

Legislative Analysis



AMENDMENTS TO AUDITOR GENERAL STATUTE

Phone: (517) 373-8080
<http://www.house.mi.gov/hfa>

House Bill 4336 as introduced
Sponsor: Rep. Steven Johnson

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

House Bill 4574 as introduced
Sponsor: Rep. David LaGrand

Committee: Oversight
Complete to 5-10-19

BRIEF SUMMARY:

House Bill 4336 would clarify the auditor general's authority to access and examine electronically stored information and confidential information held by state entities.

House Bill 4574 would clarify that the explicit authority granted to the auditor general to access records held by state entities contained in a statutory provision (e.g., HB 4336) could not be used to interpret any other statutory provision that does not explicitly allow that access as preventing the auditor general from accessing records.

DETAILED SUMMARY:

Section 53 of Article IV 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.

House Bill 4336 would amend 2003 PA 1, which specifies in statute the powers and duties of the auditor general. Subsection (2) of section 1 of the act says,

...[T]he 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 add the term "access" to the current "examine," and would state that the powers and duties of the auditor general are "[a]s provided for in section 53 of Article IV of the State Constitution of 1963." The bill would also add "electronically stored information" to the kinds of information the auditor general can examine (in addition to books, accounts, documents, records, performance activities, and financial affairs).

The bill would further 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.

Confidential information would mean information that is subject to a legal duty to not disclose its contents.

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

- 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] law for willfully and intentionally disclosing confidential information.
- Notwithstanding any other provision of law to the contrary, state officers and employees of all branches, departments, offices, boards, commissions, agencies, authorities, and institutions of the state are not subject to civil or criminal penalties imposed by state law for providing information requested by the auditor general.

The bill would also add to the beginning of subsection (2): “Notwithstanding any other provision of law to the contrary, except as provided in subsection (10) or where the auditor general’s access is expressly limited by law...” Subsection (10) would be added by 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.

In addition, the entity providing the information to the auditor general would be responsible for paying all costs to produce it, and state officials and employees could not restrict the auditor general’s access to information requested regardless of whether the information was sought for the purpose of performing an audit of another state program or agency. Further, all working papers and records of the auditor general in connection with audits and examinations would be exempt from public disclosure under the Freedom of Information Act.

The bill would also rewrite, without making a substantive change, provisions of the act concerning misdemeanor penalties.

MCL 13.101

House Bill 4574 would add a new section to Chapter 1 of the Revised Statutes of 1846, entitled “Of the Statutes.” The bill would specify that any statutory provision that explicitly allows the auditor general to access records (as HB 4336 would do) could not also be used to interpret any other statute that does not have that explicit allowance as preventing the auditor general from accessing records.

The bill is tie-barred to House Bill 4336, meaning that HB 4574 could not take effect unless HB 4336 were also enacted into law.

Proposed MCL 8.6a

BACKGROUND:

House Bill 4336 is a reintroduction of HB 4259 of the 2017-18 legislative session. The bill was passed by both chambers and ordered enrolled, but was vetoed by the governor.¹ In his veto message, Governor Snyder said that he believed HB 4259 to be “well intentioned” but nevertheless “an unconstitutional overreach that would blur the separation between the legislative and other branches.”²

FISCAL IMPACT:

House Bill 4336 does not appear to have a significant direct fiscal impact. The bill would require departments to bear the costs of supplying any additional information. It is likely that any marginal costs incurred by departments or agencies would be covered under current appropriation levels.

House Bill 4574 would have no fiscal impact on state or local government.

Legislative Analyst: Susan Stutzky
Fiscal Analyst: Ben Gielczyk

■ 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.

¹ See <http://www.legislature.mi.gov/documents/2017-2018/billanalysis/House/pdf/2017-HLA-4259-E3EBCCC6.pdf>

² https://www.michigan.gov/documents/snyder/House_Bill_4259_veto_letter_641858_7.pdf