



The Commonwealth of Massachusetts  
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**BY ELECTRONIC MAIL**

Michael Leung-Tat, Deputy Auditor and General Counsel  
Office of the State Auditor  
State House  
Room 230  
Boston, MA 02133

Dear Deputy Auditor Leung-Tat,

On behalf of the Massachusetts Senate (Senate), I write regarding the Office of the State Auditor's (OSA) request for certain documents from the Senate. The OSA's request was originally made to the Senate on January 6, 2025, in relation to the State Auditor's initiation on January 3, 2025, of a far-reaching purported "performance audit" of the Senate pursuant to Chapter 250 of the Acts of 2024.<sup>1</sup>

Members of the Senate met with members of the OSA on February 11, 2025, to discuss those document requests in the context of the OSA's proposed performance audit. Members of the Senate engaged with OSA staff concerning questions about the constitutionality and scope of the proposed performance audit. For example, the State Auditor's letter of January 3, 2025, mentioned that the proposed performance audit would "start" with a review of areas such as contracting and procurement procedures, nondisclosure agreements, and the balance forward line item, but it also mentioned that the audit would "cover all of the topics" from a prior review of the General Court, including how and to what extent the General Court is "ensuring an equitable mode of making laws in accordance with the Preamble of the Massachusetts Constitution". In addition, the Senate attempted to determine from discussions with OSA staff how the proposed

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<sup>1</sup> A "performance" audit is different than a "financial" audit. A financial audit provides an assessment of whether an entity's "reported financial information (e.g., financial condition, results, and use of resources) is presented fairly, in all material respects, in accordance with recognized criteria." U.S. Government Accountability Office, *Government Auditing Standards (2024 Revision)* § 1.17. That is, a financial audit is generally about how money is *spent*. A performance audit, on the other hand, focuses on "improving program performance and operations, reducing costs, facilitating decision making by parties responsible for overseeing or initiating corrective action, and contributing to public accountability." *Id.*, § 1.21. In other words, a performance audit—as the name implies—is focused on how an entity is performing its *job*. Thus, the OSA is pursuing an unprecedented effort to evaluate the Legislature's job performance, something no executive auditor has done anywhere in the country.

performance audit would fit within generally accepted government auditing standards (GAGAS), as the OSA never specified by what standard it would be evaluating the Senate in the proposed performance audit. That meeting and subsequent correspondence did not produce clear or consistent answers from the OSA on those topics. The OSA and the Attorney General's Office engaged in similar discussions over the course of a year about those same issues, and many of the OSA's answers were no clearer. Ultimately, intervention by the Supreme Judicial Court (SJC) brought needed clarity to the OSA's requests, with agreement that they are currently focused on four items.

The Senate remains deeply concerned that Chapter 250 of the Acts of 2024 and the OSA's proposed performance audit are inconsistent with foundational constitutional principles, such as the Senate's rulemaking authority, separation of powers, and legislative immunity and privilege. Nevertheless, in light of the narrowly tailored document requests outlined in the SJC's order of May 7, 2026, the Senate will voluntarily share with the State Auditor and the OSA the information requested. The Senate does so without conceding that the State Auditor or the OSA has a legal right to make such requests to the Senate or that such requests can be reconciled with the aforementioned constitutional principles. Moreover, the Senate reserves all its rights to object to this or any future audit on any grounds, including, but not limited to, the aforementioned constitutional issues, the OSA's retroactive application of Chapter 250 of the Acts of 2024, or the potential conflict of interest presented by the State Auditor's own involvement in a performance audit that covers a time period in which she served as an elected member of the Senate.<sup>2</sup>

### **Document requests**

The OSA's letter to the Senate of January 6, 2025, as clarified by the SJC in its order of May 7, 2026, requested the following documents related to its purported performance audit.

- “[t]he official budgets for the Senate for Fiscal Years 2021, 2022, 2023 and 2024”;
- “[c]opies of official audits of the Senate for Fiscal Years 2021, 2022, 2023 and 2024”;
- “[a] listing of all transactions related to the Senate's balance forward line item for Fiscal Years 2021, 2022, 2023 and 2024”; and
- “[a] listing of all monetary settlement agreements entered into by the Senate with any current or former employees or members of the Senate during Fiscal Years 2021, 2022, 2023 and 2024”.

I will address each request in turn, but it should be noted that information concerning each of the requests is already available to the public online, including on the Comptroller's website. Nonetheless, the Senate here, in good faith, provides the requested information, as clarified by the SJC's order.

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<sup>2</sup> The Senate adopted S. 3104 on May 28, 2026, consistent with the foregoing. A copy of that Senate resolution is attached.

## **Official budgets**

The OSA has requested the “official budgets for the Senate” for four particular fiscal years (2021-2024). The Senate’s official budget is contained in the annual general appropriations act (GAA) in line items 9500-0000 (operations) and 9510-0000 (used for expenditures related to legislative redistricting).<sup>3</sup> Expenditures from those appropriations are available on the Comptroller’s website.

The Senate attaches to this letter, for each requested fiscal year, the line-item language from the GAA.

## **Official audits**

The OSA has requested copies of “official audits of the Senate” for four particular fiscal years (2021-2024). The Senate’s official audits are conducted annually by the outside, independent auditing firm CliftonLarsonAllen LLP (CLA). The Senate procured CLA’s auditing services pursuant to Senate Rule 62B from a statewide procurement contract established by the Operational Services Division.

The Senate’s official audits by CLA are available on the General Court’s public website. *See* <https://malegislature.gov/ClerksOffice/Senate/Audits>. The Senate includes on that website CLA’s official audit reports going back to Fiscal Year 2017 and continuing through Fiscal Year 2023. The Senate attaches to this letter the requested official audits for Fiscal Years 2021, 2022, and 2023.

The Senate’s official audit for Fiscal Year 2024 is ongoing, but CLA has informed the Senate that the audit is nearing completion. As soon as that audit is completed, CLA will alert the Senate, after which the Senate Clerk will (a) post the audit on the General Court’s website and (b) transmit a copy to the State Auditor, consistent with Senate Rule 13C.

## **Balance forward line item**

The OSA has requested a “listing of all transactions related to the Senate’s balance forward line item” for four particular fiscal years (2021-2024).

Each fiscal year (FY), the Senate appropriates monies for its anticipated payroll and operations needs through two budget items: 9500-0000 (operations) and 9510-0000 (redistricting expenditures).

Appropriations in line item 9500-0000.

FY 2021	\$23,606,511
FY 2022	\$24,482,739
FY 2023	\$28,317,221

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<sup>3</sup> The combination of those two line items represents 0.05% of the Commonwealth’s annual budget.

FY 2024      \$29,266,738

Appropriations in line item 9510-0000.

FY 2021      \$750,000  
FY 2022      \$750,000  
FY 2023      \$750,000  
FY 2024      \$0

At the start of each fiscal year, any monies available that were not expended during the prior fiscal year may be carried forward to the next fiscal year.<sup>4</sup> If monies are carried forward, such monies are reflected in the Senate’s official audits as a “balance forward from the previous fiscal year”.<sup>5</sup>

Balance forward totals for line item 9500-0000.

FY 2021      \$10,905,647  
FY 2022      \$12,476,019  
FY 2023      \$14,708,942  
FY 2024      Waiting for audit completion; estimate is \$17,760,778

Balance forward totals for line item 9510-0000.

FY 2021      \$37,749  
FY 2022      \$731,966  
FY 2023      \$1,250,979  
FY 2024      Waiting for audit completion; estimate is \$2,000,979

The balance forward amount is made available for expenditures on payroll and operations in the next fiscal year. The entire amount available for expenditures in each fiscal year is the sum of the appropriation and the balance forward amount.

The total balance forward amount increased in each of those four fiscal years (2021-2024) because in those years the Senate’s expenses were less than the appropriation amount.

Once carried over, the balance forward monies are not distinguished from any newly appropriated monies. The Senate’s audited financial statements display those numbers for each fiscal year.

All expenditures by the Senate are from the single line item 9500-0000 or, in the case of redistricting expenses, from line item 9510-0000. There are no transactions associated with the

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<sup>4</sup> The legislative authorization to carry monies forward typically appears in a fiscal year closeout supplemental budget. *See, e.g.*, Section 2C.1. of Chapter 73 of the Acts of 2025 (allowing unexpended fiscal year appropriations to be carried forward, including for the Senate).

<sup>5</sup> G.L. c. 29, § 13A is inapplicable here, as that statute applies to segregated “funds” and “trusts”, not operating line items like 9500-0000 or 9510-0000.

balance forward monies. For clarity, the Senate has attached copies of all transactions from those fiscal years.

### **Monetary settlement agreements**

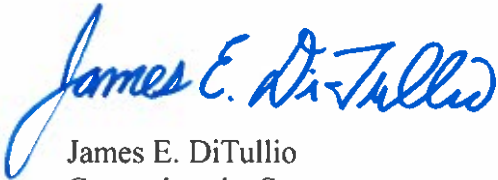
The OSA has requested a listing of all monetary settlement agreements entered into by the Senate with any current or former employee or member over the span of four particular fiscal years (2021-2024). The OSA has cited the Comptroller's policy on settlements and judgments for its definition of "monetary settlement agreements". See <https://public.powerdms.com/MAComptroller/documents/1779893>. The Senate has no such monetary settlement agreements for those fiscal years.

Although not part of the OSA's request, I add that, since 2019, Senate Rule 11G explicitly prohibits the use of a nondisclosure, non-disparagement, or other similar clause in any agreement or contract between the Senate and a member, officer, or employee. That Senate Rule codified a longstanding Senate practice prohibiting such language.

### **Conclusion**

With the delivery of this letter and related materials, the Senate has fully responded to the OSA's requests.

Sincerely,



James E. DiTullio  
Counsel to the Senate

Attachments