

**"CHAPTER 23
AUDITOR**

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Pilot project for efficiency measures to be included with budget documents submitted to the legislature; report to 2017 legislature; auditor report (no later than March 1, 2017). L 2015, c 67.

Plant quarantine branch, department of agriculture; financial and performance audit; report to 2017 legislature. L 2016, c 243, §7.

Workers' compensation closed claims study by auditor; submission to 2018 legislature. L 2016, c 188.

"[PART I. OFFICE OF AUDITOR PROPER]"

Revision Note

Sections 23-1 to 10 have been designated Part I in view of addition of Part II.

§23-1 Definition. As used in this chapter:

"Departments, offices, and agencies" means and includes all executive departments, boards, commissions, bureaus, offices, agencies, and all independent commissions and other establishments of the state government (excepting the legislature) and all quasi-public institutions and all courts which are supported in whole or in part by, or which handle state or public funds; and

"Political subdivision" means and includes all counties and municipalities of the State insofar as they are supported by or handle state or public funds. [L Sp 1959 1st, c 14, pt of §1; Supp, §2-30; HRS §23-1]

" **§23-2 Auditor; appointment, tenure, removal.** The auditor shall be appointed, hold office for such term, and be subject to removal in the manner prescribed in section 10, Article VII, of the Constitution. [L Sp 1959 1st, c 14, pt of §1; am L 1963, c 184, pt of §1; Supp, pt of §2-31; HRS §23-2]

" **[§23-2.5] Acting auditor.** In the event that the auditor dies, resigns, becomes ineligible to serve, or is removed or suspended from office, the first assistant or first deputy to the auditor shall become the acting auditor until an auditor is appointed pursuant to Article VII, section 10 of the Constitution of the State of Hawaii. The acting auditor shall

have all of the powers and duties of the auditor. [L 1989, c 98, §1]

" **§23-3 Salary of the auditor and appropriations.** (a) Effective July 1, 2005, the salary of the auditor shall be the same as the salary of the director of health.

The salary of the auditor shall not be diminished during the auditor's term of office, unless by general law applying to all salaried officers of the State.

(b) The funds for the support of the auditor's office shall be provided for in the act providing for the expenses of the legislature. [L Sp 1959 1st, c 14, pt of §1; am L 1963, c 184, pt of §1, §3; am L 1965, c 223, §9; Supp, pt of §§2-31, 2-39; HRS §23-3; am L 1969, c 127, §4; am L 1975, c 58, §31; am L 1982, c 129, §29(1); am L 1986, c 128, §27(1); am L 1989, c 329, §17(1); am L 2005, c 225, §1; am L 2012, c 300, §2]

Attorney General Opinions

A bill to appropriate funds for the legislative auditor may be separate and distinct from that of the expenses of the legislature. Att. Gen. Op. 67-2.

" **[\$23-3.5] Reimbursement moneys for financial audits.** When any part of the costs of financial audits conducted by or contracted for by the auditor are reimbursable by moneys appropriated to or generated by any department, office, or agency of the State or its political subdivisions, the affected department, office, or agency of the State or political subdivision shall transmit those cost reimbursements to the auditor. Moneys collected pursuant to this section shall be deposited in the audit revolving fund established by section 23-3.6. [L Sp 2003, c 4, pt of §1]

" **[\$23-3.6] Audit revolving fund.** (a) There is established the audit revolving fund to be administered by the office of the auditor, into which shall be deposited:

- (1) Reimbursement moneys received by any department, office, or agency of the State and its political subdivisions for financial audits;
- (2) Moneys received by the auditor from any department, office, or agency of the State and its political subdivisions for audit costs payable by special funds, revolving funds, capital improvement funds, or trust funds;
- (3) Legislative appropriations; and

(4) All interest and investment earnings credited to the assets of the fund.

(b) Moneys in the audit revolving fund shall be expended by the auditor to conduct audits of the State's departments, offices, agencies, and political subdivisions, audits of special, revolving, capital improvement, or trust funds, and for the services of certified public accountants contracted to conduct such audits. [L Sp 2003, c 4, pt of §1]

" **§23-4 Duties.** (a) The auditor shall conduct postaudits of the transactions, accounts, programs, and performance of all departments, offices, and agencies of the State and its political subdivisions. The postaudits and all examinations to discover evidence of any unauthorized, illegal, irregular, improper, or unsafe handling or expenditure of state funds or other improper practice of financial administration shall be conducted at least once in every two years after the close of a fiscal year, and at any other time or times during the fiscal year as the auditor deems necessary or as may be required by the legislature for the purpose of certifying to the accuracy of all financial statements issued by the respective accounting officers and of determining the validity of expenditures of state or public funds.

(b) Each department, office, or agency of the State or political subdivision thereof that is the subject of an audit performed pursuant to this chapter shall provide updates on its progress in implementing the recommendations made by the auditor, at intervals prescribed by the auditor.

(c) The auditor, in conducting postaudits, to the extent practicable and applicable to the audit scope and objectives, shall review and assess the audited agency's rules as defined in section 91-1. [L Sp 1959 1st, c 14, pt of §1; Supp, §2-32; HRS §23-4; am L 1975, c 130, §2; am L 1979, c 42, §1 and c 216, §3; gen ch 1985; am L 1990, c 21, §1; am L 1994, c 279, §1; am L 2008, c 36, §2]

" **§23-5 Auditor; powers.** (a) The auditor may examine and inspect all accounts, books, records, files, papers, and documents and all financial affairs of every department, office, agency, and political subdivision; provided that:

(1) Upon written request by the auditor, the department of taxation shall provide to the auditor access to tax returns but only to the extent necessary and relevant to the scope of the comprehensive annual financial report audit of the State; and

(2) Tax return information provided to the auditor by the department of taxation pursuant to paragraph (1) shall be considered working papers of the auditor pursuant to section 23-9.5.

(b) The auditor may cause search to be made and extracts to be taken from any account, book, file, paper, record, or document in the custody of any public officer without paying any fee for the same; and every officer having the custody of the accounts, books, records, files, papers, and documents shall make such search and furnish such extracts as thereto requested.

(c) The auditor may issue:

- (1) Subpoenas compelling at a specified time and place the appearance and sworn testimony of any person whom the auditor reasonably believes may be able to provide information relating to any audit or other investigation undertaken pursuant to this chapter; and
- (2) Subpoenas duces tecum compelling the production of accounts, books, records, files, papers, documents, or other evidence, which the auditor reasonably believes may relate to an audit or other investigation being conducted under this chapter.

Upon application by the auditor, obedience to the subpoena may be enforced by the circuit court in the county in which the person subpoenaed resides or is found in the same manner as a subpoena issued by the clerk of the circuit court. [L Sp 1959 1st, c 14, pt of §1; Supp, §2-33; HRS §23-5; gen ch 1985; am L 2000, c 275, §1; am L 2014, c 136, §2]

" **§23-6 Examination under oath.** The auditor may administer oaths to persons summoned to appear before the auditor and may question such persons, under oath, concerning receipts and expenditures of money and concerning all other things and matters necessary for the due execution of the duties vested in the auditor by this chapter. [L Sp 1959 1st, c 14, pt of §1; Supp, §2-34; HRS §23-6; gen ch 1985]

" **§23-7 Discovery of irregularities.** In case the auditor at any time discovers evidence of any unauthorized, illegal, irregular, improper, or unsafe handling or expenditure of state funds, or other improper practice of financial administration or if at any time it comes to the auditor's knowledge that any unauthorized, illegal, irregular, improper, or unsafe handling or expenditure of state funds or other improper practice of financial administration is contemplated but not consummated, in either case, the auditor shall forthwith transmit the facts to the legislature or any legislative interim committee then in

existence, and the governor and the council of the political subdivision concerned. The auditor shall in the auditor's annual report to the legislature make specific recommendations for the avoidance of the same in the future. [L Sp 1959 1st, c 14, pt of §1; Supp, §2-36; HRS §23-7; gen ch 1985]

Revision Note

"Council" substituted for "city council or board of supervisors".

" **§23-7.5 Audit recommendations; annual report.** (a) Not later than twenty days prior to the regular session of 2009, and each regular session thereafter, the auditor shall submit a report to the legislature of each audit recommendation the auditor has made that is more than one year old and that has not been implemented by the audited agency. The report shall clearly identify:

- (1) The state agency audited;
- (2) The audit title and number that contained the recommendation;
- (3) A brief description of the recommendation;
- (4) The date that the audit was issued; and
- (5) The most recent explanation provided by the agency to the auditor on the status of the recommendation.

(b) Any agency that is notified by the auditor that it has not implemented a recommendation made pursuant to this chapter more than one year prior shall submit a written report to the auditor, the president of the senate, and the speaker of the house of representatives not later than thirty days after the notification explaining why the audit recommendation was not implemented and the estimated date of implementation of the recommendation. [L 2008, c 36, §1]

" **§23-8 Assistance and staff.** (a) In the performance of the auditor's duties, the auditor may employ the services of one or more certified public accountants or accounting firms, and other assistants and clerical workers as may be necessary; provided the cost thereof shall not exceed the sums as may be available out of the appropriation provided by law for the conduct of the auditor's office; provided further that the accountants, firms, and assistants are entirely independent of the departments, offices, and agencies of the State and its political subdivisions whose affairs are subject to audit by the auditor.

(b) All employees shall be hired by the auditor subject to the approval of the president of the senate and the speaker of the house of representatives and shall serve at the auditor's pleasure; provided that in the establishment of the salary of each employee, the auditor shall consult with the department of human resources development and shall follow as closely as possible the recommendations of the department; provided further that effective July 1, 2007, the salary of the first assistant or first deputy shall be not more than ninety-two per cent of the salary of the auditor.

(c) The auditor and the auditor's full-time staff shall be entitled to participate in any employee benefit program privileges. [L Sp 1959 1st, c 14, pt of §1; am L 1963, c 184, §2; Supp, §2-37; HRS §23-8; am L 1982, c 129, §29(2); gen ch 1985; am L 1986, c 128, §27(2); am L 1989, c 329, §17(2); am L 1994, c 56, §21; am L 2005, c 225, §2; am L 2007, c 63, §1]

Cross References

Salary of auditor, see §23-3.

" **§23-9 Reports.** The auditor shall, at each regular session, submit a report to the legislature of the audits and examinations conducted by the auditor for the immediately preceding fiscal year and all other audits and examinations conducted by the auditor during the current fiscal year, together with findings and recommendations relative to the expenditures made and financial transactions had by the departments, offices, and agencies of the State and its political subdivisions. Reports may also be submitted to the legislative council or any legislative interim committee then in existence. Certified copies of all audits and examinations made by the auditor shall be sent to the governor and the director of finance. All reports shall be available for public inspection. A certified copy of that portion of any report which consists of audits and examinations of departments, offices, or agencies of a political subdivision shall be sent to the council of the political subdivision concerned. [L Sp 1959 1st, c 14, pt of §1; am L Sp 1959 2d, c 1, §14; am L 1963, c 114, §1; Supp, §2-38; HRS §23-9; gen ch 1985]

Revision Note

"Council" substituted for "city council or board of supervisors".

" **[§23-9.5] Confidentiality.** The auditor shall not be required to disclose any working papers. For the purposes of this section, "working papers" means the notes, internal memoranda, and records of work performed by the auditor on audits and other investigations undertaken pursuant to this chapter, including any and all project evidence collected and developed by the auditor. [L 1996, c 270, §1]

" **§23-10 Penalty for violation and false evidence.** Any person summoned or subpoenaed as provided in section 23-5 to give testimony or to produce any accounts, books, records, files, papers, documents, or other evidence relating to any matter under inquiry, who wilfully makes default, or who, having appeared, refuses to answer any question pertaining to the matter under inquiry, shall be fined not less than \$100 nor more than \$1,000, or imprisoned not less than one month nor more than twelve months, or both. If any person, in the course of the person's examination before the auditor, wilfully gives false evidence, the person so offending shall incur the same penalties as are or may be provided against persons convicted of perjury. [L Sp 1959 1st, c 14, pt of §1; Supp, §2-35; HRS §23-10; gen ch 1985; am L 2000, c 275, §2]

Cross References

Classification of offense and authorized punishment, see §§701-107, 706-640, 663.

" **§23-11 New special or revolving funds.** (a) Within five days after the deadline for the introduction of bills in each legislative session, the clerks of each house of the legislature shall transmit, to the auditor for analysis, copies of all legislative bills that were introduced in their respective houses during that session that propose to establish new special or revolving funds.

(b) The criteria to be used by the auditor in analyzing each legislative bill shall include:

- (1) The need for the fund, as demonstrated by:
 - (A) The purpose of the program to be supported by the fund;
 - (B) The scope of the program, including financial information on fees to be charged, sources of projected revenue, and costs; and
 - (C) An explanation of why the program cannot be implemented successfully under the general fund appropriation process; and

- (2) Whether there is a clear nexus between the benefits sought and charges made upon the program users or beneficiaries or a clear link between the program and the sources of revenue, as opposed to serving primarily as a means to provide the program or users with an automatic means of support that is removed from the normal budget and appropriation process.

Each analysis shall set forth the probable effects of the proposed fund and shall also assess alternative forms of funding.

(c) No later than thirty days prior to the adjournment sine die of each legislative session, the auditor shall submit the analysis of each transmitted legislative bill to each house of the legislature. [L 1990, c 240, §2; am L 2013, c 130, §2]

Revision Note

Section was enacted as addition to chapter 36 but is renumbered to this chapter pursuant to §23G-15.

" **§23-12 Review of special, revolving, and trust funds.** (a) The office of the auditor shall report to the legislature, at each regular session, a review of special, revolving, and trust funds established to provide services rendered by any state department or establishment to other state departments or establishments or to any political subdivision of the State. The review shall include:

- (1) An evaluation of the original intent and purpose of each fund, both as expressed by the legislature and as understood by the expending agency;
- (2) The degree to which each fund achieves the stated and claimed purposes;
- (3) An evaluation of performance standards established by the agency; and
- (4) A summary statement reflecting total fund transactions in the preceding five fiscal years, including the fund balance at the beginning of each fiscal year, total deposits and withdrawals, amount of interest earned, total expenditures made from the fund, and the ending fund balance for each fiscal year.

(b) Each special, revolving, and trust fund shall be reviewed every five years as follows:

- (1) Beginning 2014 and every five years thereafter, the auditor shall submit a review of the special, revolving, and trust funds of the department of accounting and general services; the department of

- agriculture; the department of budget and finance; and the department of land and natural resources;
- (2) Beginning 2015 and every five years thereafter, the auditor shall submit a review of the special, revolving, and trust funds of the department of the attorney general; the department of business, economic development, and tourism; and the University of Hawaii system;
 - (3) Beginning 2016 and every five years thereafter, the auditor shall submit a review of the special, revolving, and trust funds within the judiciary and of the department of commerce and consumer affairs; the department of Hawaiian home lands; the department of health; and the department of human services;
 - (4) Beginning 2017 and every five years thereafter, the auditor shall submit a review of the special, revolving, and trust funds of the office of the governor; the office of Hawaiian affairs; and the department of education;
 - (5) Beginning 2018 and every five years thereafter, the auditor shall submit a review of the special, revolving, and trust funds of the department of labor and industrial relations; the department of taxation; the department of human resources development; the department of public safety; and all other moneys expended in accordance with section 37-40; and
 - (6) Beginning 2014 and every five years thereafter, the auditor shall submit a review of the special, revolving, and trust funds of the department of transportation and the department of defense. [L 1993, c 280, §57; am L 1994, c 56, §21; am L 2013, c 130, §3]

" **[§23-13] Hawaii tourism authority; audit.** (a) The auditor shall conduct at least every five years a management and financial audit of all contracts or agreements awarded by the Hawaii tourism authority to a major contractor to determine if the authority and its major contractors are in compliance with all relevant programmatic and financial requirements. The first audit shall be conducted within one year of July 1, 2002. These audits shall include but not be limited to a review of the following:

- (1) The responsibilities, services, and activities of all major contractors;
- (2) The propriety of expenditures;

- (3) Compliance by all major contractors with any laws and rules that may be in effect;
- (4) The management and oversight of all major contractors by the authority; and
- (5) Any additional audit issues that the auditor deems appropriate.

(b) The authority and any private companies or agencies receiving state funds shall fully cooperate with and provide assistance to the auditor as needed with respect to its audit, and shall respond promptly to the auditor's requests in conducting this audit, including providing for records and other information requested in the course of the audit.

(c) The authority shall compensate the auditor for expenditures incurred by the auditor in conducting the management and financial audit.

(d) The auditor shall submit its findings and recommendations to the legislature no later than twenty days before the convening of the regular session following the year in which the audit is conducted.

(e) For purposes of this section, "major contractor" means any contractor to whom a contract or agreement has been awarded that is valued in excess of \$15,000,000. [L 2002, c 143, §1]

Revision Note

"July 1, 2002" substituted for "the effective date of this Act".

"PART II. LEGISLATIVE SCIENTIFIC ADVISORY COMMITTEE--REPEALED

§§23-21 to 27 REPEALED. L 1989, c 165, §3.

"PART III. LEGISLATIVE ECONOMIC ADVISORY COUNCIL--REPEALED

§§23-41 to 47 REPEALED. L 1989, c 165, §3.

"[PART IV.] SOCIAL AND FINANCIAL ASSESSMENT OF PROPOSED MANDATORY HEALTH INSURANCE COVERAGE

§23-51 Proposed mandatory health insurance coverage; impact assessment report. Before any legislative measure that mandates health insurance coverage for specific health services, specific diseases, or certain providers of health care services as part of individual or group health insurance policies, can be considered, there shall be concurrent resolutions passed

requesting the auditor to prepare and submit to the legislature a report that assesses both the social and financial effects of the proposed mandated coverage. The concurrent resolutions shall designate a specific legislative bill that:

- (1) Has been introduced in the legislature; and
- (2) Includes, at a minimum, information identifying the:
 - (A) Specific health service, disease, or provider that would be covered;
 - (B) Extent of the coverage;
 - (C) Target groups that would be covered;
 - (D) Limits on utilization, if any; and
 - (E) Standards of care.

For purposes of this part, mandated health insurance coverage shall not include mandated optionals. [L 1987, c 331, pt of §1; am L 1990, c 227, §1; am L 1996, c 270, §2]

" **§23-52 Assessment report; contents.** The report required under section 23-51 for assessing the impact of a proposed mandate of health coverage shall include at the minimum and to the extent that information is available, the following:

- (1) The social impact.
 - (A) The extent to which the treatment or service is generally utilized by a significant portion of the population;
 - (B) The extent to which such insurance coverage is already generally available;
 - (C) If coverage is not generally available, the extent to which the lack of coverage results in persons being unable to obtain necessary health care treatment;
 - (D) If the coverage is not generally available, the extent to which the lack of coverage results in unreasonable financial hardship on those persons needing treatment;
 - (E) The level of public demand for the treatment or service;
 - (F) The level of public demand for individual or group insurance coverage of the treatment or service;
 - (G) The level of interest of collective bargaining organizations in negotiating privately for inclusion of this coverage in group contracts;
 - (H) The impact of providing coverage for the treatment or service (such as morbidity, mortality, quality of care, change in practice patterns, provider competition, or related items); and

- (I) The impact of any other indirect costs upon the costs and benefits of coverage as may be directed by the legislature or deemed necessary by the auditor in order to carry out the intent of this section.
- (2) The financial impact.
 - (A) The extent to which insurance coverage of the kind proposed would increase or decrease the cost of the treatment or service;
 - (B) The extent to which the proposed coverage might increase the use of the treatment or service;
 - (C) The extent to which the mandated treatment or service might serve as an alternative for more expensive treatment or service;
 - (D) The extent to which insurance coverage of the health care service or provider can be reasonably expected to increase or decrease the insurance premium and administrative expenses of policyholders; and
 - (E) The impact of this coverage on the total cost of health care. [L 1987, c 331, pt of §1; am L 1990, c 227, §2]

"[PART V.] LEGISLATIVE ADVISORY COMMITTEE

[\$23-61] Purpose. The legislature finds that the assistance of experts in a variety of fields ranging from science, finance, economics, business, technology, and other technical areas is vital to sound legislative decisionmaking. Assessment of facts and data, including a clear formulation of ideas and objectives are often needed by legislators. The purpose of this part is to provide the legislature with the necessary resource experts to aid legislators in making judicious decisions. [L 1989, c 165, pt of §2]

" **[\$23-62] Definition.** As used in this part, "committee" means the legislative advisory committee. [L 1989, c 165, pt of §2]

" **[\$23-63] Establishment.** There is established in the office of the legislative auditor for administrative purposes only, a legislative advisory committee to provide technical advice to the legislature. [L 1989, c 165, pt of §2]

" **[\$23-64] Composition; appointment.** (a) The committee shall be composed of fifteen members representing a broad spectrum of the scientific, financial, economic, business, and

academic communities who are skilled in factual inquiry and dispute resolution.

(b) The ombudsman, the legislative auditor, and the director of the legislative reference bureau shall submit a list of thirty names to the president of the senate and the speaker of the house of representatives who shall, in consultation with the party leaderships of their respective houses, jointly appoint the members of the committee.

(c) The co-chairpersons of the committee shall be the respective chairpersons of the standing committees in the senate and the house of representatives responsible for legislative management. [L 1989, c 165, pt of §2]

" **[\$23-65] Term of appointment.** The members of the committee shall be appointed for three-year terms, and shall serve until a successor is appointed. Vacancies shall be filled for the remainder of any unexpired term in the same manner as original appointments. [L 1989, c 165, pt of §2]

" **[\$23-66] Powers and duties.** The committee shall:

- (1) Operate within guidelines for requests for information established by the standing committee in the senate and the standing committee in the house of representatives responsible for legislative management;
- (2) Respond to legislative requests for information within guidelines established by the standing committees in the senate and the house of representatives responsible for legislative management;
- (3) Convene ad hoc panels of experts who, with the assistance of interested parties, can make findings and recommendations to the legislature in whatever technical field requested after reducing the number of disputed facts, and helping interest groups clearly express their objectives and assumptions; and
- (4) Present the clarified policy questions to the legislature for resolution. [L 1989, c 165, pt of §2]

" **[\$23-67] Expenses.** The members of the committee and ad hoc committees shall serve without compensation but shall be reimbursed for all necessary expenses incurred in the performance of their duties. [L 1989, c 165, pt of §2]

"[PART VI.] REVIEW OF TAX EXEMPTIONS, EXCLUSIONS, AND CREDITS

Note

Part effective July 1, 2017.

[\$23-71] Review of certain exemptions, exclusions, and credits under the general excise and use taxes, public service company tax, and insurance premium tax. (a) The auditor shall conduct a review of the tax exemptions, exclusions, and credits listed in sections 23-72 to 23-81.

(b) In the review of an exemption, exclusion, or credit, the auditor shall:

- (1) Determine the amount of tax expenditure for the exemption, exclusion, or credit for each of the previous three fiscal years;
- (2) Estimate the amount of tax expenditure for the exemption, exclusion, or credit for the current fiscal year and the next two fiscal years;
- (3) Determine whether the exemption, exclusion, or credit has achieved and continues to achieve the purpose for which it was enacted by the legislature;
- (4) Determine whether the exemption, exclusion, or credit is necessary to promote or preserve tax equity or efficiency;
- (5) If the exemption, exclusion, or credit was enacted because of its purported economic or employment benefit to the State:
 - (A) Determine whether a benefit has resulted, and if so, quantify to the extent possible the estimated benefit directly attributable to the exemption, exclusion, or credit; and
 - (B) Comment on whether the benefit, if any, outweighs the cost of the exemption, exclusion, or credit; and
- (6) Estimate the annual cost of the exemption, exclusion, or credit per low-income resident of the State. For purposes of this paragraph, a "low-income resident of the State" means an individual who is a resident of the State and:
 - (A) Is the only member of a family of one and has an income of not more than eighty per cent of the area median income for a family of one; or
 - (B) Is part of a family with an income of not more than eighty per cent of the area median income for a family of the same size.

The cost shall be estimated by dividing the annual tax expenditure for the exemption, exclusion, or credit for each fiscal year under review by the number of low-income residents of the State in the fiscal year. The estimate determined pursuant to this paragraph is

intended to display the effect on low-income residents of the State if they directly receive, either through tax reduction or negative tax, the dollars saved by elimination of the exemption, exclusion, or credit.

(c) Based on the review, the auditor shall recommend whether the exemption, exclusion, or credit should be retained without modification, amended, or repealed.

The auditor may recommend that an exemption, exclusion, or credit be removed from review under sections 23-72 through 23-81. [L 2016, c 261, pt of §2]

" **[\$23-72] Review for 2018 and every tenth year thereafter.**

(a) The exemptions and exclusions under the general excise and use taxes listed in subsection (c) shall be reviewed in 2018 and every tenth year thereafter.

(b) The auditor shall submit the findings and recommendations of the reviews to the legislature and governor no later than twenty days prior to the convening of the immediately following regular session.

(c) This section shall apply to the following:

- (1) Section 237-3(b)--Gross receipts from the following:
 - (A) Sales of securities;
 - (B) Sales of commodity futures;
 - (C) Sales of evidences of indebtedness;
 - (D) Fee simple sales of improved or unimproved land;
 - (E) Dividends; and
 - (F) Sales or transfers of materials and supplies, interest on loans, and provision of services among members of an affiliated public service company group;
- (2) Section 237-13(3)(B)--Gross income of contractors from subcontractors;
- (3) Section 237-13(3)(C)--Reimbursements to federal cost-plus contractors;
- (4) Section 237-13(6)(D)(i), (ii), (iii), and (iv)--Gross receipts of home service providers acting as service carriers;
- (5) Section 237-24.3(11)--Amounts received from aircraft and aircraft engine rental or leasing;
- (6) Section 237-24.9--Amounts received from aircraft servicing and maintenance and aircraft service and maintenance facility construction;
- (7) Section 238-1, paragraph (6) of the definition of "use"--The value of aircraft leases or rental and acquired or imported aircrafts and aircraft engines; and

- (8) Section 238-1, paragraph (8) of the definition of "use"--The value of material, parts, or tools for aircraft service and maintenance and aircraft service and maintenance facility construction. [L 2016, c 261, pt of §2]

" **[\$23-73] Review for 2019 and every tenth year thereafter.**

(a) The exemptions, exclusions, and credits under the general excise tax listed in subsection (c) shall be reviewed in 2019 and every tenth year thereafter.

(b) The auditor shall submit the findings and recommendations of the reviews to the legislature and governor no later than twenty days prior to the convening of the immediately following regular session.

(c) This section shall apply to the following:

- (1) Section 237-16.5--Gross income of real property lessees from sublessees;
- (2) Section 237-16.8--Value or gross income of nonprofit organizations from conventions, conferences, trade shows, and display spaces;
- (3) Section 349-10--Proceeds earned from annual senior citizen's fairs;
- (4) Section 237-23.5--Amounts received from common payments of related entities;
- (5) Section 237-24(13)--Amounts received by blind, deaf, or totally disabled persons from their business;
- (6) Section 237-24(14)--Amounts received by independent cane farmers who are sugarcane producers;
- (7) Section 237-24(15)--Amounts received by foster parents;
- (8) Section 237-24(16)--Reimbursements to cooperative housing corporations for operating and maintenance expenses;
- (9) Section 237-24(17)--Amounts received by TRICARE managed care support contractors; and
- (10) Section 237-24(18)--Amounts received by Patient-Centered Community Care program contractors. [L 2016, c 261, pt of §2]

" **[\$23-74] Review for 2020 and every tenth year thereafter.**

(a) The exemptions and exclusions under the general excise tax, public service company tax, or insurance premium tax listed in subsection (c) shall be reviewed in 2020 and every tenth year thereafter.

(b) The auditor shall submit the findings and recommendations of the reviews to the legislature and governor no later than twenty days prior to the convening of the immediately following regular session.

(c) This section shall apply to the following:

- (1) Section 239-2, paragraph (5) of the definition of "gross income"--Gross income of home service providers of mobile telecommunications services;
 - (2) Section 239-2, exclusions under the definition of "gross income"--Dividends paid by one member to another member of an affiliated public service company group or gross income from the sale or transfer of materials and supplies, interest on loans, and provision of services among members of an affiliated public service company group;
 - (3) Section 237-3(b)--Gross receipts from the sale or transfer of materials and supplies, interest on loans, and provision of services among members of an affiliated public service company group;
 - (4) Section 239-5.5--Gross income of utilities from monthly surcharges;
 - (5) Section 239-5.6--Gross income of electric utility companies from cable surcharges;
 - (6) Section 239-6.5--Tax credit for lifeline telephone service subsidies;
 - (7) Section 269-172--Green infrastructure charges received by electric utilities;
 - (8) Section 237-29.7--Gross income or gross proceeds received by insurance companies;
 - (9) Section 431:7-207--Tax credit to facilitate regulatory oversight;
 - (10) Section 432:1-403--Exemption for nonprofit medical indemnity or hospital service associations or societies specifically from the general excise tax, public service company tax, or insurance premium tax; and
 - (11) Section 432:2-503--Exemption for fraternal benefit societies specifically from the general excise tax, public service company tax, or insurance premium tax.
- [L 2016, c 261, pt of §2]

" **[§23-75] Review for 2021 and every tenth year thereafter.**

(a) The exemptions or exclusions under the general excise and use taxes listed in subsection (c) shall be reviewed in 2021 and every tenth year thereafter.

(b) The auditor shall submit the findings and recommendations of the reviews to the legislature and governor no later than twenty days prior to the convening of the immediately following regular session.

(c) This section shall apply to the following:

- (1) Section 237-24.3(1)--Amounts received from loading, transporting, and unloading agricultural commodities shipped interisland;
- (2) Section 237-24.3(3)(A)--Amounts received from cargo loading or unloading;
- (3) Section 237-24.3(3)(B)--Amounts received from tugboat and towage services;
- (4) Section 237-24.3(3)(C)--Amounts received from the transportation of pilots or government officials and other maritime-related services;
- (5) Section 238-1, paragraph (7) of the definition of "use"--The value of oceangoing vehicles for transportation from one point to another in the State;
- (6) Section 238-3(g)--The value of imported intoxicating liquor and cigarettes and tobacco products for sale to persons or common carriers in interstate commerce;
- (7) Section 238-3(h)--The value of vessels constructed under section 189-25, relating to commercial fishing vessel loans, prior to July 1, 1969; and
- (8) Section 237-28.1--Gross proceeds from shipbuilding and ship repair. [L 2016, c 261, pt of §2]

" **[\$23-76] Review for 2022 and every tenth year thereafter.**

(a) The exemptions or exclusions under the general excise tax listed in subsection (c) shall be reviewed in 2022 and every tenth year thereafter.

(b) The auditor shall submit the findings and recommendations of the reviews to the legislature and governor no later than twenty days prior to the convening of the immediately following regular session.

(c) This section shall apply to the following:

- (1) Section 237-24.3(4)--Amounts received by employment benefit plans and amounts received by nonprofit organizations or offices for the administration of employee benefit plans;
- (2) Section 237-24.3(5)--Amounts received from food coupons under the federal food stamp program or vouchers under the Special Supplemental Foods Program for Women, Infants and Children;
- (3) Section 237-24.3(6)--Amounts received from the sale of prescription drugs or prosthetic devices;

- (4) Section 237-24.3(8)--Amounts received as dues by unincorporated merchants associations for advertising or promotion;
- (5) Section 237-24.3(9)--Amounts received by labor organizations from real property leases;
- (6) Section 237-24.75(2)--Reimbursements to the Hawaii convention center operator from the Hawaii tourism authority;
- (7) Section 237-24.75(3)--Reimbursements to professional employer organizations from client companies for employee wages and fringe benefits; and
- (8) Section 209E-11--Amounts received by qualified businesses in enterprise zones. [L 2016, c 261, pt of §2]

" **[\$23-77] Review for 2023 and every tenth year thereafter.**

(a) The exemptions or exclusions under the general excise and use taxes listed in subsection (c) shall be reviewed in 2023 and every tenth year thereafter.

(b) The auditor shall submit the findings and recommendations of the reviews to the legislature and governor no later than twenty days prior to the convening of the immediately following regular session.

(c) This section shall apply to the following:

- (1) Section 237-24.3(2)--Reimbursements to associations of owners of condominium property regimes or nonprofit homeowners or community associations for common expenses;
- (2) Section 237-24.5--Amounts received by exchanges or exchange members;
- (3) Section 237-25(a)(3)--Gross income received from tangible personal property sales to state-chartered credit unions;
- (4) Section 237-24.8--Amounts received by financial institutions, trust companies, trust departments, or financial corporations acting as interbank brokers;
- (5) Section 237-26--Gross proceeds of scientific contractors and subcontractors;
- (6) Section 238-3(j)--The value of property or services exempted by section 237-26, relating to scientific contracts; and
- (7) Section 237-27--Amounts received by petroleum product refiners from other refiners. [L 2016, c 261, pt of §2]

" **[\$23-78] Review for 2024 and every tenth year thereafter.**

(a) The exemptions or exclusions under the general excise tax listed in subsection (c) shall be reviewed in 2024 and every tenth year thereafter.

(b) The auditor shall submit the findings and recommendations of the reviews to the legislature and governor no later than twenty days prior to the convening of the immediately following regular session.

(c) This section shall apply to the following:

- (1) Section 237-24.7(1)--Amounts received by hotel operators and hotel suboperators for employee wages and fringe benefits;
- (2) Section 237-24.7(2)--Amounts received by a county transportation system operator under a contract with the county;
- (3) Section 237-24.7(4)--Amounts received by orchard property operators for employee wages and fringe benefits;
- (4) Section 237-24.7(6)--Amounts received from insurers for damage or loss of inventory of businesses located in a natural disaster area;
- (5) Section 237-24.7(7)--Amounts received by community organizations, school booster clubs, and nonprofit organizations for precinct and other election-related activities;
- (6) Section 237-24.7(8)--Interest received by persons domiciled outside the State from trust companies acting as payment agents or trustees on behalf of issuers or payees of interest-bearing instruments or obligations;
- (7) Section 237-24.7(9)--Amounts received by management companies from related entities engaged in interstate or foreign common carrier telecommunications services for employee wages and fringe benefits; and
- (8) Section 237-24.7(10)--Amounts received from high technology research and development grants. [L 2016, c 261, pt of §2]

" **[\$23-79] Review for 2025 and every tenth year thereafter.**

(a) The exemptions, exclusions, or credits under the general excise and use taxes and insurance premium tax listed in subsection (c) shall be reviewed in 2025 and every tenth year thereafter.

(b) The auditor shall submit the findings and recommendations of the reviews to the legislature and governor

no later than twenty days prior to the convening of the immediately following regular session.

- (c) This section shall apply to the following:
- (1) Section 237-27.5--Gross proceeds from air pollution control facility construction, reconstruction, operation, use, maintenance, or furnishing;
 - (2) Section 238-3(k)--The value of air pollution control facilities;
 - (3) Section 237-27.6--Amounts received by solid waste processing, disposal, and electric generating facility operators under sale and leaseback transactions with political subdivisions that involve the facilities;
 - (4) Section 237-29--Gross income of qualified persons or firms or nonprofits or limited distribution mortgagors for certified or approved low-income housing projects;
 - (5) Section 238-3(j)--The value of property, services, or contracting exempted by section 237-29, relating to certified or approved housing projects;
 - (6) Section 431:7-208--Credit for low-income housing;
 - (7) Section 46-15.1(a)--Gross income from county low-income housing projects; and
 - (8) Section 346-369--Compensation received by provider agencies for homeless services or homeless facility management. [L 2016, c 261, pt of §2]

" **[\$23-80] Review for 2026 and every tenth year thereafter.**

(a) The exemptions or exclusions under the general excise and use taxes listed in subsection (c) shall be reviewed in 2026 and every tenth year thereafter.

(b) The auditor shall submit the findings and recommendations of the reviews to the legislature and governor no later than twenty days prior to the convening of the immediately following regular session.

- (c) This section shall apply to the following:
- (1) Section 237-29.5--Value or gross proceeds from tangible personal property shipped out of State;
 - (2) Section 237-29.53--Value or gross income from contracting or services performed for use outside the State;
 - (3) Section 238-1, paragraph (9) of the definition of "use"--The value of services or contracting imported for resale, consumption, or use outside the State; and
 - (4) Section 237-29.55--Gross proceeds or gross income from the sale of tangible personal property imported into the State for subsequent resale. [L 2016, c 261, pt of §2]

" **[\$23-81] Review for 2027 and every tenth year thereafter.**

(a) The exemptions or exclusions under the general excise tax listed in subsection (c) shall be reviewed in 2027 and every tenth year thereafter.

(b) The auditor shall submit the findings and recommendations of the reviews to the legislature and governor no later than twenty days prior to the convening of the immediately following regular session.

(c) This section shall apply to the following:

- (1) Section 237-23(a)(3)--Fraternal benefit societies, orders, or associations for the payment of benefits to members;
- (2) Section 237-23(a)(4)--Corporations, associations, trusts, or societies:
 - (A) Organized and operated exclusively for religious, charitable, scientific, or educational purposes;
 - (B) Operating senior citizens housing facilities qualifying for loans under the United States Housing Act of 1959, as amended;
 - (C) Operating legal service plans; or
 - (D) Operating or managing homeless facilities or other programs for the homeless;
- (3) Section 237-23(a)(5)--Business leagues, chambers of commerce, boards of trade, civic leagues, agricultural and horticultural organizations, and organizations operated exclusively for the benefit of the community or promotion of social welfare, including legal service plans;
- (4) Section 237-23(a)(6)--Hospitals, infirmaries, and sanitararia;
- (5) Section 237-23(a)(7)--Tax-exempt potable water companies serving residential communities lacking access to public utility water services;
- (6) Section 237-23(a)(8)--Agricultural cooperative associations incorporated under state or federal law;
- (7) Section 237-23(a)(9)--Persons affected with Hansen's disease and kokuas with respect to business within the county of Kalawao;
- (8) Section 237-23(a)(10)--Corporations, companies, associations, or trusts organized for cemeteries; and
- (9) Section 237-23(a)(11)--Nonprofit shippers. [L 2016, c 261, pt of §2]

Note

Part effective July 1, 2018.

[\$23-91] Review of certain credits, exclusions, and deductions under the income tax and financial institutions tax.

(a) The auditor shall conduct a review of the tax credits, exclusions, and deductions listed in sections 23-92 to 23-96.

(b) In the review of a credit, exclusion, or deduction, the auditor shall:

- (1) Determine the amount of tax expenditure for the credit, exclusion, or deduction for each of the previous three fiscal years;
- (2) Estimate the amount of tax expenditure for the credit, exclusion, or deduction for the current fiscal year and the next two fiscal years;
- (3) Determine whether the credit, exclusion, or deduction has achieved and continues to achieve the purpose for which it was enacted by the legislature;
- (4) Determine whether the credit, exclusion, or deduction is necessary to promote or preserve tax equity or efficiency;
- (5) If the credit, exclusion, or deduction was enacted because of its purported economic or employment benefit to the State:
 - (A) Determine whether a benefit has resulted, and if so, quantify to the extent possible the estimated benefit directly attributable to the credit, exclusion, or deduction; and
 - (B) Comment on whether the benefit, if any, outweighs the cost of the credit, exclusion, or deduction; and
- (6) Estimate the annual cost of the credit, exclusion, or deduction per low-income resident of the State. For purposes of this paragraph, a "low-income resident of the State" means an individual who is a resident of the State and:
 - (A) Is the only member of a family of one and has an income of not more than eighty per cent of the area median income for a family of one; or
 - (B) Is part of a family with an income of not more than eighty per cent of the area median income for a family of the same size.

The cost shall be estimated by dividing the annual tax expenditure for the credit, exclusion, or deduction for each fiscal year under review by the number of

low-income residents of the State in the fiscal year. The estimate determined pursuant to this paragraph is intended to display the effect on low-income residents of the State if they directly receive, either through tax reduction or negative tax, the dollars saved by elimination of the credit, exclusion, or deduction.

(c) Based on the review, the auditor shall recommend whether the credit, exclusion, or deduction should be retained without modification, amended, or repealed.

The auditor may recommend that a credit, exclusion, or deduction be removed from review under sections 23-92 to 23-96. [L 2016, c 245, pt of §2]

" **[\$23-92] Review for 2019 and every fifth year thereafter.**

(a) The credits under the income tax and financial institutions tax listed in subsection (c) shall be reviewed in 2019 and every fifth year thereafter.

(b) The auditor shall submit the findings and recommendations of the reviews to the legislature and governor at least twenty days prior to the convening of the immediately following regular session.

(c) This section shall apply to the following:

- (1) Sections 235-12.5 and 241-4.6--Credit for renewable energy technology system installed and placed in service in the State. For the purpose of section 23-91(b)(5), this credit shall be deemed to have been enacted for an economic benefit; and
- (2) Section 235-17--Credit for qualified production costs incurred for a qualified motion picture, digital media, or film production. [L 2016, c 245, pt of §2]

" **[\$23-93] Review for 2020 and every fifth year thereafter.**

(a) The credits, exclusions, and deductions under the income tax and financial institutions tax listed in subsection (c) shall be reviewed in 2020 and every fifth year thereafter.

(b) The auditor shall submit the findings and recommendations of the reviews to the legislature and governor at least twenty days prior to the convening of the immediately following regular session.

(c) This section shall apply to the following:

- (1) Section 235-7.3--Exclusion of royalties and other income derived from a patent, copyright, or trade secret of a qualified high technology business;
- (2) Section 235-9.5--Exclusion for income and proceeds from stock options or stocks of a qualified high

- technology business or a holding company for a qualified high technology business;
- (3) Sections 235-17.5 and 241-4.4--Credit for capital infrastructure costs;
 - (4) Sections 235-110.7 and 241-4.5--Credit for capital goods used by a trade or business;
 - (5) Section 235-110.91--Credit for research activity;
 - (6) Section 235-110.3--Credit for ethanol facility; and
 - (7) Section 241-3.5--Deduction for adjusted eligible net income of an international banking facility. [L 2016, c 245, pt of §2]

Note

Section 235-110.3, referred to in subsection (c)(6), is repealed.

" **[\$23-94] Review for 2021 and every fifth year thereafter.**

(a) The credits and exclusions under the income tax listed in subsection (c) shall be reviewed in 2021 and every fifth year thereafter.

(b) The auditor shall submit the findings and recommendations of the reviews to the legislature and governor at least twenty days prior to the convening of the immediately following regular session.

(c) This section shall apply to the following:

- (1) Section 235-4.5(a)--Exclusion of intangible income earned by a trust sited in this State;
- (2) Section 235-4.5(b)--Exclusion of intangible income of a foreign corporation owned by a trust sited in this State;
- (3) Section 235-4.5(c)--Credit to a resident beneficiary of a trust for income taxes paid by the trust to another state;
- (4) Sections 235-55 and 235-129--Credit for income taxes paid by a resident taxpayer to another jurisdiction;
- (5) Section 235-71(c)--Credit for a regulated investment company shareholder for the capital gains tax paid by the company;
- (6) Section 235-110.6--Credit for fuel taxes paid by a commercial fisher;
- (7) Section 235-110.93--Credit for important agricultural land qualified agricultural cost;
- (8) Section 235-129(b)--Credit to S corporation shareholder for pro rata share of the tax credit earned by the S corporation in this State; and

- (9) Section 209E-10--Credit for a qualified business in an enterprise zone; provided that the review of this credit pursuant to this part shall be limited in scope to income tax credits. [L 2016, c 245, pt of §2]

" **[\$23-95] Review for 2022 and every fifth year thereafter.**

(a) The credits and deductions under the income tax and financial institutions tax listed in subsection (c) shall be reviewed in 2022 and every fifth year thereafter.

(b) The auditor shall submit the findings and recommendations of the reviews to the legislature and governor at least twenty days prior to the convening of the immediately following regular session.

(c) This section shall apply to the following:

- (1) Section 235-5.5--Deduction for individual housing account deposit;
- (2) Section 235-7(f)--Deduction of property loss due to a natural disaster;
- (3) Section 235-16.5--Credit for cesspool upgrade, conversion, or connection;
- (4) Section 235-19--Deduction for maintenance of an exceptional tree;
- (5) Section 235-55.91--Credit for the employment of a vocational rehabilitation referral;
- (6) Section 235-110.2--Credit for in-kind services contribution for public school repair and maintenance; and
- (7) Sections 235-110.8 and 241-4.7--Credit for ownership of a qualified low-income housing building. [L 2016, c 245, pt of §2]

" **[\$23-96] Review for 2023 and every fifth year thereafter.**

(a) The credits under the income tax listed in subsection (c) shall be reviewed in 2023 and every fifth year thereafter.

(b) The auditor shall submit the findings and recommendations of the reviews to the legislature and governor at least twenty days prior to the convening of the immediately following regular session.

(c) This section shall apply to the following:

- (1) Section 235-15--Credit for purchase of child passenger restraint system;
- (2) Section 235-55.6--Credit for employment-related expenses for household and dependent care services;
- (3) Section 235-55.7--Credit for a low-income household renter; and

(4) Section 235-55.85--Credit for food and excise tax. [L
2016, c 245, pt of §2]