

SENATE BILL NO. 201

March 12, 2019, Introduced by Senator NESBITT and referred to the Committee on Oversight.

A bill to amend 2003 PA 1, entitled

"An act to provide for the audit and examination of this state and state funds; to provide for the audit and examination of the books and accounts of all branches, departments, offices, boards, commissions, agencies, authorities, and institutions of this state; to prescribe powers and duties of certain state officers and employees; to provide for access to certain records; to provide for the subpoena of witnesses and production of documents and records; to prescribe penalties; and to provide for the administration of this act,"

by amending the title and section 1 (MCL 13.101).

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

TITLE

An act to provide for the audit and examination of this state and state funds; to provide for the audit and examination of the books and accounts of all branches, departments, offices, boards, commissions, agencies, authorities, and institutions of this state; to prescribe powers and duties of certain state officers and employees; to provide for access to ~~certain~~ records; to provide for the subpoena of witnesses and production of documents and records; to prescribe penalties; and to provide for the administration of this act.

Sec. 1. (1) ~~The~~ **As provided for in section 53 of article IV of the state constitution of 1963, the** auditor general shall conduct audits and examinations of all branches, departments, offices, boards, commissions, agencies, authorities, and institutions of this state.

(2) ~~In~~ **Notwithstanding any other provision of law to the contrary except as provided in subsection (10) or where the auditor general's access is expressly and specifically limited by law, in** connection with the audits and examinations described in this act, the auditor general may **access and** examine, or cause to be **accessed and** examined, the books, accounts, documents, records, **electronically stored information**, performance activities, and financial affairs, **including, but not limited to, confidential information**, of each branch, department, office, board, commission, agency, authority, and institution of this state. **All of the following apply to confidential information obtained under this subsection:**

(a) The auditor general is subject to the same duty of confidentiality imposed by law on the entity providing the

1 confidential information.

2 (b) The auditor general is subject to any civil or criminal
3 penalties imposed by law for willfully and intentionally disclosing
4 that confidential information.

5 (c) Notwithstanding any other provision of law to the
6 contrary, state officers and employees of all branches,
7 departments, offices, boards, commissions, agencies, authorities,
8 and institutions of this state are not subject to civil or criminal
9 penalties imposed by state law for providing information requested
10 by the auditor general.

11 (3) Upon demand of the auditor general, deputy auditor
12 general, or any ~~person~~**individual** appointed by the auditor general
13 to make the audits and examinations provided in this act, the
14 officers and employees of all branches, departments, offices,
15 boards, commissions, agencies, authorities, and institutions of
16 this state shall produce **or provide** for **unrestricted access and**
17 examination all books, accounts, documents, ~~and~~**records, and**
18 **electronically stored information, including, but not limited to,**
19 **confidential information,** of their respective branch, department,
20 office, board, commission, agency, authority, and institution and
21 truthfully answer all questions relating to their books, accounts,
22 documents, ~~and~~**records, and electronically stored information,**
23 **including, but not limited to, confidential information,** of their
24 respective activities and affairs.

25 (4) The entity providing the information to the auditor
26 general under this act is responsible for paying all costs to
27 produce the information.

28 (5) State officers and employees shall not restrict the
29 auditor general's access to information requested regardless of

1 whether the information is sought for the purpose of performing an
2 audit of another state program or agency.

3 (6) ~~(4)~~—In connection with audits and examinations described
4 in this act, the auditor general, deputy auditor general, or any
5 ~~person-individual~~ appointed to make audits and examinations may
6 issue subpoenas, direct the service of the subpoena by any police
7 officer, and compel the attendance and testimony of witnesses; may
8 administer oaths and examine any ~~person-individual~~ as may be
9 necessary; and may compel the production of books, accounts,
10 papers, documents, ~~and~~ records, and electronically stored
11 information, including, but not limited to, confidential
12 information. The orders and subpoenas issued by the auditor
13 general, deputy auditor general, or any ~~person-individual~~ appointed
14 with the duty of making the examinations provided in this
15 subsection may be enforced upon application to any circuit court as
16 provided by law.

17 (7) ~~(5)~~—The auditor general may employ and compensate
18 auditors, examiners, and assistants as he or she considers
19 necessary. In addition, the auditors, examiners, and assistants
20 ~~shall-must~~ be paid their necessary traveling expenses while
21 engaging in the duties provided under this act. Compensation and
22 expenses ~~shall-must~~ be paid out of the funds appropriated for that
23 purpose. The auditor general and the deputy auditor general ~~shall~~
24 **must** receive their actual traveling expenses incurred while
25 engaging in the duties provided under this act, which ~~shall-must~~ be
26 paid out of the funds appropriated for that purpose.

27 (8) ~~(6)~~—Any ~~person-individual~~ who gives or offers to any
28 examiner, accountant, clerk, or other employee of the auditor
29 general, any money, gift, emolument, or thing of value for the

1 purpose of influencing the action of the examiner or other
 2 employee, in any matter relating to the examination of any public
 3 account authorized by this act, or for the purpose of preventing or
 4 delaying the examination of any public account, or for the purpose
 5 of influencing the action of the examiner or other employee, in
 6 framing, changing, withholding, or delaying any report of any
 7 examination of any public account, is guilty of a misdemeanor ~~7~~
 8 punishable by **imprisonment for not less than 30 days or more than 6**
 9 **months, or** a fine of not **less than \$200.00 or** more than \$1,000.00,
 10 ~~nor less than \$200.00, or imprisonment for not more than 6 months~~
 11 ~~and not less than 30 days, or both.~~

12 (9) ~~(7)~~ Any ~~person~~ **individual** appointed by the auditor general
 13 to make the examinations provided for under this act, or any
 14 officer, clerk, or other employee of the auditor general, who
 15 receives or solicits any money, gift, emolument, or anything of
 16 value for the purpose of being influenced in the matter of the
 17 examination of any public account authorized by this act, or for
 18 the purpose of being influenced to prevent or delay the examination
 19 of any public account, is guilty of a misdemeanor ~~7~~ punishable by
 20 **imprisonment for not less than 30 days or more than 6 months, or** a
 21 fine of not **less than \$200.00 or** more than \$1,000.00, ~~and not less~~
 22 ~~than \$200.00, or imprisonment for not more than 6 months and not~~
 23 ~~less than 30 days, or both.~~

24 (10) This act does not authorize the auditor general to access
 25 or examine records or information subject to the attorney-client
 26 privilege.

27 (11) All working papers and records of the auditor general in
 28 connection with audits and examinations are exempt from public
 29 disclosure under the freedom of information act, 1976 PA 442, MCL

1 15.231 to 15.246.

2 (12) ~~(8)~~—As used in this act:

3 (a) "Audit" means a post audit of financial transactions and
4 accounts or performance audit as described in section 53 of article
5 IV of the state constitution of 1963.

6 (b) "Auditor general" means the individual appointed auditor
7 general under section 53 of article IV of the state constitution of
8 1963.

9 (c) "Confidential information" means information that is
10 subject to a legal duty to not disclose its contents.

11 (d) ~~(e)~~—"Examination" means an inquiry, compilation, or review
12 within the scope of the auditor general's authority under section
13 53 of article IV of the state constitution of 1963.