

# A-Engrossed House Bill 2166

Ordered by the House May 11  
Including House Amendments dated May 11

Ordered printed by the Speaker pursuant to House Rule 12.00A (5). Pre-session filed (at the request of Secretary of State Bill Bradbury)

## SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure.

Deletes provisions allowing municipal corporations to request Secretary of State to develop or revise and install accounting systems. Modifies requirement that contracts for conducting municipal audits be provided to Secretary of State. Modifies language to conform with current usage.

**Eliminates requirement that Oregon Board of Accountancy maintain roster of accountants authorized to conduct municipal audits. Deletes provisions requiring municipal corporations to select accountants from roster for audit purposes. Redefines "accountants" for purposes of Municipal Audit Law. Makes conforming amendments.**

## A BILL FOR AN ACT

1  
2 Relating to audits; creating new provisions; and amending ORS 297.405, 297.425, 297.465, 297.466,  
3 297.475, 297.740, 328.465, 341.709, 673.165 and 673.170; and repealing ORS 297.670, 297.680,  
4 297.701, 297.710, 297.720 and 297.730.

5 **Be It Enacted by the People of the State of Oregon:**

6 **SECTION 1.** ORS 297.425 is amended to read:

7 297.425. (1) Except as provided in ORS 297.435, the accounts and fiscal affairs of every municipal  
8 corporation shall be audited and reviewed at least once each calendar or fiscal year, and more often  
9 if considered advisable by the governing body or managing or executive officer of the municipal  
10 corporation. The audits and reviews shall be made by accountants pursuant to contracts entered  
11 into by the governing body, or managing or executive officer, and accountants, or by the Secretary  
12 of State pursuant to a duly adopted ordinance or resolution[, *a copy of which shall be furnished to*  
13 *the Secretary of State*]. **Upon request of the Secretary of State, the governing body, or man-**  
14 **aging or executive officer, shall provide the secretary with a copy of a contract entered into**  
15 **or an ordinance or resolution adopted under this section.**

16 [(2) *Municipal corporations may enter into contracts, or by ordinance or resolution request the*  
17 *Secretary of State, to develop or revise and install accounting systems.*]

18 [(3)] **(2)** All contracts for conducting audits and reviews [*or for developing or revising and in-*  
19 *stalling accounting systems*] shall be in a form prescribed or approved by the Secretary of State. [*A*  
20 *copy of each completed contract shall be furnished the Secretary of State.*]

21 [(4)(a)] **(3)** The compensation for audits and reviews performed by accountants shall be as agreed  
22 upon between the governing body, or managing or executive officer of the municipal corporation,  
23 and the accountant, and shall be paid in the same manner as other claims against the municipal  
24 corporation are paid.

25 [(b) *The compensation for installation of accounting systems performed by parties under subsection*

**NOTE:** Matter in **boldfaced** type in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted.  
New sections are in **boldfaced** type.

1 (2) of this section, other than the Secretary of State, shall be as agreed upon between the governing  
2 body, or managing or executive officer of the municipal corporation, and the other party, and shall be  
3 paid in the same manner as other claims against the municipal corporation are paid.]

4 [(5)] (4) All expenses and costs incurred by the Secretary of State in conducting audits and  
5 reviews[, and installing accounting systems] for municipal corporations shall be borne by the munic-  
6 ipal corporation for which a particular audit[,] or review [or installation] is made. The expenses and  
7 costs shall be paid to the Secretary of State in the same manner as other claims against the mu-  
8 nicipal corporation are paid.

9 [(6)] (5) Audits and reviews required by this section shall inquire into:

10 (a) The principles of accounting and methods followed by the municipal corporation in recording,  
11 summarizing and reporting its financial transactions and financial condition;

12 (b) The accuracy and legality of the transactions, accounts, records, files and financial reports  
13 of the officers and employees of the municipal corporation as they relate to its fiscal affairs; and

14 (c) Compliance with requirements, orders and regulations of other public officials which pertain  
15 to the financial condition or financial operations of the municipal corporation.

16 (6) **Audits required by this section shall be conducted in accordance with generally ac-**  
17 **cepted auditing standards issued by the American Institute of Certified Public Accountants**  
18 **and the standards contained in the government auditing standards issued by the Comptroller**  
19 **General of the United States.**

20 **SECTION 2.** ORS 297.465 is amended to read:

21 297.465. (1) The Secretary of State, in cooperation with the Oregon Board of Accountancy, and  
22 in consultation with the Oregon Society of Certified Public Accountants, shall prescribe the mini-  
23 mum standards for conducting audits of municipal corporations, preparing the resulting audit reports  
24 and expressing opinions upon the financial condition and results of operation for the period under  
25 audit. The expression of opinion shall be signed by the accountant signing the contract, or in the  
26 case of a partnership or professional corporation, by a partner or stockholder who is an accountant  
27 as defined in ORS 297.405, who has personally conducted the audit to an extent satisfactory to the  
28 Secretary of State and to the municipal corporation.

29 (2) The municipal corporation shall be furnished with a written audit report, containing a signed  
30 expression of opinion, in the form prescribed by the Secretary of State. A copy of the audit report  
31 shall be furnished to each person who was a member of the governing body at the end of the cal-  
32 endar or fiscal year and to each member of the current governing body. Other copies shall be fur-  
33 nished the municipal corporation as are requested by the chairperson of the governing body or the  
34 managing or executive officer. The accountant shall furnish the audit report to the municipal cor-  
35 poration within six months after the close of the calendar or fiscal year under audit, except that the  
36 Secretary of State, for good cause shown, may grant to the accountant a reasonable extension of  
37 time.

38 (3) The municipal corporation shall file one copy of its audit report with the Secretary of State.  
39 The report shall be subject to review by the Secretary of State, who may also require submission  
40 of the [working papers] **supporting documentation** and audit programs of the accountant. If an  
41 audit, audit report or expression of opinion is found by the Secretary of State not to be in accord-  
42 ance with the prescribed standards, the Secretary of State shall request compliance. If the ac-  
43 countant fails to comply with the request, the Secretary of State shall so report to the Oregon Board  
44 of Accountancy[, which thereupon may remove or suspend the name of the accountant from the roster  
45 required by ORS 297.670].

1 (4) Audit reports or financial statements filed with the Secretary of State as required by ORS  
2 297.405 to 297.555 shall include the names, mailing addresses and titles of the officers and members  
3 of the governing board of the municipal corporation. The report or statement of a special district  
4 shall include the name of its registered agent and the address of its registered office as provided  
5 by ORS 198.335 to 198.365.

6 **SECTION 3.** ORS 297.466 is amended to read:

7 297.466. (1) In performing an audit and review required under ORS 297.425, the accountant under  
8 contract with the municipal corporation or the Secretary of State, whoever performs the audit and  
9 review, shall determine if the municipal corporation has, or has not, followed generally accepted  
10 [*governmental*] accounting principles in reporting its financial condition and operations, established  
11 appropriate accounting systems and internal controls and substantially complied with legal require-  
12 ments in conducting its financial affairs. The determination shall either be included in the signed  
13 expression of opinion or otherwise disclosed in the audit report required under ORS 297.465.

14 (2) Upon receipt of an audit report under ORS 297.465 the governing body of a county or city  
15 shall determine the measures it considers necessary to correct any deficiencies disclosed in the re-  
16 port. The governing body shall adopt a resolution setting forth the corrective measures it proposes  
17 and the period of time estimated to complete them.

18 (3) Within 30 days after a county or city files a copy of its audit report with the Secretary of  
19 State under ORS 297.465 a copy of the resolution prepared under subsection (2) of this section shall  
20 also be filed. Upon receipt of the audit report and the resolution, the Secretary of State shall either  
21 acknowledge the city or county's plans to correct deficiencies cited in the audit report or notify the  
22 county or city of those deficiencies which, if not corrected, could result in withholding of funds  
23 under this section. At the request of the governing body of the city or county the Secretary of State  
24 shall make suggestions for correcting those deficiencies. If the governing body of the county or city  
25 does not agree with the notification by the Secretary of State, it shall be granted an opportunity for  
26 a conference regarding the notification, audit determinations or corrective measures to be taken.

27 (4) If the Secretary of State concurs with determinations made under subsection (1) of this sec-  
28 tion in two successive audits and reviews of the same county or city, and determines that the gov-  
29 erning body of the county or city has not taken adequate action to correct the deficiencies cited in  
30 the notifications given under subsection (3) of this section, the Secretary of State may certify these  
31 facts to the State Treasurer, the Director of the Department of Revenue, the Director of Transpor-  
32 tation and the Director of the Oregon Department of Administrative Services. The certificate of the  
33 Secretary of State shall only be issued after notice, opportunity to be heard and hearing pursuant  
34 to the provisions of ORS chapter 183, governing contested cases. The hearing shall be held within  
35 the jurisdiction of the county or city.

36 (5) Upon receipt of a certificate from the Secretary of State under subsection (4) of this section,  
37 the State Treasurer, the Director of the Department of Revenue, the Director of Transportation and  
38 the Director of the Oregon Department of Administrative Services shall withhold from distribution  
39 to the county or city 10 percent of the moneys otherwise to be distributed to it under ORS 221.770,  
40 323.455, 366.762 to 366.768, 366.785 to 366.820, 471.805 and 471.810. The moneys withheld shall be  
41 disbursed to the county or city only after the officer responsible for disbursement has received no-  
42 tice from the Secretary of State that the governing body of the county or city has taken action to  
43 follow generally accepted [*governmental*] accounting principles in reporting financial condition and  
44 operations and establish appropriate accounting systems and internal controls and will substantially  
45 comply with legal requirements in conducting its financial affairs.

1 (6) The Secretary of State shall not issue a certificate under subsection (4) of this section for  
2 failure to follow generally accepted [*governmental*] accounting principles if a county or city has  
3 followed accounting practices authorized by state law.

4 (7) As used in this section, “generally accepted [*governmental*] accounting principles” means  
5 those accounting principles sanctioned by recognized authoritative bodies such as the [*National*  
6 *Council on Governmental Accounting*] **Governmental Accounting Standards Board**, the American  
7 Institute of Certified Public Accountants, the Financial Accounting Standards Board or their suc-  
8 cessors.

9 **SECTION 4.** ORS 297.475 is amended to read:

10 297.475. Whenever any municipal corporation has made a request to the Secretary of State,  
11 pursuant to ORS 297.425, for the audit of its accounts and fiscal affairs, [*or for the installation of*  
12 *accounting systems, or both,*] the municipal corporation may cancel that request by ordinance or re-  
13 solution adopted and furnished to the Secretary of State at least 90 days prior to the end of a cal-  
14 endar or fiscal year.

15 **SECTION 5.** ORS 297.405 is amended to read:

16 297.405. As used in ORS 297.020, 297.230, 297.405 to 297.740 and 297.990:

17 (1) “Accountants” means [*and indicates all accountants whose names are included in the roster*  
18 *prepared and maintained by the Oregon Board of Accountancy as required by ORS 297.670*]:

19 (a) **Certified public accountants who hold a permit to engage in the practice of public**  
20 **accountancy under ORS 673.150;**

21 (b) **Certified public accountants authorized to practice public accountancy in this state**  
22 **under ORS 673.153; and**

23 (c) **Public accountants who hold a permit to engage in the practice of public accountancy**  
24 **under ORS 673.150 and who may perform audits under ORS 673.103.**

25 (2) “Accounts” means [*and includes*] all books, papers, files, letters and records of any nature  
26 or in any form used in conducting the affairs of the municipal corporation or in recording the  
27 transactions thereof.

28 (3) “Board” means the Oregon Board of Accountancy.

29 (4) “Fiscal affairs” means and includes all activities of any nature giving rise to or resulting  
30 from financial transactions, including compliance with legal requirements applicable to the operation  
31 of a municipal corporation.

32 (5) “Municipal corporation” means a county, city, district or other corporation upon which is  
33 conferred powers of the state for the purpose of local government or a public corporation, including  
34 a cooperative body formed between municipal corporations, except in a city which by charter es-  
35 tablishes a board or commission with responsibility for operating a water and electric utility of the  
36 city, which is governed by a board elected by the people, both the city and the board or commission  
37 shall be separate municipal corporations within the meaning of ORS 297.405 to 297.555 and 297.990.

38 (6) “Public corporation” means a corporation the operation of which is subject to control by  
39 local government or its officers and which, at least in part, is organized to serve a public purpose  
40 of, and receives public funds or other support having monetary value from, such government.

41 **SECTION 6.** ORS 297.740 is amended to read:

42 297.740. The Oregon Board of Accountancy may adopt rules necessary to exercise its powers  
43 and duties provided in ORS 297.405 to 297.555 [*and 297.670 to 297.740*].

44 **SECTION 7.** ORS 328.465 is amended to read:

45 328.465. (1) All common and union high school district boards shall cause to have prepared an

1 annual audit of the books and accounts of the district in the manner set forth in subsection (2) or  
2 (3) of this section. The audit statements must be filed with the administrative office for the county  
3 on or before November 1 of the year in which the audit is conducted.

4 (2) The district school board may contract for its audit with the administrative office for the  
5 county in which the administrative office of the school district is located. The administrative office  
6 for the county shall secure the services of accountants who shall audit the books and accounts of  
7 the districts and file with the administrative office for the county a statement setting forth the fi-  
8 nancial condition of each district. A copy of the audit report of the district shall be sent to the  
9 appropriate district board. Each district, upon receipt of billing from the administrative office for  
10 the county, shall pay its share of the audit costs.

11 (3) The district board may employ accountants to audit the books and accounts of the district.

12 *[(4) Accountants employed under subsection (2) or (3) of this section must be selected from the*  
13 *roster of authorized municipal accountants maintained by the Oregon Board of Accountancy under*  
14 *ORS 297.670]*

15 **(4) Audits under this section shall be conducted by accountants as defined in ORS**  
16 **297.405.**

17 (5) The audit required by this section shall include an audit of those factors that are used to  
18 compute the State School Fund distribution under ORS 327.013.

19 **SECTION 8.** ORS 341.709 is amended to read:

20 341.709. (1) The board of a community college district shall cause to have prepared an annual  
21 audit of the books and accounts of the district, including but not limited to student body funds,  
22 athletic funds, cafeteria funds, and other similar funds collected by the college. The audit statements  
23 must be filed with the administrative office for the district on or before December 31 of the year in  
24 which the audit is conducted.

25 *[(2) Accountants employed under this section must be selected from the roster of authorized mu-*  
26 *nicipal accountants maintained by the Oregon Board of Accountancy under ORS 297.670]*

27 **(2) Audits under this section shall be conducted by accountants as defined in ORS**  
28 **297.405.**

29 **SECTION 9.** ORS 673.165 is amended to read:

30 673.165. (1) Each holder of a permit issued under ORS 673.150, under rules adopted by the  
31 Oregon Board of Accountancy, shall participate in a continuing education program that directly  
32 contributes to professional competency.

33 (2) The education programs shall include any of the following:

34 (a) Professional development programs and technical meetings of professional associations of  
35 public accountants, of certified public accountants or of public accountants and certified public ac-  
36 countants.

37 (b) University and college courses.

38 (c) Such professional staff training programs provided by accountancy organizations and other  
39 education programs that meet the requirements established by the board by rule.

40 (3) The board shall determine the hourly value to be assigned to each education program.

41 **(4) The board may require each holder of a permit issued under ORS 673.150 who con-**  
42 **ducts municipal audits under ORS 297.405 to 297.740 to participate in a continuing education**  
43 **program relating to governmental auditing.**

44 *[(4)]* (5) The number of hours of continuing education required shall be determined by the board,  
45 but shall not exceed 40 hours per year, or the equivalent, for both certified public accountants and

1 public accountants.

2 [(5)] (6) The board by rule may adopt conditions under which continuing education requirements  
3 may be waived. However, continuing education requirements may not be waived by the board for  
4 more than three consecutive years except for military service, retirement, disability, absence from  
5 the state or for other instances of individual hardship as determined by the board, or for account-  
6 ants granted inactive status by the board. The board may, among other things, take into account the  
7 accessibility by applicants to continuing education programs and any impediments to interstate  
8 practice of public accountancy that may result from differences in continuing education require-  
9 ments in other states.

10 **SECTION 10.** ORS 673.170 is amended to read:

11 673.170. (1) The Oregon Board of Accountancy may take any of the following disciplinary  
12 actions:

13 (a) Revoke, suspend or refuse to issue any certificate issued under ORS 673.040 to 673.075.

14 (b) Revoke, suspend or refuse to issue any public accountant's license issued under ORS 673.100.

15 (c) Revoke, suspend, refuse to renew or refuse to issue any permit described in ORS 673.150.

16 (d) Revoke, suspend, refuse to renew or refuse to issue authorization to practice public  
17 accountancy in this state under ORS 673.153.

18 (e) Censure the holder of any permit described in ORS 673.150 or authorization described in ORS  
19 673.153.

20 (f) Revoke, suspend, refuse to renew or refuse to issue any registration issued under ORS  
21 673.160.

22 (g) Censure the holder of any registration issued under ORS 673.160.

23 (2) The board may take any of the actions described in subsection (1) of this section for any one  
24 or any combination of the following causes:

25 (a) Fraud or deceit in obtaining or applying for:

26 (A) A certificate under ORS 673.040 to 673.075;

27 (B) A public accountant's license under ORS 673.100;

28 (C) A registration under ORS 58.345 or 673.160;

29 (D) A permit under ORS 673.150; **or**

30 (E) Authorization to practice public accountancy in this state under the provisions of ORS  
31 673.153[; or]

32 [(F) Admission to the roster of authorized accountants referred to in ORS 297.670].

33 (b) Dishonesty, fraud or gross negligence in the practice of public accountancy.

34 (c) Incompetence in the practice of public accountancy. A holder of a license issued under ORS  
35 673.100, certificate, permit or registration is incompetent in the practice of public accountancy if the  
36 holder:

37 (A) Engages or has engaged in conduct that evidences a lack of ability or fitness to discharge  
38 the duty owed to a client or the general public; or

39 (B) Engages or has engaged in conduct that evidences a lack of knowledge or ability to apply  
40 principles or skills of the practice of public accountancy, as adopted by the board.

41 (d) Violation of any of the provisions of ORS 673.010 to 673.457.

42 (e) Violation of any of the provisions of ORS 297.405 to 297.555.

43 (f) Violation of any provision of the Code of Professional Conduct adopted by the board under  
44 the authority granted by ORS 673.010 to 673.457, or rules adopted by the board under ORS 670.310.

45 (g) Conduct resulting in a conviction of a felony under the laws of any state, of any foreign ju-

1 jurisdiction or of the United States. However, such conduct may be considered only to the extent  
2 permissible under the provisions of ORS 670.280.

3 (h) Conviction of any crime, an essential element of which is dishonesty, fraud or misrepresenta-  
4 tion, under the laws of any state, of any foreign jurisdiction or of the United States.

5 (i) Conviction of willful failure to pay any tax, file any tax return, keep records or supply in-  
6 formation required under the tax laws of any state, of any foreign jurisdiction or of the United  
7 States, or conviction of the willful making, rendering, delivery, disclosure, signing or verifying of  
8 any false or fraudulent list, return, account, statement or other document, or of supplying any false  
9 or fraudulent information, required under the tax laws of any state, of any foreign jurisdiction or  
10 of the United States.

11 (j) Cancellation, revocation, suspension or refusal to renew, authority to practice as a certified  
12 public accountant or a public accountant in any state or foreign jurisdiction.

13 (k) Cancellation, suspension, revocation or refusal to renew by any state, any foreign jurisdic-  
14 tion or any federal agency of the right to practice law, to practice as an enrolled agent before the  
15 Internal Revenue Service pursuant to 31 C.F.R. part 10, or to practice under other regulatory law  
16 if the cancellation, suspension, revocation or refusal to renew was related to the practice of public  
17 accountancy or if dishonesty, fraud or deception was involved.

18 (L) Failure to comply with the continuing education requirements under ORS 673.165 unless  
19 such requirements have been waived by the board.

20 (m) Failure to pay a civil penalty imposed by the board after the period for requesting a hearing  
21 on the civil penalty terminates if the person or business organization against whom the penalty is  
22 imposed has not requested a hearing, or after the period for seeking judicial review of the order  
23 assessing the civil penalty has passed.

24 (n) Failure to comply with the terms of a consent agreement described in subsection (3) of this  
25 section.

26 (o) Failure to comply with any reporting or other requirement established by the board by rule.

27 (3) In lieu of disciplinary actions under subsection (1) of this section, the board may enter into  
28 a consent agreement with the holder of any certificate described in ORS 673.040 to 673.075, the  
29 holder of any public accountant's license, the holder of any registration described in ORS 673.160,  
30 the holder of any permit described in ORS 673.150 or the holder of any authorization described in  
31 ORS 673.153, under which the holder agrees to comply with conditions prescribed by the board.

32 (4) In addition to the causes in subsection (2) of this section, the board may take any of the  
33 actions described in subsection (1) of this section for dishonesty, fraud or misrepresentation not in  
34 the practice of public accountancy.

35 (5) In lieu of or in addition to any action described in subsection (1) of this section, the board  
36 may take any of the following actions:

37 (a) Require a holder of a permit under ORS 673.150 that provides compilation services or a  
38 business organization registered under ORS 673.160 to undergo a peer review conducted as the  
39 board may specify; or

40 (b) Require a holder of a permit under ORS 673.150 to complete any continuing professional  
41 education programs the board may specify.

42 (6) In the case of a registered business organization, the board may take any of the actions de-  
43 scribed in subsection (1) of this section for any of the following additional causes:

44 (a) The cancellation, revocation or suspension of, or refusal to renew, the authority to provide  
45 professional services, in this state or any other jurisdiction, of any partner, officer, shareholder,

1 member, manager or owner of the business organization; or

2 (b) The cancellation, revocation or suspension of, or refusal to renew, the authority of the  
3 business organization to practice public accountancy or provide other professional services in any  
4 other state or foreign jurisdiction.

5 (7) Notwithstanding any protective order issued under ORCP 36 C, upon motion of the board,  
6 the court shall order disclosure of materials or information subject to a protective order under  
7 ORCP 36 C. The board may use the material or information to take disciplinary action under this  
8 section.

9 **SECTION 11. ORS 297.670, 297.680, 297.701, 297.710, 297.720 and 297.730 are repealed.**

10 **SECTION 12. (1) The amendments to ORS 297.425 and 297.475 by sections 1 and 4 of this  
11 2005 Act do not apply to requests for development or revision and installation of accounting  
12 systems made to the Secretary of State prior to the effective date of this 2005 Act.**

13 **(2) The amendments to ORS 297.465 and 297.466 by sections 2 and 3 of this 2005 Act apply  
14 to municipal audits commenced prior to, on and after the effective date of this 2005 Act.**

15 **(3) The amendments to ORS 297.405, 297.740, 328.465 and 341.709 by sections 5 to 8 of this  
16 2005 Act and the repeal of ORS 297.670, 297.680, 297.701, 297.710, 297.720 and 297.730 by section  
17 11 of this 2005 Act apply to municipal audits commenced on and after the effective date of  
18 this 2005 Act.**

19 **(4) The amendments to ORS 673.165 by section 9 of this 2005 Act apply to persons con-  
20 ducting municipal audits on or after the effective date of this 2005 Act.**

21 **(5) The amendments to ORS 673.170 by section 10 of this 2005 Act apply to activities oc-  
22 ccurring prior to, on or after the effective date of this 2005 Act.**

23