



HOUSE COMMITTEE ON LEGISLATIVE MANAGEMENT
The Honorable Dale T. Kobayashi, Chair
The Honorable John M. Mizuno, Vice Chair

H.B. No. 517, RELATING TO THE AUDITOR

Hearing: Monday, February 8, 2021, 2:00 p.m.

Thank you for the opportunity to testify in **support** of H.B. No. 517. The Office of the Auditor strongly supports this bill, which clarifies the traditional powers of the Auditor to examine all state agency materials during the course of auditing the agency.

The Legislature relies on the Office of the Auditor to examine virtually every state department, office, and agency. Under generally accepted government auditing standards, we are responsible for planning, conducting, and reporting our work without internal or external impairments. These same standards require us to obtain sufficient, appropriate evidence to provide a reasonable basis for any related findings and conclusions.

Government audits are most valuable to the agencies being audited, providing independent analysis designed to help management make sound and timely decisions. But there are two additional groups that truly benefit from government audits. First, legislators, for whom audits provide independent and objective information about the government agencies they fund. Second, the general public, for whom government audits provide objective and independent information about how well government is working. Perhaps most importantly, every independent government audit underscores the Legislature's long-standing commitment to open, transparent, and accountable state government.

Current state law provides that the Auditor "may examine and inspect all accounts, books, records, files, papers, and documents and all financial affairs" of all state agencies. Hawai'i Revised Statutes (HRS) § 23-5(a). This mandate is matched by a mandate of confidentiality—existing state laws require the Auditor to secure all information obtained during the course of its work¹ and obligate the Auditor to maintain the same level of confidentiality for information obtained from an agency as is required of the originating agency head.²

The language from HRS § 23-5(a) is not new; it has been included in the statutory powers of the Auditor since 1959,³ and for good reason. If state agencies were free to selectively provide some but not all evidence or data to the Auditor, no objective and meaningful assessment of the agency would be possible, and agencies could impede or obstruct an audit whenever they chose.

¹ HRS § 23-9.5.

² HRS § 92F-19(a)(9); HRS § 92F-19(b).

³ The word "accounts" was added in 2000. Act 275, SLH 2000, section 1.

Recently, this long-standing structure has been tested. In 2019, the Office of the Auditor was compelled to suspend an audit of the Office of Hawaiian Affairs (OHA) and its limited liability companies (LLCs). The decision to suspend was based on OHA's refusal to provide complete, unredacted minutes of Board of Trustees meetings at which matters involving the LLCs were discussed. As part of the audit fieldwork, we met with a number of current and former OHA trustees and managers about the Board of Trustees' use and oversight of the LLCs. The information we received from those interviews was often incomplete and, in some instances, inconsistent and possibly inaccurate. Without the ability to review the complete and unredacted board minutes to confirm and clarify the information that we were told, we determined the "audit risk" that key findings and conclusions would not be sufficiently supported and verified was significant and unacceptable, and Government Auditing Standards required us to suspend the audit. OHA filed a lawsuit alleging the Auditor violated state law by not issuing a report. As part of that proceeding, a circuit court judge ruled that HRS § 23-5 did not require OHA to provide the unredacted minutes to the Auditor, finding that the Auditor's statutory authority to "examine and inspect all accounts, books, records, files, papers, and documents and all financial affairs of every department, office, agency, and political subdivision" does not apply to attorney-client communications. The lawsuit is still ongoing.

As drafted, H.B. No. 517 does not reset the clock on the litigation by OHA, but it will make clear, going forward, the Legislature's intent that audits of state agencies should be based on "all accounts, books, records, files, papers, documents, and all financial affairs" of the agencies it oversees.

It is important to note that, had the unredacted minutes been provided by OHA, we would be precluded by law to disclose the minutes, i.e., they would have remained confidential. Some critics may assert that certain state agency information should be shielded even from the Auditor. But the nature of government auditing work requires us to work with sensitive or confidential material all the time. Federal and state auditors routinely audit, for example, defense agencies, criminal enforcement agencies, and the security of government information technology systems. Government Auditing Standards address this and already require auditors to consider when public safety, privacy, or security concerns justify excluding sensitive or confidential information from public reports. And, once again, existing Hawai'i state law requires our working papers to remain confidential, and we maintain that providing information to the Auditor pursuant to HRS § 23-5(a) does not constitute a waiver of any privilege or other confidentiality.

Thank you for your continued support of the Office of the Auditor and for your consideration of our testimony in strong support of H.B. No. 517.