

Legislative Analysis



LEGISLATIVE SUBPOENAS AND INVESTIGATIONS

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House Bill 4522 (reported from committee as H-2)

House Bill 4523 (reported as H-3)

Sponsor: Rep. Edward McBroom

Committee: Oversight and Ethics

Complete to 5-26-15

Analysis available at
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REVISED SUMMARY:

Each bill deals with the subpoena power of legislative committees.

House Bill 4522 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. Presently, 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 could also 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 department, board, institution, or agency of a local unit of government, the majority of the members of that committee must make an affirmative and informed vote, with not less than one of the affirmative votes coming from a member of the minority party.

If an entity is issued a subpoena, HB 4522 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, with not less than 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 for the legislature.

The bill also would add a subsection which states 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.

HB 4522 would also remove language 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.

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.

The term "informed vote" would mean a vote that occurs after the aid and 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 under this section.

House Bill 4523 would amend Public Act 118 of 1931 (MCL 4.101). That act deals with the power of committees and commissions of 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) the one-section, one paragraph act, and add new subsections.

Currently, the act refers to "committees and commissions of or appointed by the legislature." The bill would refer instead to "each house of" the legislature. This is apparently intended to make it clear either house can act alone (rather than 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 the act 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.

If an entity is issued a subpoena, HB 4523 also 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 would be served with notice to that effect.

In addition, the bill would add a subsection which states 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.

Both bills would take effect 90 days after being enacted into law.

DISCUSSION AND BACKGROUND:

Presently, there appear to be multiple ways for committees of the House and Senate to subpoena records and files. A standing or select committee of the House or Senate, or a joint select committee of the House and Senate, can subpoena the records and files of any state department, board, institution, or agency, so long as those records and files are only subpoenaed, examined, or used in connection with the jurisdiction and purpose for which the committee was created. This power is outlined in PA 46 of 1952, the act HB 4522 seeks to amend.

PA 118 of 1931 grants committees and commissions of, or appointed by, the legislature the ability to, by resolution of the legislature, administer oaths, subpoena witnesses, and/or to examine the books and records of any persons, partnerships or corporations involved in a matter properly before any of such committees or commissions. This act would be amended by HB 4523.

Further, Rule 37 of the Standing Rules of the House, adopted January 14, 2015, states that the right of a special or standing committee to subpoena shall be granted by resolution of the House in accordance with the current edition of Mason's Manual of Legislative Procedure. A record roll call vote and a majority of members elected and serving is required for adoption of the resolution. Subcommittees cannot be granted subpoena powers.

Taken together, HB 4522 and HB 4523 would restrict the power of a committee to subpoena records and files to the committees "authorized by each house of the legislature to receive and review auditor general reports." (In the House, this is the Oversight and Ethics Committee in the current session), while allowing other committees to pursue subpoena via a resolution passed by a majority of members elected and serving in that house of the legislature.

Once subpoenaed by the Oversight and Ethics Committee, or any subsequent committee that is tasked with receiving and reviewing the reports of the Auditor General, any person who fails to produce any records or files that have been subpoenaed may be punished for contempt for the legislature. This language is not present in HB 4523, which provides for subpoena power via resolution.

Another key difference between the bills is that while the Oversight and Ethics Committee needs at least one of the affirmative votes to come from a member of the minority party before an entity can be subpoenaed, the same does not apply to resolutions coming before a house of the legislature. The same difference applies to a vote taken by a committee taken that would reduce the requirement that a subpoena be served at least seven days before the date fixed in that subpoena for the production of records.

FISCAL IMPACT:

House Bills 4522 and 4523 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.

POSITIONS:

Among those indicating opposition to the committee were: the Michigan Association of Counties; the Michigan Townships Association; the Michigan Municipal League; Wayne County; and the Michigan Sheriffs Association. (5-14-15)

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■ 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.