

1                   **HOUSE OF REPRESENTATIVES - FLOOR VERSION**

2                                   STATE OF OKLAHOMA

3                                   2nd Session of the 53rd Legislature (2012)

4 COMMITTEE SUBSTITUTE  
5 FOR  
6 HOUSE BILL NO. 2196

By: Murphey

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8                                   COMMITTEE SUBSTITUTE

9           An Act relating to state government; amending 74 O.S.  
10           2011, Section 213.2, which relates to the State  
11           Auditor and Inspector; modifying provisions related  
12           to cost of audits; modifying procedures; modifying  
13           provisions related to expenses; modifying provisions  
14           related to annual reports; providing for  
15           apportionment of sales and use tax revenues;  
16           providing exception for sales and use tax revenue  
17           derived from levies of political subdivisions;  
18           providing for revolving fund; providing for  
19           expenditures from revolving fund; authorizing  
20           performance audits by the State Auditor and  
21           Inspector; providing for authorized scope of  
22           performance audits; providing for written responses;  
23           providing for responses; authorizing issuance of  
24           subpoenas; authorizing affidavits; prohibiting  
          certain conduct; providing for misdemeanor  
          punishment; providing audits to become public  
          records; requiring copies of performance audits to be  
          provided to the Governor, the President Pro Tempore  
          of the State Senate and the Speaker of the Oklahoma  
          House of Representatives; providing for effect of  
          audits conducted by the State Auditor and Inspector;  
          authorizing contracts for audits; creating the  
          Performance Audit Expenditure Revolving Fund;  
          providing for apportionment of revenues; providing  
          for expenditures; requiring annual report; requiring  
          publication of performance reporting metrics and  
          standards by the Director of the Office of State  
          Finance; prescribing content of metrics; requiring

1 state agencies to provide information; requiring  
2 certain information to be accessible through state  
3 Internet portal and direct domain name; requiring  
4 annual review; requiring annual report with respect  
5 to low-performing agencies; providing for shared  
6 service contracts; authorizing appeal to Government  
7 Technology Applications Review Board; defining term;  
8 amending 68 O.S. 2011, Section 1353, which relates to  
9 the apportionment of sales tax revenues; providing  
10 for apportionment of certain revenues for use in  
11 performance audits; providing for codification; and  
12 providing an effective date.

13 BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

14 SECTION 1. AMENDATORY 74 O.S. 2011, Section 213.2, is  
15 amended to read as follows:

16 Section 213.2 A. There is hereby created in the Office of the  
17 State Auditor and Inspector a Performance Audit Division, subject to  
18 the discretion of the State Auditor and Inspector. An Assistant  
19 State Auditor and Inspector may be appointed to direct the  
20 operations of the Division, subject to the supervision and control  
21 of the State Auditor and Inspector at all times.

22 B. The State Auditor and Inspector, deputies and agents of the  
23 Performance Audit Division may examine all books and accounts of all  
24 public officers, institutions and other governmental entities  
specified in Sections 212 through 227.9 of this title to instruct  
the proper officers thereof in the performance of their duties and  
to prescribe cost-effective methods of operating such governmental

1 entities; provided, however, the State Auditor and Inspector shall  
2 perform the examinations authorized in this subsection upon  
3 receiving a written request to do so by the Governor, the chief  
4 executive officer of a governmental entity or pursuant to a joint or  
5 concurrent resolution of the Legislature. A copy of the examination  
6 shall be given to the examined entity. A copy of any examination  
7 conducted pursuant to this subsection shall be submitted to the  
8 Governor, the Speaker of the House of Representatives, the President  
9 Pro Tempore of the Senate, the appropriations and budget chairs of  
10 the House of Representatives and the Senate, and the Minority Leader  
11 of the House of Representatives and of the Senate, and shall be  
12 electronically transmitted to all members of the House of  
13 Representatives and Senate.

14 C. ~~The cost of the examinations authorized pursuant to~~  
15 ~~subsection B of this section shall be borne by the examined agency~~  
16 ~~in an amount not to exceed the actual costs of the examination.~~  
17 ~~Prior to the start of such an examination, the State Auditor and~~  
18 ~~Inspector shall prepare in writing and present to the affected state~~  
19 ~~agency an estimate of the cost of the examination. If the estimate~~  
20 ~~requires revision, the State Auditor and Inspector shall notify the~~  
21 ~~agency in a prompt manner. Except as otherwise provided, the State~~  
22 ~~Auditor and Inspector shall recover its costs for the examination~~  
23 ~~pursuant to monthly progress billings presented by the State Auditor~~

1 ~~and Inspector to the Office of State Finance detailing current~~  
2 ~~monthly costs for each examination. In addition, the State Auditor~~  
3 ~~and Inspector shall provide a copy of the billing to the affected~~  
4 ~~state agency. The Office of State Finance may deduct the amounts~~  
5 ~~billed from the next subsequent allotment for the corresponding~~  
6 ~~state agency and transfer the funds to the State Auditor and~~  
7 ~~Inspector Revolving Fund.~~

8 ~~D. The salaries and traveling expenses of the Assistant State~~  
9 ~~Auditor and Inspector, deputies and agents of the Performance Audit~~  
10 ~~Division and the costs of material, supplies and equipment for the~~  
11 ~~Division shall be paid from funds made available through~~  
12 ~~appropriation by the Legislature.~~

13 ~~E. The State Auditor and Inspector shall submit an annual~~  
14 ~~report of the Performance Audit Division to the Governor, the~~  
15 ~~President Pro Tempore of the Senate, the Speaker of the House of~~  
16 ~~Representatives, appropriations and budget chairs of the House of~~  
17 ~~Representatives and the Senate, and the Minority Leader of the~~  
18 ~~Senate and of the House of Representatives Funding for performance~~  
19 ~~audits shall be provided by dedicating one-tenth of one percent~~  
20 ~~(1/10 of 1%) of all sales and use taxes collected by the State of~~  
21 ~~Oklahoma. The provisions of this subsection shall not apply to~~  
22 ~~sales and use tax revenue derived from a levy imposed by a political~~  
23 ~~subdivision. Such amounts shall be accumulated and apportioned~~

1 monthly to a separate revolving fund in the State Treasury as  
2 specified in Section 2 of this act. These revenues may only be used  
3 in conducting performance audits performed under the authority of  
4 this section, which can include costs associated with personnel,  
5 services, equipment, supplies, or other direct costs of performing  
6 such audits. Only the State Auditor and Inspector or the State  
7 Auditor and Inspector's designee may authorize expenditures from  
8 said account.

9 D. The performance audits conducted in accordance with this  
10 section shall be at the discretion of the State Auditor and  
11 Inspector. The scope of the audits shall include, as applicable  
12 given the audit objectives, but not be limited to the following:

13 1. Identification of cost savings and recommendations for  
14 achieving such;

15 2. Identification of services that can be reduced or  
16 eliminated;

17 3. Identification of programs/services which could be  
18 transferred to the private sector and operate in a more cost-  
19 effective manner;

20 4. Identification of duplication of services by  
21 programs/entities which could be consolidated into a single  
22 program/entity;

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1       5. Identification of gaps in programs/services that could  
2 adversely affect the entity and/or state;

3       6. Analyzing the objectives of programs/entities against their  
4 performance measures;

5       7. Verifying compliance with significant laws and regulations;

6       8. Identification of best practices;

7       9. Recommendations for statutory or regulatory changes to  
8 enhance the effectiveness of the program/entity; and

9       10. Recommendations for improvement or enhancement of  
10 operations or other matters relevant to the audit objectives.

11       E. The State Auditor and Inspector will seek written responses  
12 to the recommendations from the program/entity officials. When  
13 program/entity officials disagree or do not plan to implement such  
14 recommendations, they shall report this with their reasoning within  
15 thirty (30) days of public release of the audit to the Governor, the  
16 President Pro Tempore of the Senate, and the Speaker of the House of  
17 Representatives, and they shall also electronically transmit said  
18 report to all members of the House of Representatives and Senate.

19       F. The State Auditor and Inspector may, at any time, conduct a  
20 performance audit or a follow-up on previous performance audits as  
21 deemed necessary.

22       G. The State Auditor and Inspector may issue subpoenas or  
23 require other written affidavits in such form and in such manner as

1 he or she may prescribe. Any public official, elected or otherwise,  
2 or any employee of any program or entity being audited who shall  
3 obstruct or refuse access to information or documents relevant to  
4 such audits except, in good faith, where such refusal is required by  
5 law or a court order shall be guilty of a misdemeanor.

6 H. All performance audits shall become a public record upon  
7 completion of said audit. In addition, copies of each performance  
8 audit report shall be furnished to the Governor, the President Pro  
9 Tempore of the Senate, the Speaker of the House of Representatives,  
10 the chairpersons of the appropriate legislative committees and the  
11 responsible officials of the program/entity being audited, and shall  
12 be electronically transmitted to all members of the House of  
13 Representatives and Senate.

14 I. Performance audits authorized herein shall not limit or  
15 restrict other public officials from requesting performance audits  
16 by the State Auditor and Inspector as provided by law.

17 J. Where appropriate, the State Auditor and Inspector may, at  
18 his or her discretion, contract out any or all aspects of any  
19 performance audit.

20 K. By September 30 of each year, the State Auditor and  
21 Inspector shall issue an annual report summarizing the results of  
22 performance audits completed. This annual report shall include a  
23 summary of all recommended cost savings, as applicable, in such

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1 performance audit reports as were issued in the preceding fiscal  
2 year. Copies of this report shall be made available to the public  
3 and provided to the Governor, the President Pro Tempore of the  
4 Senate, and the Speaker of the House of Representatives, and shall  
5 be electronically transmitted to all members of the House of  
6 Representatives and Senate.

7 SECTION 2. NEW LAW A new section of law to be codified  
8 in the Oklahoma Statutes as Section 213.2A of Title 74, unless there  
9 is created a duplication in numbering, reads as follows:

10 There is hereby created in the State Treasury a revolving fund  
11 for the State Auditor and Inspector to be designated the  
12 "Performance Audit Expenditure Revolving Fund". The fund shall be a  
13 continuing fund, not subject to fiscal year limitations, and shall  
14 consist of all monies received by the State Auditor and Inspector  
15 from the revenues apportioned pursuant to the provisions of  
16 subsection C of Section 1353 of Title 68 of the Oklahoma Statutes.  
17 All monies accruing to the credit of said fund are hereby  
18 appropriated and may be budgeted and expended by the State Auditor  
19 and Inspector for the purpose of paying the expenses associated with  
20 performance audits authorized pursuant to Section 213.2 of Title 74  
21 of the Oklahoma Statutes. Expenditures from said fund shall be made  
22 upon warrants issued by the State Treasurer against claims filed as  
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1 prescribed by law with the Director of the Office of State Finance  
2 for approval and payment.

3 SECTION 3. NEW LAW A new section of law to be codified  
4 in the Oklahoma Statutes as Section 45.10 of Title 62, unless there  
5 is created a duplication in numbering, reads as follows:

6 A. Pursuant to this act, the Director of the Office of State  
7 Finance shall cause to be published performance reporting metrics  
8 and standards for each state agency and agency-specific initiatives.  
9 These metrics shall account for input, output and outcome measures  
10 and shall include not less than three consistent scales  
11 demonstrating that a performance standard has been achieved,  
12 partially achieved or not achieved. At least one metric shall  
13 demonstrate the cost per person served by the agency.

14 B. State agencies shall provide information as required by the  
15 Director to assist in the development of performance reporting  
16 metrics and standards.

17 C. State agencies shall report information as required by the  
18 Director to assist in the determination of the agencies' success or  
19 failure to meet established performance reporting metrics.

20 D. Performance metrics showing agency and agency department-  
21 level performance shall be published and prominently featured on the  
22 state Internet portal and through the direct domain  
23 *performance.ok.gov*. This data shall be updated on a regular basis.

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1 E. Performance metrics and standards shall be reviewed and  
2 approved annually.

3 F. Each year the Director of the Office of State Finance shall  
4 publish a report identifying the lowest-performing state agencies.  
5 The report shall be provided to the Governor, Speaker of the House,  
6 President Pro Tempore of the Senate, and shall be electronically  
7 transmitted to all members of the House of Representatives and  
8 Senate and shall be prominently featured on the state Internet  
9 portal. The report shall also describe and rank the agencies having  
10 the highest ratio of cost per person served.

11 G. Agencies whose performance ranks in the bottom ten percent  
12 (10%) of performance in relation to the performance metrics shall be  
13 considered eligible for entering into a shared services contract for  
14 administrative services with the Office of State Finance.

15 H. An agency whose performance ranks in the bottom ten percent  
16 (10%) of performance in relation to the performance metrics may  
17 appeal this finding to the State Governmental Technology  
18 Applications Review Board and may request the State Auditor to  
19 verify the veracity of the findings.

20 I. For the purposes of this section, "performance reporting  
21 metrics" shall mean a set of criteria which demonstrates the  
22 quantity and quality of work.

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1 SECTION 4. AMENDATORY 68 O.S. 2011, Section 1353, is  
2 amended to read as follows:

3 Section 1353. A. It is hereby declared to be the purpose of  
4 the Oklahoma Sales Tax Code to provide funds for the financing of  
5 the program provided for by the Oklahoma Social Security Act and to  
6 provide revenues for the support of the functions of the state  
7 government of Oklahoma, and for this purpose it is hereby expressly  
8 provided that, revenues derived pursuant to the provisions of the  
9 Oklahoma Sales Tax Code, subject to the apportionment requirements  
10 for the Oklahoma Tax Commission and Office of State Finance Joint  
11 Computer Enhancement Fund provided by Section 265 of this title,  
12 shall be apportioned as follows:

13 1. a. the following amounts shall be paid to the State  
14 Treasurer to be placed to the credit of the General  
15 Revenue Fund to be paid out pursuant to direct  
16 appropriation by the Legislature:

Fiscal Year	Amount
FY 2003 and FY 2004	86.04%
FY 2005	85.83%
FY 2006	85.54%
FY 2007	85.04%
FY 2008 and each fiscal year thereafter	83.61%

b. in the event that additional monies are necessary pursuant to paragraph 6 of this section, such additional monies shall be deducted in the proportion determined by the State Board of Equalization pursuant to paragraph 3 of Section 2355.1B of this title from the monies apportioned to the General Revenue Fund;

2. For FY 2003, FY 2004 and FY 2005, ten and forty-two one-hundredths percent (10.42%), shall be paid to the State Treasurer to be placed to the credit of the Education Reform Revolving Fund of the State Department of Education and for FY 2006 and each fiscal year thereafter, ten and forty-six one-hundredths percent (10.46%) shall be paid to the State Treasurer to be placed to the credit of the Education Reform Revolving Fund of the State Department of Education;

3. The following amounts shall be paid to the State Treasurer to be placed to the credit of the Teachers' Retirement System Dedicated Revenue Revolving Fund:

Fiscal Year	Amount
FY 2003 and FY 2004	3.54%
FY 2005	3.75%
FY 2006	4.0%
FY 2007	4.5%

1 FY 2008 and each fiscal

2 year thereafter 5.0%

3 4. For the fiscal year beginning July 1, 2010, and for each  
4 fiscal year thereafter, eighty-seven one-hundredths percent (0.87%)  
5 shall be paid to the State Treasurer to be further apportioned as  
6 follows:

- 7 a. thirty-six percent (36%) shall be placed to the credit  
8 of the Oklahoma Tourism Promotion Revolving Fund, and  
9 b. sixty-four percent (64%) shall be placed to the credit  
10 of the Oklahoma Tourism Capital Improvement Revolving  
11 Fund; and

12 5. For the fiscal year beginning July 1, 2010, and for each  
13 fiscal year thereafter, six one-hundredths percent (0.06%) shall be  
14 placed to the credit of the Oklahoma Historical Society Capital  
15 Improvement and Operations Revolving Fund.

16 6. During the first fiscal year after the State Board of  
17 Equalization has made a determination as provided in Section 2355.1B  
18 of this title, regarding a baseline amount of revenue apportioned  
19 pursuant to paragraph 3 of this section, and for each fiscal year  
20 thereafter, in no event shall monies apportioned pursuant to  
21 paragraph 3 of this section, paragraph 3 of Section 1403 of this  
22 title and subparagraph c of paragraph 1 of Section 2352 of this  
23 title be less than such baseline amount.

1 B. Provided, for the fiscal year beginning July 1, 2007, and  
2 every fiscal year thereafter, an amount of revenue shall be  
3 apportioned to each municipality or county which levies a sales tax  
4 subject to the provisions of Section 1357.10 of this title and  
5 subsection F of Section 2701 of this title equal to the amount of  
6 sales tax revenue of such municipality or county exempted by the  
7 provisions of Section 1357.10 of this title and subsection F of  
8 Section 2701 of this title. The Oklahoma Tax Commission shall  
9 promulgate and adopt rules necessary to implement the provisions of  
10 this subsection.

11 C. Notwithstanding any other provisions of this section, on and  
12 after the effective date of this act, before any other apportionment  
13 is made, one-tenth of one percent (1/10 of 1%) of the revenues  
14 otherwise apportioned by the provisions of this section shall be  
15 apportioned in the manner prescribed by subsection C of Section  
16 213.2 of Title 74 of the Oklahoma Statutes for use by the State  
17 Auditor and Inspector to conduct performance audits.

18 SECTION 5. Section 4 of this act shall become effective July 1,  
19 2013.

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21 COMMITTEE REPORT BY: COMMITTEE ON GOVERNMENT MODERNIZATION, dated  
22 02/23/2012 - DO PASS, As Amended.  
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