



Senate Fiscal Agency
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BILL ANALYSIS



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Senate Bill 201 (as introduced 3-12-19)
Senate Bill 404 (as introduced 8-20-19)
Sponsor: Senator Aric Nesbitt (S.B. 201)
Senator Ed McBroom (S.B. 404)
Committee: Oversight

Date Completed: 10-14-19

CONTENT

Senate Bill 201 would amend Public Act 1 of 2003, which provides for the audit and examination of the State and State funds, to do the following:

- Specify that, notwithstanding any provision of law to the contrary or in which the Auditor General's access was limited by law, the Auditor General would be authorized to access and examine, or caused to be accessed and examined, in addition to material the Auditor General is currently authorized to examine, electronically stored information and confidential information of each State branch, department, office, agency, and institution.
- Specify that the Auditor General would be subject to the same duty of confidentiality imposed by law on the entity providing the confidential information, and to any civil or criminal penalties imposed for willfully and intentionally disclosing that information.
- Specify that State officers and employees would not be subject to civil or criminal penalties for providing information requested by the Auditor General.
- Require a State branch, department, office, board, commission, agency, authority, or institution to provide the Auditor General with unrestricted access to materials currently specified under the Act, as well as electronically stored information, and confidential information.
- Specify that the entity providing the information to the Auditor General would be responsible for paying all costs to produce it.
- Prohibit State officers and employees from restricting the Auditor General's access to requested information regardless of whether the information was sought for the purpose of performing an audit of another state program or agency.
- Authorize the Auditor General to compel the production of electronically stored information and confidential information.
- Specify that the Act would not authorize the Auditor General to access or examine records or information subject to the attorney-client privilege.
- Specify that the Auditor General's working papers and records would be exempt from the Freedom of Information Act.

Senate Bill 404 would amend Revised Statutes 1 of 1846 to specify that any statutory provision that explicitly allowed the Auditor General to access records could not be used to interpret any other statute without that explicit allowance as preventing the Auditor General from accessing records.

Senate Bill 404 is tie-barred to House Bill 4336, which would make substantially the same changes as Senate Bill 201.

Senate Bill 201 is described in greater detail below.

Public Act 1 of 2003 requires the Auditor General to conduct audits and examinations of all State branches, departments, offices, boards, commissions, agencies, authorities, and institutions. In connection with those 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 branch, department, office, board, commission, agency, authority, and institution of the State. Under the bill, this would apply notwithstanding any other provision of law to the contrary, except as provided in the bill for records subject to the attorney-client privilege or where the Auditor General's access is expressly limited by law. Also, under the bill the Auditor General could access and examine, or caused to be accessed and examined, those materials, as well as electronically stored information, including confidential information of each State branch, department, office, board, commission, agency, authority, and institution. All of the following would apply to confidential information obtained as described above:

- The Auditor General would be subject to the same duty of confidentiality imposed by law on the entity providing the confidential information.
- The Auditor General would be subject to any civil or criminal penalties imposed by law for willfully and intentionally disclosing the 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 would not be subject to civil or criminal penalties imposed by State law for providing information requested by the Auditor General.

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

The Act specifies that upon the Auditor General's demand, the Deputy Auditor General or a person appointed by the Auditor General to make an audit or examination, the officers and employees of all State branches, departments, offices, boards, commissions, agencies, authorities, and institutions must produce for examination all books, accounts, documents, and records, and must truthfully answer all questions related to those materials. Under the bill, a State branch, department, office, board, commission, agency, authority, or institution would have to produce or provide for unrestricted access and examination of all of those materials, and electronically stored information, including confidential information, as well as answer truthfully all questions relating to those materials. The entity providing the information to the Auditor General under the Act would be responsible for paying all costs to produce the information.

State officers 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.

Under the Act, in connection with an audit or examinations, the Auditor General, Deputy Auditor General, or a person appointed to make an audit or examination may, among other things, compel the production of books, accounts, papers, documents, and records. Under the bill, the Auditor General also could compel the production of electronically stored information, including confidential information.

The bill would not authorize the Auditor General to access or examine information subject to the attorney-client privilege.

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.

MCL 13.101 (S.B. 201)
Proposed MCL 8.6a (S.B. 404)

Legislative Analyst: Stephen Jackson

FISCAL IMPACT

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

Fiscal Analyst: Joe Carrasco

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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.