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S.B. 91

135th General Assembly

Bill Analysis

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Version: As Reported by Senate Government Oversight

Primary Sponsor: Sen. Schaffer

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SUMMARY

- Requires the Auditor of State to promptly notify the prosecuting attorney, director of law, village solicitor, or similar chief legal officer of a municipal corporation if a report received under the fraud-reporting system involves probable theft or fraud by any public office or public official, unless the attorney, director, solicitor, or chief legal officer is the perpetrator.
- Requires the Auditor to create training material detailing Ohio's fraud-reporting system and the means of reporting fraud, waste, and abuse.
- Requires the Department of Administrative Services to administer the training material to each state employee, statewide elected official, and General Assembly member in a manner prescribed by the Auditor.
- Requires the Auditor to provide the training material to elected officials and employees of a political subdivision.
- Specifies certain persons required to make a timely report after becoming aware of fraud, theft in office, or misuse or misappropriation of public money.
- Specifies that a prosecuting attorney, director of law, village solicitor, or similar chief legal officer of a municipal corporation, or employees of those, is not required, and does not have an express statutory duty, to report a violation to the Auditor's fraud-reporting system.
- Exempts a person who serves as legal counsel, or who is employed as legal counsel, for a public office from being required to report fraud, theft in office, or misuse or misappropriation of public money if it concerns any communication received from a client in an attorney-client relationship.

- Permits the Office of Internal Audit to consult with the Auditor regarding any written report the office receives regarding those violations and to share those reports with the Auditor upon request.

DETAILED ANALYSIS

Fraud-reporting system and training

Fraud-reporting system

The bill requires the Auditor of State to promptly notify the prosecuting attorney, director of law, village solicitor, or similar chief legal officer of a municipal corporation if a report received under the fraud-reporting system involves probable theft or fraud, including misuse or misappropriation of public money by any public office or public official, unless the attorney, director, solicitor, or chief legal officer is the perpetrator.¹

Fraud-reporting training

The bill requires the Auditor to create training material detailing Ohio's fraud-reporting system and the means of reporting fraud, waste, and abuse. The training material must be as concise as practicable. Under continuing law, the Auditor must establish and maintain a system for reporting fraud, including misuse and misappropriation of public money by any public office or official. The system must allow residents and employees of any public office to make anonymous complaints using a toll free telephone number, the Auditor's website, or by mail to the Auditor's office. The Auditor must review all complaints in a timely manner.

Additionally, the bill requires the Department of Administrative Services to administer the training material to each state employee, statewide elected official, and General Assembly member. The Auditor must provide the training material to employees and elected officials of a political subdivision. Current employees and elected officials must complete the training within 90 days of a date the Auditor specifies unless there is good cause for noncompliance. Each new employee or elected official must confirm receipt of the training material on a form model provided by the Auditor within 30 days after taking office or beginning employment. The training is required every four years for each employee or elected official. Under current law, a public office is required to provide employees with information about Ohio's fraud reporting system within 30 days upon employment with a public office and is satisfied if the public office provides the information in an employee handbook and requires an employee's signature for receipt of the handbook.²

Persons required to report fraud and abuse

The bill requires the following persons who, during the person's term of office or course of employment, become aware of fraud, theft in office, or misuse or misappropriation of public

¹ R.C. 117.103(A)(1)(c).

² R.C. 117.103(B).

money to timely notify the Auditor through the fraud reporting system or other means, or if the persons are employees or officers of the state, notify the Office of Internal Audit or Inspector General:

- The person is elected to public office;
- The person is appointed to or within a public office;
- The person has a fiduciary duty to a public office;
- The person holds a supervisory position within a public office;
- The person is employed in the department or office responsible for processing any expenses of the public office.

The bill specifies that the duty of those persons to notify the Auditor is an express statutory duty of the officers and employees of a public office. However, a prosecuting attorney, director of law, village solicitor, or similar chief legal officer of a municipal corporation, or employees of those, is not required, and does not have an express statutory duty, to report a violation to the Auditor's fraud-reporting system.

Additionally, the bill exempts a person who serves as legal counsel, or who is employed as legal counsel, for a public office from being required to report fraud, theft in office, or misuse or misappropriation of public money if it concerns any communication received from a client in an attorney-client relationship.

Continuing law requires a person who becomes aware, in the course of the person's employment, of a violation of any state or federal statute or any ordinance or regulation of a political subdivision that the person's employer has the authority to correct, and the person reasonably believes the violation is a criminal offense that is likely to cause imminent harm or hazard to public health and safety, a felony, or improper solicitation for contribution, to orally notify the person's supervisor or other responsible officer of the violation. Additionally, the person must file a written report with that supervisor or officer that provides sufficient detail to identify and describe the violation. If the violation is not corrected within 24 hours or a reasonable and good faith effort was made to correct the violation, the person may file a written report with the relevant prosecuting attorney, a peace officer, the inspector general if within its jurisdiction, the fraud-reporting system, or any other appropriate public official or agency.

The bill also specifies that nothing in the bill should be construed to limit the authority of an auditor, including the Auditor of State, to make inquiries or interview state or local government employees or officials or otherwise perform audit procedures related to fraud during the course of an audit or attestation engagement.³

³ R.C. 4113.52.

Office of Internal Audit

Additionally, the bill permits the Office of Internal Audit (within the Office of Budget and Management) to consult with the Auditor of State regarding any written report the office receives. The Office may share the written reports with the Auditor upon request and those reports are not a public record under Ohio's Public Records Law. Continuing law permits an employee of the classified or unclassified civil service to file a written report identifying violations of state or federal statutes, rules, or regulations, or misuse of public resources with the employee's Office of Internal Audit, in addition to or instead of with the employee's supervisor or appointing authority or the fraud-reporting system. The Office directs internal audits of state agencies or divisions of state agencies to improve their operations in areas of risk management, internal controls, and governance.⁴

HISTORY

Action	Date
Introduced	03-22-23
Reported, S. Gov't Oversight	06-21-23

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⁴ R.C. 126.47; R.C. 124.341, 126.45, and 149.43, not in the bill.