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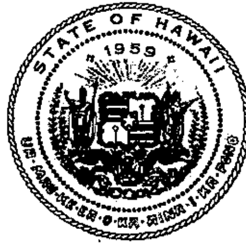

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TESTIMONY OF MARION M. HIGA, STATE AUDITOR, ON HOUSE BILL NO. 2179, RELATING TO THE AUDITOR

House Committee on Legislative Management

February 15, 2012

Chair Yamashita and Members of the Committee:

Thank you for this opportunity to testify in opposition to this bill that would allow the diminishment of the auditor's salary during the auditor's term of office by general law applicable to all salaried officers of the State. My testifying is reluctant and awkward, whether in favor or in opposition, because either way it will appear to be self-serving. I would like to offer background more than anything else.

This bill does two things: (1) inserts the same provisions for salary diminishment as already exist for two other legislative service directors, and (2) exempts the incumbent auditor from diminishment unless another general diminishment law is enacted at the same time or after the effective date of H.B. 2179.

With regard to Issue No. 1, I would like to recount that the position of auditor was created in the State Constitution by the 1950 Constitutional Convention after much debate. In many respects, it was an affirmation of the existence of the Territorial and County Auditors already in place. But the delegates finally settled on a position to be appointed by the Legislature, rather than elected, placing it in the Taxation and Finance article of the Constitution, to reinforce the point that the

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auditor's function was to assist the Legislature in holding agencies accountable for their spending of taxpayer dollars. The delegates opted early on for an eight-year term for the auditor, in order, as Delegate Henry A. White put it, "to remove the auditor from undue pressure from any one legislature." After the Territory secured statehood in 1959, the First State Legislature enacted the enabling statute for the auditor. Among the provisions of Act 14, First Special Session Laws of Hawaiʻi 1959, was the provision that the "salary of the auditor shall be fixed by the legislature and shall not be diminished during the auditor's term of office." There was no qualification to the sentence. The 1950 Constitutional delegates also debated the provision for removal of the auditor, settling on a two-thirds majority of each house in joint session at any time for cause. This was affirmed in the 1959 enabling statute. In fact, the 1959 statute contains most of the provisions in existence today for my office, such as the authority to command the production of records and information, examine under oath, and report any discovery of irregularities, as well as the basic authority to audit all transactions of all agencies and political subdivisions. Subsequent legislation clarified and expanded the auditor's duties and powers from the 1959 language.

In Section 1 of H.B. 2179, the bill argues that the same provision should apply to all three legislative service agency heads' salaries. The argument, however, does not recognize the differences among the agencies. Clearly, the constitutional genesis for my office is the major difference, but there are others. The Office of the Ombudsman was established in 1967 by statute. From that originating language, the ombudsman is appointed to six year terms, with a cap of three terms. The ombudsman's salary shall not be diminished during the incumbent's term of office, unless by general law applying to all salaried officers of the State. The requirement for removal from office is neglect of duty, misconduct, or disability. The Legislative Reference Bureau was transferred by statute from the University of Hawaiʻi to the Legislature in 1972. Its director serves a six year term and the director's compensation shall not be diminished during the individual's term of office. As with the ombudsman, the qualifying language, "unless by general law applying to all salaried officers of the State," was part of the 1972 originating legislation for the Legislative Reference Bureau. Further, the ground for removal is the same lower bar, i.e., "neglect of duty, misconduct, or disability."

As for Issue No. 2, Section 3 of H.B. 2179 exempts the incumbent, effectively me on this date, unless a general law is enacted at the same time or subsequent to the effective date of a successful H.B. 2179. To support Section 3 would appear patently self serving and also negate the arguments posited above for Issue No. 1. To oppose Section 3, while perhaps appearing to be high minded, could be seen as unsupportive of any successors.

I am unaware of the genesis of this bill. I hope its proponents will articulate their arguments so a full discussion can be had. Most importantly, thank you for this opportunity to deliver a history lesson and provide some context.