

LEGISLATIVE SUBPOENAS AND INVESTIGATIONS

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House Bills 4431 & 4432 as introduced

Sponsor: Rep. Joseph Graves

Committee: Oversight

Complete to 4-26-17

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

SUMMARY:

Each bill deals with the subpoena power of legislative committees. Taken together, generally speaking, House Bills 4431 and 4432 would limit the power of a committee to subpoena records and files to "the committee authorized by each house of the Legislature to receive and review auditor general reports," while allowing other legislative committees to pursue subpoena power via a resolution passed by one house of the Legislature or jointly by both houses. House Bill 4431 also would allow for the subpoena of records of local units of government.

House Bill 4431 would amend Public Act 46 of 1952 (MCL 4.541) to modify which committees of the Legislature can wield subpoena power, as well as which entities can be subpoenaed by those committees. Currently, under that act, any standing or select committee of the House and Senate, or any joint select committee of the House and Senate, may subpoena the files and records of any state department, board, institution, or agency.

The bill would change this so that only the committee "authorized by each house of the legislature to receive and review auditor general reports" may subpoena the records and files of any state department, board, institution, or agency, and such committees also would be authorized to subpoena the records and files of any department, board, institution, or agency of a local unit of government. In order to subpoena records and files from a local unit of government, the majority of the members of that committee must make an affirmative and informed¹ vote, with at least one of the affirmative votes coming from a member of the minority party.

The term "local unit of government" would refer to a county, city, village, township, school district, intermediate school district, community college district, or local authority.

Under the bill, service of a subpoena must be made at least seven days before the date fixed in the subpoena for the production of records unless a shorter period is authorized by a majority vote of all the members of the committee, with at least one of the affirmative votes coming from a member of the minority party. Any person who fails to produce any records or files that have been subpoenaed may be punished for contempt of the legislature.

¹ The term "informed vote" would mean a vote that occurs after the advice of legal counsel is received, and at least 72 hours after the committee clerk and legal counsel for the minority and majority parties receive written notification by the committee chair that of the intent to act.

The bill specifies that providing records and files to a committee under this section does not constitute public disclosure of the records or files. Further, in the course of inspecting and using any records or files, the committee may not disregard the confidential nature of the records or files and may meet in a closed session under Section 8(h) of the Open Meetings Act, which allows a public body to meet in closed session in order to "consider material exempt from discussion or disclosure by state or federal statute." In a closed session, only the members, clerk of the committee, legal counsel for the minority and majority parties, and persons necessary for the production of any record or file may be present.

House Bill 4431 would also remove language from the act which states that records and files can be subpoenaed, examined, or used only in connection with the jurisdiction and purpose for which the committee was created.

House Bill 4432 would amend Public Act 118 of 1931 (MCL 4.101). That act currently allows the Legislature, by resolution, to authorize committees and commissions of, or appointed by, the Legislature to administer oaths, subpoena witnesses, and examine the books and records of any "persons, partnerships, or corporations" involved in a matter before a committee, and to punish for contempt those who refuse to be sworn or testify, fail to produce certain materials on demand, or who are guilty of contempt while in attendance at a hearing. The bill would rewrite (and expand) what is now a one-section, one paragraph act, and add new subsections.

The bill would create two subsections, one which refers to "each house of" the legislature, and a second that refers simply to the Legislature. This is apparently intended to make it clear either house can act alone (in addition to acting together as "the legislature"). The bill also would replace the term "persons, partnerships or corporations" with the term "person or entity."

This would mean, with the amendatory language, the subpoena and investigatory power under Public Act 118 would extend to any person or entity involved in a matter properly before a committee or commission of, or appointed by, a house of the Legislature or a committee, commission of, or appointed by the Legislature as a single entity. A resolution would still be required in each case.

House Bill 4432, as with the other bill, would require service of that subpoena be made at least seven days before the date fixed in the subpoena for the production of records, unless a shorter period is authorized by a majority vote of all the members of the committee. Any person served with a subpoena may choose to be accompanied by counsel if a personal appearance is required and must be served with notice to that effect.

In addition, House Bill 4432 would also specify, as with the other bill, that providing records and files to a committee under this section does not constitute public disclosure of the records or files. In the course of inspecting and using any records or files provided under this section, the committee may not disregard the confidential nature of the records or files and may meet in a closed session pursuant to Section 8(h) of the Open Meetings Act, which allows a public body to meet in closed session in order to "consider material exempt from discussion or disclosure by state or federal statute." In a closed session, only

the members, clerk of the committee, legal counsel for the minority and majority parties, and persons necessary for the production of any record or file may be present.

BACKGROUND:

Current House Rules

Rule 37. Except as provided by MCL 4.541, the right of a special or standing committee to subpoena shall be granted by resolution of the House in accordance with Mason's Manual of Legislative Procedure - current edition. The vote on adoption of a subpoena power resolution shall be by record roll call vote. The votes of a majority of the Members elected and serving shall be required for adoption. The right to subpoena shall not be granted to subcommittees.

FISCAL IMPACT:

House Bills 4431 and 4432 could increase administrative costs for local units of government subject to the subpoena and investigatory authority of a committee of the Legislature provided under the provisions of the bill. Any fiscal impact on a local unit of government would be dependent upon the extent to which certain records and files were required to be produced before a committee of the Legislature.

Legislative Analyst: Chris Couch
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.