

Dear Governor Hughes:

This is to advise you that we have reviewed for constitutionality and legal sufficiency House Bill 1568, a bill which requires the units of the State Government to correct deficiencies noted in reports of the Legislative Auditor. the bill would allow the Joint Committee on Budget and Audit to grant a unit a waiver from compliance with recommendations of the Auditor in certain circumstances. To the extent the bill imposes a mandatory duty upon the Executive and Judicial Branches to comply with recommendations of the Legislative Auditor, we think the bill would violate Separation of Powers.

Under current law, the Auditor is part of the Legislative Branch of Government and has the responsibility to inquire into matters of general performance as well as the purely financial transactions of the various agencies of the State Government. Art. 40, Secs. 61A and 61B and see 63 Opinions of the Attorney General 453, 454 (1978). These provisions of law are carried forward into the new State Government Article, see Sec. 2-1213, 2-1215 and 2-1216 (Senate Bill 50), which is amended by House Bill 1568. In view of the Auditor's broad authority to make performance audits and the fact that the Auditor is part of the Legislative Branch, it is apparent that requiring units in the Executive and Judicial Branches to comply with the Auditor's recommendations would constitute a usurpation of the essential functions and powers of another branch in violation of the Separation of Powers Clause, Art. 8, Declaration of Rights. See letter to the Honorable Catherine I. Riley and the Honorable John S. Arnick, dated February 9, 1984. Accordingly, we are unable to approve this bill.

Very truly yours,  
Stephen H. Sachs  
Attorney General

House Bill No. 1568

AN ACT concerning

Department of Fiscal Services - Audit Compliance

FOR the purpose of requiring State government units to correct audit deficiencies and to report to the Joint Budget and Audit Committee and the Comptroller of the Treasury the corrective action taken; providing for review of the corrective action by the Committee; providing for a compliance waiver; requiring the concurrence of the Comptroller before certain actions are taken by the Committee; providing that the Comptroller is no longer