

---

---

A BILL FOR AN ACT

RELATING TO FINANCIAL AUDIT OF THE STATE OF HAWAII BY THE  
LEGISLATIVE AUDITOR.

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:**

1           SECTION 1. The purpose of this bill is to specifically  
2 authorize the department of taxation to release certain  
3 otherwise confidential information to the legislative auditor or  
4 the legislative auditor's authorized agents, for the purpose of  
5 conducting the annual certified financial audit pursuant to  
6 section 23-5, Hawaii Revised Statutes, while also requiring the  
7 legislative auditor and its authorized agents to keep the  
8 information confidential.

9           SECTION 2. Section 23-5, Hawaii Revised Statutes, is  
10 amended by amending section (a) to read as follows:

11           "(a) The auditor may examine and inspect all accounts,  
12 books, records, files, papers, and documents and all financial  
13 affairs of every department, office, agency, and political  
14 subdivision[-], including tax return information of the  
15 department of taxation, solely with respect to the audit of the  
16 comprehensive annual financial report of the State of Hawaii.

1 Upon written request by the auditor, the department of taxation  
2 shall provide to the auditor access to tax returns and the  
3 accounts, books, records, files, papers, documents, and  
4 financial affairs of the department of taxation but only to the  
5 extent necessary and relevant to the scope of annual financial  
6 audit of the State. Return information provided to the auditor  
7 by the department of taxation shall be considered working papers  
8 of the auditor pursuant to section 23-9.5."

9 SECTION 3. Section 231-18, Hawaii Revised Statutes, is  
10 amended to read as follows:

11 "§231-18 ~~[Federal or other tax officials]~~ Tax and other  
12 officials permitted to inspect returns; reciprocal provisions.  
13 Notwithstanding the provisions of any law making it unlawful for  
14 any person, officer, or employee of the State to make known  
15 information imparted by any tax return or permit any tax return  
16 to be seen or examined by any person, it shall be lawful to  
17 permit a duly accredited tax official of the United States, any  
18 state or territory, any county of this State, [ø] the  
19 Multistate Tax Commission to inspect any tax return of any  
20 taxpayer, or to furnish to an official, commission, or the  
21 authorized representative thereof an abstract of the return or  
22 supply the official, commission, or the authorized  
23 representative thereof with information concerning any item

1 contained in the return or disclosed by the report of any  
2 investigation of the return or of the subject matter of the  
3 return for tax purposes only[-], or, in the case of the  
4 legislative auditor, only in connection with performing a  
5 financial audit of the State, but only to the extent necessary  
6 and relevant to the scope of the financial audit. The  
7 Multistate Tax Commission may make the information available to  
8 a duly accredited tax official of the United States, any state  
9 or territory, or the authorized representative thereof, for tax  
10 purposes only."

11 SECTION 4. Section 235-116, Hawaii Revised Statutes, is  
12 amended to read as follows:

13 "§235-116 Disclosure of returns unlawful; penalty. All  
14 tax returns and return information required to be filed under  
15 this chapter shall be confidential, including any copy of any  
16 portion of a federal return [~~which~~] that may be attached to a  
17 state tax return, or any information reflected in the copy of  
18 [~~such~~] the federal return. It shall be unlawful for any person,  
19 or any officer or employee of the State, including the  
20 legislative auditor or the legislative auditor's agent in  
21 connection with a financial audit of the State pursuant to  
22 section 23-5, to make known intentionally information imparted  
23 by any income tax return or estimate made under sections 235-92,

1 235-94, 235-95, and 235-97 or willfully to permit any income tax  
2 return or estimate so made or copy thereof to be seen or  
3 examined by any person other than the taxpayer or the taxpayer's  
4 authorized agent, persons duly authorized by the State in  
5 connection with their official duties, the Multistate Tax  
6 Commission or the authorized representative thereof, except as  
7 provided by law, and any offense against the foregoing  
8 provisions shall be punished by a fine not exceeding \$500 or by  
9 imprisonment not exceeding one year, or both."

10 SECTION 5. Section 237-34, Hawaii Revised Statutes, is  
11 amended by amending subsection (b) to read as follows:

12 "(b) All tax returns and return information required to be  
13 filed under this chapter, and the report of any investigation of  
14 the return or of the subject matter of the return, shall be  
15 confidential. It shall be unlawful for any person or any  
16 officer or employee of the State, including the legislative  
17 auditor or the legislative auditor's agent conducting a  
18 financial audit of the State pursuant to section 23-5, to  
19 intentionally make known information imparted by any tax return  
20 or return information filed pursuant to this chapter, or any  
21 report of any investigation of the return or of the subject  
22 matter of the return, or to willfully permit any [~~such~~] return,  
23 return information, or report so made, or any copy thereof, to

1 be seen or examined by any person; provided that for tax  
2 purposes only, the taxpayer, the taxpayer's authorized agent, or  
3 persons with a material interest in the return, return  
4 information, or report may examine them. Unless otherwise  
5 provided by law, persons with a material interest in the return,  
6 return information, or report shall include:

- 7 (1) Trustees;
- 8 (2) Partners;
- 9 (3) Persons named in a board resolution or a one per cent  
10 shareholder in the case of a corporate return;
- 11 (4) The person authorized to act for a corporation in  
12 dissolution;
- 13 (5) The shareholder of an S corporation;
- 14 (6) The personal representative, trustee, heir, or  
15 beneficiary of an estate or trust in the case of the  
16 estate's or decedent's return;
- 17 (7) The committee, trustee, or guardian of any person in  
18 paragraphs (1) [~~te~~] through (6) who is incompetent;
- 19 (8) The trustee in bankruptcy or receiver, and the  
20 attorney-in-fact of any person in paragraphs (1) [~~te~~]  
21 through (7);
- 22 (9) Persons duly authorized by the State in connection  
23 with their official duties;

1 (10) Any duly accredited tax official of the United States  
2 or of any state or territory;

3 (11) The Multistate Tax Commission or its authorized  
4 representative;

5 (12) Members of a limited liability company; and

6 (13) A person contractually obligated to pay the taxes  
7 assessed against another when the latter person is  
8 under audit by the department.

9 Any violation of this subsection shall be a misdemeanor."

10 SECTION 6. Section 237D-13, Hawaii Revised Statutes, is  
11 amended by amended subsection (a) to read as follows:

12 "(a) All tax returns and return information required to be  
13 filed under this chapter, and the report of any investigation of  
14 the return or of the subject matter of the return, shall be  
15 confidential. It shall be unlawful for any person or any  
16 officer or employee of the State, including the legislative  
17 auditor or the legislative auditor's agent conducting a  
18 financial audit of the State pursuant to section 23-5, to  
19 intentionally make known information imparted by any tax return  
20 or return information filed pursuant to this chapter, or any  
21 report of any investigation of the return or of the subject  
22 matter of the return, or to willfully permit any return, return  
23 information, or report so made, or any copy thereof, to be seen

1 or examined by any person; provided that for tax purposes only  
2 the taxpayer, the taxpayer's authorized agent, or persons with a  
3 material interest in the return, return information, or report  
4 may examine them. Unless otherwise provided by law, persons  
5 with a material interest in the return, return information, or  
6 report shall include:

- 7 (1) Trustees;
- 8 (2) Partners;
- 9 (3) Persons named in a board resolution or a one per cent  
10 shareholder in the case of a corporate return;
- 11 (4) The person authorized to act for a corporation in  
12 dissolution;
- 13 (5) The shareholder of an S corporation;
- 14 (6) The personal representative, trustee, heir, or  
15 beneficiary or an estate or trust in the case of the  
16 estate's or decedent's return;
- 17 (7) The committee, trustee, or guardian of any person in  
18 paragraphs (1) [~~to~~] through (6) who is incompetent;
- 19 (8) The trustee in bankruptcy or receiver, and the  
20 attorney-in-fact of any person in paragraphs (1) [~~to~~]  
21 through (7);
- 22 (9) Persons duly authorized by the State in connection  
23 with their official duties;

1 (10) Any duly accredited tax official of the United States  
2 or of any state or territory, or of any county of  
3 this State;

4 (11) The Multistate Tax Commission or its authorized  
5 representative; and

6 (12) Members of a limited liability company.

7 Any violation of this subsection shall be a misdemeanor.

8 Nothing in this subsection shall prohibit the publication of  
9 statistics [sø] that are classified [as] to prevent the  
10 identification of particular reports or returns and the items of  
11 the reports or returns."

12 SECTION 7. Section 251-12, Hawaii Revised Statutes, is  
13 amended by amending subsection (a) to read as follows:

14 "(a) All tax returns and return information required to be  
15 filed under this chapter, and the report of any investigation of  
16 the return or of the subject matter of the return, shall be  
17 confidential. It shall be unlawful for any person or any  
18 officer or employee of the State, including the legislative  
19 auditor or the legislative auditor's agent conducting a  
20 financial audit of the State pursuant to section 23-5, to  
21 intentionally make known information imparted by any tax return  
22 or return information filed pursuant to this chapter, or any  
23 report of any investigation of the return or of the subject



1 matter of the return, or to willfully permit any ~~such~~ tax  
2 return, return information, or report so made, or any copy  
3 thereof, to be seen or examined by any person; provided that for  
4 surcharge tax purposes only the lessor or tour vehicle operator,  
5 the lessor's or tour vehicle operator's authorized agent, or  
6 persons with a material interest in the return, return  
7 information, or report may examine them. Unless otherwise  
8 provided by law, persons with a material interest in the return,  
9 return information, or report shall include:

- 10 (1) Trustees;
- 11 (2) Partners;
- 12 (3) Persons named in a board resolution or a one per cent  
13 shareholder in the case of a corporate return;
- 14 (4) The person authorized to act for a corporation in  
15 dissolution;
- 16 (5) The shareholder of an S corporation;
- 17 (6) The personal representative, trustee, heir, or  
18 beneficiary of an estate or trust in the case of  
19 the estate's or decedent's return;
- 20 (7) The committee, trustee, or guardian of any person in  
21 paragraphs (1) ~~to~~ through (6) who is incompetent;
- 22 (8) The trustee in bankruptcy or receiver, and the  
23 attorney-in-fact of any person in paragraphs (1) ~~to~~

H.B. NO. 2230

1 through (7);

2 (9) Persons duly authorized by the State in connection  
3 with their official duties;

4 (10) Any duly accredited tax official of the United States  
5 or of any state or territory;

6 (11) The Multistate Tax Commission or its authorized  
7 representative; and

8 (12) Members of a limited liability company.

9 Any violation of this subsection shall be a misdemeanor.

10 Nothing in this subsection shall prohibit the publication of  
11 statistics [~~se~~] that are classified so as to prevent the  
12 identification of particular reports or returns and the items of  
13 the reports or returns."

14 SECTION 8. Statutory material to be repealed is bracketed  
15 and stricken. New statutory material is underscored.

16 SECTION 9. This Act shall take effect upon its approval.

17

18

INTRODUCED BY

19

BY REQUEST  
JAN 21 2014

20

**Report Title:**

Legislative Auditor; Access to Tax Information

**Description:**

Specifically authorizes the Legislative Auditor to access information in the possession of the Department of Taxation for purposes of conducting financial audits of the State of Hawaii, while also requiring the Legislative Auditor to keep the information confidential.

*The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.*

JUSTIFICATION SHEET

DEPARTMENT: Accounting and General Services.

TITLE: A BILL FOR AN ACT RELATING TO FINANCIAL AUDIT OF THE STATE OF HAWAII BY THE LEGISLATIVE AUDITOR.

PURPOSE: To specifically authorize the Legislative Auditor to access from the Department of Taxation certain otherwise confidential taxpayer information for the purpose of conducting the Comprehensive Annual Financial Report (CAFR) audit of the State of Hawaii where such confidential information is relevant and necessary to conduct the audit, while also requiring the Legislative Auditor and its authorized agents to keep that information confidential.

MEANS: Amend sections 23-5(a), 231-18, 235-116, 237-34(b), 237D-13(a), and 251-12(a), Hawaii Revised Statutes.

JUSTIFICATION: The Legislative Auditor has authority to conduct audits of all departments, offices, and agencies of the State and its political subdivisions. However, questions have been raised by the Department of Taxation regarding the Legislative Auditor's authority and ability to review tax returns and other records on file with the Department of Taxation in connection with the annual financial audit of the State of Hawaii, which has hindered the ability of the Legislative Auditor's office to conduct and timely complete financial audits of the State of Hawaii

Impact on the public: Allowing the Legislative Auditor access to relevant and necessary confidential documents it needs to complete a financial audit of the State of

Hawaii will benefit the public, as timely completion can positively affect the ability of the State to issue general obligation bonds to fund capital improvement projects that benefit the public. In addition, this legislation assures taxpayers that their taxpayer information will remain confidential and are thoroughly protected from intentional and inadvertent disclosure.

Impact on the department and other agencies:  
The department of taxation will need to make records available and the Legislative Auditor and its agents will need to keep these records confidential.

GENERAL FUND: None.

OTHER FUNDS: None.

PPBS PROGRAM  
DESIGNATION: None.

OTHER AFFECTED  
AGENCIES: Department of Taxation and Legislative Auditor.

EFFECTIVE DATE: Upon approval.