



QUESTION 1: SHOULD THE AUDITOR OVERSEE THE LEGISLATURE

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EXECUTIVE SUMMARY

Massachusetts voters elect a state auditor every four years. But despite the word “audit” in the job title, the auditor isn’t focused on financial irregularities; instead, they ensure that state agencies follow existing laws and regulations.

The auditor has substantial powers, including broad, court-supported access to all manner of documents and records. But there are limits to this investigative power, and Question 1 on the November ballot is about expanding those limits.

Question 1 asks voters whether the auditor should be allowed to investigate the state legislature, overseeing and evaluating at least some of its activities.

The ballot question is being advanced by the current auditor, Diana DiZoglio, and is [generally opposed by the legislature](#).

As part of our commitment to help voters understand state ballot questions, we have looked at other states and spoken with experts and advocates on both sides of the issue.

We found that:

- Some legislative activities are off-limits to executive interference, including from the auditor. Votes, debates, committee assignments, policy priorities — these are all “core legislative functions” that the Massachusetts auditor will not be able to examine even if Question 1 passes.
- Other legislative activities might be subject to audit, such as compliance with employee training rules, cybersecurity norms, and purchasing practices.
- While auditors in other states occasionally investigate such non-core activities, they rely on cooperation from legislators. Looking around the country, we could not find any examples of legislative audits conducted without lawmakers’ consent.
- Even if Question 1 passes, legislators will have a lot of leverage to resist investigations. They might drag their feet, refuse to comply, or use their budgetary power to handcuff or even defund the auditor’s office. If that happens, the fight may shift to the courts, where the outcome is hard to predict.

In the sections that follow, we discuss these and other issues in detail, including a summary of the ballot question, background on the powers and limitations of the auditor’s office, and the potential impact of a yes vote on Question 1.

WHAT QUESTION 1 WOULD DO

Question 1 would allow the state auditor to audit the legislature, ensuring that it is operating in accordance with government rules and regulations.

Whereas the [general laws](#) currently give the auditor authority over “all departments, offices, commissions, institutions and activities of the commonwealth,” Question 1 explicitly adds the legislature to this list.

BACKGROUND ON THE AUDITOR’S OFFICE

The “auditor” title can be a bit misleading, since many people associate audits with financial record-keeping or the IRS. But in Massachusetts, as in many other states, the auditor’s job is to evaluate the performance of government agencies, using principles set by the Government Accountability Office.

When dealing with state agencies and other executive branch entities, auditors have fairly broad, though not unlimited, authority. They can’t compel evidence or issue subpoenas, but they can access and review records, backed by the threat of court enforcement for noncompliance.

One reason for this broad purview over executive agencies is that the auditor is an executive branch position, originally created to help monitor the activities of the governor.

Now, there’s no formal prohibition on moving beyond the executive branch. Over the years, auditors have periodically reviewed the activities of cities, towns, courts, and even the legislature.

However, when dealing with nonexecutive agencies, auditors generally rely on the consent of the groups being audited rather than any threat of compulsion. Cities and towns can request audits, and state courts have willingly accepted audits (with some limits).

THE AUDITOR & THE LEGISLATURE

CONSTITUTIONAL CONCERNS

There is a fundamental constitutional reason the auditor can’t necessarily audit the legislature, namely separation of powers.

Core legislative activities, like establishing committees and voting on bills, are understood to be the unique prerogative of the legislature. Article XXX of the state constitution puts it directly: “In the government of this commonwealth, the legislative department shall never exercise the executive and judicial powers, or either of them: the executive shall never exercise the legislative and judicial powers, or either of them: the judicial shall never exercise the legislative and executive powers, or either of them: to the end it may be a government of laws and not of men.”

Yet, it’s also true that alongside the strict “separation of powers” principle sits another bedrock constitutional ideal: the need for “checks and balances.”

There are times when the executive branch does check on the activity of the legislature, including through regular financial audits from the Comptroller and financial disclosures to the state ethics commission.

LEGISLATIVE TRANSPARENCY

However you assess the constitutional issues, there are reasons that the legislature’s assertions of privilege have grown increasingly unconvincing to many Massachusetts voters, including an array of practices that seem to lack appropriate, democratic scrutiny.

To cite some examples: the legislature is exempt from [public records requests](#); committee votes [aren’t consistently shared](#); amendments to major legislation are sometimes altered or eliminated in [private meetings with leadership](#); and major legislation often passes at late hours, with [limited debate, using voice votes](#) that leave no record of which side members took.

To be clear, these sorts of issues are unlikely to be affected by Question 1, as they involve core legislative functions.

But the current auditor, herself a former legislator and the chief sponsor of Question 1, also cites instances where the legislature may [fail to follow its own established rules](#) — like procurement practices — and where an audit might be feasible.

AUDITS IN OTHER STATES

Looking around the country, other state auditors have found ways to audit at least some legislative activities, which suggests a possible path forward in Massachusetts.

Yet, the balance between an auditor's power and the legislature's autonomy is tricky.

- Even in other states, legislative audits do not examine votes, amendments, or committee operations, as these are protected by separation of powers concerns. Instead, they cover routine internal operations like providing appropriate employee training or following sound procurement rules for buying office furniture.
- Legislative audits are smoother, and more common, in states where the auditor is appointed by the legislature — rather than independently elected, as is the case here in Massachusetts.
- Our research did not uncover any examples of auditors who completed legislative audits actively opposed by their state legislature.

IMPACT OF A YES VOTE

Nothing would immediately change if Question 1 passes. But the stage would be set for a test of the auditor's new authority.

And the auditor would have a key strategic advantage: She could choose a highly sympathetic type of audit, far removed from core legislative powers and more likely to be favorably viewed by courts.

Once the auditor initiated an audit, or made a formal request for relevant materials, legislative leaders would then face their own choice. They could:

- a) Accept the auditor's authority and comply.
- b) Reject the auditor's authority but agree to voluntarily comply.
- c) Reject the auditor's authority and expressly refuse.
- d) Ignore the request altogether.

The first two options would likely satisfy the auditor, but a decision to refuse or ignore the request could move the issue to the courts.

Here, there would be new players and possibilities to consider. A suit backed by the state would likely need cooperation from the attorney general (though, absent that, the auditor might still attempt to bring a case herself.)

Meantime, throughout this whole unfolding cascade, the legislature would have some powerful countermeasures.

It could pass a bill overturning Question 1 and clarifying that the auditor's ambit doesn't cover the legislative branch. Ballot questions have no special legal authority and can be readily overturned or amended by new laws.

Alternatively, the legislature could use its budget-writing authority to cut funding for the auditor's office or attach spending strings, specifying that money can't be used for legislative audits.

One precedent for legislative defiance would be the [clean elections ballot initiative in 1998](#), which was supposed to provide public funding for state elections. Though this initiative was endorsed by voters, it was opposed by many incumbent lawmakers, who defied pressure from the governor and the courts, consistently underfunded the effort, and then repealed it in 2003.

REASONS FOR A YES VOTE

Despite the uncertain real-world impact, voters dissatisfied with the transparency of the Massachusetts Legislature might still endorse Question 1. At the very least, this would send a message about public frustration with the status quo and potentially increase pressure for change.

More broadly, a yes vote would kickstart a process of institutional negotiation, with the legislature, the courts, and the auditor forced to reassess the bounds of legitimate autonomy and appropriate oversight.

To be sure, a fight between the auditor and the legislature could end in a stalemate, but it could also trigger a court ruling that empowers the auditor to investigate non-core legislative functions, potentially keeping the public more informed about the behavior of our state lawmakers.

REASONS FOR A NO VOTE

Safeguarding the established separation of powers, and avoiding a contentious and distracting fight between branches, is the most direct reason to oppose Question 1.

Absent legislative consent, the auditor will struggle to pursue any investigations of the legislature. And there's every reason to doubt lawmakers will consent. Indeed, the committee tasked with determining whether Question 1 should be passed as a law **concluded in all caps** that it: "OUGHT NOT TO BE ENACTED BY THE LEGISLATURE AT THIS TIME."

And if a fight between the legislature and the auditor somehow ends with a novel court ruling, Question 1 could transform the state auditor's role. The office could shift from being a quietly valuable but low-profile position to an increasingly politicized and newly potent one, able to use the threat of audits to influence legislative behavior.

CONCLUSION

A yes vote on Question 1 would allow the auditor to pursue limited audits of the non-core functions of the Massachusetts Legislature, with the real-world impact to be determined by follow-on interactions between the auditor, lawmakers, and the courts.

A no vote would maintain the status quo, where the auditor's official purview is limited to executive agencies, but where they can review legislative and judicial activities with permission.

We at the Center for State Policy Analysis do not take a position on Question 1 — or any ballot initiative — but we hope this brief gives voters the information they need to make a sound decision on this important issue.



Contributors

In assembling this report, the Center for State Policy Analysis consulted a number of parties on both sides of Question 1. The final contents reflect our best judgment.

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