

## DUTIES OF AUDITOR GENERAL

### House Bill 6557 (Substitute H-1) First Analysis (12-11-02)

**Sponsor: Rep. Bruce Patterson**  
**Committee: House Oversight and  
Operations**

#### ***THE APPARENT PROBLEM:***

As part of the rewriting of the state constitution in 1963, the office of auditor general was converted from an elected position to a position appointed by the legislature. The 1963 constitution requires the auditor general to conduct post audits of financial transactions and accounts of the state and of all branches, departments, offices, boards, commissions, agencies, authorities and institutions of the state, and to conduct performance post audits of those entities. It also authorizes the auditor general to make investigations pertinent to the conduct of audits, and requires the auditor general to report annually (and at other times as considered necessary) to the legislature and the governor. The constitution says that the auditor general "shall be assigned no other duties than those specified" in the constitution (Article 4, Section 53).

Accordingly, the Executive Organization Act of 1965 transferred all of the auditor general's powers (except those granted under the constitution) to the Department of Treasury. However, many statutes that referred to the auditor general were never amended to reflect these changes. During the past year, the legislature has passed a series of bills to remove references to the auditor general in a number of statutes where the powers and duties described have been transferred to the treasury department.

In particular, House Bill 5665, which became Public Act 370 of 2002, amended the Uniform System of Accounting Act, which prior to the 2002 public act included language requiring the auditor general to formulate and install a system of accounting for state government and county governments, required periodic auditing, authorized the auditor general to examine books and accounts, required state and county officials to provide access to their records, allowed the auditor general to issue subpoenas and compel testimony with regard to audits, and authorized the auditor general to employ staff. The recent legislation removed references to the auditor general and to accounting practices for state agencies,

and clarified that the state treasurer is responsible for developing an accounting system for county governments. (At the time House Bill 5665 was considered, it was noted that the Department of Management and Budget has responsibility for developing and implementing an accounting system for state government under the Management and Budget Act.)

However, by deleting all references to the auditor general in the Uniform System of Accounting Act, apparently the legislature inadvertently deleted the auditor general's office's statutory authority to conduct audits, examine records, compel testimony, and generally carry out its constitutional duties. Legislation has been introduced to restore these powers of the auditor general, notably subpoena power, which is used at times to secure necessary documents for audits. In addition, the Office of the Auditor General has proposed language to explicitly state its authority to access personnel, records, and information from state agencies. The auditor general has noted, in a position paper entitled "Authority to Access Records", dated October 1998, that state agencies have attempted to limit the auditor general's access to records on several bases and on several occasions over the years. However, the auditor general notes that its access to records has been consistently upheld by the attorney general. The auditor general's office has requested expanded statutory language to this end.

#### ***THE CONTENT OF THE BILL:***

The bill would create a new act to specify the powers and duties of the auditor general. (Article IV, Section 53 of the state constitution provides for the legislature to appoint an auditor general, who must be a licensed certified public accountant. The auditor general is charged with conducting post audits of financial transactions and accounts of the state and of all branches, departments, offices, boards, commissions, agencies, authorities and institutions of

the state. In addition, the auditor general is required to perform performance post audits of these entities.)

The bill would require the auditor general to conduct audits and examinations of all branches, departments, offices, boards, commissions, agencies, authorities, and institutions of the state. In connection with these audits, the auditor general would be authorized to examine the books, accounts, documents, records, activities, and affairs of each state entity, and of other entities and individuals receiving state funds or funds under state control, as necessary to audit state funds or funds under state control. Upon demand of the auditor general or his or her deputies or appointees, the officers and employees of all branches of state government and all state entities, as well as other entities and individuals receiving state funds or funds under state control, would be required to produce for examination all books, accounts, documents, and records of their activities and affairs, and to truthfully answer all questions relating to the records.

The bill states that the auditor general and his or her appointees would have unrestricted access to all personnel, records, and information that they consider necessary for the completion of an audit or examination. Disclosing information to the auditor general under this provision would not abrogate or waive any privilege or confidentiality that otherwise could be asserted to shield records from public access, including but not limited to the attorney-client privilege.

In connection with audits and examinations, the auditor general and his or her appointees could issue subpoenas, direct the service of a subpoena by a police officer, and compel the attendance and testimony of witnesses; could administer oaths and examine any person "as may be necessary", and could compel the production of books, accounts, papers, documents, and records. The subpoenas and orders could be enforced upon application to the circuit court.

The auditor general could employ and compensate auditors, examiners, and assistants as he or she considered necessary. These staff would be paid their necessary traveling expenses while engaging in their duties under the bill. The auditor general and deputy auditor general would be paid their actual traveling expenses incurred while engaging in the duties provided in the bill.

## ***BACKGROUND INFORMATION:***

Duties and operations of the Office of the Auditor General. The Office of the Auditor General's web site ([www.state.mi.us/audgen](http://www.state.mi.us/audgen)) provides information about the office's constitutional and statutory responsibilities, including financial audits, single audits, performance audits, and combined performance and financial audits. The site also contains the text of audit reports completed by the office.

## ***FISCAL IMPLICATIONS:***

Fiscal information is not available.

## ***ARGUMENTS:***

### ***For:***

The bill would restore statutory language that authorizes the office of the auditor general (an agency of the legislative branch) to perform its constitutional duties, including the power to subpoena witnesses and documents, and to attain necessary access to state agency records and employees. Because of the inadvertent elimination of some of its powers by the legislative approval of a package of legislation designed to clean up outdated references, the auditor general's office needs, at least, a restoration of those deleted powers. In addition, the agency is seeking an expansion of its statutory authorization so that it is clear that executive branch agencies are required to cooperate with the auditing process and provide open access to records and files. In recent years the auditor general has encountered resistance from some state agencies, including the Financial Institutions Bureau, the Department of Corrections, mental health institutions, state universities, and the Michigan Employment Security Commission. Some of the recalcitrance has been attributed to concerns about confidentiality, but clearly the confidentiality of certain records, including those subject to attorney-client privilege, extends to the auditor general's staff and this has not been an issue; the auditor general has examined such confidential records for over 35 years and has not had even one instance of release of confidential information. To this end, the bill contains specific language to protect the confidentiality of records. In order to perform its constitutional duties, the office of the auditor general needs unfettered access to records and files, and needs to use its resources in performing its duties rather than in going to court to enforce this access. Clear statutory authority will help avoid these legal issues.

***Against:***

Some are concerned with the breadth of the language of the bill. The bill would apply not just to state agencies, but to “other entities and individuals receiving state funds or funds under state control”, and would require these entities to open all of their “books, accounts, documents, and records of their respective activities and affairs”. It has been pointed out by representatives of local governments and of businesses that if, for example, a local government receives even one dollar of revenue sharing, or if a business receives a government contract accounting for a small amount of its business activity, the bill would allow the auditor general access to *all* of the records, books, etc. of that local government or business.

***Response:***

The Committee on House Oversight and Operations added language designed to limit the scope of the bill to meet these concerns, and further amendatory language is expected to be offered. The office of the auditor general points out the necessity, in certain cases, of having access to records beyond those pertaining to state funds. This would include cases in which a local government or organization is required to provide matching funds for a state grant; the auditors would need to examine other organizational funds to determine if matching requirements have been met.

***POSITIONS:***

The Office of the Auditor General supports the bill.  
(12-10-02)

Representatives of the Michigan Townships Association, the Michigan Municipal League, and the Michigan Manufacturer’s Association testified of concerns that the language of the bill is overly broad.  
(12-10-02)

Analyst: D. Martens

■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.