HOUSE . . . . . No. 4603

The Commonwealth of Massachusetts

HOUSE OF REPRESENTATIVES

REPORT
of the
SPECIAL JOINT
COMMITTEE
on
INITIATIVE PETITIONS
on the
INITIATIVE PETITION
of
DIANA DIZOGLIO
AND OTHERS
FOR THE PASSAGE OF AN ACT
EXPRESSLY AUTHORIZING THE AUDITOR
TO AUDIT THE LEGISLATURE (see House, No. 4251)

April 30, 2024.

MAJORITY REPORT.

A majority of the Special Joint Committee on Initiative Petitions ("The Committee") recommends that the Initiative Petition 23-34, House 4251, "An Act expressly authorizing the Auditor to audit the Legislature," ("the Initiative Petition") as currently drafted and presented to this Committee, OUGHT NOT TO BE ENACTED BY THE LEGISLATURE AT THIS TIME.

The purpose of this report is to provide a recommendation to the full legislature on whether to accept the Initiative Petition as written for consideration and enactment.

The proposed Initiative Petitions would give the Auditor authority to audit the finances and workings of the state legislature.

Testimony

The Committee heard from experienced professionals, proponents and opponents of the Initiative Petition, as well as members of the general public.

The Committee first heard testimony from experienced professionals. Christopher Rogers, CPA and Managing Principal, State and Local Government at the accounting firm CliftonLarsonAllen LLC, testified that his firm conducted audits of the Massachusetts House and Senate. He was followed by the Comptroller of the Commonwealth, William McNamara, who explained the responsibilities of his office including the administration of the Commonwealth's Financial Records Transparency Program. The Committee then heard from two academics. David C. King, Senior Lecturer in Public Policy at the Harvard Kennedy School of Government, and Jeremy Paul, Professor of Law at Northeastern University, provided testimony relating to the constitutional issues raised by the Initiative Petition

The Auditor, Diana DiZoglio, testified in support of the Initiative Petition as did a panel consisting of former Representative Daniel Winslow, Mary Connaughton of the Pioneer Institute, and Paul Craney of Massachusetts Fiscal Alliance.

Former Auditor Suzanne Bump and Jerold J. Duquette, Professor of Political Science at Central Connecticut State University, testified in opposition to the amendment.

Conclusion

The statutory change would undermine the well-contemplated balance of constitutional powers between the branches of government as established by the framers of the Constitution of the Commonwealth. As David C. King, Senior Lecturer in Public Policy at the Harvard Kennedy School and Faculty Chair of Harvard's Bi-Partisan Program for Newly Elected Members of the U.S. Congress, testified during The Committee's public hearing ". . . I want to warn voters and this Legislature that House 4251 is exceptionally unwise . . . the Massachusetts separation of powers became foundational for our national constitution. The Auditor's proposal chips away at this foundation. I do believe it is that

dire. The Auditor is proposing an unprecedented transfer of power from the people's representatives into the Executive Branch."

The Office of the State Auditor is a member of the Executive Branch of the government of the Commonwealth. Both the United States Constitution and the Massachusetts Constitution enshrine the separation of powers among the three branches of government, while creating various checks and balances on those powers. What this Initiative Petition seeks to do, however, is to transfer, by statute, authority explicitly vested by the constitution in the legislative branch, not to the electorate, but to the executive branch thereby violating the foundational constitutional principle of separation of powers. As Jeremy R. Paul, Professor of Law at Northeastern University, stated in testimony submitted to The Committee "I believe there are strong reasons to conclude that it would be such an overreach and thus there is a significant likelihood that Massachusetts courts would be forced to invalidate a statute adopted by the Initiative Petition that tracks the current language."

Notably, a recent action taken by the Trial Court supports the conclusion that the Auditor's proposed audit of the General Court would violate the separation of powers established in the Massachusetts Constitution. In a letter sent to the Office of the State Auditor on August 24, 2023, the Trial Court wrote that it was declining to continue responding to requests related to an audit of the Trial Court's Office of Jury Commissioner. Although the Trial Court, like the General Court, is a part of a separate branch of government from the Auditor and therefore not subject to the Auditor's authority, it nevertheless consented to the Auditor's request for an audit. It was only after the Auditor unilaterally expanded the scope of her audit that the Trial Court rescinded its consent, making clear that the Auditor had exceeded her authority and violated the separation of powers principle.

In a representative democracy, power rests with the constituents who elect their Representatives and Senators and hold them accountable. Rather than achieve its stated goals, the proposed the Initiative Petition would limit the power of the voters who elect Members of the Legislature by expanding the powers of the Executive Branch; essentially, the Auditor would supplant the people for herself in holding the Legislature accountable. In fact, a member of the panel that testified in support of the Initiative Petition, former Representative Dan Winslow, indicated that if the Initiative Petition was approved by voters, it would most likely be challenged on constitutional grounds, as the language is overly broad. He went on to suggest that the Legislature should change the Initiative Petition, so it did not "intrude on core legislative functions."

It is for these reasons that the Commonwealth's chief law enforcement officer, Attorney General Andrea Campbell, in evaluating the Auditor's assertion of authority to audit all functions of the legislative branch, declared that the proposal "raise[d] separation of powers issues" and "constitutional concerns" about impermissible interference with or encroachment on "powers uniquely granted to the Legislature."

The House and Senate, under their individual governing rules, require a yearly financial audit conducted by an independent auditing firm. These audit reports are available to the public.

The Legislature's financial records and accounts are available on the Commonwealth's Financial Records Transparency Platform ("CTHRU"), administered by William McNamara, Comptroller of the Commonwealth, who testified at The Committee's public hearing. CTHRU includes detailed and comprehensive information regarding payroll, expenditures, and other financial information, including the amounts paid to state vendors. Additionally, all legislative sessions and committee hearings are live-streamed and recorded and can be found on the General Court's website. Access to information about all bills and amendments, including roll call votes and journals and calendars from the House and Senate are also available online.

As part of her testimony in support of the Initiative Petition, Auditor DiZoglio shared a visual representation of documents she described as past audits to claim precedent exists for auditing the Legislature. However, further research established that 74 of those 113 audits (many of which date back to the 19th century) were mere financial accounting reports similar to what is now publicly available on the Comptroller's CTHRU website. The remainder are the financial statements of specific divisions within the Legislature. As Attorney General Campell has stated, despite the existence of numerous Auditor's reports on certain discrete activities or entities within the legislative branch, there is "no historical precedent at all for the type of audit the [Auditor] seeks to conduct now: a sweeping audit of the Legislature over its objection, which would include review of many of its core legislative functions."

The majority of The Committee notes that the Auditor, during her campaign and in public statements, has frequently cited perceived political mistreatment in the Legislature. Suzanne Bump, former Auditor of the Commonwealth, testified that the proper subject of government audits are government programs authorized by the Legislature to serve public purposes, not the functions of the legislative branch of government. As Bump stated, because the Massachusetts Constitution enables the Legislature to govern itself through its own rules and procedures, there are no *objective* criteria by which the Auditor can assess it; such an audit would be inherently subjective and thus inconsistent with well-established auditing standards. In addition, Auditor DiZoglio lacks the objectivity required to audit the Legislature in accordance with the Generally Accepted Government Auditing Standards (GAGAS), also known as the Yellow Book, due to the Auditor's recent service in the Legislature, as well as the clear prejudice that the Auditor has publicly expressed against the Legislature.

For these reasons, we, the majority of the Special Joint Committee on Initiative Petitions, recommend that "An Act expressly authorizing the Auditor to audit the Legislature" (see House No. 4251) as currently drafted and presented to this Committee, OUGHT NOT TO BE ENACTED BY THE LEGISLATURE AT THIS TIME.

Senators.	Representatives.
Cindy F. Friedman	Alice Hanlon Peisch
Paul R. Feeney	Michael S. Day
Jason M. Lewis	Kenneth I. Gordon