



STATE OF VERMONT
OFFICE OF THE STATE AUDITOR

To: House Committee on Government Operations

Re: S.9

Date: 12 April 2023

I offer the following comments for the record.

1. Does S.9 Give the Auditor's Office More Power Than It Has Always Had? - No

What are being described as worrying policy changes are nothing of the sort. Indeed, as Senator Brock reminded his colleagues during floor debate, S.9 would simply return us to the status quo from just before the Supreme Court's decision.

The audit provision in [Attachment C of Bulletin 3.5](#) (#13) has been part of every contract with the State for decades. During my ten-year tenure, not one person or contractor expressed concern about this until OneCare refused to provide documentation explaining their dramatic increase in salary expenses.

Far from imposing any new administrative burden on contractors, records regarding a contractor's performance can be obtained by the contracting entity right now. Codifying the *State Auditor's* historical right to access these records changes nothing for contractors.

2. Will the Independence of the Auditor's Office Be Diminished if S.9 Does Not Pass? - Yes

Deputy Secretary Farnham expressed the view that the State Auditor had no need to access OneCare's payroll records. With respect, I'm not sure how he came to that conclusion, having never discussed it with me. In fact, there were good reasons to review those records and I would be happy to explain if given the opportunity.

Mr. Farnham's position is a perfect example of the troubling risk to the State Auditor's independence if S.9 is not approved. As this example illustrates, absent S.9 the administration (on behalf of any contracting entity) could decide not to approve a request for records deemed necessary by the State Auditor. This would be a radical transfer of authority from the State Auditor to the Governor or his / her appointees. Had that been the Founders' intent, the Auditor would be an appointee of the Governor, rather than an independent statewide elected official. The State Auditor works for the people of Vermont, not the Governor.

3. Confidential records

I hope this issue has been put to rest. As is well known, sensitive health care, personnel and business records are already protected by law and S.9 reinforces those protections.

And for the record, the State Auditor's office has obtained and used all manner of confidential records over the years including tax, HIPPA, personnel and private business records, all of which have been protected.

4. Unbridled power

A lobbyist expressed fear that the Auditor could pursue records he believes are related to the contract, but the request would not be limited by any guardrails. S.9 makes it very clear that the State Auditor can only seek records related to performance under the contract – exactly as it was before.

5. The chilling effect

The State suggests that the knowledge that the Auditor can access records to conduct audits will have a chilling effect on businesses interested in working for the state.

This is speculative and wholly without foundation. Businesses have been signing contracts including the audit provisions in Attachment C for decades. Moreover, at least a dozen states provide explicit statutory authority for State Auditors to audit contracts and there is absolutely no evidence of a chilling effect.

California – [State Contracting Manual - Volume 1](#) See [7.50](#)

Explicit reference to the authority of the State Auditor

Illinois - [5. AUDIT/RETENTION OF RECORDS](#) (explicit reference to [Office of the Auditor General](#))

Iowa – [Model contract](#)

See 16.22 - Record Retention and Access for audit (explicit reference to State Auditor)

Louisiana – [OFFICE OF STATE PROCUREMENT \(OSP\) PROFESSIONAL SERVICES CONTRACT GUIDELINES](#)

See top of page 35 (explicit reference to State Legislative Auditor)

Massachusetts – General Laws [Section 12](#) (explicit reference to State Auditor)

Michigan – [Section 18.1470](#)

Refers to compliance, which should include deliverables. (explicit reference to Auditor General)

New York - [Appendix A – Standard Clauses for New York State Contracts](#) See 10. RECORDS

(Explicit reference to the [Comptroller](#) who is also the state auditor)

North Carolina – [§ 147-64.7. Authority.](#)

See (a)(1) *et seq.*, (explicit references to State Auditor)

Oklahoma - [74 O.S. § 85.41. Professional Services Contracts](#) See #5. (Explicit reference to State Auditor)

Tennessee – [Contracts Guideline: G-030](#) See 4.(i). Audit & Documentation

(Explicit reference to the [Comptroller](#); as in NY, the Comptroller performs audit functions)

Texas - [Sec. 2262.154.](#) Required Provision Relating to Auditing (explicit reference to State Auditor)

Utah - [Utah Admin. Code 33-12-605](#) See section (2)

(1)(a)(iv) – “authorized representative” includes the state auditor.

6. The requested authority is redundant - No

As we reported last week (see the attachment to the April 7 e-mail), our audits challenge the assertion by administration officials that there is no need for the State Auditor to conduct audits involving contractors because the State agencies and departments ensure compliance and performance. We frequently find instances where the State fails to ensure compliance and performance.

7. Big picture

Until the 1990s, state auditors limited themselves to financial and compliance auditing. Then the Governmental Accounting Standards Board encouraged state auditors to go to the next level. Tracking the money and compliance is important but it's not the end of the conversation, it's the beginning. Citizens, program managers and policymakers need to know if taxpayer funds are being used to achieve the goals intended by the legislature. This requires performance auditing and that is now a common element of state auditing in every state.

As the scope and complexity of government operations has grown over the decades, more and more work is being done by contractors. In Vermont, this means that limiting the Auditor's authority to state entities would wall off a billion dollars a year from scrutiny by the only independent audit shop in state government. In my time as Auditor, I have spoken to hundreds of legislators, and the common refrain has been that we need more scrutiny of contracted funds, not less. Failure to pass S.9 would be a step in the wrong direction for accountability and transparency.

The purpose of the State Auditor's office is not finger pointing. Our job is to promote transparency and accountability, and to help state entities save money and improve the delivery of services. It is also our job to help inform the discourse for policymakers like you.

Therefore, with all that in mind, it is essential that you pass S.9 to restore the longstanding authority of the State Auditor.