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# COUNTY ADVISORY BULLETIN

CAB

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## SHARED SERVICES – NEW PROGRAMS

**APPLICABLE LEGISLATION:** HB 5 (131st General Assembly)

**REVISED CODE SECTIONS EFFECTED:**

**Amends section:** ORC 117.47

**Enacts sections:** ORC 117.473, 117.48, 2743.31, and 2744.11

**LEAD SPONSOR:** Representatives Kunze and Koehler

**EFFECTIVE DATE:** September 14, 2016

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HB 5 creates two new programs that allow the Auditor of State (Auditor) to provide assistance for local governments seeking to improve their shared services opportunities. The Auditor is now authorized to conduct feasibility studies for local governments to help them determine if they may benefit from sharing various services or facilities. In addition, the Auditor may also establish a Shared Equipment Service Agreement Program under which the question of risk of loss resulting from utilization of the equipment is clearly assigned to the user of the equipment rather than its owner.

### **Feasibility Studies (ORC 117.473)**

The act allows a local public office to request that the Auditor conduct a feasibility study to determine if greater efficiency or cost savings could be realized by the office sharing services or facilities with other agencies or offices. Under this new program county commissioners could request a feasibility study be conducted for any or all of the county offices, assuming each office consents, to identify, evaluate the benefits and delineate the cost savings that might be obtained by the offices sharing services or facilities.

In a feasibility study request made to the Auditor the requesting office must identify the agencies or offices that it seeks to include within the proposed plan for sharing services or facilities. The Auditor must provide written notification to each agency and office identified in the feasibility study request. The Auditor may review only those identified agencies or offices that do not opt out. To opt out, an agency or office must provide an opt out notice to the Auditor within 60 days of the date on which the Auditor's notification to the agency or office is postmarked. If an agency or office opts out of a requested study, the Auditor, at the Auditor's discretion, may cancel the study or may proceed to conduct it considering only the identified agencies and offices that have not opted out.

The Auditor must provide written notice to the requesting agency or office and any other agency or office that consented to being reviewed not later than ten days before starting the feasibility study. Upon completion of a feasibility study the Auditor is obligated to conduct a public hearing on the feasibility study's findings. This hearing must be held within 180 days after completing the study. The Auditor must give written notice of the time, date and place of the hearing to the agencies and offices involved in the feasibility study not later than ten days before the date of the public hearing and must also place a notice of the hearing on the Auditor's website.

The Auditor's costs of conducting the feasibility study are funded from the Leverage for Efficiency, Accountability and Performance (LEAP) Fund which receives an appropriation from the General Assembly and is a part of the Auditor of State's budget. This fund was originally established to cover the Auditor of State's costs of conducting performance audits. HB 5 allows half of the funds appropriated to the LEAP Fund to be used for feasibility studies and the other half of the Fund to continue to be used to make loans to state agencies and local public offices to pay the costs of conducting performance audits. The auditing team that currently conducts performance audits will also be the team conducting the feasibility studies.

### **Shared Equipment Service Agreement Program (ORC 117.48)**

HB 5 also authorizes the Auditor to establish a shared equipment service agreement program among state agencies and political subdivisions. Under the Program, state agencies and political subdivisions may voluntarily enter into an agreement whereby the lender state agency or political subdivision lends its capital equipment to the recipient state agency or political subdivision for temporary use in the performance of a governmental or proprietary function, as defined under the sovereign immunity provisions.

One of the biggest challenges to a collaboration of this type is the assignment of liability for risk of loss between the political subdivision that owns the equipment and the political subdivision that is borrowing the equipment. Historically, while the assignment of risk is usually included as a provision of the agreement, there has been some question whether risk can be legally assigned.

HB 5 addresses this issue by specifically providing in law (ORC Secs. 2743.31 and 2744.11) that a shared service agreement, whether entered into under the Auditor's shared equipment service agreement program or under general authority granted to counties (See: [CAB 2012-03](#) regarding shared services and [CAB 2011-14](#) regarding county centralized services) may include a provision regarding the assumption of liability. Specifically, the provision may provide that the recipient agency or subdivision, and its officers and employees, assume any potential liability in a civil action for damages for injury, death or loss to person or property allegedly caused by an act or omission of the recipient agency or subdivision or its officers or employees resulting from the use of the equipment in the performance of the recipient agency's or subdivision's

governmental or proprietary functions. The assumption of liability applies insofar as the recipient agency or subdivision or its officers or employees uses the equipment covered by the agreement in the performance of a governmental or proprietary function.

Questions or comments should be directed to [John Leutz](#), CCAO legislative counsel, who was primarily responsible for the preparation of this CAB.