

As Reported by the Senate Government Oversight Committee

135th General Assembly

Regular Session

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Sub. S. B. No. 91

Senator Schaffer

Cosponsors: Senators Cirino, Romanchuk

A BILL

To amend sections 117.103, 126.47, and 4113.52 of 1
the Revised Code regarding fraud, waste, and 2
abuse of public funds. 3

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO:

Section 1. That sections 117.103, 126.47, and 4113.52 of 4
the Revised Code be amended to read as follows: 5

Sec. 117.103. (A) (1) The auditor of state shall establish 6
and maintain a system for the reporting of fraud, including 7
misuse and misappropriation of public money, by any public 8
office or public official. The system shall allow Ohio residents 9
and the employees of any public office to make anonymous 10
complaints through a toll-free telephone number, the auditor of 11
state's web site, or the United States mail to the auditor of 12
state's office. The auditor of state shall review all complaints 13
in a timely manner. 14

(2) (a) Subject to division (A) (2) (b) of this section, the 15
auditor of state shall keep a log of all complaints filed under 16
this section, which is a public record under section 149.43 of 17
the Revised Code. The log shall include the date the complaint 18

was received, a general description of the nature of the 19
complaint, the name of the public office or agency with regard 20
to which the complaint is directed, and a general description of 21
the status of the review by the auditor of state. If section 22
149.43 of the Revised Code or another statute provides for an 23
applicable exemption from the definition of public record for 24
the information recorded on the log, that information may be 25
redacted. 26

(b) The auditor shall not log a complaint regarding an 27
ongoing criminal investigation, but shall log the complaint not 28
later than thirty days after the investigation is complete. 29

(c) If the auditor of state determines that a report made 30
under division (A) (1) of this section involves probable fraud or 31
theft, including misuse and misappropriation of public money by 32
any public office or public official, the auditor of state shall 33
promptly notify the prosecuting attorney, director of law, 34
village solicitor, or similar chief legal officer of the 35
municipal corporation in whose jurisdiction the probable fraud 36
or theft occurred, unless the prosecuting attorney, director of 37
law, village solicitor, or similar chief legal officer of the 38
municipal corporation is identified in the report as the alleged 39
perpetrator of the fraud or theft. 40

~~(B) (1) A public office~~ (B) The auditor of state shall 41
create training material detailing Ohio's fraud-reporting system 42
and the means of reporting fraud, waste, and abuse. The 43
department of administrative services shall ~~provide information~~ 44
~~about the Ohio fraud-reporting system and the means of reporting~~ 45
~~fraud~~ provide the auditor's training material to each ~~new-state~~ 46
employee upon employment with the public office, statewide 47
elected official, and member of the general assembly. Such 48

materials shall be as concise as practicable. The auditor of 49
state shall provide the training material to employees and 50
elected officials of a political subdivision. Current employees 51
and elected officials as of the effective date of this amendment 52
shall complete the training within ninety days of a date 53
specified by the auditor of state unless good cause exists for 54
noncompliance. Each new employee or elected official shall 55
confirm receipt of this ~~information-material~~ within thirty days 56
after taking office or beginning employment. The training shall 57
be required every four years for each employee or elected 58
official. The auditor of state shall provide a model form on the 59
auditor of state's web site to be printed and used by ~~new-public~~
employees and elected officials to sign and verify their receipt 61
of ~~information-material~~ as required by this section. The auditor 62
of state shall confirm, when conducting an audit under section 63
117.11 of the Revised Code, that ~~new-public employees and~~
elected officials have been provided ~~information-material~~ as 65
required by this division. 66

~~(2) On May 4, 2012, each public office shall make all its~~ 67
~~employees aware of the fraud reporting system required by this~~ 68
~~section.~~ 69

~~(3) Divisions (B) (1) and (2) of this section are satisfied~~ 70
~~if a public office provides information about the fraud-~~ 71
~~reporting system and the means of reporting fraud in the~~ 72
~~employee handbook or manual for the public office. An employee-~~ 73
~~shall sign and verify the employee's receipt of such a handbook-~~ 74
~~or manual.~~ 75

Sec. 126.47. (A) The state audit committee created by 76
section 126.46 of the Revised Code shall ensure that the office 77
of internal audit in the office of budget and management has an 78

annual internal audit plan that identifies the internal audits 79
of state agencies or divisions of state agencies scheduled for 80
the next fiscal year. The chief internal auditor of the office 81
of internal audit shall submit the plan to the state audit 82
committee for review and comment before the beginning of each 83
fiscal year. The chief internal auditor may submit a revised 84
internal audit plan for review and comment at any time the 85
director of budget and management believes there is reason to 86
modify the previously submitted plan for a fiscal year. 87

(B) To determine the state agencies or divisions of state 88
agencies that are to be internally audited, the office of 89
internal audit, in the formulation of an annual or revised 90
internal audit plan, and the state audit committee, in reviewing 91
a submitted annual or revised internal audit plan, shall 92
consider the following factors: 93

(1) The risk for fraud, waste, or abuse of public money 94
within an agency or division; 95

(2) The length of time since an agency or division was 96
last subject to an internal audit; 97

(3) The size of an agency or division, and the amount of 98
time and resources necessary to audit it; 99

(4) Any other factor the state audit committee determines 100
to be relevant. 101

(C) All internal audits shall be directed by employees of 102
the office of internal audit. 103

(D) After the conclusion of an internal audit, the chief 104
internal auditor shall submit a preliminary report of the 105
internal audit's findings and recommendations to the state audit 106
committee and to the director of the state agency involved. The 107

state agency or division of the state agency covered by the 108
preliminary report shall be provided an opportunity to respond 109
within thirty days after receipt of the preliminary report. The 110
response shall include a corrective action plan for any 111
recommendations in the preliminary report that are not disputed 112
by the agency or division. Any response received by the office 113
of internal audit within that thirty-day period shall be 114
included in the office's final report of the internal audit's 115
findings and recommendations. The final report shall be issued 116
by the office of internal audit within thirty days after the 117
termination of the thirty-day response period. Copies of the 118
final report shall be submitted to the state audit committee, 119
the governor, and the director of the state agency involved. The 120
state audit committee shall determine an appropriate method for 121
making the preliminary and final reports available for public 122
inspection in a timely manner. 123

Any suspected fraud or other illegal activity discovered 124
by the office of internal audit during an internal audit shall 125
be reported immediately to the state audit committee, the 126
director of the state agency in which the fraud or illegal 127
activity is suspected to have occurred, and the auditor of 128
state. 129

(E) The office of internal audit may consult with the 130
auditor of state regarding any written report the office 131
receives under section 124.341 of the Revised Code. The office 132
of internal audit may share such written reports with the 133
auditor of state upon request. Reports shared under this 134
division are not a public record under section 149.43 of the 135
Revised Code. 136

(F) The chief internal auditor shall prepare an annual 137

report and submit the report to the governor, the president of 138
the senate, the speaker of the house of representatives, and the 139
auditor of state. The office of budget and management shall make 140
the report available to the public by posting it on the office's 141
web site before the first of August of each year. 142

Sec. 4113.52. (A) (1) (a) A person is required to make a 143
report under division (A) (1) (b) of this section if the person 144
meets any of the following: 145

(i) The person is elected to public office. 146

(ii) The person is appointed to or within a public office. 147

(iii) The person has a fiduciary duty to a public office. 148

(iv) The person holds a supervisory position within a 149
public office. 150

(v) The person is employed in the department or office 151
responsible for processing any expenses of the public office. 152

(b) If a person identified in division (A) (1) (a) of this 153
section, during the person's term of office or in the course of 154
the person's employment, becomes aware of fraud, theft in 155
office, or the misuse or misappropriation of public money, the 156
person shall timely notify the auditor of state via the auditor 157
of state's fraud-reporting system under section 117.103 of the 158
Revised Code or via other means. Employees and officers of the 159
state shall direct any report required under division (A) (1) (b) 160
of this section to the office of internal audit or inspector 161
general instead of the auditor of state. 162

(c) The duty to report under division (A) (1) (b) of this 163
section is an express statutory duty of the officers and 164
employees of a public office included in division (A) (1) (a) of 165

this section. 166

(d) A person who serves as legal counsel, or who is 167
employed as legal counsel, for a public office is not required 168
to make a report under division (A) (1) (b) of this section 169
concerning any communication received from a client in an 170
attorney-client relationship. 171

(e) Divisions (A) (1) (a) to (c) of this section do not 172
apply to a prosecuting attorney, director of law, village 173
solicitor, or similar chief legal officer of a municipal 174
corporation, or to any employee of the prosecuting attorney, 175
director of law, village solicitor, or similar chief legal 176
officer of a municipal corporation. 177

(f) If an ~~employee~~ person becomes aware in the course of 178
the ~~employee's~~ person's employment of a violation of any state 179
or federal statute or any ordinance or regulation of a political 180
subdivision that the ~~employee's~~ person's employer has authority 181
to correct, and the ~~employee~~ person reasonably believes that the 182
violation is a criminal offense that is likely to cause an 183
imminent risk of physical harm to persons or a hazard to public 184
health or safety, a felony, or an improper solicitation for a 185
contribution, the ~~employee~~ person orally shall notify the 186
~~employee's~~ person's supervisor or other responsible officer of 187
the ~~employee's~~ person's employer of the violation and 188
subsequently shall file with that supervisor or officer a 189
written report that provides sufficient detail to identify and 190
describe the violation. If the employer does not correct the 191
violation or make a reasonable and good faith effort to correct 192
the violation within twenty-four hours after the oral 193
notification or the receipt of the report, whichever is earlier, 194
the ~~employee~~ person may file a written report that provides 195

sufficient detail to identify and describe the violation with 196
the prosecuting authority of the county or municipal corporation 197
where the violation occurred, with a peace officer, with the 198
inspector general if the violation is within the inspector 199
general's jurisdiction, with the auditor of state's fraud- 200
reporting system under section 117.103 of the Revised Code if 201
applicable, or with any other appropriate public official or 202
agency that has regulatory authority over the employer and the 203
industry, trade, or business in which the employer is engaged. 204

~~(b)~~ (g) If an ~~employee~~ a person makes a report under 205
division ~~(A)(1)(a)~~ (A)(1)(f) of this section, the employer, 206
within twenty-four hours after the oral notification was made or 207
the report was received or by the close of business on the next 208
regular business day following the day on which the oral 209
notification was made or the report was received, whichever is 210
later, shall notify the ~~employee~~ person, in writing, of any 211
effort of the employer to correct the alleged violation or 212
hazard or of the absence of the alleged violation or hazard. 213

(2) If an ~~employee~~ a person becomes aware in the course of 214
the ~~employee's~~ person's employment of a violation of chapter 215
3704., 3734., 6109., or 6111. of the Revised Code that is a 216
criminal offense, the ~~employee~~ person directly may notify, 217
either orally or in writing, any appropriate public official or 218
agency that has regulatory authority over the employer and the 219
industry, trade, or business in which the employer is engaged. 220

(3) If an ~~employee~~ a person becomes aware in the course of 221
the ~~employee's~~ person's employment of a violation by a fellow 222
employee of any state or federal statute, any ordinance or 223
regulation of a political subdivision, or any work rule or 224
company policy of the ~~employee's~~ person's employer and the 225

~~employee-person~~ reasonably believes that the violation is a 226
criminal offense that is likely to cause an imminent risk of 227
physical harm to persons or a hazard to public health or safety, 228
a felony, or an improper solicitation for a contribution, the 229
~~employee-person~~ orally shall notify the ~~employee's-person's~~ 230
supervisor or other responsible officer of the ~~employee's-~~ 231
~~person's~~ employer of the violation and subsequently shall file 232
with that supervisor or officer a written report that provides 233
sufficient detail to identify and describe the violation. 234

(B) Except as otherwise provided in division (C) of this 235
section, no employer shall take any disciplinary or retaliatory 236
action against an ~~employee-person~~ for making any report 237
authorized by division (A) (1) or (2) of this section, or as a 238
result of the ~~employee's-person's~~ having made any inquiry or 239
taken any other action to ensure the accuracy of any information 240
reported under either such division. No employer shall take any 241
disciplinary or retaliatory action against an ~~employee-person~~ 242
for making any report authorized by division (A) (3) of this 243
section if the ~~employee-person~~ made a reasonable and good faith 244
effort to determine the accuracy of any information so reported, 245
or as a result of the ~~employee's-person's~~ having made any 246
inquiry or taken any other action to ensure the accuracy of any 247
information reported under that division. For purposes of this 248
division, disciplinary or retaliatory action by the employer 249
includes, without limitation, doing any of the following: 250

(1) Removing or suspending the ~~employee-person~~ from 251
employment; 252

(2) Withholding from the ~~employee-person~~ salary increases 253
or employee benefits to which the ~~employee-person~~ is otherwise 254
entitled; 255

(3) Transferring or reassigning the employee <u>person</u> ;	256
(4) Denying the employee <u>person</u> a promotion that otherwise would have been received;	257 258
(5) Reducing the employee <u>person</u> in pay or position.	259
(C) An employee <u>A person</u> shall make a reasonable and good faith effort to determine the accuracy of any information reported under division (A) (1) or (2) of this section. If the employee <u>person</u> who makes a report under either division fails to make such an effort, the employee <u>person</u> may be subject to disciplinary action by the employee's <u>person's</u> employer, including suspension or removal, for reporting information without a reasonable basis to do so under division (A) (1) or (2) of this section.	260 261 262 263 264 265 266 267 268
(D) If an employer takes any disciplinary or retaliatory action against an employee <u>person</u> as a result of the employee's <u>person's</u> <u>person's</u> having filed a report under division (A) of this section, the employee <u>person</u> may bring a civil action for appropriate injunctive relief or for the remedies set forth in division (E) of this section, or both, within one hundred eighty days after the date the disciplinary or retaliatory action was taken, in a court of common pleas in accordance with the Rules of Civil Procedure. A civil action under this division is not available to an employee <u>a person</u> as a remedy for any disciplinary or retaliatory action taken by an appointing authority against the employee <u>person</u> as a result of the employee's <u>person's</u> having filed a report under division (A) of section 124.341 of the Revised Code.	269 270 271 272 273 274 275 276 277 278 279 280 281 282
(E) The court, in rendering a judgment for the employee <u>person</u> <u>person</u> in an action brought pursuant to division (D) of this	283 284

section, may order, as it determines appropriate, reinstatement 285
of the ~~employee-person~~ to the same position that the ~~employee-~~ 286
~~person~~ held at the time of the disciplinary or retaliatory 287
action and at the same site of employment or to a comparable 288
position at that site, the payment of back wages, full 289
reinstatement of fringe benefits and seniority rights, or any 290
combination of these remedies. The court also may award the 291
prevailing party all or a portion of the costs of litigation 292
and, if the ~~employee-person~~ who brought the action prevails in 293
the action, may award the prevailing ~~employee-person~~ reasonable 294
attorney's fees, witness fees, and fees for experts who testify 295
at trial, in an amount the court determines appropriate. If the 296
court determines that an employer deliberately has violated 297
division (B) of this section, the court, in making an award of 298
back pay, may include interest at the rate specified in section 299
1343.03 of the Revised Code. 300

(F) Any report filed with the inspector general under this 301
section shall be filed as a complaint in accordance with section 302
121.46 of the Revised Code. 303

(G) As used in this section: 304

(1) "Contribution" has the same meaning as in section 305
3517.01 of the Revised Code. 306

(2) "Improper solicitation for a contribution" means a 307
solicitation for a contribution that satisfies all of the 308
following: 309

(a) The solicitation violates division (B), (C), or (D) of 310
section 3517.092 of the Revised Code; 311

(b) The solicitation is made in person by a public 312
official or by an employee who has a supervisory role within the 313

public office; 314

(c) The public official or employee knowingly made the 315
solicitation, and the solicitation violates division (B), (C), 316
or (D) of section 3517.092 of the Revised Code; 317

(d) The employee reporting the solicitation is an employee 318
of the same public office as the public official or the employee 319
with the supervisory role who is making the solicitation. 320

(3) "Public office" has the same meaning as in section 321
117.01 of the Revised Code. 322

(H) Nothing in this section shall be construed to limit 323
the authority of an auditor to make inquiries or interview state 324
or local government employees or officials or otherwise perform 325
audit procedures related to fraud during the course of an audit 326
or attestation engagement. 327

Section 2. That existing sections 117.103, 126.47, and 328
4113.52 of the Revised Code are hereby repealed. 329