



HOUSE COMMITTEE ON GOVERNEMENT REFORM
The Honorable Angus L.K. McKelvey, Chair
The Honorable Tina Wildberger, Vice Chair

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

**H.B. No. 2419, RELATING TO
THE CONFIDENTIALITY OF THE AUDITOR'S WORK**

Hearing: Friday, February 4, 2022, 9:30 a.m.

The Office of the Auditor **opposes** H.B. No. 2419, relating to the confidentiality of the Auditor's working papers, and offers the following comments.

H.B. No. 2419 would create exceptions to Hawai'i Revised Statutes (HRS) section 23-9.5, the statute that currently guarantees without exception the confidentiality of the Auditor's working papers. Under the current statute, all "working papers" are confidential, that is, protected from disclosure. And to guarantee this protection, "working papers" are very broadly defined under the statute to include "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." HRS § 23-9.5.

Protecting the confidentiality of the Auditor's working papers is critical to the performance of our Office's statutory duties and responsibilities.

The current statute's legislative history recognizes and underscores this crucial point. "[T]he scope and nature of the duties and responsibilities imposed upon the Auditor ... are of such critical importance to the State, that the Auditor's working papers should be kept confidential ... subjecting the Auditor's working papers to disclosure requirements would *seriously impair* the Auditor's ability to fulfill mandated responsibilities and to discharge statutory duties."¹

Hawai'i is not alone in protecting the confidentiality of all its Auditor's working papers. The majority of other state auditor offices also consider all working papers to be confidential.²

The most basic rationale for comprehensive confidentiality of Auditor working papers is simple. The confidentiality of Auditor working papers creates a "safe harbor" for employees of state agencies that enables them to speak candidly about agency problems or issues without fear of

¹ Stand. Com. Rep. No. 2730, 1996 Senate Journal, 1271 (emphasis added).

² National Association of State Auditors, Comptrollers, and Treasurers, *Auditing in the States: A Summary* (2021), 111.

retaliation or retribution by others within the agency. Eliminating that safe harbor will have a predictable and significant chilling effect on the candor of agency employees, and therefore would profoundly adversely affect our ability to perform our statutory duties and responsibilities.

We need the full cooperation and candor of agency employees in order to do our job of providing accurate and meaningful performance audits of state agencies. Agency employees will not readily report issues, problems, or dysfunctions within their agencies—much less fraud, waste, and abuse—if they fear adverse consequences in their employment for doing so. Comprehensive confidentiality of our working papers protects them; lack of comprehensive confidentiality does not.

Confidentiality of our working papers also protects the “deliberative process” within the Office of the Auditor. As former State Auditor Marion Higa said when the present statute was being considered, making working papers non-confidential “would discourage the candid and open discussion and analysis that are so essential to our staff in maintaining the quality and usefulness of our reports. ... [O]ur staff may hesitate to pursue all lines of inquiry and analysis for fear their tentative notes, opinions, and other materials could become public.”

The confidentiality of our working papers allows our staff to perform their critical functions without fear or favor, that is, without having to “look over their shoulders” for fear their work product will later be subject to disclosure or the cross-currents of partisan politics. The independence that confidentiality guarantees is essential to our function.

We must be able to do our job without political or other external interference. As *Government Auditing Standards* stress, threats to auditor independence include the threat “that influences or pressures from sources external to the audit organization will affect an auditor’s ability to make objective judgments.”³

H.B. 2419 was introduced by some, but not all, members of the House Investigative Committee to Investigate Compliance with Audit Nos. 19-12 and 21-01—notably *not* including the one member of the Committee with significant experience as a professional auditor. The bill would amend our confidentiality statute to grant investigating committees access to “the notes, internal memoranda, and records of all work performed by the auditor on audits and other investigations ... including any and all project evidence collected and developed by the auditor.”

As I have noted, permitting a legislative investigative committee access to our working papers would have a chilling effect on government accountability. Confidentiality allows those who are interviewed or asked by us to provide information, evidence, and documents to do so without fear of retaliation or retribution by their employers or, later, by other government officials. It also allows our staff to do their work with the independence required to do their jobs. This bill could also have consequences its authors do not intend. For example, the bill would make tax return information provided to the Auditor by the department of taxation visible to investigative committees upon request. See HRS § 23-5(a)(2).

³ The Comptroller General of the United States, *Government Auditing Standards, 2018 Revision* (the “Yellow Book”), 3.30(e).

Most importantly, the proposed amendment would profoundly and adversely impact the functions of our Office, which the present statute's legislative history called "of such critical importance to the State, that the Auditor's working papers should be kept confidential."⁴

The proposed amendment is also unnecessary. The investigative committee was able to gather thousands of pages of documents relating to the two audits it investigated relating to the Agribusiness Development Corporation and the Department of Land and Natural Resources without breaching the confidentiality of our working papers. Information was always available from primary sources.

In short, confidential working papers are an integral and necessary part of the function of our Office. The State Constitution, which established the position, intended the Auditor to be non-partisan and independent, shielding the Auditor from such political interference. The proposed amendment would profoundly and adversely impact the Office of the Auditor's function and our ability to produce fair, independent, non-partisan and objective reports.

Thank you for considering our testimony in **opposition** to H.B. No. 2419.

⁴ Stand. Com. Rep. No. 2730, 1996 Senate Journal, 1271.