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S.B. 91*
135th General Assembly

Bill Analysis

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Version: As Reported by House Government Oversight

Primary Sponsor: Sen. Schaffer

S. Ben Fogle, Attorney

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 the applicable legislative authority, and is not compelled by a process authorizing expenditures by resident vote.

DETAILED ANALYSIS

Persons required to report fraud and abuse

The bill 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. A “state agency” for the purpose of the bill 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. All other state employees and elected officials must report fraud,

* This analysis was prepared before the report of the Senate Education Committee appeared in the Senate Journal. Note that the legislative history may be incomplete.

theft in office, or the misuse or misappropriation of public money to the Auditor of State's fraud-reporting system.¹

"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

Additionally, the bill requires a person 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 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 bill exempts a person who serves as legal counsel, or who 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. It further 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 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 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

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

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).

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

The bill 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 bill 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.⁷

Political subdivision expenditure restrictions

Additionally, the bill prohibits political subdivisions or taxing authorities (see COMMENT) 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 bill 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

COMMENT

If challenged, a court may examine the bill's restriction on political subdivision expenditures 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. Under general home rule jurisprudence, 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.

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

⁶ R.C. 4113.52(A)(4).

⁷ R.C. 4113.52(H).

⁸ R.C. 5705.41.

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 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	---

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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).