence that an allegation is supported by the evidence, the Attorney General, by certified mail, must notify the Auditor of State, the county treasurer, and the person who initiated the sworn affidavit of that fact, and must commence an action for the removal of the county treasurer from public office under the authority conferred by the bill.

Township Fiscal Officer (R.C. 507.13)

The procedure for removal of a township fiscal officer is the same as that set forth above for county officers except that an allegation of wrongdoing must be supported by the sworn affidavit of *four residents of the township*.⁵¹ Accordingly, those four residents would be notified by the Auditor of State, and if necessary, the Attorney

⁵¹ Presumably, one or more of the township trustees could be among the four residents of the township because the provision does not expressly exclude the trustees who are also residents of the township. R.C. 507.13(A)(1).



General, of their determinations as to whether the allegation is supported by clear and convincing evidence.

City or Village Fiscal Officers (R.C. 733.78)

A member of the legislative authority of a city or village is authorized to submit a sworn affidavit and supporting evidence. If the allegations are not supported, the Auditor of State is to notify, in writing, the fiscal officer and the person who initiated the sworn affidavit. If it is supported, the Auditor of State is to notify the Attorney General, the fiscal officer, and the person who initiated the sworn affidavit. The Attorney General must send certified mail notice of the findings to the Auditor of State, the fiscal officer, and the person who initiated the sworn affidavit regardless of whether the evidence supports the sworn affidavit or not.⁵²

HISTORY

ACTION	DATE
Introduced Reported, S. Public Safety, Local Gov't & Veterans Affairs	02-12-13 ---

S0006-RS-130.docx/ks

⁵² R.C. 733.78.

