

STATE OF OKLAHOMA

1st Session of the 56th Legislature (2017)

HOUSE BILL 1425

By: Lepak

AS INTRODUCED

An Act relating to state government finance; defining terms; specifying purpose; specifying powers and duties of Joint Committee on Accountability; allowing State Auditor and Inspector to enter into certain contracts; requiring certain cooperation with Joint Committee; requiring State Auditor and Inspector to conduct certain performance audits and tax incentive reviews; specifying priority and requirements related thereto; requiring performance audits and tax incentive reviews to make certain determinations; providing for distribution of audit and review reports; subjecting certain persons to duty of confidentiality and criminal penalties; providing procedures for certain investigations; amending 62 O.S. 2011, Section 34.96, as last amended by Section 3, Chapter 168, O.S.L. 2015 (62 O.S. Supp. 2016, Section 34.96), which relates to the Legislative Oversight Committee on State Budget Performance; changing name of Committee; modifying duties and membership; providing that expenditures be deemed open records; amending 74 O.S. 2011, Sections 213.2, as amended by Section 844, Chapter 304, O.S.L. 2012, 219A and 227.9, as amended by Section 845, Chapter 304, O.S.L. 2012 (74 O.S. Supp. 2016, Sections 213.2 and 227.9), which relate to the Office of the State Auditor and Inspector; requiring audits at direction of Joint Committee; modifying recipients and form of audit distribution; modifying funds from which audit cost may be borne; providing for deposit of certain funds; modifying amounts deposited to State Auditor and Inspector Revolving Fund; providing for codification; providing an effective date; and declaring an emergency.

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

2 SECTION 1. NEW LAW A new section of law to be codified
3 in the Oklahoma Statutes as Section 450.4 of Title 74, unless there
4 is created a duplication in numbering, reads as follows:

5 As used in Sections 1 through 6 of this act:

6 1. "Committee" or "Joint Committee" means the Joint Committee
7 on Accountability created in Section 34.96 of Title 62 of the
8 Oklahoma Statutes;

9 2. "Tax incentive review" means a review of any tax preference
10 or other provision of tax law to determine the impact on state
11 revenues of the granting of such preference and any economic benefit
12 to the state resulting therefrom.

13 SECTION 2. NEW LAW A new section of law to be codified
14 in the Oklahoma Statutes as Section 450.5 of Title 74, unless there
15 is created a duplication in numbering, reads as follows:

16 The purpose of Sections 1 through 6 of this act is to require
17 the conducting of performance audits, the review of tax incentives,
18 the feasibility of privatizing governmental assets and services and
19 the investigation and eradication of waste, fraud, abuse and
20 corruption in state government, to ensure that taxpayer funds are
21 being used efficiently and effectively and that state agencies are
22 using the best practices available.

23

24

1 SECTION 3. NEW LAW A new section of law to be codified

2 in the Oklahoma Statutes as Section 450.6 of Title 74, unless there
3 is created a duplication in numbering, reads as follows:

4 A. The Joint Committee on Accountability shall have the
5 following powers and duties:

6 1. Not later than March 1 of each year, to determine and
7 publish a list of state agencies or state programs for which a
8 performance audit will be conducted, subject to available funding.

9 Such list may include specific divisions of state agencies if
10 directed by the Committee. The Legislature, by concurrent
11 resolution or by statute, may add or delete state agencies or
12 divisions thereof, or state programs, to or from the list. Any
13 member of the Legislature may request a performance audit to be
14 conducted of any agency, division or state program by making a
15 written request to the Committee detailing the reasons for
16 requesting such audit, which shall be granted upon a majority vote
17 of a quorum of the Committee, subject to available funding;

18 2. Not later than January 1 of each year, to determine and
19 publish a list of tax preferences or other provisions of tax law for
20 which a tax incentive review will be conducted, subject to available
21 funding. The Legislature, by concurrent resolution or by statute,
22 may add or delete tax preferences or other provisions of tax law to
23 or from the list. Any member of the Legislature may request a tax
24 incentive review to be conducted of any provision of state tax law

1 by making a written request to the Committee detailing the reasons
2 for requesting such review, which shall be granted upon a majority
3 vote of a quorum of the Committee;

4 3. As often as it is deemed necessary, to identify assets owned
5 or services provided by the State of Oklahoma or its political
6 subdivisions which could be converted to private ownership and to
7 evaluate the advisability and feasibility of such conversion. The
8 Legislature, by concurrent resolution or by statute, may identify
9 specific assets to be evaluated pursuant to the provisions of this
10 paragraph;

11 4. To collect any information from state agencies or other
12 persons or entities which relates or may relate to a performance
13 audit or tax incentive review; and

14 5. To investigate allegations of waste, fraud, abuse and
15 corruption in state government and, upon a majority vote of the
16 Joint Committee, to refer such allegations to the appropriate
17 authorities for prosecution or other action.

18 B. The State Auditor and Inspector may contract with
19 independent auditors and may work with any other entity of state
20 government as may be necessary to accomplish these audits.

21 C. Each state agency and other affected persons shall cooperate
22 with the Joint Committee in the providing of any information
23 requested. The Joint Committee shall have the power to issue
24 subpoenas and to compel the attendance of witnesses and the

1 production of information as provided in Section 773 of Title 74 of
2 the Oklahoma Statutes, upon a majority vote of a quorum of the
3 members of the Committee.

4 SECTION 4. NEW LAW A new section of law to be codified
5 in the Oklahoma Statutes as Section 450.7 of Title 74, unless there
6 is created a duplication in numbering, reads as follows:

7 A. Under the direction of the Joint Committee on
8 Accountability, the State Auditor and Inspector shall conduct a
9 performance audit each year of those state agencies specified by law
10 or concurrent resolution of the Legislature or designated by the
11 Joint Committee on Accountability, subject to available funding. If
12 funding is insufficient to conduct every such performance audit,
13 those specified by law shall receive first priority and the Joint
14 Committee shall specify the priority of those specified by
15 concurrent resolution of the Legislature or designated by the Joint
16 Committee. These audits shall be conducted in accordance with
17 generally accepted governmental auditing standards. The resulting
18 written audit reports shall be issued as soon after the completion
19 of the audit as is practicable.

20 B. A performance audit shall determine:

21 1. Whether the audited agency, division or program is carrying
22 out only those activities or programs authorized by state law or is
23 engaging in activities or programs which go beyond its
24 authorization, as set forth in state law;

1 2. Whether the agency, division or program is efficiently and
2 effectively administered, including, but not limited to:

3 a. whether it is operated under the best practices of
4 this state or other comparable entities,

5 b. whether its functions are duplicative of, or could be
6 better provided by, other agencies of state government
7 or the private sector, and

8 c. whether it is operated in a manner which is accessible
9 and easily used by those to whom public services are
10 provided;

11 3. Whether a new agency, division or program is efficiently and
12 effectively implemented according to the intent of the Legislature
13 as expressed in state law; and

14 4. Whether any change or reorganization of the agency, division
15 or program would be preferable to its current structure.

16 C. Copies of the reports of audits conducted shall be furnished
17 to the Governor, the President Pro Tempore of the Senate, the
18 Speaker of the House of Representatives, each member and the staff
19 of the Joint Committee on Accountability, the audited state agency
20 and each member of the governing board of the state agency, if
21 applicable, and other interested persons or agencies as may be
22 specified by the Committee or required by law or by the
23 specifications of the audit. The copies may be furnished
24 electronically.

1 SECTION 5. NEW LAW A new section of law to be codified

2 in the Oklahoma Statutes as Section 450.8 of Title 74, unless there
3 is created a duplication in numbering, reads as follows:

4 A. A tax incentive review may be conducted each year of those
5 tax preferences or other provisions of tax law specified by law or
6 concurrent resolution of the Legislature or designated by the Joint
7 Committee on Accountability, subject to available funding. If
8 funding is insufficient to conduct every such tax incentive review,
9 those specified by law shall receive first priority and the Joint
10 Committee shall specify the priority of those specified by
11 concurrent resolution of the Legislature or designated by the Joint
12 Committee. The Oklahoma Tax Commission shall provide such
13 assistance to the Committee in the conduct of such reviews as may be
14 necessary.

15 B. A tax incentive review shall include, but not be limited to:

16 1. A determination of the impact on state revenues due to the
17 granting of the tax preference or provision;

18 2. A determination of the economic benefit to the state due to
19 the granting of the tax preference or provision, whether measured in
20 increased state revenues, job creation, wage or personal income
21 growth, investment in this state or other economic criteria;

22 3. An estimate of the effect on the distribution of the tax
23 burden upon citizens or legal entities of this state;

1 4. An analysis of the competitive position of this state
2 relative to other states with similar tax preferences or provisions;
3 and

4 5. An overall determination of the effectiveness of the tax
5 preference or provision in achieving the desired objective as set
6 forth in state law.

7 C. Copies of the reports of tax incentive reviews conducted
8 shall be furnished to the Governor, the President Pro Tempore of the
9 Senate, the Speaker of the House of Representatives, each member and
10 the staff of the Joint Committee on Accountability and other
11 interested persons or agencies as may be specified by the Committee
12 or required by law or by the specifications of the review. The
13 copies may be furnished electronically.

14 D. Notwithstanding the provisions of Section 205 of Title 68 of
15 the Oklahoma Statutes, any person receiving tax information under
16 the provisions of this section shall be subject to the same duty of
17 confidentiality imposed by law upon the Tax Commission and shall be
18 subject to any civil or criminal penalties imposed by law for
19 violations of such duty of confidentiality.

20 SECTION 6. NEW LAW A new section of law to be codified
21 in the Oklahoma Statutes as Section 450.9 of Title 74, unless there
22 is created a duplication in numbering, reads as follows:

23 An investigation may be ordered and conducted by the Joint
24 Committee on Accountability, upon a majority vote of a quorum of the

1 members thereof, into any information received by the Joint
2 Committee alleging waste, fraud, abuse or corruption in state
3 government. The Joint Committee may request the assistance of the
4 Office of the Attorney General, the Office of the State Auditor and
5 Inspector, the Office of Management and Enterprise Services or any
6 other state agency. If the Committee determines that waste, fraud,
7 abuse or corruption has or may have occurred, the Joint Committee
8 shall forward the results of its investigation and any other
9 relevant information that it has received to the appropriate
10 authority for prosecution or other action.

11 SECTION 7. AMENDATORY 62 O.S. 2011, Section 34.96, as
12 last amended by Section 3, Chapter 168, O.S.L. 2015 (62 O.S. Supp.
13 2016, Section 34.96), is amended to read as follows:

14 Section 34.96 A. There is hereby established the ~~Legislative~~
15 ~~Oversight Committee on State Budget Performance. The purposes of~~
16 ~~this committee shall include oversight of the implementation of a~~
17 ~~system of program performance-based budgeting for implementation by~~
18 ~~state agencies~~ Joint Committee on Accountability.

19 B. ~~The~~ In addition to its duties specified in Section 3 of this
20 act, the Joint Committee's duties shall also include:

21 1. ~~Development of agency budget request forms and instructions~~
22 ~~in conjunction with the Office of Management and Enterprise~~
23 ~~Services;~~

24

1 ~~2. Directing studies to aid in the development of legislative~~
2 ~~and procedural changes to further improve the budgetary, financial,~~
3 ~~accounting, reporting, personnel, and purchasing processes and~~
4 ~~systems of the state;~~

5 ~~3.~~ Direction of program evaluation and management studies;

6 ~~4.~~ 2. Oversight and reporting on executive branch compliance
7 with the legislative intent of appropriation measures. Such
8 oversight and reporting duties may include:

9 a. agency reorganization actions,

10 b. executive orders calling for reduction of full-time-
11 equivalents or hiring freezes, and

12 c. transfer of funds by the executive branch;

13 ~~5. The development of revenue and expenditure estimates and~~
14 ~~analyses;~~

15 ~~6.~~ 3. Study of the management, operations, programs and fiscal
16 needs of the agencies and institutions of Oklahoma state government
17 pursuant to the Oklahoma Program Performance Budgeting and
18 Accountability Act;

19 ~~7.~~ 4. Review of the executive budget, agency strategic plans
20 and the estimate of needs of each state agency and institution.
21 Reports may be issued by the Joint Committee as it deems
22 appropriate; and

23 ~~8.~~ 5. Implementation of an ongoing evaluation review procedure
24 of existing programs based on performance-informed budgeting

1 techniques pursuant to the Oklahoma Program Performance Budgeting
2 and Accountability Act. The ~~committee~~ Joint Committee, in
3 cooperation with the Office of Management and Enterprise Services
4 shall establish a schedule to review strategic plans and existing
5 programs for each agency a minimum of once every four (4) years.
6 The ~~committee~~ Joint Committee shall issue an evaluation report for
7 each agency once every four (4) years which will include but not be
8 limited to the following information:

- 9 a. a review of the agency's programs, performance and
10 management,
- 11 b. whether the agency has demonstrated that there is a
12 need for the services and programs which justifies the
13 agency's continued existence,
- 14 c. whether the agency is the most appropriate provider of
15 the programs and services furnished by the agency.

16 C. ~~Any reference in the Oklahoma Statutes to the Joint~~
17 ~~Legislative Committee on Budget and Program Oversight shall be a~~
18 ~~reference to the Legislative Oversight Committee on State Budget~~
19 ~~Performance.~~

20 D. The Joint Committee shall be composed of ~~three~~ two members
21 appointed by the President Pro Tempore of the Senate, ~~three~~ two
22 members appointed by the Speaker of the House of Representatives,
23 ~~two members~~ one member appointed by the minority leader of the
24 Senate and ~~two members~~ one member appointed by the minority leader

1 of the House of Representatives; provided, not more than two members
2 shall represent legislative districts which are part of the same
3 county. The State Auditor and Inspector or his or her designee,
4 along with two additional members appointed by the State Auditor and
5 Inspector, shall also be members of the Joint Committee. The Chair
6 and Vice Chair of the Committee shall rotate every two (2) years
7 between the Senate and the House of Representatives beginning with a
8 Senate member serving as Chair in ~~2003~~ 2017. The Committee shall
9 meet at least four (4) times per year and at other times as called
10 by the Chair. ~~The Legislative Oversight Committee on State Budget~~
11 ~~Performance~~ Joint Committee shall function as a committee of the
12 Legislature when the Legislature is in session and is not in
13 session. Each member of the Joint Committee shall serve until a
14 successor is appointed. The duties of the Committee may be
15 performed by the Appropriations Committee of the Senate and the
16 Appropriations and Budget Committee of the House of Representatives
17 or subcommittees thereof.

18 ~~E. The Committee shall be staffed jointly by the staff of the~~
19 ~~fiscal divisions of the Senate and the House of Representatives.~~

20 ~~F.~~ D. The Joint Committee may make use of all available
21 teleconferencing technology to facilitate meetings of the Joint
22 Committee when the Legislature is not in session. The Joint
23 Committee shall take any appropriate action to make such
24 teleconferenced meetings comply with the provisions of the

1 Oklahoma Open Meeting Act, Section 301 et seq. of Title 25 of the
2 Oklahoma Statutes.

3 ~~G.~~ E. The Joint Committee shall periodically meet in different
4 geographical regions of the state to enhance the Joint Committee's
5 understanding of local conditions and to help educate the public as
6 to the fiscal condition of the state.

7 F. All expenditures made by the Joint Committee or any
8 expenditure made by any other state governmental entity acting at
9 the request of or in conjunction with the Joint Committee shall be
10 deemed "records" within the meaning of such term as defined in the
11 Oklahoma Open Records Act.

12 SECTION 8. AMENDATORY 74 O.S. 2011, Section 213.2, as
13 amended by Section 844, Chapter 304, O.S.L. 2012 (74 O.S. Supp.
14 2016, Section 213.2), is amended to read as follows:

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

21 B. The State Auditor and Inspector, deputies and agents of the
22 Performance Audit Division may examine all books and accounts of all
23 public officers, institutions and other governmental entities
24 specified in Sections 212 through 227.9 of this title to instruct

1 the proper officers thereof in the performance of their duties and
2 to prescribe cost-effective methods of operating such governmental
3 entities; provided, however, the State Auditor and Inspector shall
4 perform the examinations authorized in this subsection upon
5 receiving a written request to do so by the Governor, the chief
6 executive officer of a governmental entity or pursuant to a joint or
7 concurrent resolution of the Legislature or as directed by the Joint
8 Committee on Accountability. A An electronic copy of the
9 examination shall be given to the examined entity. A copy of any
10 examination conducted pursuant to this subsection shall be submitted
11 to the Governor, the Speaker of the House of Representatives, the
12 President Pro Tempore of the Senate, the appropriations and budget
13 chairs of the House of Representatives and the Senate, ~~and~~ the
14 Minority Leader of the House of Representatives and of the Senate
15 and all members of the Joint Committee on Accountability.

16 C. The cost of the examinations authorized pursuant to
17 subsection B of this section shall be borne by the examined agency
18 in an amount not to exceed the actual costs of the examination or
19 from funds made available to conduct such examinations. Prior to
20 the start of such an examination, the State Auditor and Inspector
21 shall prepare in writing and present to the affected state agency an
22 estimate of the cost of the examination. If the estimate requires
23 revision, the State Auditor and Inspector shall notify the agency in
24 a prompt manner. Except as otherwise provided, the State Auditor

1 and Inspector shall recover its costs for the examination pursuant
2 to monthly progress billings presented by the State Auditor and
3 Inspector to the Office of Management and Enterprise Services
4 detailing current monthly costs for each examination. In addition,
5 the State Auditor and Inspector shall provide a copy of the billing
6 to the affected state agency. The Office of Management and
7 Enterprise Services may deduct the amounts billed from the next
8 subsequent allotment for the corresponding state agency and transfer
9 the funds to the State Auditor and Inspector Revolving Fund.

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

15 E. The State Auditor and Inspector shall submit an annual
16 report of the Performance Audit Division to the Governor, the
17 President Pro Tempore of the Senate, the Speaker of the House of
18 Representatives, appropriations and budget chairs of the House of
19 Representatives and the Senate, ~~and~~ the Minority Leader of the
20 Senate and of the House of Representatives and all members of the
21 Joint Committee on Accountability.

22 SECTION 9. AMENDATORY 74 O.S. 2011, Section 219A, is
23 amended to read as follows:
24

1 Section 219A. The State Auditor and Inspector shall provide
2 adequate continuing professional education for all staff members
3 necessary to comply fully with federal requirements to ensure the
4 acceptability of all audits performed under Section ~~2~~ 212 of this
5 ~~act~~ title. Such training may take the form of courses presented by
6 competent state and federal employees, the American Institute of
7 Certified Public Accountants and other organizations recognized by
8 the Office of Management and Budget as competent to provide such
9 training. Employees of other state entities who can demonstrate
10 they are mandated to participate in continuing professional
11 education because of their assignment may be included in relevant
12 training sessions if, within available resources, the State Auditor
13 and Inspector is reimbursed for the costs of their participation.
14 All payments received by the State Auditor and Inspector from
15 providing continuing professional education shall be deposited to
16 the State Auditor and Inspector Revolving Fund.

17 SECTION 10. AMENDATORY 74 O.S. 2011, Section 227.9, as
18 amended by Section 845, Chapter 304, O.S.L. 2012 (74 O.S. Supp.
19 2012, Section 227.9), is amended to read as follows:

20 Section 227.9 There is hereby created in the State Treasury a
21 revolving fund for the Office of the State Auditor and Inspector to
22 be designated the "State Auditor and Inspector Revolving Fund". The
23 fund shall be a continuing fund, not subject to fiscal year
24 limitations, and shall consist of all money paid to and received by

1 the State Auditor and Inspector from all sources, including, but not
2 limited to, state agencies, boards and commissions authorized by
3 statute to pay the expense of audits and consulting services, money
4 received for performance of audits and consulting services pursuant
5 to contract entered into ~~under the authority of Section 227.8 of~~
6 ~~this title~~ as provided by state law, funds received from state
7 agencies, boards and commissions receiving federal grants of funds
8 which require periodic audits under ~~said~~ the grants or any federal
9 regulations, all money received from counties, cities, towns and
10 public trusts in payment of audit expense, funds appropriated to
11 state agencies, boards and commissions for payment of audit expense,
12 and fees collected pursuant to Section 212A of this title and any
13 other monies received by the State Auditor and Inspector. All
14 monies accruing to the credit of ~~said~~ the fund are hereby
15 appropriated and may be budgeted and expended by the Office of the
16 State Auditor and Inspector for expenses necessary for the
17 performance of duties imposed upon the Office of the State Auditor
18 and Inspector by law. Expenditures from ~~said~~ the fund shall be made
19 upon warrants issued by the State Treasurer against claims filed as
20 prescribed by law with the Director of the Office of Management and
21 Enterprise Services for approval and payment. The State Auditor and
22 Inspector shall at the close of each fiscal year pay into the
23 General Revenue Fund of the state any unencumbered balance remaining
24

1 in ~~said~~ the revolving fund in excess of Eight Hundred Fifty Thousand
2 Dollars (\$850,000.00).

3 SECTION 11. This act shall become effective July 1, 2017.

4 SECTION 12. It being immediately necessary for the preservation
5 of the public peace, health or safety, an emergency is hereby
6 declared to exist, by reason whereof this act shall take effect and
7 be in full force from and after its passage and approval.

8

9 56-1-5884 LRB 01/04/17

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24