

OHIO AUDITOR OF STATE KEITH FABER



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TO: All Public Offices
Independent Public Accountants

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SUBJECT: Impact of Senate Bill No. 15, 134th General Assembly on Findings for Recovery Issued by the Auditor of State

Bulletin Purpose

The purpose of this Bulletin is to clarify the impact of Senate Bill No. 15, 134th General Assembly (S.B. 15) on Findings for Recovery issued by the Auditor of State. The act modified the standard for when certain fiscal officers are liable for the loss of public funds. This statute will be effective for audits that include periods covered after September 13, 2022.

The officers impacted by this Act include: county auditor or treasurer; township fiscal officer or deputy fiscal officer; treasurer of a municipal corporation, auditor of a city, or other officer of a municipal corporation that has the duties of a treasurer or city auditor; treasurer or other fiscal officer of a community college district, technical college district, or state community college district; fiscal officer or deputy fiscal officer of the board of library trustees of a free public library; treasurer, auditor, or other fiscal officer of a county that has adopted a charter; and fiscal officer, treasurer, or compliance officer of a regional water and sewer district or other officer or designee performing those duties and functions.²

Background

¹ The guidance enacted in SB 15 applies only to those offices/positions expressly identified in the bulletin. SB 15 does not apply to school district treasurers. However, HB 491 of the 132nd GA applied requirements similar to those of SB 15 to school treasurers. Therefore, the general guidance included in this bulletin would be the same for school district treasurers, except for the effective date of the legislation (i.e., the standard applies to audits of school district treasurers that include periods covered after the HB 491 effective date of March 20, 2019).

² R.C. 301.221, 319.41, 321.50, 507.14, 733.82, 3354.101, 3357.101, 3358.061, 3375.361, and 6119.61.

By enacting this legislation the General Assembly is stating these officers are not liable for the loss of public funds if the officer performed all official duties with reasonable care. However, an officer is liable for the loss of public funds if the officer acted negligently or committed some other wrongful act. Under prior law, public officials were liable for the loss of public money received or collected by the official or a subordinate of the official no matter what the level of care the public official exercised. Under the act, the affected officers are no longer strictly liable for any losses of public funds.

Implementation Date

A statute is presumed to be prospective in its operation unless expressly made retrospective. R.C. 1.48; *see State v. LaSalle*, 772 N.E.2d 1172, 1175, 96 Ohio St.3d 178, 181, 2002 -Ohio- 4009, ¶ 14 (Ohio, 2002). The General Assembly did not expressly state the statutes in S.B. 15 apply retroactively. Therefore, the application of these statutes is prospective only and the AOS must apply the words of the law in effect at the time the alleged conduct occurred.

This means that the AOS will apply the new statutes enacted by S.B. 15 to *conduct* of a fiscal officer that occurs after September 13, 2022. Therefore, the AOS will not apply the new statutes in audit reports that cover audit periods before September 13, 2022. In those audit reports, the AOS will evaluate liability using strict liability under ORC 9.39 for appropriate officers/employees. In audit reports that cover audit periods after September 13, 2022, the AOS will apply the new statutes enacted by S.B. 15 to evaluate liability of the fiscal officers.

For example, if an audit report references an expenditure made by a fiscal officer in May 2021, and the report is issued in December 2022, strict liability under ORC 9.39 could apply. However, if an audit report is issued in December 2023, and references an expenditure made by fiscal officer in November 2022, strict liability under ORC 9.39 does not apply and liability will be determined in accordance with the new statutes enacted by S.B. 15.

Questions

If you have any questions regarding the information presented in the Bulletin, please contact the Center for Audit Excellence at the Auditor of State's Office at (800) 282-0370.



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