

Senate Fiscal Agency
P. O. Box 30036
Lansing, Michigan 48909-7536

SFA**BILL ANALYSIS**

Telephone: (517) 373-5383
Fax: (517) 373-1986
TDD: (517) 373-0543

Senate Bill 160 (as enrolled)
Sponsor: Senator Bruce Patterson
Senate Committee: Judiciary
House Committee: Government Operations

PUBLIC ACT 1 of 2003

Date Completed: 4-17-03

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 of the financial transactions and accounts of the State and its departments, offices, agencies, boards, and commissions, as well as performance audits of those bodies, and must 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 Despite that transfer of power, numerous statutes retained outdated language requiring the Auditor General to perform responsibilities that were transferred to the Department of Treasury.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 requested that its subpoena authority be reinstated. Public Act 370 also deleted reference to the Auditor General in provisions setting criminal penalties for bribing examiners and other employees and for those officials' receiving or soliciting a bribe. It was suggested that criminal penalties be reinstated for those actions.

CONTENT

The bill created a new act to specify the responsibilities and authority of the Auditor General, which include conducting audits and examinations of all State departments and agencies, issuing subpoenas, and compelling the production of documents. The bill also prohibits and specifies criminal penalties for giving or offering to any Auditor General employee any money or other thing of value to influence his or her actions. Similarly, the bill prescribes criminal penalties for an Auditor General employee who receives or solicits any money or other thing of value for the purpose of being influenced.

"Auditor General" means the individual appointed to that office under Article IV, Section 53 of the State Constitution. "Audit" means a post audit of financial transactions and accounts or performance audit described in Article IV, Section 53. "Examination" means an inquiry, compilation, or review within the scope of the Auditor General's authority under Article IV, Section 53.

Auditor General Activities & Subpoena Power

The bill requires 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 may examine, or cause to be examined, the books, accounts, documents, records, performance activities, and financial 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 must produce for examination all books, accounts, documents, and records of their respective branch, department, office, board, commission, agency, authority, and institution, and truthfully answer all questions relating to those materials.

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

- Issue subpoenas, direct the service of a 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 may be enforced upon application to any circuit court, as provided by law.

The Auditor General may employ and compensate auditors, examiners, and assistants as he or she considers necessary. In addition, the auditors, examiners, and

assistants must be paid their necessary traveling expenses while engaging in the duties provided under the bill. The Auditor General and the deputy Auditor General also must receive their actual traveling expenses incurred while engaging in the duties provided under the bill. Compensation and expenses must be paid out of the funds appropriated for that purpose.

Prohibitions & Criminal Penalties

The bill prohibits giving or offering to any examiner, accountant, clerk, or other Auditor General employee any money, gift, emolument, or thing of value for the purpose of influencing his or her actions in any matter relating to the examination of a public account, preventing or delaying the examination of a public account, or influencing the employee's action in framing, charging, withholding, or delaying any report of any examination of any public account. The bill also prohibits a person appointed by the Auditor General to make examinations or any officer, clerk, or other Auditor General employee, from receiving or soliciting any money, gift, emolument, or anything of value for the purpose of being influenced in the examination of a public account or being influenced to prevent or delay such an examination.

Both violations are punishable by a fine of not less than \$200 or more than \$1,000, imprisonment for at least 30 days but not more than six months, or both a fine and imprisonment.

MCL 13.101

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 restored the Auditor General's subpoena power, which was inadvertently deleted by legislation enacted in 2002 that was designed to remove 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. In addition to reinstating the Auditor General's subpoena power, the bill provides for the subpoenas to 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 codifies the constitutional authority of the Auditor General to conduct audits and examinations of the financial records and performance activities 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.

In addition, the bill restored prohibitions against and criminal penalties for bribing an examiner or other Auditor General employee and for solicitation or acceptance of a bribe by an examiner or other Auditor General employee. The violations and penalties specified in the bill are identical to those in MCL 21.51 and 21.52, which Public Act 370 of 2002 amended to replace references to Auditor General examiners and employees with references to Department of Treasury employees.

Legislative Analyst: Patrick Affholter

FISCAL IMPACT

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

Fiscal Analyst: Bill Bowerman

A0304's160ea

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.