

AMENDMENTS TO AUDITOR GENERAL STATUTE

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House Bill 4259 (reported from committee w/o amendment)

Sponsor: Rep. Joseph Graves

Committee: Oversight

Complete to 3-22-17

Analysis available at
<http://www.legislature.mi.gov>

SUMMARY:

The bill would amend Public Act 1 of 2003, which specifies in statute the powers and duties of the auditor general. Section 1 of that act says,

"...the auditor general may examine, or cause to be examined, the books, accounts, documents, records, performance activities, and financial affairs of each branch, department, office, board, commission, agency, authority, and institution of this state."

The bill would specify in statute that this applies to access to and the examination of *confidential information* of each branch, department, office, board, commission, agency, authority, and institution of the state. Also the bill would add "*electronically stored information*" to the list of the kinds of information the auditor general can examine (in addition to books, accounts, documents, records, performance activities, and financial affairs). Further, the bill adds the term "*access*" to the current "*examine*."

Representatives of the auditor general say that these updates to statute affirm and reinforce that the office's constitutional authority to access information includes access to confidential information and electronically stored information, and revise language to reflect the use of information technology systems.

Under a new provision added by the bill, both of the following would apply to confidential information obtained:

- The auditor general is subject to the same duty of confidentiality imposed by law on the entity providing confidential information.
- The auditor general is subject to any civil or criminal penalties imposed by [other laws] for willfully and intentionally disclosing confidential information.

The bill would also add to the beginning of Section 1: "notwithstanding any other provision of law to the contrary, except as provided in Subsection (8). . ." Subsection (8) would be newly added to the bill and specifies that the act does not authorize the auditor general to access or examine records or information subject to the attorney-client privilege or any other privilege recognized by the constitution, statute, court rule, or rules adopted by the Senate or House of Representatives.

The bill also would rewrite several sections of the act dealing with misdemeanor penalties without making a substantive change.

BACKGROUND:

Constitutional provisions on 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.

FISCAL IMPACT:

The bill does not appear to have a significant direct fiscal impact.

BRIEF DISCUSSION ON THE ISSUES:

State departments and agencies collect and maintain a great deal of information on a broad array of topics. Though much of the information is accessible even by the general public, access to some is limited by statute due to its sensitive nature. Under Michigan law, the unlawful disclosure of nonpublic information to unauthorized persons may subject an individual to criminal, civil, and/or administrative penalties.

As discussed above, the enabling legislation for the Office of Auditor General (OAG), Public Act 1 of 2003, authorizes access to financial records and performance activities of state entities. Yet, according to testimony presented by representatives of the OAG, the office on occasion has experienced delays in accessing records due to worker's concerns pertaining to the safety of releasing confidential information to it. Without the information, the office cannot provide audit oversight as tasked by Public Act 1 and the state Constitution.

The bill addresses the issue by clarifying, affirming, and reinforcing in statute that the OAG's authority to access information includes confidential information and also information that is stored electronically. The bill also holds the OAG to the same confidentiality standards that apply to the entity providing the information. Further, by placing the clarifying language in the OAG statute, it saves the Legislature from amending the nearly 200 statutory laws restricting disclosure of information.

POSITIONS:

A representative of the Office of Auditor General testified in support of the bill. (3-9-17)

The Department of Technology, Management and Budget has not taken a formal position on the bill. (3-9-17)

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