



Ohio Legislative Service Commission

Final Analysis

Daniel M. DeSantis

Sub. H.B. 5

131st General Assembly
(As Passed by the General Assembly)

- Reps.** Kunze and Koehler, Rogers, Boose, Hambley, Amstutz, Anielski, Antonio, Baker, Barnes, Bishoff, Blessing, Boyd, Brenner, Brown, Buchy, Burkley, Celebrezze, Cera, Conditt, Cupp, Dever, Dovilla, Duffey, Ginter, Green, Grossman, Hackett, Henne, Kraus, McClain, McColley, M. O'Brien, S. O'Brien, Reineke, Retherford, Rezabek, Romanchuk, Ruhl, Ryan, Schaffer, Scherer, Schuring, Sheehy, K. Smith, R. Smith, Sprague, Stinziano, Strahorn, Sweeney, Terhar, Thompson, Young, Rosenberger
- Sens.** Coley, Balderson, Beagle, Eklund, Faber, Hite, Obhof, Oelslager, Patton, Peterson, Sawyer, Schiavoni, Tavares, Thomas, Uecker

Effective date: September 14, 2016

ACT SUMMARY

Feasibility studies

- Allows a state agency or local public office to request that the Auditor of State conduct a feasibility study to determine if greater efficiency or cost savings could be realized by sharing services or facilities with other state agencies or local public offices.
- Requires the team that conducts performance audits to conduct feasibility studies as funds allow.
- Requires the Auditor to use not more than 50% of the funds in the Leverage for Efficiency, Accountability, and Performance Fund to conduct feasibility studies.
- Before starting a feasibility study, requires the Auditor to notify each state agency or local public office that is identified in the study request and allows the agency or office to opt out of the study.

* This version updates the effective date.

- Requires the Auditor to conduct a public hearing regarding feasibility study findings.

Shared equipment service agreement program

- Allows the Auditor to establish a Shared Equipment Service Agreement Program.
- Allows a shared service agreement to provide that, when capital equipment is shared, the recipient state agency or political subdivision assumes liability in a civil action for damages allegedly resulting from the equipment's use.

CONTENT AND OPERATION

Feasibility studies

The act allows a state agency or local public office to request that the Auditor of State conduct a feasibility study to determine if greater efficiency or cost savings could be realized by the agency or office sharing services or facilities with other agencies or offices. In the request, the requesting agency or office must identify for the Auditor the agencies or offices that may be included within the proposed plan for sharing services or facilities. Under continuing law, "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.¹ "Public office" means any state agency, public institution, political subdivision, other organized body, office, agency, institution, or entity established by Ohio laws for the exercise of any function of government, but does not include JobsOhio.² The auditing team that conducts performance audits must conduct the requested feasibility studies as funds allow.

The Auditor must pay the costs incurred in conducting feasibility studies.³ The act prohibits the Auditor from using more than 50% of Leverage for Efficiency, Accountability, and Performance (LEAP) Fund moneys for conducting feasibility studies in a fiscal year. The other 50% of the LEAP Fund money must be used to make loans to state agencies and local public offices to pay costs of conducting performance audits. Prior law required the Auditor to use all the Fund moneys for performance audits.⁴

¹ R.C. 117.473.

² R.C. 117.01(D) and (F), not in the act.

³ R.C. 117.473.

⁴ R.C. 117.47.



The Auditor must provide written notification to each agency and office identified in a feasibility study request. The Auditor may review only those identified agencies or offices that do not opt out. To opt out, an agency or office must provide an opt out notice to the Auditor within 60 days of the date on which the Auditor's notification to the agency or office is postmarked. If an agency or office opts out of a requested study, the Auditor, at the Auditor's discretion, may cancel the study or may proceed to conduct it considering only the identified agencies and offices that have not opted out.

The act also requires the Auditor, not later than ten days before starting a feasibility study, to provide written notice to the requesting agency or office and any other agency or office that consented to being reviewed. Finally, the act requires the Auditor to conduct a public hearing on the feasibility study findings within 180 days after completing the study. The Auditor, not later than ten days before the public hearing, must give written notice to the agencies and offices of the hearing's date, time, and location, and also must give notice on the Auditor's website.⁵

Shared equipment service agreement program

The act authorizes the Auditor to establish a Shared Equipment Service Agreement Program. Under the Program, state agencies and political subdivisions may voluntarily enter into an agreement whereby the lender state agency or political subdivision lends its capital equipment to the recipient state agency or political subdivision for temporary use in the performance of a governmental or proprietary function, as defined in the Political Subdivision Sovereign Immunity Law.⁶

A shared service agreement, whether entered into under the Program or under other authority (see **COMMENT**), may include a provision regarding the assumption of liability. Specifically, it may provide that the recipient agency or subdivision, and its officers and employees, assume any potential liability in a civil action for damages for injury, death, or loss to person or property allegedly caused by an act or omission of the recipient agency or subdivision or its officers or employees resulting from the use of the equipment in the performance of the recipient agency's or subdivision's governmental or proprietary functions. The assumption of liability applies insofar as the recipient agency or subdivision or its officers or employees uses the equipment covered by the agreement in the performance of a governmental or proprietary function.⁷

⁵ R.C. 117.473.

⁶ R.C. 117.48(A) and (B); see R.C. 2744.01, not in the act.

⁷ R.C. 117.48(C), 2743.31, and 2744.11.



COMMENT

The act does not explicitly authorize a state agency or a political subdivision to enter into a shared service agreement outside of the Auditor's Shared Equipment Service Agreement Program. But an existing municipal corporation or county charter may include a similar authorization. Furthermore, Ohio law⁸ authorizes political subdivisions to enter into agreements, when legally authorized to do so, "to exercise any power, perform any function, or render any service for the contracting recipient political subdivision . . ."⁹ Although it does not explicitly mention equipment, a court might consider this law "other authority" that authorizes the lending of capital equipment.

HISTORY

| ACTION | DATE |
|---|----------|
| Introduced | 01-28-15 |
| Reported, H. Local Gov't | 03-24-15 |
| Passed House (95-0) | 04-29-15 |
| Reported, S. Gov't Oversight & Reform | 05-17-16 |
| Passed Senate (30-0) | 05-18-16 |
| House concurred in Senate amendments (94-3) | 05-24-16 |

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⁸ R.C. 9.482, not in the act.

⁹ R.C. 9.482(B), not in the act.

