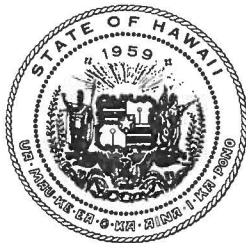


SB3030



**TESTIMONY OF MARION M. HIGA, STATE AUDITOR, ON SENATE BILL NO. 3030,
RELATING TO THE AUDITOR**

Senate Committee on Judiciary and Labor

February 7, 2012

Chair Hee 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 S.B. 3030.

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

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 Hawai'i 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 S.B. 3030, 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 Hawai'i 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 S.B. 3030 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 S.B. 3030. 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.



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Testimony

Committee on Judiciary and Labor

Hearing: *Tuesday, Feb.7, 2012*

Time: *10:15 a.m*

Place: *016*

SUBJECT: SB3030 Relating to the auditor

POSITION: *Strongly OPPOSE*

Testimony:

Chair Hee, Vice-Chair Shimabukuro, Members of the Committee:

I am testifying for the League of Women Voters of Hawaii. Thank you for this opportunity to speak on behalf of our members throughout Hawaii.

This bill would allow the salary of the Auditor to be decreased during his or her term in office. The ostensible purpose of this change is to create a uniform policy allowing salary decreases for the heads of legislative service agencies.

But there is an obvious and critically important reason why the Auditor's salary should not be changed during his or her term of office by legislative action: the Auditor's work requires evaluations and appraisals which, to be of any value to the Legislature and the public, must be, and be perceived as, entirely objective and not influenced by hope or fear of personal gain or loss. The Auditor frequently is asked to audit programs created by the Legislature, or of significant interest to various Legislators and their constituents. If the Auditor's salary could be changed during his or her term of office, there might be a temptation to use such salary changes to deter undesired findings, or to punish such findings once reported. Even if that never, in fact, happened, the possibility must have a chilling effect on the Auditor's impartiality and the public's trust in the Auditor's work and reports.

The League strongly opposes this ill-conceived and dangerous bill.

Thank you for the opportunity to testify

Beppie Shapiro, President

League of Women Voters of Hawaii