

Senate Fiscal Agency  
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**SFA****BILL ANALYSIS**

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Senate Bill 160 (as reported without amendment)  
Sponsor: Senator Bruce Patterson  
Committee: Judiciary

Date Completed: 2-20-03

### **RATIONALE**

When the State Constitution was rewritten in the early 1960s, the Office of Auditor General was converted from a position filled by an elected official to one filled by a legislative appointee. Article IV, Section 53 of the State Constitution of 1963 requires the Legislature to appoint an Auditor General, for an eight-year term. The Legislative Auditor General must conduct post audits and performance post audits of the financial transactions and accounts of the State and its departments, offices, agencies, boards, and commissions, and report at least annually to the Legislature and the Governor. Upon the direction of the Legislature, the Auditor General may employ independent accounting firms or legal counsel, and make investigations pertinent to the conduct of audits. Section 53 states that the Auditor General "shall be assigned no duties other than those specified in this section".

In the past, many statutes authorized the Auditor General to execute pay warrants, audit plats, perform duties related to property taxes, and perform many other functions. Public Act 43 of 1959 transferred the warrant functions of the Auditor General to the Department of Treasury. Further, the Executive Organization Act of 1965 transferred to the Department of Treasury all of the Auditor General's powers, except those granted in Article IV, Section 53 of the State Constitution, and abolished the office of elected auditor general. Despite that transfer of power, numerous statutes retained outdated language requiring the Auditor General to perform responsibilities that were transferred to the Department of Treasury. A series of amendments enacted in 2002 (Public Act 83 et al.) removed various statutory references to the Auditor General and replaced many of them with references to the State

Treasurer. One of those measures, Public Act 370 (House Bill 5665), which took effect on May 24, 2002, amended the uniform system of accounting Act to transfer to the State Treasurer the Auditor General's authority to issue subpoenas in connection with examinations of governmental entities (MCL 21.46). Consequently, the authority of the Auditor General to issue subpoenas in the course of conducting audits and examinations of government financial records was deleted. That deletion apparently was inadvertent, and the Auditor General's office has requested that its subpoena authority be reinstated.

### **CONTENT**

**The bill would create a new act to specify the responsibilities and authority of the Auditor General, which would include conducting audits and examinations of all State departments and agencies, issuing subpoenas, and compelling the production of documents.** "Auditor General" would mean the individual appointed to that office under Article IV, Section 53 of the State Constitution.

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 the audits and examinations, the Auditor General could examine, or cause to be examined, the books, accounts, documents, records, activities, and affairs of each of those bodies.

Upon demand of the Auditor General, deputy Auditor General, or any person appointed by the Auditor General to make audits and

examinations, the officers and employees of all branches, departments, offices, boards, commissions, agencies, authorities, and institutions of the State would have to produce for examination all books, accounts, documents, and records of their respective activities and affairs, and answer truthfully all questions relating to those materials.

The Auditor General, deputy Auditor General, or any person appointed to make audits and examinations could do any of the following:

- Issue subpoenas, direct the service of the subpoena by any police officer, and compel the attendance and testimony of witnesses.
- Administer oaths and examine any person, as necessary.
- Compel the production of books, accounts, papers, documents, and records.

The orders and subpoenas could be enforced upon application to any circuit court, as provided by law.

The Auditor General could employ and compensate auditors, examiners, and assistants as he or she considered necessary. In addition, the auditors, examiners, and assistants would have to be paid their necessary traveling expenses while engaging in the duties provided under the bill. The Auditor General and the deputy Auditor General also would have to receive their actual traveling expenses incurred while engaging in the duties provided under the bill. Compensation and expenses would have to be paid out of the funds appropriated for that purpose.

## **ARGUMENTS**

*(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)*

### **Supporting Argument**

The bill would restore the Auditor General's subpoena power, which was inadvertently deleted in a package of bills enacted last year that were designed to remove various obsolete references to the Office of Auditor General and its powers and duties. The Office of Auditor General apparently had held subpoena power since 1919, and had used the power judiciously. According to testimony before the Senate Judiciary Committee, the

Auditor General's subpoena power was rarely used and was recognized and enforced by the courts when necessary. Reportedly, judicial enforcement was needed only about three or four times in the last decade. The bill specifies that subpoenas issued under it could be enforced by the circuit court.

The bill also includes language similar in content to MCL 21.46 (the section in which the Auditor General's subpoena power was transferred to the State Treasurer). This would codify the constitutional authority of the Auditor General to conduct audits and examinations of the financial records of governmental offices, and specifies the duty of those offices to comply with requests of the Auditor General's office in connection with the audits and examinations.

Legislative Analyst: Patrick Affholter

## **FISCAL IMPACT**

The bill would have no fiscal impact on State or local government.

Fiscal Analyst: Bill Bowerman

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.