

Legislative Analysis



TRANSPORTATION FUNDING AUDITS

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House Bill 5007

Sponsor: Rep. Pat Somerville

Committee: Transportation

Complete to 11-1-11

A SUMMARY OF HOUSE BILL 5007 AS INTRODUCED 9-27-11

The bill would amend Public Act 51 of 1951 (known as Act 51) to require that additional audit procedures and reporting requirements be developed for both county road commissions and cities and villages to determine whether transportation funds were expended in compliance with the act. These procedures and requirements would have to be developed by July 1, 2012, presumably by the Department of Treasury, and the department would have to report on them to the legislative committees on transportation issues by August 1, 2012.

House Bill 5007 would amend Section 12, Subsection 21, of Public Act 51 of 1951 regarding **county road commission**, and Section 13, Subsection 12, regarding **cities and villages**.

The amendment regarding cities and villages would also state that, *the audit procedures shall include a review of the road fund balance of the city or village. The cities and villages shall report their road fund balances by fund balance component. The department of treasury shall assist cities and villages to ensure that road fund balances are consistently classified.*

We note that in the context of the current language of Subsection 12 (21), and Subsection 13 (12) the term "department" would appear to reference the Michigan Department of Treasury. However, Section 10c of Act 51 indicates that as used in the act, "department" means the Michigan Department of Transportation."

FISCAL IMPACT:

There are currently three auditors assigned to the Department of Treasury's Local Audit Division; the division clearly does not have enough auditors to audit the 83 county road commissions and 535 cities and villages on a regular basis, let alone annually. Requiring regular Treasury performance audits of all local road agencies would require a significant increase in Treasury's local audit staff.

BACKGROUND DISCUSSION:

The Michigan Department of Treasury, under the Uniform Budgeting and Accounting Act (1968 PA 2), has authority and responsibility for prescribing uniform accounting

systems for all local units of government, including road commissions, cities, and villages. The department is also responsible for ensuring that local units are audited, either by private CPA firms or by Treasury auditors on a fee-for-service basis. Treasury prescribes auditing procedures and standards for those audits. The several constitutional and statutory authorities for these Treasury functions are referenced at the end of this memo.

In 1997, 1997 PA 79 amended 1951 PA 51 (Act 51) to give the Department of Treasury responsibility for "performance audits" of local road agencies. The language regarding county road commissions is found in Section 12, Subsection 21 of Act 51 (MCL 247.662): *"In addition to the financial compliance audits required by law, the department of treasury shall conduct performance audits and make investigations of the disposition of all state funds received by county road commissions [or] county boards of commissioners...to determine compliance with the terms and conditions of this act. Performance audits shall be conducted according to government auditing standards issued by the United States general accounting office."*

1997 PA 79 established similar audit requirements for cities and villages in Section 13, Subsection 12 (MCL 247.663).

Following the 1997 amendments to Act 51, boilerplate language in the FY 1997-98 transportation appropriations act required Treasury to perform "Act 51 audits": *"The department of treasury shall perform audits and make investigations of the disposition of all state funds received by county road commissions, or county boards of commissioners, as applicable, and cities and villages for transportation purposes for purposes of determining compliance with the terms and conditions of 1951 PA 51."* This language from Section 502 of 1999 PA 136 was retained in subsequent appropriations bills through the 2010-11 fiscal year budget 2010 PA 2010. It was not retained in the FY 2011-12 omnibus budget act, 2011 PA 63.

These statutory and appropriations boilerplate requirements were compatible and more-or-less covered the same ground.

What is the status of these Act 51 audit requirements?

The first Act 51 performance audit was issued in September 2000. The initial audit was of the Schoolcraft County Road Commission which had volunteered for the audit. Since September 2000, a total of 17 Act 51 performance audits have been issued. The department has not issued an Act 51 performance audit since September 2005.

The department's Local Audit Division performs these audits at times when they are not engaged doing fee-for-service audits. As mentioned earlier, there are currently three auditors assigned to the Department of Treasury's Local Audit Division; the division clearly does not have enough auditors to audit the 83 county road commissions and 535 cities and villages on a regular basis, let alone annually. Requiring regular Treasury

performance audits of all local road agencies would require a significant increase in Treasury's local audit staff.

No money has been appropriated to support this mandated Act 51 performance audit function. An attempt to fund this audit function in 1998 through a \$300,000 legislative transfer (DMB letter dated 9/10/98) was defeated at a September 22, 1998, House Appropriations meeting.

Citations

Article IX, Section 21 of the 1963 Constitution provides that:

"The legislature shall provide by law for the maintenance of uniform accounting systems by units of local government and the auditing of county costs by competent state authority and other units of government as provided by law."

Article IV, Section 53 of the 1963 Constitution establishes and describes the duties of the Auditor General. This section limits the duties of the Auditor General to state departments and agencies. As a result, the Auditor General may not perform "Act 51" or "performance" audits of local units. See Attorney General Opinion No. 6970 dated January 28, 1998.

Note that in 1976, the Michigan Court of Appeals ruled that the Michigan State Highway Commission did not have authority to perform "Act 51" or performance audits of local units. See *County Road Association v. State Highway Commission*, 68 Mich. App. 390; 242 N.W.2d 786; 1976 Mich.

MCL 21.41 as amended by MCL 16.180 (Executive Reorganization Act) requires that the Michigan State Treasurer prescribe a uniform system of accounting and reporting for county governments. The Treasurer is also required to examine those accounts.

Department of Treasury Audit Requirements

MCL 141.421 - 141.437 (Uniform Budgeting and Accounting Act)

MCL 224.26 - 224.32 (Michigan Highway Law)

These acts give the Michigan State Treasurer responsibility for the establishment of accounting policies and procedures for all local units of government. The Treasury Department is also responsible for ensuring that local units are audited, either by a public accounting firm or by the Michigan Department of Treasury. The Department of Treasury is also responsible for the establishment of minimum auditing procedures and standards.

These acts require that the audits of local units:

- Be performed in accordance with Generally Accepted Auditing Standards (GAAS) and the standards prescribed by the State Treasurer.
- State that the financial statements have been prepared in accordance with Generally Accepted Accounting Principles (GAAP) and any applicable rules and regulations of any state department or agency.
- Disclose and describe any material deviations from GAAP or from applicable rules and regulations.
- Disclose any fiscal irregularities, defalcations, misfeasance, or malfeasance which came to the auditor's attention.

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■ 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.