

DUTIES OF AUDITOR GENERAL

Senate Bill 160 (Substitute H-2) First Analysis (3-12-03)

Sponsor: Sen. Bruce Patterson
**House Committee: Government
Operations**
Senate Committee: Judiciary

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.

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, performance activities, and financial affairs of each

state entity. 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 would be required to produce for examination all books, accounts, documents, and records, and to truthfully answer all questions relating to the records.

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.

The bill would also provide that it would be a misdemeanor to give money, gifts, or other valuable items to an examiner, accountant, clerk, or other employee of the auditor general for the purpose of influencing the action of the examiner or other employee, or to prevent or delay an audit, examination, or report of the auditor general. Likewise, it would be a misdemeanor for a person employed by the auditor general to receive or solicit any money or item of value for those purposes. Both offenses would be punishable by a fine of from \$200 to \$1,000, imprisonment for 30 days to 6 months, or both fine and imprisonment.

HOUSE COMMITTEE ACTION:

The House Committee on Government Operations adopted a substitute for the bill that added definitions of several terms, including “audit” and “examination”.

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) 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:

According to the House Fiscal Agency, the bill has no fiscal implications. (3-10-03)

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. The bill’s language is similar to MCL 21.46 (the section in which the auditor general’s subpoena power was transferred to the state treasurer). Adding this language back into the statute would codify the constitutional authority of the auditor general to conduct audits and examinations of the financial records of governmental offices, and would require these offices to cooperate with the requests of the auditor general’s office in connection with audits and examinations.

POSITIONS:

The Office of the Auditor General supports the bill. (3-11-03)

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.