



OAG

Office of the Auditor General

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House Bill 4336 and 4574

OVERALL PURPOSE

- The bill seeks to update the current law to clarify, affirm, and reinforce our Constitutional audit authority to access State-held data including confidential and electronically stored information. Access to records dates back to 1919 when law required all officers of the State government to produce the books of account and papers of their respective departments upon demand of the Auditor General.
- The bill does not give the Auditor General new authority.
- This bill codifies Attorney General Kelley Opinion 6749 published in 1993, that the Auditor General possesses entirely separate constitutional and statutory authority for demanding access to records, including records that would otherwise be deemed confidential and that the confidentiality laws in specific statutes are binding on the OAG to prohibit further disclosure.
- With passage and enactment of these bills, the legislature can ensure that the OAG will have the necessary access to agency records in connection with an audit and would not have to amend over 100 existing and all future State laws related to confidential information. It would also negate the need to potentially address other laws governing over 600 projects in our audit universe.
- The bill also makes our statute more consistent with other State audit offices across the country with respect to the confidential and electronic information language. The OAG identified 46 states with statutory language mentioning access to all or any records and 19 specifying that the access includes confidential records.

WHY NEEDED

- Independent access to all records of a program in connection to an audit or examination is necessary to objectively assess the true effectiveness and/or efficiency of state operations.
- Independent access to all records of a program in connection to an audit or examination is imperative to maintaining the integrity of the audit process.
- Recently, an unpublished court of claims opinion indicated that conflicting statute could exist between the OAG's enabling legislation, which is broad in nature so that it covers all government operations and laws regarding program records that may be more specific in nature. That said, the individual confidentiality laws could prevail if not clarified and reinforced through these statutory improvements.
- Over the years, we periodically face questions about access to records that have been resolved without a subpoena, but it still takes a lot of time on the part of our office and the agency to resolve. These bills help ensure the efficiency and effectiveness of our audit operations and of our audit reports submitted to the legislature and public.
- If access to records is denied, it could render a program un-auditable and severely limit the legislature's independent oversight. In other words, if we don't audit the records, who will?

HB 4336 AND 4574 AMENDMENTS:

NOTWITHSTANDING ANY OTHER LAW UNLESS EXPRESSLY LIMITED

- This affirms legislative intent that "all" in current statute means all records that we need to see in connection to an audit.
- Leaves in the Legislature's hands the ability to expressly and specifically limit our access to information.
- We are not aware of a single instance in law that limits our access but they have the prerogative.

SAME DUTY OF CONFIDENTIALITY

- The OAG keeps confidential information secure through several means.
- Our duty to protect confidential information and any penalties prescribed for a release is the same as the data custodian (i.e. the State agencies).
- This is our current practice. We asked to place in law for transparency.

EMPLOYEE WILL NOT BE IN VIOLATION OF AN LAW WHEN PROVIDING

- The intention of confidentiality and privacy laws is not to prevent oversight of government programs.
- Understandably, program management and staff may wonder whether they are breaking the law by providing us information to execute our Constitutional mandate.
- These amendments would clarify that providing confidential information to the OAG for an audit purpose does not violate confidentiality provisions in other laws, without having to amend multiple statutes related to disclosure of confidential information.

AGENCY TO PROVIDE INFORMATION AT NO COST

- Paying for audit records impairs our independence per auditing standards.
- Our costs are typically not significant, because we either access the information directly or receive data downloads of the information then internally analyze it.
- A discussion with an auditee about the cost to produce data could become another mechanism for delaying audit progress.

USING AGENCY INFORMATION FOR ANOTHER AGENCY AUDIT

- One of the best sources of evidence that we use as auditors is the extensive amount of data that exists within the State's data warehouse and data centers.
- This amendment would codify our current practice to cross match databases to evaluate and recommend improvements to operations, and efficiency in State spending.
- This issue was also addressed by the Kelley Opinion, which concluded that the auditor general may access records of one agency when performing an auditor of other state programs or agencies.

ATTORNEY-CLIENT PRIVILEGE RECORDS

- Provides a carve-out for these records. Although we find minimal audit value in records that are truly attorney client privilege documents, it again attempts to clarify the scope of our data access authority.

WORKING PAPERS/RECORDS NOT PUBLIC DOCUMENTS

- Provides an additional layer of protection for confidential records.
- Directs the public information request to the custodian agency who is best able to address what should and should not be publically released.
- We do and will continue to provide information that appears in our reports, such as the locales where certain errors were encountered, or where appropriate, details related to exceptions identified in a particular finding.