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S.B. 91
135th General Assembly

Final Analysis

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Primary Sponsor: Sen. Schaffer

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SUMMARY

- Requires state officials and employees of a state agency to report alleged fraud, theft in office, or misuse or misappropriation of public money to the Inspector General.
- Requires all other state officials and employees, and certain other persons in local public office, to report alleged fraud, theft in office, or misuse or misappropriation of public money to the Auditor of State.
- Prohibits a political subdivision or taxing authority from making a revenue expenditure unless the expenditure has been appropriated by its legislative authority, and is not compelled by a process authorizing expenditures by resident vote.

DETAILED ANALYSIS

Persons required to report fraud and abuse

The act requires all state officials and employees employed by or appointed to a state agency to report alleged fraud, theft in office, or the misuse or misappropriation of public money by a state official or employee to the Inspector General. All other state employees and elected officials must report fraud, theft in office, or the misuse or misappropriation of public money to the Auditor of State's fraud-reporting system.

A "state agency" for the purpose of the act is every organized body, office, or agency established by the laws of the state for the exercise of any function of state government, except it does not include the General Assembly, any court, or the offices of the Secretary of State, Auditor of State, Treasurer of State, or Attorney General. Officials or employees of these bodies must report to the Auditor of State's fraud-reporting system.¹

¹ R.C. 4113.52(A)(1)(a); R.C. 1.60, 117.01, 117.103, and 121.41, not in the act.

“Misappropriation of public money” is defined as knowingly using public money or public property for an unauthorized, improper, or unlawful purpose to serve a private or personal benefit or interest, and “misuse of public money” is knowingly using public money or public property in a manner not authorized by law.²

With respect to local public government, the act requires a person who, during the person’s term of office or course of employment, becomes aware of fraud, theft in office, or misuse or misappropriation of public money, to timely notify the Auditor through the fraud-reporting system or other means, if any of the following apply:

- The person is elected to a local public office;
- The person is appointed to or within a local public office;
- The person has a fiduciary duty to a local public office;
- The person holds a supervisory position within a local public office;
- The person is employed in the department or office responsible for processing any expenses of the local public office.³

Additionally, the act exempts a person who serves or is employed as legal counsel for a local public office or a state agency 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. Further, a prosecuting attorney, director of law, village solicitor, or similar chief legal officer of a municipal corporation, or employees of those, is not required to report a violation to the Inspector General or to the Auditor’s fraud-reporting system at all.⁴

Continuing law requires a person who becomes aware, in the course of employment, of a violation of a state or federal statute or a local ordinance or regulation 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. Also, 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 not made to correct the violation, the person may file a written report with the relevant prosecuting attorney, a peace officer, the Inspector General, the fraud-reporting system, or any other appropriate public official or agency.⁵

² R.C. 4113.52(G)(3) to (G)(5).

³ R.C. 4113.52(A)(1)(b) and (c).

⁴ R.C. 4113.52(A)(1)(d) and (e).

⁵ R.C. 4113.52(A)(1)(f), (2), and (3).

The act also clarifies that these reporting requirements are not intended to infringe, and should not be interpreted as infringing on, the constitutional right against self-incrimination.⁶

Finally, the act specifies that nothing in the act 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.⁷

Political subdivision expenditure restrictions

Additionally, the act prohibits political subdivisions or taxing authorities from making any expenditures of money unless the fiscal officer of the subdivision or taxing authority certifies the following:

- The expenditure has been appropriated in accordance with the tax levy law (continuing law requirement);
- The expenditure has been appropriated by the subdivision's or taxing unit's legislative authority; and
- The expenditure is not compelled by a process authorizing management, control, distribution, or disbursement of an appropriation or expenditure by a vote of the subdivision's or taxing unit's residents.

The act clarifies that these restrictions do not prevent a political subdivision or taxing unit from authorizing a bond issue otherwise permitted by law, or from soliciting input related to the management, control, distribution, or disbursement of funds.⁸

If challenged, a court may examine this restriction in light of the Home Rule amendment. Municipal corporations have constitutional home rule authority to exercise all powers of local self-government, which includes the power of taxation. The Ohio Constitution grants the General Assembly authority to limit a municipal corporation's authority to tax, assess, borrow money, incur debt, and loan its credit. Courts have found chartered municipal corporations may deviate from state law on all matters of local self-government, whether substantive or procedural, while nonchartered municipalities may deviate only on substantive matters.

If a court finds the provision relates to a matter of local self-government and does not fall under the General Assembly's authority to limit municipal corporations' taxing authority, the provision may not apply to any municipal corporations. If a court finds that the provision is

⁶ R.C. 4113.52(A)(4).

⁷ R.C. 4113.52(H).

⁸ R.C. 5705.41.

a procedural matter of local self-government, rather than substantive matter, it may apply only to nonchartered municipal corporations.⁹

HISTORY

Action	Date
Introduced	03-22-23
Reported, S. Gov't Oversight	06-21-23
Passed Senate (32-0)	06-28-23
Reported, H. Gov't Oversight	12-13-23
Passed House (92-0)	12-13-23
Senate Concurred in House Amendments (30-1)	12-13-23

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⁹ Ohio Constitution, Article XVIII, Section 3, art. XII, sec. 2, art. XIII, sec. 6, and art. XVIII, sec. 13; *Gesler v. City of Worthington Income Tax Bd. of Appeals*, 138 Ohio St.3d 76 (2013); *Northern Ohio Patrolmen's Benevolent Ass'n v. Parma*, 61 Ohio St.2d 375 (1980). See also *State ex rel. Cronin v. Wald*, 26 Ohio St.2d 22, 27 (1971); *Cleveland Electric Illuminating Co. v. Cleveland*, 50 Ohio App.2d 275 (8th Dist. 1976); *Frisbie Company v. The City of Cleveland*, 98 Ohio St. 267 (1918); and *Emmert v. Elyria*, 74 Ohio St. 185 (1906).