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DAILY NEWS

STATE

Legal experts say approval of Question 1 doesn't mean Legislature will be audited

Ziyue Zhu Boston University Statehouse Program

Nov. 1, 2024, 4:47 a.m. ET

[Voter approval of Question 1](#) on Tuesday's ballot, which would give the state auditor the authority to audit the Legislature, raises a number of legal and constitutional issues, experts say.

[State Auditor Diana DiZoglio](#) worked to put the issue before voters as a solution to what she and a broad coalition of groups from both the left and right of the political spectrum view as a legislative body tightly controlled by House and Senate leaders and which lacks transparency.

But those legislative leaders insist the question would violate the separation of powers defined by the Massachusetts Constitution, and a [Tufts University](#) analysis suggests the office could not investigate legislative votes, debates, committee assignments or even lawmakers' policy priorities — things that are considered to be the “unique prerogative of the Legislature.”

'Fed up with lack of access': [How Question 1 would change the power of the state auditor](#)

DiZoglio, a Methuen resident who served in both the House and Senate prior to winning the auditor's chair in 2022, began the ballot initiative process after lawmakers refused to cooperate with a current review.

“Not only are they refusing to cooperate with our office's audit, but they are refusing those same documents to taxpaying members of the general public,” DiZoglio said.

“That’s unacceptable. Accountability will be restored with the passage of Question 1 to ensure that there is transparency regarding how our tax dollars are being spent.”

Attorney general: Auditor lacks authority to audit Legislature

Multiple public opinion polls have found overwhelming support for the question.

But even as she approved the question for the ballot, [Attorney General Andrea Joy Campbell](#) issued a legal opinion that the auditor does not have statutory and constitutional authority to audit the Legislature over its objection.

“I believe transparency is a cornerstone of good government, but that transparency must be achieved through methods that are consistent with the law,” Campbell said.

It is a view shared by other legal experts — and DiZoglio’s predecessor.

[Suzanne Bump](#), who served as state auditor for 12 years starting in 2011, said granting the power would “politicize and degrade the office” of auditor. During a recent hearing on Beacon Hill, Bump also said DiZoglio’s past work as a lawmaker poses a conflict with her intention to audit the chambers.

'Not taken steps': [Bump finds flaws in MassBay's record-keeping of college property](#)

“This question implicates the Massachusetts Constitution,” said [Bradley M. Baranowski](#), a professor of administrative law at Boston University, noting Article 30 states “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.”

The auditor is considered a part of the executive branch.

BU law professor; Key is determining 'whether an audit crosses the line'

Baranowski noted that while the constitution defines these boundaries, the branches of government are not “water-tight compartments” and must interact to

function effectively.

“The challenge,” he said, “is determining whether an audit crosses the line and violates the separation of powers.”

Traditionally, the Massachusetts auditor reviews state entities and contractors to assess their performance and recommend improvements. However, in her August 2023 letter to Campbell, DiZoglio sought authority to audit not just financial information, but also budgetary, hiring and procurement details, as well as information related to pending legislation, committee appointments and legislative procedures.

Opponents of the question argue that if DiZoglio gains that power, it would give an executive branch official the ability to influence how the Senate and House create and manage their own procedures, which could interfere with core legislative functions and potentially violate the separation of powers.

One area open to possible review could be how the Legislature trains its employees.

Ballot question approval doesn't mean compliance will occur

Even if voters approve the ballot question, the Legislature may still have several ways to respond.

“They would probably either ignore the audit requests or actively fight them,” Baranowski suggested. This could lead to a court battle, as auditors have the authority to go to court to obtain the information they need.

However, lawmakers could argue that they are under no obligation to comply, claiming that the auditor’s actions are unconstitutional. Ultimately, this could be decided by [the Massachusetts Supreme Judicial Court](#).

“There are strong reasons to conclude that this would be an overreach, and there’s a significant likelihood that Massachusetts courts would be forced to invalidate a

statute adopted by the initiative petition,” said [Northeastern University law professor Jeremy R. Paul](#).

The Legislature could also pass a funding appropriation bill that effectively prohibits the auditor from using any money for legislative audits. That would also require [the approval of Gov. Maura Healey](#), who has taken no position on the question.

Mass. Legislature often ranked among the nation's least transparent

The ultimate question is what, if anything, can Question 1 do to open up the Massachusetts Legislature, which is often ranked among the least transparent and least accessible in the nation. The Legislature has exempted itself from public records laws and open meeting laws, and votes are frequently cast late at night with no recorded roll call.

DiZoglio said her intent in sponsoring the question was to “bring sunlight to the dark areas of state government.”

Her office released a performance audit on Oct. 21 that did not include documentation of expenditures or state contracting and procurement processes.

“Audits provide a service to state entities to help discover potential inefficiencies and to prevent potential abuse of tax dollars,” DiZoglio said. “Why would the state Legislature not welcome it? It causes us to wonder what are they so intent on hiding if they are so vehemently against a basic audit that every other entity participates in as a matter of routine.”

Baranowski is skeptical about the potential for increased transparency.

“What auditors can do is very limited, and it will distract the Legislature by creating a big court battle,” he said, adding that a fight between the auditor and Legislature will raise many constitutional issues and could get tied up in the courts.

“State auditors play a crucial role in ensuring the executive branch meets performance standards, but the question is whether giving them the power to audit the Legislature and taking that battle to court will politicize the office,” Baranowski said. “It’s hard to predict whether that will happen.”