

CITY OF BALTIMORE

STEPHANIE RAWLINGS-BLAKE, Mayor



DEPARTMENT OF LAW

GEORGE A. NILSON, City Solicitor  
101 City Hall  
Baltimore, Maryland 21202

May 30, 2013

The Honorable President and Members  
of the Baltimore City Council  
Attn: Karen Randle, Executive Secretary  
Room 409, City Hall  
100 N. Holliday Street  
Baltimore, Maryland 21202

Re: City Council Bill 12-0151 – City Audits Commission

Dear President and City Council Members:

The Law Department has reviewed City Council Bill 12-0151 for form and legal sufficiency. The bill would create a City Audits Commission of 5 voting members appointed by the Mayor and 3 non-voting members: the Comptroller, the Inspector General and a member of the City Council designated by the Council President. The bill provides that the Commission's primary function is "to provide oversight of the City's external and internal audit activities" and makes the Commission "responsible" for the five specific things enumerated in Section 9-12. It also tasks the Commission with scheduling the audits. To carry out these duties, the Commission may adopt rules and regulations and may "appoint employees, assistants, and investigators as provided in the Ordinance of Estimates." The Commission must also make an annual assessment of the audits by March 31 of the year following the fiscal year reviewed.

Additionally, the bill states that a "financial audit" is one of a "City agency" and defines a City agency to include, "any department, board, commission, council, authority, committee, office or other unit of City government; and any individual not embraced in a unit of City government who exercise authority comparable to that of the head of a unit of City government."

The City Council may not by legislation modify the power created by Charter. City Charter, Art. III, §11. The general auditing functions of the City have already been vested in the City Auditor pursuant to Sections 7 through 10 of Article V of the City Charter. These sections give the City Auditor the power to determine at what intervals financial audits will be conducted of City agencies and to perform them. Charter, Art. V, § 8(a)(1)-(4). The Charter also provides that the City Auditor may undertake additional audits at the request of the Comptroller or the Board of Estimates. Charter, Art. V, § 8(a)(5). Nevertheless, this general auditing function is modified by the more specific Section 4.5 of Article III concerning "agency audits," which requires audits of certain principal agencies to be conducted by the City Auditor or an independent certified public accountant ("CPA") or CPA firm "at least once during every 4-year term of the Mayor and City Council."

F/A



Since “Charters are subject to the ‘same canons of statutory construction that apply to the interpretation of statutes’” and those rules of construction require that “all parts are to be reconciled and harmonized if possible,” the Charter must be read to give all power over general auditing to the City Auditor except in the case of the mandated audits of principal agencies, in which case those audits may be done by either the City Auditor or a CPA. *See e.g., Mayor & City Council v. Bunting*, 168 Md. App. 134, 141 (2006) (citations omitted); *Thomas v. Police Commissioner of Baltimore City*, 211 Md. 357, 361 (1956). The Charter already provides the City Auditor with the power to determine at what intervals audits will be conducted and to perform them, except in the case of principal agencies, where the Charter is more specific as to when those must be conducted but allows them to be conducted by the City Auditor or a CPA. Charter, Art. III, §4.5; Art. V, § 8(a)(1)-(4). Therefore, several amendments to this bill are required so that it is clear that the Commission is not involved in overseeing any auditing functions, as the Charter already vests that power in others. However, the Commission may make recommendations concerning these audits. Suggested language for the amendments is attached.

Accordingly, the rules and regulations promulgated by the Commission would be to further clarify how the Commission is to function and would not be governing how audits are performed. *See Mayor and City Council of Baltimore v. Koons*, 270 Md. 231, 237 (1973)(rules and regulations adopted must be consistent with statute giving regulatory power).

Additionally, it should be noted that the definitions of “audit,” “City agency” and “agency” can describe the types of things on which the Commission can make recommendations, but cannot operate to modify the types of audits conducted as that would conflict with the City Charter’s placement of that function in the City Auditor, the Comptroller and the Board of Estimates. *See City Charter*, Art. III, §4.5; Art. V, §10(b)

Finally, the word “appoint” in line 4 of page 4 should be changed to “hire” to clarify that Commission would be hiring workers (assuming money budgeted for that in the Ordinance of Estimates).

Subject to the foregoing amendments, the Law Department can approve the bill for form and legal sufficiency.

Very truly yours,



Hilary Ruley  
Assistant Solicitor

cc: George Nilson, City Solicitor  
Angela C. Gibson, Mayor’s Legislative Liaison  
Elena DiPietro, Chief Solicitor  
Victor Tervalá, Assistant Solicitor  
Jennifer Landis, Special Assistant Solicitor

**AMENDMENTS TO COUNCIL BILL 12-0151**  
**(First Reader Copy)**

- On page 4, line 4, delete "APPOINT" and replace it with "HIRE."
- On page 4, line 24, insert "RECOMMENDATIONS ABOUT THE" after "PROVIDE."
- On page 4, line 27, insert "ROUTINELY PROVIDING TO THE MAYOR, COMPTROLLER AND PRESIDENT AND MEMBERS OF THE CITY COUNCIL RECOMMENDATIONS CONCERNING" after "FOR."
- On page 4, line 28, delete "OVERSEEING" and delete "ENSURING THAT."
- On page 4, line 29, insert "WHICH" after "PROCEDURES."
- On page 5, line 4, delete "IDENTIFYING."
- On page 5, line 5, replace "MONITORING" with "HOW TO BEST MONITOR."
- On page 5, delete lines 6 through 9.
- On page 5, delete lines 11 through 13.
- On page 5, lines 15 and 19, delete "MUST" and replace it with "MAY."
- On page 5, line 24, delete "ALL" and replace it with "ANY."
- On page 5, line 24, insert "THAT MAY HAVE BEEN PROVIDED TO THE COMMISSION" after "AUDITS."
- On page 6, line 2, replace "EACH" with "ANY."