

State Auditor Working Group Report

2021

A Report to the House of Representatives of the State of Hawai'i



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Introduction

Establishment of the Working Group

Provided herewith is the Report of the State Auditor Working Group (Working Group), created pursuant to the memorandum issued by the Speaker of the House of Representatives (Speaker) on January 14, 2021 (House Speaker Memo), to determine whether the Office of the State Auditor is in compliance with article VII, section 10 of the Hawaii State Constitution. The House Speaker Memo authorized the Working Group to analyze documents, interview individuals, and conduct other necessary research. The requested date to submit this Report to the House of Representatives is on or before April 1, 2021.

According to the House Speaker Memo, "limited resources make it problematic for the State Auditor to address all outstanding issues and matters. Therefore, the findings of the working group will assist the State Auditor in prioritizing its work and the scope of its work."

Speaker appointed the following individuals to serve on the Working Group without compensation:

Edwin Young, Chair

Colleen Hanabusa

Wesley Machida

A copy of the House Speaker Memo is attached hereto as Appendix 1.

Authority and basis for establishing the Working Group

The Office of the Auditor (hereinafter Office of the State Auditor) is constitutionally established and largely reports to the Legislature on its evaluation of various state programs and transactions and other studies and investigations as directed by the Legislature.

House Resolution No. 189, Regular Session of 2020, *Authorizing and Empowering the Speaker to Perform and Carry out any Official Legislative Business During the Interim Between the 2020 and 2021 Regular Session*, provides in part, that the Speaker may establish and approve any action of standing, interim, select, and special committees, including determining "members, functions, and duties of such committees; provided that the Speaker, notwithstanding any prior authorization action, may, at the Speaker's discretion, limit the number of members of the House participating on the committee."

Rule 2.1 of the Rules of the House of Representatives, State of Hawai'i, requires the Speaker to notify members of the names of individuals nominated for or appointed to a task force, commission, working group, or similar position requiring the Speaker to nominate individuals for

such a position; publish a list, no less than annually, of those individuals nominated or appointed; and perform other duties required by law or the Rules of the House of Representatives.¹

Speaker formed the Working Group to identify opportunities for improving the timeliness and operations of the Office of the State Auditor since in recent years the State Auditor has not issued timely reports and furthermore many of the State Auditor reports required or requested by the Legislature were not conducted at all.

The media has quoted the State Auditor as stating the audits were late or not done due to staff turnover and inadequate resources. The State Auditor was further quoted as claiming the office was independent and objective and not required to answer to the Legislature. The Speaker subsequently formed a working group to determine why the audits of this legislatively attached agency were late or not performed and what improvement is needed to improve the efficacy and timeliness of the State Auditor reports.

Scope Limitations and Methodology

Two members of the Working Group have a collective total of more than 60 years of auditing experience in the private and public sectors, including time in the Office of the State Auditor and the Office of the Auditor for the City and County of Honolulu. In their experience, they have not been subjected to the refusal to cooperate, the level of animus, or the lack of professionalism which they have experienced from the current State Auditor. One member of the Working Group has had a standing meeting with the current State Auditor on behalf of the House of Representatives with the intent of improving communication. If the Working Group erred, it was in their expectations that the State Auditor would want to comply with its Constitutional mandate and improve its ability to produce timely and useful reports for the Legislature, Governor, audited departments or agencies, and the people of the State of Hawai'i.

To issue a fair and complete Report to the Speaker, the Working Group analyzed and reviewed data since the inception of the Office of the State Auditor and a wide array of resources in arriving at its conclusions and recommendations, including the Hawaii State Constitution, Reports of the Constitutional Convention, Hawaii Revised Statutes (HRS), County Charters, legislation, ongoing litigation, former state employees, and Peer Reviews of the Office of the

¹ The right of the Speaker to, for example, seek permission to file amicus briefs in ongoing litigation during the interim has been challenged twice. In both situations, the circuit court judges ruled in favor of the Speaker and permitted the filing of briefs on behalf of the House of Representatives. See *Nelson v. Hawaiian Homes Commission* (Civil No. 07-1-1663-08 JHC) and *League of Women Voters of Honolulu and Common Cause v. State of Hawai'i* (Civil No. 18-1-1376-09 GWBC).

State Auditor. The Working Group also requested to meet with and interview the State Auditor, however the State Auditor refused. In addition, the State Auditor refused requests from the Working Group to:

- (1) Respond to the Working Group's communications, questions, and requests for information;
- (2) Provide background and other information requested by the Working Group, including basic information such as a current organizational chart; personnel contact information or information needed to speak with current employees; access to formal, written policies and procedures; and access to audit guides;
- (3) Answer questions asked by the Working Group regarding state legislative resolutions and laws and why audits were not performed or were suspended;
- (4) Answer questions and failed to provide information to the Working Group on personnel separations;
- (5) Provide access to its contract files, including the contracts related to the certified public accounting firm BKD, LLP (BKD). BKD was contracted for the Honolulu Authority for Rapid Transportation (HART) audit. The Working Group was informed that the contract was terminated by the State Auditor for cause and the final payment was withheld. Without access to the contract files, the Working Group could not determine the source of the funds, the scope of work, or the rationale for canceling the contracts;²
- (6) Provide access to its working papers, case files, litigation files, and any information related to its litigations;³ and

² The Legislature, through Act 1, First Special Session Laws of Hawai'i 2017, appropriated \$1 million for the State Auditor's Honolulu Authority for Rapid Transportation audits. The Legislature is entitled to know if another lawsuit will be filed and/or if there is a settlement of this matter, and how much of the funds produced what portion of the HART reports that have been provided to the Legislature. The hiring of BKD was within the discretion of the current State Auditor. It is also the Working Group's understanding that BKD was hired by the current State Auditor to perform other financial audits. To better understand the Office of the State Auditor's quality and evaluative controls that impact the timeliness of audit reports, we need to evaluate their performance in those matters. The Legislature and the public have a right to know how effectively their funds were spent.

³ Research of public sources indicated that there is only one lawsuit involving the Office of the State Auditor. This lawsuit, *Office of Hawaiian Affairs vs. Kondo*, is discussed in greater detail in this report.

- (7) Provide access to information, data, and/or files that would allow the Working Group to verify the results of its analysis of the Office of the State Auditor website data.

Although the Working Group informed the State Auditor on what it would be doing, the State Auditor attacked the Working Group by weaponizing the media with inaccurate information and mischaracterized the Working Group's requests for information. The State Auditor went further on the offensive by sending two letters to the Working Group that questioned the authority of the Speaker to even form the Working Group. The State Auditor's use of the media to answer questions, attack inquiries, and defend the Office of the State Auditor are atypical practices for audit offices. The Office of the State Auditor did not respond to follow up questions of the Working Group related to the use of the media and the criteria used by the Auditor for litigation.

To determine whether the Office of the State Auditor is in compliance with article VII, section 10 of the Hawaii State Constitution, the Working Group reviewed:

- (1) The performance of the Office's post-audits, including the certification to the accuracy of all financial statements where required;
- (2) Operations, including but not limited to, policies and procedures, training, audit experience of personnel, work environment, and other parameters that ensure that legislatively directed and other post-audits are conducted and comply with state law; and
- (3) The Office's organizational structure that provides for sufficient controls to timely and accurately complete post-audits.

Despite the State Auditor's attempt to obstruct and undermine its review, the Working Group used alternative audit techniques and methods to gather and analyze information available in open, public sources and conducted interviews with persons who were familiar with and willing to describe their experiences with the State Auditor's operations.

The Working Group also reviewed the State Auditor's claims against the Office of Hawaiian Affairs (OHA); reviewed legal briefs, court decisions, legal proceedings, and information related to the OHA lawsuits; conducted research and reviewed case law related to the OHA litigations; and contacted attorneys involved with the OHA litigations and relevant reports of the State Auditor.

The Working Group primarily focused on financial and performance audits. The Working Group reviewed government auditing standards related to financial and performance audits; reviewed and analyzed public information related to the Office of the State Auditor's personnel and their salaries, report production, and personnel turnover; and reviewed and analyzed the State Auditor's website data. The Working Group also contacted and interviewed former employees, consultants, contractors, peers, and others who were willing to speak with the Working Group.

Background

Legal framework for the Office of the State Auditor

The 1950 Constitutional Convention of Hawai'i established the constitutional framework for the appointment, term, removal, and duties of the State Auditor. Under article VII, section 10 of the Hawaii State Constitution, the Legislature, by a majority vote of each house in joint session, appoint a State Auditor who shall serve for a period of eight years and thereafter until a successor is appointed. The Legislature may remove the State Auditor from office for cause at any time by a two-thirds vote of the members in joint session. The State Auditor's constitutional duties are to:

- (1) Conduct post-audits of the transactions, accounts, programs, and performance of all departments, offices, and agencies of the State and its political subdivisions;
- (2) Certify the accuracy of financial statements issued by the respective accounting officers;
- (3) Report the Auditor's findings and recommendations to the Governor and the Legislature at such times as shall be provided by law; and
- (4) Make additional reports and conduct additional investigations as directed by the Legislature.

The Hawaii State Constitution is clear that the State Auditor conducts post-audits. Post-audit is a term of art that differentiates between post- and pre-audits and are intended to discover any evidence of unauthorized, illegal, irregular, or unsafe handling or expenditure of state funds. The Hawaii State Constitution also makes clear that the State Auditor certifies the accuracy of all financial statements issued.

The statutory laws governing the Office of the State Auditor are primarily codified under chapter 23, HRS. (See Appendix 2). However, the Legislature may also pass specific laws (Acts) or adopt resolutions concerning the State Auditor.

Appointment of the current State Auditor

On April 20, 2016, the Legislature, by majority vote in each house in joint session, appointed the current State Auditor, Leslie H. Kondo, to serve for a period of eight years beginning on May 1, 2016. (See House Concurrent Resolution No. 207, Regular Session of 2016).

The current State Auditor is an attorney by trade and has accumulated varied state government experience while working as a Commissioner for the Public Utilities Commission, Director of the Office of Information Practices, Executive Director of the State Ethics Commission, and recently

as State Auditor. Lacking in the current State Auditor's experience prior to becoming the State Auditor was any direct experience in the professional fields of accounting or auditing.

Overall Findings

When Hawai'i become a state in 1959, the Office of the State Auditor was established as set forth in the Constitution adopted in 1950. The Office of the State Auditor serves a legislative audit function under the auspices of the Hawai'i State Legislature. As a legislative service agency, the State Auditor is charged with providing objective, unbiased, evidence-based assessments of state programs. Among other things, the audits are aimed to provide meaningful answers to the effectiveness and efficiency of state programs and whether the programs are achieving the purposes intended by the Legislature. These audits help the Legislature develop effective policy and hold state agencies accountable for their performance and the safeguarding and appropriate use of public funds.⁴

For Fiscal Year (FY) 2020-2021, the Office of the State Auditor has consisted of approximately 26 full-time staff with an overall operating budget of about \$3.3 million (does not include the \$2.8 million authorized in the Audit Revolving Fund). Financial audits, which are performed by external accounting firms contracted by the State Auditor, comprised between 56-76% of the reports issued by the Office of the State Auditor each year (26-31 reports per year) over the past five years. The number of performance audit reports issued by the State Auditor each year over the past five years ranged from a low of one report in FY 2016-2017 and one report in FY 2019-2020 to a high of eight reports in FY 2018-2019. Given the size and budget of the Office of the State Auditor, performance audit report productivity is considered low. By comparison, the Office of the Auditor for the City and County of Honolulu, which has about a third of the staff and budget of the Office of the State Auditor, issues about one to five performance audits per year.

The lack of auditing experience among executive-level staff and other administrative issues are impacting compliance with government auditing standards and the timely submission of reports, as well as causing personnel turnover and unnecessary litigation.

⁴ When the Office of the State Auditor was created with a "post-audit" function in the Hawaii State Constitution, it was determined to be a farsighted creation and was specifically under the auspices of the Legislature. The fiscal budget of the Office of the State Auditor is found in the Legislature's Budget. The first Auditor was appointed in 1965.

Although the Office of the State Auditor has passed triennial peer reviews⁵ as required by government auditing standards, the Working Group's analysis, research of public information, and interviews indicates more needs to be done to ensure the Office of the State Auditor is responsive to the needs of the Legislature. The Working Group therefore recommends the following:

- (1) To be successful, the State Auditor and its executives and audit managers must have several years of auditing experience before supervising and overseeing audits, regardless of their background, experience, and training. If the Office of the State Auditor personnel have prior audit experience and are properly trained in audit standards, techniques, and methods, timely and value-added audits can help the Legislature hold state agencies accountable for their performance, and the safeguarding and proper use of public funds;
- (2) Sound management practices, communication, and interpersonal skills are necessary to successfully operate and supervise the work and employees of the Office of the State Auditor; and
- (3) Legislative oversight is needed to ensure the Office of the State Auditor is responsive to the Legislature and fulfills its mandate to provide objective, unbiased, evidence-based assessments of state programs, meaningful answers to the effectiveness and efficiency of state programs, impactful recommendations that improve government operations and delivery of public services and save public funds, and whether programs are achieving the purposes intended by the Legislature.

⁵ The December 2019 Peer Review Report issued by the National Conference of State Legislatures did not consider the criteria of issuing timely reports in accordance with state law, which is an important criteria in determining the Office of the State Auditor's compliance with the Hawaii State Constitution.

Auditing Requirements and Expectations

The State Auditor is required to comply with the Generally Accepted Government Auditing Standards (GAGAS), commonly referred to as Yellow Book standards, as established by United States Government Accountability Office (GAO). The Yellow Book requires independent and objective assessments of programs based on appropriate and sufficient evidence to support the audit conclusions and opinions. The Yellow Book establishes audit standards for performance audits as well as financial audits:

- **Financial audits** are audits of financial statements and must be performed and signed off by a Certified Public Accountant (CPA).⁶ The financial audits are usually completed within six months of the agencies' year-end, and an opinion on the accuracy and reliability of the financial statements are certified by a CPA. The financial audits are required to be timely due to federal funding requirements and affect the interest rates, credit rating, and success of the sale of government bonds as it helps to assess the creditworthiness of the State. CPA firms are always hired to perform these financial audits for the State.⁷ Financial audits do not require access to unredacted executive session minutes.
- **Performance audits** are performed to evaluate the economy, effectiveness, and efficiency of government programs and can take up to one year or longer.⁸ The audits

⁶ The American Institute of Certified Public Accountants standards also require a CPA to perform financial audits.

⁷ The financial statement audits of the State are paid for by the appropriations from the Audit Revolving Fund for those departments that require annual audits. Some non-general funded agencies may reimburse the fund. There may also be some general funded programs that receive appropriations for financial statement audits. In this case, they must reimburse the Audit Revolving Fund.

It may not be unusual for HART or OHA to have a specific appropriation to do a financial audit, since they receive state general fund tax revenues. It is not unusual for financial statement audits of large departments or agencies to be in the \$300,000 - \$500,000 range. The State Comprehensive Annual Financial Report is about \$1,000,000 or more. Any monies not used are returned to the State Treasury. Arguably, financial statement audits should not be counted toward the totals of audits performed by the Office of the State Auditor.

⁸ Notwithstanding how long a performance audit may take, if the audit is required by law, the Office of the State Auditor must comply with the law. Alternatively, the Legislature should be informed that its standard language of the report being due "twenty days prior to the convening of the" next Legislative session must change.

Auditing Requirements and Expectations

are complex, require an understanding of government funding and operations, require innovative scopes and methodologies, problem solving, and the use of adaptive and updated audit techniques. As stated earlier, the audits provide objective, unbiased, evidence-based assessments of state programs and are supposed to provide meaningful answers to the effectiveness and efficiency of state programs and whether the programs are achieving the purposes intended by the Legislature.

Performance audits also help the Legislature hold government entities accountable for their program operations and performance and the use of public funds and government resources. To be useful to the Legislature, the audit reports must be timely and issued by statutory deadlines so that the Legislature can make policy decisions related to the report and introduce laws that improve the audited programs. Performance audits include audits of finances and funding for programs, but the primary focus is not to determine the accuracy or validity of a financial statement and a CPA is not required. Contractors are sometimes hired to either assist with or conduct performance audits.⁹

- **Follow-up audits** review the findings and recommendations of previous audits, determine the status of the recommendations, and whether the recommendations were implemented. The work performed is usually limited to the findings and recommendations. For the most part, the Working Group understands follow-up audits to be self-initiated. Therefore, the audit work is limited in scope and time.¹⁰

Independence and objectivity

Yellow Book proscribes that the Office of the State Auditor be independent and objective. GAGAS requires independence related to the audit work and proscribes independence of mind and appearance and independence of opinions, findings, conclusions, judgments, and recommendations. The State Auditor must be impartial as viewed by reasonable and informed third parties.

GAGAS states independence safeguards can be developed to ensure audit results are based on facts and are not biased. GAGAS states ethical audit principles for audit work require that

⁹ The Working Group has been unable to ascertain what the BKD contract for HART was for; however, Section 11 of Act 1, Session Laws of Hawaii Special Session of 2017, it required a specific and comprehensive financial audit of HART. The report was due 20 days before the convening of the 2019 Session. In addition, under HRS 23-14, there are specific requirements set forth in law for annual audits of HART. The \$500,000 for the OHA audit was for a financial audit but the State Auditor unilaterally determined he would not do it.

¹⁰ Some auditor offices do not consider follow-up audits as performance audits.

Auditing Requirements and Expectations

auditors have integrity, be objective, properly use government information and resources, act in the public interest, and exhibit professional behavior. Objectivity includes independence of mind and appearance when performing audits, maintaining an attitude of impartiality, having intellectual honesty, and being free of conflicts of interest.

Attorney and auditor mindsets and skills sets are different

Interviewees stated that auditors need to understand the differences and purposes of both financial and performance audits. Regardless of their background and training, individuals, including lawyers, need prior audit experience to successfully perform, complete, and issue performance audit reports. Interviewees stated that lawyers and others need extensive experience in auditing to understand the jargon and concepts, audit practices, audit techniques, and acceptable audit methods. The interviewees stated that conclusions and audit results must be based on appropriate and substantial evidence as required by the Yellow Book and that the rules of evidence include more than testimonial evidence.

Interviewees stated that audit experience in the executive, leadership levels is important to running an audit office. Knowledge and acceptance of GAGAS is necessary. In previous state auditor administrations, audit executives with legal backgrounds had many years of audit training and successfully blended their legal training with the audit processes to complete audits and to issue audit reports on time.

The interviewees stated that the audit approach in the Office of the State Auditor has recently changed from a fact-based, evidence-based process, as required by GAGAS, to a different mindset. Interviewees stated the new approach questions the integrity of the audit process, and their sense of ethics. Those who protested or challenged the new audit process of the Office likely experienced consequences.

Peer reviews

The National Conference of State Legislatures performed peer reviews of the Office of the State Auditor in 2010, 2013, 2016, and 2019. The peer reviews concluded the Office's quality control system provided reasonable assurance of compliance with government auditing standards and professional best practices as determined by the peer reviewers with respect to performance audits. The peer reviews did not address the timeliness of the audit reports. (For full disclosure, the peer results are summarized in Appendix 3).

Office Administration

Structure of the Office of the State Auditor

In FY 2020-2021, the Office of the State Auditor consisted of approximately 26 full-time staff with an overall budget of approximately \$3.3 million. Funding for the Office of the State Auditor is supplemented by about \$2.8 million in the Audit Revolving Fund which was established under section 23-3.6, HRS. The Audit Revolving Fund is used to pay the cost of the annual State Comprehensive Annual Financial Report, the Single Audit of federal funds, and the financial and single audits of 20 state departments and programs. Certain departments and programs reimburse the Audit Revolving Fund for the audit costs.¹¹

According to the Database of Public Employee Salaries – Honolulu Civil Beat for 2013, the leadership and executive support positions of the Office of the State Auditor consisted of nine filled positions: State Auditor, deputy auditor, administrative deputy auditor, human resources manager/general counsel, two assistant auditors, editor, information technology coordinator, and assistant information technology coordinator. The 14 audit staff included three senior analysts and 11 analysts and associate analysts. Administrative support consisted of two secretaries. This totaled 25 filled positions.

Since 2016, the current State Auditor has restructured the organization of the Office of the State Auditor by, among other changes, adding or reclassifying positions to a new writer and graphics and communication positions, which were paid more than many of the analysts who perform the audits for the Office. We noted that there were two assistant editor positions according to the Database of Public Employee Salaries – Honolulu Civil Beat for 2018. These two positions did not exist in the 2016 database as reported by the Honolulu Civil Beat. According to the Database of Public Employee Salaries – Honolulu Civil Beat for 2020, there were 12 filled executive, leadership, and management support positions: State Auditor, deputy auditor, administrative deputy auditor, general counsel, editor, writer, graphics and communication, two audit managers, tax incentive review program manager, information technology coordinator, and assistant information technology coordinator. The filled analyst audit staff was reduced from 14 positions to 10 positions and consisted of three senior analysts and seven analysts. Administrative support was provided by two secretaries. This totaled 24 filled positions.

¹¹ Examples of statutorily authorized transfers to the Audit Revolving Fund to fund audits include the appropriations for the HART (\$1,000,000) and OHA (\$500,000). Legislative appropriations of this magnitude indicate the seriousness of the operational concerns that remains at the Legislature for these agencies.

Two assistant editor positions established and/or filled since 2016 (which did not exist in the Civil Beat database of salaries for 2020) and, more recently, writer and graphic and communications positions do not participate in performing audits according to testimonial evidence. These changes along with a reduction in filled audit staff positions between 2016 and 2021 support the testimonies of a shift in priorities away from performing and issuing more timely audits, especially those mandated by state law. All the while, the Office maintained total filled positions of about 24 or 25 according to the Civil Beat database of government salaries.

Section 23-8, HRS, requires all employees hired by the State Auditor to be subject to the approval of the President of the Senate and Speaker of the House of Representatives. It also requires "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." At a minimum, consultation for the salaries of the two new (or reclassified and redescribed) filled positions, writer and graphics and communication, must take place in accordance with state law. It is also questionable as to whether consultation should also have been sought for the salary of the Tax Incentive Review Program Manager.

According to the appropriate representatives of the Department of Human Resources Development, the State Auditor did not consult the Department about the salaries for the new or reclassified positions. We did not find any documentation that the President of the Senate and the Speaker of the House of Representatives approved the hiring of new employees in these new or reclassified positions, or any other positions in the Office of the State Auditor as required by state law.

Personnel turnover

Our analysis of Civil Beat public information shows personnel turnover at the Office of the State Auditor was 47.6% (10 of 21 employees were separated) between FY 2016 to FY 2018 and 40% (10 of 25 employees were separated) between FY 2018 to FY 2020. For FY 2020 to FY 2021, partial year personnel turnover was running about 25% (6 of 24 employees were separated). Some former employees of the Office of the State Auditor indicated the audit deadlines, work demands, and Legislature's deadlines during the holiday season contributed to the high personnel turnover.

Other interviewees reported that ineffective executives/managers, current executive/management demands, and arbitrary management decisions also contributed to the personnel turnover. Interviewees stated the current State Auditor's confrontational style of management, preference for employees with legal backgrounds, hiring of executives and/or managers with no audit experience, rejection of accepted audit concepts and practices, and rejection of advice from audit experts affected morale and further contributed to personnel turnover. For example, some interviewees stated audit executive/manager directions that

contradicted existing policies and procedures affected employee morale and personnel departures.

Interviewees stated that inconsistent State Auditor decisions, decisions without logic or explanation, micro-managing (vs. leadership and guidance), attempts to sensationalize audit reports, attempts to issue a perfect audit report, and/or audit results that were not supported by the audit work or evidence resulted in delays in issuing audit reports and contributed to their decisions to separate.

Interviewees did not consider outdated policies and procedures or the lack of a formal, updated audit guide significant problems to performing their audit work. Many were highly critical that the current State Auditor was not clear in what he wanted. Some interviewees further stated that the State Auditor's inability to provide clear and consistent directions on how to do their work contributed to their separation. As an example of bias and unfair management practices by the State Auditor, some interviewees stated that certain employees were terminated if they contradicted the advice or direction of the State Auditor while other employees were allowed to argue with or challenge the advice of the State Auditor openly and publicly without retribution. Some interviewees mentioned that certain employees who did not fall in-line would report to work, be given notice that they were being terminated, and told to leave their offices the same day. These actions of the State Auditor made remaining employees nervous and uncertain if they would also be terminated and unceremoniously told to leave. The insecurity resulted in some employees seeking jobs elsewhere and leaving the Office of the State Auditor. The potential violations of GAGAS and the drafting of reports by managers without audit experience were added incentives for employees, including those with prior audit experience, to terminate their employment with the Office of the State Auditor.

The interviewees stated that the current State Auditor replaced employees with audit experience with new hires with little to no audit experience. The lack of audit backgrounds contributed to dysfunctional audit processes and unnecessary delays in issuing reports. Interviewees stated that the final reports were similar to the draft reports prepared six months to a year earlier.

According to some interviewees, the new hires and managers that lacked prior audit experience created problems among the audit staff. The morale, frustration, dissatisfaction with the audit process, and potential violation of GAGAS resulted in employees with extensive audit experience leaving the Office of the State Auditor. The interviewees reported that it is their understanding that their replacements included lawyers, journalists, and others with no prior audit experience.

For more information on the interviewee's comments, see Appendix 4.

State Auditor Productivity

Report Production

The Office of the State Auditor issues seven types of reports: performance audits, financial audits, funds review, sunrise-sunset evaluations, health insurance, follow-up, and other reports. (See Appendix 5 for more information on the different types of audits). The Working Group found that the State Auditor's audit report production has fluctuated over the years. (See Appendix 6). Most recently:

- In FY 2015-2016, the State Auditor produced a total of 48 reports: three performance audits, 28 financial audits, and 17 funds review, follow-up, or other types of reports;
- In FY 2016-2017, the State Auditor produced a total of 34 reports: one performance audit, 26 financial audits, and seven funds review, follow-up, or other types of reports;
- In FY 2017-2018, the State Auditor produced a total of 46 reports: six performance audits, 26 financial audits, and 14 funds review, sunrise-sunset evaluations, health insurance, follow-up, or other types of reports;
- In FY 2018-2019, the State Auditor produced a total of 55 reports: eight performance audits¹², 31 financial audits, and 16 funds review, health insurance, or follow-up reports; and
- In FY 2019-2020, the State Auditor produced a total of 41 reports: one performance audit, 25 financial audits, and 15 funds review, health insurance, follow-up, or other types of reports.

Financial audit reports, which were outsourced to external accounting firms, comprised about 56-76% of the reports issued by the Office of the State Auditor over the past five years. The financial audits outsourced to external accounting firms were used to sustain State Auditor

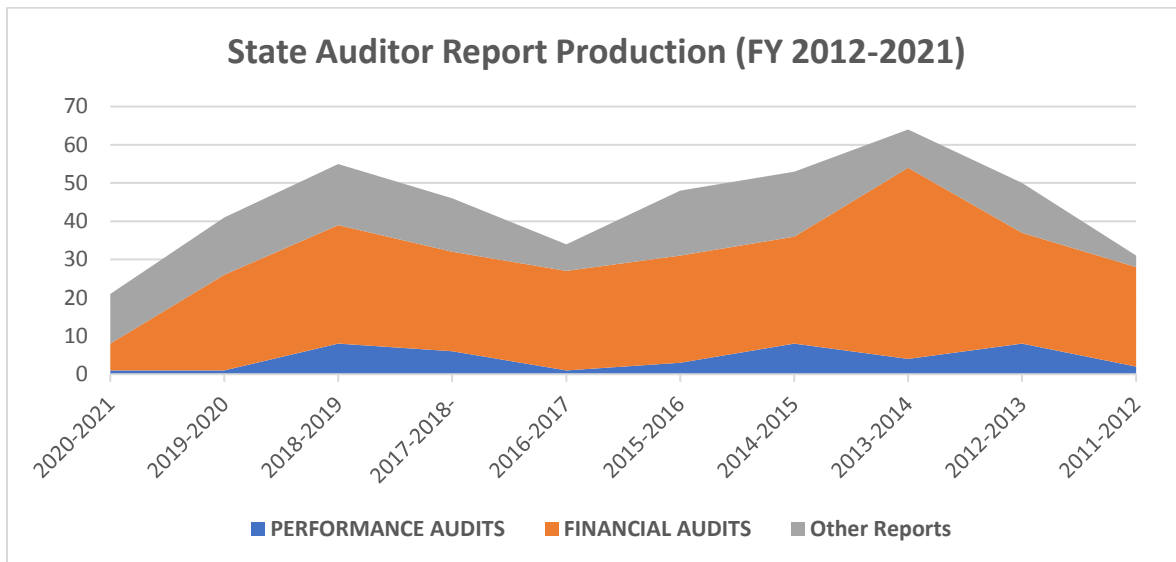
¹² For FY 2018-2019, the state auditor website reported 16 performance audits were completed. We discovered the total included seven follow-up audits, one fund audit and eight performance audits. Of the eight performance audits, four were HART Audits. If the HART audits were counted as one audit as requested in Act 1, the performance audit production declined to 5 performance audit reports.

State Auditor Productivity

report production. The State Auditor's role was to procure accounting firm services, award contracts, and administer the financial audit contracts.

Overall, the number of performance audit reports has declined over the past five years when compared to prior years. A total of eight performance audits were issued in FY 2014-2015; however, by FY 2016-2017, performance audits declined to a low of one performance audit report. After reaching eight performance audits in FY 2018-2019, performance audit production again dropped to only one performance audit report in FY 2019-2020. The figures below compare the audit production over the years.

Figure 1: Performance Audit versus Financial Audit Reports (FY 2012-2021)¹³

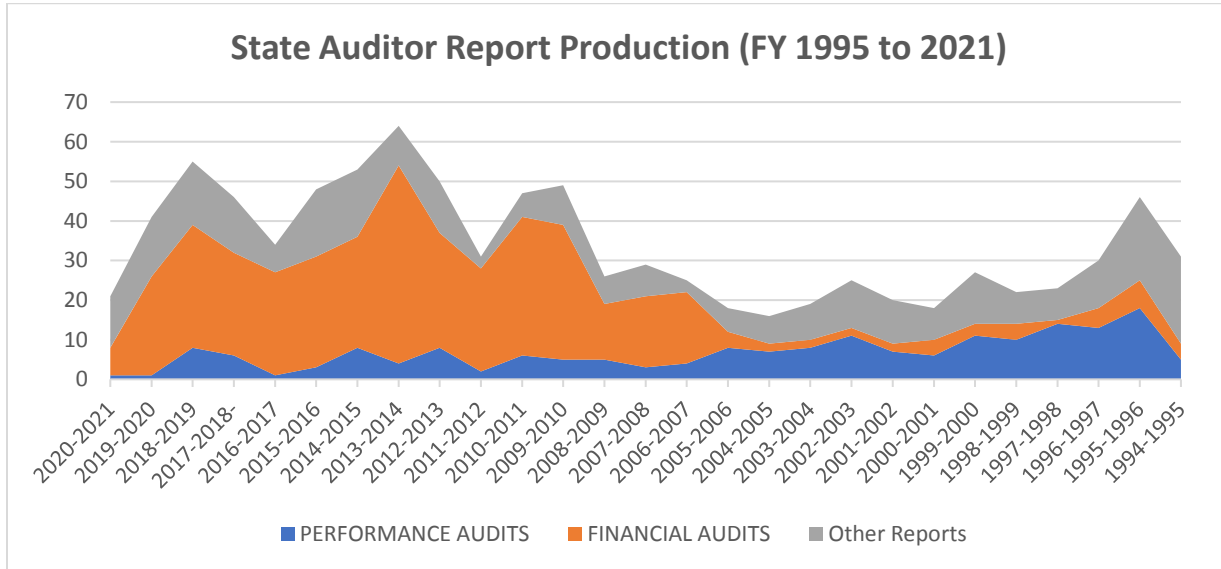


Source: Office of the State Auditor website.

¹³ The charts are based on the results of the Working Group analysis of the Office of the State Auditor website data and are best estimates. The State Auditor would not allow access to any information, data, or files needed to verify the accuracy of the data.

State Auditor Productivity

Figure 2: Performance Audit versus Financial Audit Reports (FY 1995-2021)¹⁴



Source: Office of the State Auditor website.

The FY 2019-2020 production of one performance audit was a significant drop from the FY 2018-2019 high of eight performance audits. The productivity rate of the Office of the State Auditor, with a staff of 26 persons and budget of \$3.3 million, is lower than the productivity rate of the much smaller Office of the Auditor for the City and County of Honolulu, which issues one to five performance audits per year with a staff of ten auditors and interns and a budget of \$1.8 million.

Report Delays

As previously indicated, the impetus for establishing the Working Group was the untimeliness or noncompletion of reports to the Legislature. Between 2016 and 2020, the Legislature passed 25 bills and resolutions that requested the submission of audit results and reports to the Legislature.

- Ten of the 25 requested audits were never performed or completed.

¹⁴ The charts are based on the results of the Working Group analysis of the Office of the State Auditor website data and are best estimates. The State Auditor would not allow access to any information, data, or files needed to verify the accuracy of the data.

State Auditor Productivity

- Of the 15 completed audits, only three reports were issued on time. (See Appendix 11)

Interviewees stated that the absence of audit experience among the current State Auditor and the executive level staff created multiple problems, including communications problems during the audit process and contributed to the delays in issuing audit reports. Interviewees stated that after the division between financial and performance audits was removed and the current State Auditor attempted to blend the financial and performance audit standards, audit processes became dysfunctional, and the issuance of audit reports were unnecessarily delayed.

For performance audits, the Working Group found that there were significant delays during the report production process, specifically after the completion of fieldwork. Eight of the 17 performance audits, excluding follow-up and performance audits performed under the same report number, from May 2016 through January 2021 took about six or more months from the end of fieldwork to the issuance of the reports.¹⁵ (See Table A under Appendix 7). GAGAS fieldwork standards include planning the audit, performing the work that includes evidence gathering, and evaluation and assessment of the evidence that ensures the audit objectives are met. All the issues, findings, and recommendations are based on the evidence and assessments made during fieldwork. Fieldwork is usually the most time-consuming phase of the audit. The report development is based on the documentation, evidence, and assessments produced from the fieldwork phase of the audit.

The delays in issuing the audit reports after completing fieldwork can be attributed in part to changes in the organizational structure, report writing process, report development, editing and graphics. Those interviewed stated that further delays were due to inexperienced executives and changing priorities. The results were missed deadlines and untimely reports. In comparison, previous state auditors took less time to process audit reports. (See Appendix 7).

In addition, some interviewees explained that delays in work product and the release of audit reports were also due to many of the audit staff assigned to an audit that was supposed to be used as a guide to help revise the internal Operating and Standards Manual (known as the Manual of Guides) for the Office of the State Auditor. According to some, this project took many months of work and further jeopardized the timely and efficient completion of other audits. This

¹⁵ Eight of the 17 performance audits, excluding follow-up and performance audits performed under the same report number, took about six to 18 months to be issued after fieldwork was completed. The HART audit performed by Baker Tilly Virchow Krause LLP with a May 2019 report date was not included in the total performance audit count of 17 because the fieldwork dates were not included in the report.

State Auditor Productivity

lack of prioritization further demonstrates the questionable use of time and resources of the Office.

Media attention was more important than statutorily prescribed deadlines

In another example, interviewees stated that previous state auditors were insistent on meeting audit deadlines and sometimes used the taskmaster approach to issue timely reports as required by the Legislature. This focus on meeting deadlines resulted in cancelled vacations, change of holiday season plans, and unhappiness, but the audit deadlines were met.

In contrast, interviewees reported the current State Auditor de-emphasized the importance of meeting the Legislature's deadlines and was more focused on issuing sensationalized audit reports that would capture media headlines and result in media attention. The emphasis on capturing media attention resulted in frequent rewrites of the audit report, report contents that could not be supported by the evidence gathered, and disagreements between the audit staff that did the audit work and the executive level managers who did not have auditing experience.

The interviewees stated that the focus on issuing sensationalized audit reports resulted in additional audit work and delays in issuing the audit reports that were six months to one year after the Legislature's deadlines. The interviewees stated that the delays did not produce final reports that were significantly different from the original draft reports.

The interviewees stated that previous state auditors and managers understood the audit process, edited the audit reports, and issued the audit reports timelier. In contrast, the current State Auditor and his other executives lacked an understanding of the audit process, required multiple rewrites of the audit reports even though deadlines were missed, and revised the reports to include information and conclusions that appeared to be designed to attract media attention with less emphasis on supporting the audit work.

Our research found that several performance audits initiated by the State Legislature through bills or concurrent resolutions from 2016 through 2020 were not issued as required by state law and not in compliance with the government auditing standards. The audit standards state that audit reports should be timely and provide relevant evidence in time to respond to the legitimate needs of officials of the audited entity, legislative officials, and other users. Several audits were issued after the legislative session adjourned and more than seven months after they were due (See Appendix 11).

The obsession for high quality reports that would attract media attention included the hiring of a graphics and communication specialist at a salary that was almost twice the salary of the audit analysts and created dissension among some of the audit/analyst staff.

Office of Hawaiian Affairs Controversy

The Office of Hawaiian Affairs (OHA) controversy and lawsuit brought to light the flaws in how the State Auditor's role is perceived and requires that the Legislature look to its process and how the State Auditor is to be accountable.

Financial and management audit of OHA

In 2019, the Legislature appropriated funds for the operating budget of OHA¹⁶ for the fiscal biennium 2019-2021 under the Office of Hawaiian Affairs Appropriation Act of 2019, Act 37, Session Laws of Hawai'i 2019 (Act 37). Act 37 included a provision that made the release of more than \$3 million in general funds to OHA for FY 2020-2021 contingent upon the Legislature's receipt of a financial and management audit of OHA from the State Auditor. The Legislature appropriated \$500,000 for the State Auditor to either conduct or contract for the financial and management audit of OHA. Act 37 required the State Auditor to submit the audit no later than 20 days prior to the convening of the Regular Session of 2020.

The Working Group finds that the condition precedent to the release of the funds was very unusual and not normally found in budget provisos or audit laws. The Working Group's research showed that the State Auditor requested and approved the proviso in Act 37 that required a financial and management audit of OHA be completed by the Office of the State Auditor and the report be issued to the Legislature before general funds could be released to OHA. The objectivity standard under Section 1.19 of GAGAS (2011 Version) was compromised as the State Auditor had significant influence in determining whether these funds would be released to OHA.

Instead of performing a financial and management audit of OHA as required by Act 37, the State Auditor decided without explicit legislative authorization to conduct a performance audit of

¹⁶ OHA was created by the 1978 Constitutional Convention of Hawai'i to better the conditions of Native Hawaiians and Hawaiians and to manage its share of revenues from the public land trust. Since then, it has faced and brought many legal challenges in the courts. The most notable is *Rice v. Cayetano*, 528 U.S. 495, 120 S. Ct. 1044, 145 L. Ed. 2d 1007 (2000), which clarified that OHA is a governmental agency. OHA has, nonetheless, continued as a quasi-independent governmental entity.

Office of Hawaiian Affairs Controversy

the limited liability companies (LLCs)¹⁷ created by OHA beginning in 2007.¹⁸ Act 37 did not specify the focus of the financial and management audit and there is no mention of OHA's LLCs.¹⁹ In our opinion, the State Auditor misconstrued the purpose of the financial and management audit²⁰ with the purpose of a performance audit and incorrectly informed OHA that without the performance audit, OHA would not receive the more than \$3 million in general funds authorized by the Legislature.

In addition to misconstruing the focus of the financial and management audit of OHA, the State Auditor also unilaterally decided to ignore Act 37's mandate of a financial audit. The State Auditor, in a presentation before the OHA Board of Trustees (Entrance Meeting) as early as July 2019, informed the OHA Board of Trustees that the State Auditor would not be conducting a financial audit and would rely on the audits performed by OHA. This decision violated the law. Act 37 did not give the State Auditor the discretion to determine if a financial audit would or would not be conducted.²¹ There is no indication of a subsequent amendment to Act 37 or that the State Auditor discussed this with the leadership of the Legislature. The Working Group contends that neither the State Auditor nor leadership of the Legislature would be able to unilaterally change the law. In addition, the Working Group questions whether the State Auditor, after unilaterally cancelling the financial audit could take the position that the Office of the State Auditor would not complete the audit. It was the Legislature's intent to have a

¹⁷ Act 37 did not require an audit of the OHA LLCs. The performance audit of the LLCs was self-initiated by the State Auditor. The State Auditor disclosed his decision not to perform the financial audit to the OHA Trustees in July 2019; but failed to obtain explicit approval from the Legislature and to seek direction from the Legislature on the financial audit.

¹⁸ It is important to note that section 10-14.55, HRS, requires OHA to be audited every four years and the report to be provided on or before the convening of the next legislative session. The required OHA audit was conducted for the 2018 Legislature. The report produced on February 2018 was late and not in compliance with the Hawaii State Constitution and the law. It is also important to note that the State Auditor's report on OHA did discuss the LLCs and did not state there were difficulties with securing the information on the LLCs or executive session minutes.

¹⁹ The Senate drafts of House Bill No. 172, Regular Session of 2019, specifically required a financial and management audit of OHA's LLCs. However, House Bill No. 172, Conference Draft 1, Regular Session of 2019, which was passed by the Legislature and became Act 37, deleted the requirement that the financial and management audit be limited to OHA's LLCs.

²⁰ The OHA audit project was originally planned to be: (1) a financial statement audit outsourced to an external CPA accounting firm; and (2) a performance audit performed by a State Auditor team.

²¹ In fact, it is the Working Group's understanding that the proviso and the \$500,000 was made a part of Act 37 so that there would be an independent financial audit for the beneficiaries of OHA and the public.

Office of Hawaiian Affairs Controversy

“financial and management audit.” If OHA is to take responsibility for not producing unredacted Executive Session minutes, then the State Auditor is responsible for not completing the financial audit.²²

OHA LLCs

To comply with section 10-14.55, HRS, the State Auditor completed its last OHA audit in February 2018 (Report No. 18-03). Report No. 18-03 identified to OHA's LLCs as:

- Ho'okele Pono LLC, which was created in 2011 along with its sub-entity Ho'okipaipai LLC as economic development non-profit organizations. Ho'okipaipai houses federal economic development programs and obtains contracts from the United States Defense Logistics Agency; and
- Hi'ilei Aloha LLC, which focuses on promoting, developing, and supporting culturally-appropriate opportunities that benefit Native Hawaiians; and its subsidiaries:
 - Hi'ipaka LLC, which was created by Hi'ilea Aloha LLC to manage the Waimea Falls Park in 2007 and holds the title to Waimea Valley;
 - Hi'ipoi LLC, which was created by Hi'ilei Aloha LLC in 2008 to manage Makaweli Poi Mill in Kaua'i; and
 - Hi'ikualona LLC, which was created in 2010 but has been inactive since formation.

According to the Department of Commerce and Consumer Affairs records, only Hi'ilei Aloha LLC and Hi'ipaka LLC are still active. The remaining LLCs are not active and not in good standing. More specifically:

- Ho'okipaipai LLC has not been in good standing since 2020;
- Ho'okele Pono LLC has not been in good standing since 2020;
- Hi'ikualona LLC has been inactive since formation in 2010;
- Hi'ipoi LLC was terminated in 2017-2018; and

²² The State Auditor's decision that he would not complete the audit due to the redacted minutes is not uniformly practiced and neither is it supported by the industry practice. More specifically, the State Auditor completed the HART Audit with the same issue of redacted minutes.

Office of Hawaiian Affairs Controversy

- There is no record of a seventh LLC named Ho'opakeu LLC with the Department of Commerce and Consumer Affairs.

Suspension of the OHA audit and inconsistency with auditing standards

On December 30, 2019, the State Auditor suspended the audit of OHA because the State Auditor decided that the audit of OHA's LLCs could not be completed without complete and unredacted access to the executive session minutes of the OHA Board of Trustees. The Board of Trustees denied the Office of the State Auditor access to the complete and unredacted minutes of its meetings, claiming that the communications were protected by the attorney-client privilege. By requiring access to the complete and unredacted executive session minutes, which were not required to complete the audit, the State Auditor precipitated a controversy and lawsuit that was unnecessary to complete the financial and management audit required by Act 37.

Auditing standards permit the performance of alternative procedures to achieve the audit objectives, amending the audit objectives, and/or issuing a scope limitation report. An auditor with knowledge of modern audit techniques and that understood current audit practices could have avoided the lawsuit by using alternative audit methods to obtain the evidence needed for the audit to meet the four audit objectives outlined in the December 3, 2019, letter to OHA's Board of Trustees, and to corroborate the testimony provided by former and current OHA trustees. If instead the State Auditor reported that the audit scope was impaired and thus issued an adverse audit opinion on the OHA audit, the State Auditor could have avoided the controversy and the use of attorneys.

The State Auditor's decision to suspend the audit of OHA due to the redacted minutes is not uniformly practiced or supported by the industry practice. Furthermore, past audits completed by the State Auditor were issued without having access to unredacted executive session minutes. The State Auditor's performance audit of HART, Report No. 19-03, was issued with a scope limitation that, among other things, included receiving redacted executive session minutes that "were redacted so extensively as to render them indecipherable and meaningless." The 2018 performance audit of the OHA, Report No. 18-03, was completed and issued with the State Auditor permitted to "review board minutes" that, from what the Working Group understands, included redacted executive session minutes.

OHA vs. Kondo lawsuit

As a result of the State Auditor's unilateral decision to suspend the OHA audit thereby preventing the release of general funds to OHA, OHA filed a lawsuit against Kondo, in his official capacity as State Auditor, and the State of Hawai'i State Auditor (1CCV-20-0000259). In September 2020, the court ruled that OHA was entitled to attorney-client privileges and denied the State Auditor access to the unredacted OHA executive session minutes.

Office of Hawaiian Affairs Controversy

Although the purpose of the litigation is moot, OHA and the State Auditor refuse to terminate the litigation. About \$55,000 has been expended, with approximately \$45,000 of general funds remaining as an encumbrance. Both OHA and the State Auditor should discontinue their legal claims and refrain from expending general funds toward this effort.²³

Status of the OHA audit

The State Auditor has still not performed a financial and management audit of OHA as required by Act 37. On September 21, 2020, the Speaker of the House of Representatives requested that the State Auditor complete the financial and management audit of OHA. The State Auditor refused. The appropriation for more than \$3 million for OHA was for FY 2020-2021. This means that on July 1, 2021, the appropriation will lapse.

Why the State Auditor refuses to perform and issue the financial and management audit of OHA pursuant to Act 37 is puzzling and enigmatic. It does not seem to be the Legislature's intent to withhold the funds or have a litigious situation. The Working Group's research indicated that the Legislature does not know that a financial audit was not conducted and that most of OHA's LLCs are inactive.

The Working Group takes note that the appropriation of \$500,000 for the financial and management audit of OHA is a very strong statement from the Legislature. Aside from the State Comprehensive Annual Financial Report which costs approximately \$1 million a year, the other sizeable appropriation was \$1 million for the HART audits. The Working Group finds that this is a strong policy statement as to the need for a financial and management audit of OHA. It is the Working Group's understanding that the intent was to have a benchmark financial audit of OHA.²⁴

²³ In the Working Group's review of Chapter 23, HRS, specific reference could not be found for the State Auditor's use of his appropriation or of his Trust Fund for attorney's fees and costs. As such he should be represented by the Department of the Attorney General and/or a Special Deputy Attorney General, if the Attorney General deems it appropriate. However, absent the Legislature appropriating funds for the Office of the State Auditor's defense, the costs should be borne by the Attorney General's Budget.

From the pleadings filed in this action, it is unclear as to what the intent of the parties are. For example, under the Rules of Civil Procedure, OHA should have a filed a pretrial statement to set this matter for trial last October (8 months after the Complaint was filed). There is no pretrial statement or extension; and no action in this matter since last year, 2020.

²⁴ In the review of the Auditor's website of Financial Audits, the Working Group could not find a recent financial audit of OHA. The last financial audit was conducted over thirty years ago. (See Report No. 90-11, *Management and Financial Audit of the OHA*).

Office of Hawaiian Affairs Controversy

The Working Group believes that the request by the Legislature, especially if placed in law, must be respected by the State Auditor and followed accordingly. What the State Auditor has done is shown a disrespect for the law and the Hawaii State Constitution. The OHA incident affirms the need for the Legislature to look at oversight over the State Auditor's office to ensure that the ability to act unilaterally under the "guise of independence" does not become the norm.

Legislative Oversight

The following conclusions and opinions of the Working Group are based on our research. Since its establishment in 1950, the responsibility and role of the State Auditor has lost its constitutional purpose. What is the role of the State Auditor? In our opinion, this is the threshold issue of this review.

Independent and objective mantra is misused

The Working Group found that under the current State Auditor, the role of the Office of the State Auditor has been interpreted to be whatever the State Auditor determines it to be, with little respect for the Legislature—the entity that oversees it. The State Auditor claims through the media that the Office of the State Auditor is intended to be independent and objective. However, the State Auditor has misconstrued the independence and objective standard. Interviewees stated the independent and objective requirement was to ensure the Office of the State Auditor was independent of the Executive Branch and objective in the assessment of Executive Branch operations. There is a difference between independence and accountability and responsibility. The Working Group will be the first to ensure the independence of the State Auditor and to affirm that the Legislature should not exercise editorial control over the State Auditor's reports. However, the concern is over the State Auditor's respect of the Hawaii State Constitution, laws, and role of the Legislature. As the legislative auditor, the State Auditor must still be responsive to the Legislature.

Pursuant to the Hawaii State Constitution, the Legislature oversees the State Auditor

The assumption under article VII, section 10, of the Hawaii State Constitution, is that the Legislature has oversight and control over the State Auditor:

The legislature, by a majority vote of each house in joint session, shall appoint an auditor who shall serve for a period of eight years and thereafter until a successor shall have been appointed. The legislature, by a two-thirds vote of the members in joint session, may remove the auditor from office at any time for cause. It shall be the duty of the auditor to conduct post-audits of the transactions, accounts, programs and performance of all departments, offices and agencies of the State and its political subdivisions, to certify to the accuracy of all financial statements issued by the respective accounting officers and to report the auditor's findings and recommendations to the governor and to the legislature at such times as shall be provided by law. The auditor shall also make such additional reports and conduct such other investigations as may be directed by the legislature. Haw. Const. art. VII, sec. 10.

Under the Hawaii State Constitution, the State Auditor is subject to appointment and removal by the Legislature, and the timing of reports and mandate for additional reports and other investigations is subject to the direction of the Legislature.

There may be an argument raised that for audits performed pursuant to the laws of Hawai'i that the State Auditor need not have authorization from the Legislature. However, a close read of article VII, section 10, of the Hawaii State Constitution mandates that the State Auditor "report the auditor's findings and recommendations to the Governor and the Legislature at such times as shall be provided by law." The phrase "as shall be provided by law" means that timing of reports must be established through the enactment of legislation by the Legislature. This means the Legislature sets the priority and time for when the reports are made. Therefore, the State Auditor performs these audits when the Legislature mandates it.

Oversight of auditors is not new

Neither the Hawaii State Constitution nor chapter 23, HRS, preclude the Legislature from having oversight of the Office of the State Auditor. In the private sector, auditors report to chief executive officers, chief financial officers, the board of directors, or an audit committee on the board of directors. County charters in the State allow the county legislative branches to oversee the audit offices. More specifically, the charters of the City and County of Honolulu and counties of Kauai and Maui allow the county legislative branches to oversee the auditor offices, complete annual performance evaluations of the auditors, review annual audit plans, approve budgets, and establish audit committees. (See Appendices 8, 9, and 10 for excerpts from the charters of the City and County of Honolulu and counties of Kauai and Maui). It is the Working Group's opinion that the Legislature needs to provide similar oversight of the Office of the State Auditor to ensure it is responsive to the needs of the Legislature.

Conclusion and Recommendations

Conclusion

Based on the research and discussions, the Working Group concluded that appointing and hiring executives without audit and/or government auditing experience and inserting non-audit staff (such as writers and graphic and communication personnel who were not involved in the audits) into the audit process contributed to delays and untimely audit reports. Although their inputs were intended to improve the quality of the audit reports, their diverse backgrounds, experiences, and priorities lengthened the report process and delayed the issuance of timely audit reports. Inconsistent application of auditing standards and initiating a years-long project that mobilized most of the audit staff to revise the Office of the State Auditor's internal Operating and Standards Manual also affected performance audit production and delayed the issuance of audit reports in accordance with statutory deadlines. Separation from the Office of the State Auditor by salaried and experienced employees along with other employee turnover further exacerbated the performance audit production and the issuance of timely reports.

Oversight of the Office of the State Auditor is needed to preclude violations of laws and statutory requirements such as the deadlines established by the Legislature. Absent any oversight by the Legislature, the Office of the State Auditor and the problems discussed in this report will continue. That is, untimely reports, the hiring of personnel who lack audit experience, noncompliance with generally accepted audit standards, low performance audit production, personnel turnover, complaints, lawsuits from auditees, and non-responsive behavior by the Office of the State Auditor will continue.

To specifically answer the inquiry of the Speaker of the House of Representatives (House Speaker Memo) as to "whether the Office of the State Auditor is in compliance with Art. VII, section 10 of the Hawai'i Constitution.", the Working Group concludes in the negative. That provision of the Hawaii State Constitution mandates a duty of the State Auditor "to conduct post-audits of the transactions, accounts, programs and performance of **all** departments, offices and agencies of the State and its political subdivisions" (emphasis added). Further it is a requirement of the Hawaii State Constitution for the State Auditor to "make such additional reports and conduct such other investigations as may be directed by the legislature." With the State Auditor's failure in completing an audit of OHA and the failure to conduct or complete 10 of 25 requests of the Legislature from 2016 to 2019, and further that 12 of the 15 completed requests missed the deadline requested by the Legislature, the Working Group concludes that the State Auditor has not been in complete compliance with article VII, section 10 of the Hawaii State Constitution.

Conclusion and Recommendations

Recommendations

The Working Group recommends the following:

- (1) The Legislature should require the State Auditor to have at least five years of governmental audit experience;
- (2) The Legislature should require the Office of the State Auditor executive level managers and leaders to have at least five years of governmental audit experience;
- (3) The Legislature should receive training on the different types of audits and the different requirements for financial and performance audits;
- (4) The bills and resolutions passed by the Legislature should provide audit objectives and goals to preclude the State Auditor from diverting from the specific issue and concerns of the Legislature;
- (5) The Legislature should require the Office of the State Auditor to terminate litigation with OHA and to complete the financial and management audit of OHA;²⁵
- (6) The Legislature should establish an oversight body such as an audit committee that oversees the Office of the State Auditor operations. If necessary, the oversight body should be established by law;
- (7) The oversight body should have authority to approve the Office of the State Auditor's annual budget, staffing, annual audit work plans, and perform annual performance evaluations of the State Auditor;
- (8) The oversight body should require the State Auditor to provide periodic progress reports throughout the fiscal year on the status of audits requested in bills and resolutions passed by the Legislature; and
- (9) The oversight body should require the Office of the State Auditor to obtain approval for any litigation and to identify the source of funding for the lawsuit.

²⁵ The Working Group believes the general funds appropriated to OHA for FY 2020 - 2021 for the financial audit is a political question and the Legislature should decide the outcome and disposition of the \$500,000 appropriation.

Appendices

Appendix 1: House Speaker Memo

Appendix 2: Excerpts from Chapter 23, Hawaii Revised Statutes

Appendix 3: Peer Review Results Summary

Appendix 4: Interviewee Results

Appendix 5. Types of Audits

Appendix 6: State Auditor Reports Produced (FY 1994-1995 to FY 2020-2021)

Appendix 7: Delays in Processing and Issuing Performance Reports

Appendix 8: Excerpts from the Revised Charter of the City and County of Honolulu 1973
(Amended 2017 Edition)

Appendix 9: Excerpts from the Charter of the County of Kauai (2020 Codified Version)

Appendix 10: Excerpts from the Charter of the County of Maui (2019)

Appendix 11: Legislative Requests to the Auditor for Calendar Years 2016-2020

Appendix 1: House Speaker Memo

SCOTT K. SAIKI
Speaker



Phone No.: (808) 586-6100
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HOUSE OF REPRESENTATIVES
STATE OF HAWAII
STATE CAPITOL, ROOM 431
415 SOUTH BERETANIA STREET
HONOLULU, HAWAII 96813

January 14, 2021

MEMORANDUM

TO: All House Members

FROM: Speaker Scott K. Saiki *SCOTT SAIKI*

RE: **State Auditor Working Group**

Pursuant to House Rule 2, I am creating a State Auditor Working Group. The purpose of this working group is to determine whether the Office of the State Auditor is in compliance with Art. VII, section 10 of the Hawaii Constitution. The working group is authorized to analyze documents, interview individuals, and conduct other necessary research. The working group is requested to submit its report to the House on or before April 1, 2021.

As you know, limited resources make it problematic for the State Auditor to address all outstanding issues and matters. Therefore, the findings of the working group will assist the State Auditor in prioritizing its work and the scope of its work.

I am appointing the following individuals to serve on the working group without compensation:

Edwin Young, Chair
Colleen Hanabusa
Wesley Machida

Please contact my office if you have any questions.

cc: Senator Ronald D. Kouchi, Senate President
Mr. Leslie H. Kondo, State Auditor
Ms. Charlotte A. Carter-Yamauchi, Director, Legislative Reference Bureau
Mr. Robin K. Matsunaga, Ombudsman

Appendix 2: Excerpts from Chapter 23, Hawai'i Revised Statutes

CHAPTER 23

AUDITOR

PART I. OFFICE OF AUDITOR PROPER

SECTION

- 23-1 Definition
- 23-2 Auditor; appointment, tenure, removal
- 23-2.5 Acting auditor
- 23-3 Salary of the auditor and appropriations
- 23-3.5 Reimbursement moneys for financial audits
- 23-3.6 Audit revolving fund
- 23-4 Duties
- 23-5 Auditor; powers
- 23-6 Examination under oath
- 23-7 Discovery of irregularities
- 23-7.5 Audit recommendations; annual report
- 23-8 Assistance and staff
- 23-9 Reports
- 23-9.5 Confidentiality
- 23-10 Penalty for violation and false evidence
- 23-11 New special or revolving funds
- 23-12 Review of special, revolving, and trust funds
- 23-13 Hawai'i tourism authority; audit
- 23-14 Rapid transportation authority; annual review

Note

Audit of Honolulu authority for rapid transportation; alternative routes and development options; financial plan; report to 2019 legislature. L Sp 2017, c 1, §11.

Performance audit of the special land and development fund and land conservation fund; report to 2019 legislature. L 2017, c 209.

[PART I. OFFICE OF AUDITOR PROPER]

§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 Hawai'i. 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 Hawai'i 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] Hawai'i 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 Hawai'i 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".

[§23-14] Rapid transportation authority; annual review. (a) Beginning on September 5, 2017, and ending on December 31, 2031, the auditor, on an annual basis, shall conduct a review of any rapid transportation authority in the State charged with the responsibility of constructing, operating, or maintaining a locally preferred alternative for a mass transit project that receives moneys from a surcharge on state tax established pursuant to section 46-16.8, transient accommodations tax revenues pursuant to section 237D-2(e), or both. The annual review shall include a review of documents, including but not limited to invoices, contracts, progress reports, and time schedules, to determine that:

- (1) Expenditures by the authority comply with the criteria established pursuant to section 46-16.8(e); and
- (2) The authority follows accounting best practices for substantiating its expenditures.

(b) A rapid transportation authority subject to this section and any private company or agency contracted to provide services for the locally preferred alternative for a mass transit project shall cooperate with and assist the auditor as needed in conducting the annual review,

including promptly providing all records and other information requested by the auditor in the course of the annual review.

(c) The auditor shall submit the findings and recommendations of the auditor's review to the legislature and the rapid transportation authority no later than twenty days prior to the convening of the immediately following regular session. [L Sp 2017, c 1, §12]

Revision Note

"September 5, 2017" substituted for "the effective date of Act [1], First Special Session of 2017" pursuant to §23G-15.

Appendix 3: Peer Review Results Summary

Peer Reviews of the Office of the State Auditor were performed in 2010, 2013, 2016, and 2019 by the National Conference of State Legislatures (NCSL). The peer reviews concluded the Office of the State Auditor quality control system provided reasonable assurance of compliance with Government Auditing Standards and professional best practices as determined by the peer reviewers with respect to performance audits.



NCSL is the bipartisan organization that serves the legislators and staffs of the nation's 50 states and its commonwealths and territories. NCSL provides research, technical assistance, and opportunities for policymakers to exchange ideas on the most pressing state issues and is

an effective and respected advocate for the interests of the states in the American federal system. NCSL has three objectives: (1) to improve the quality and effectiveness of state legislatures, (2) to promote policy innovation and communication among state legislatures, and (3) to ensure state legislatures have a strong, cohesive voice in the federal system. NCSL operates from offices in Denver, Colorado, and Washington, D.C.

The Peer Reviewers reported that the Office of the State Auditor follows *Government Auditing Standards* (i.e., the Yellow Book, or GAGAS) for performance audits. These standards require the office to undergo a peer review every three years. The purpose of a peer review is to identify whether the Office of the State Auditor's system of quality control provides reasonable assurance of compliance with *Government Auditing Standards* and professional best practices as determined by peer reviewers with respect to performance audit engagements. The office contracts with private accounting firms to complete its financial auditing activities.

The peer review compared the Office of the State Auditor's policies and performance to Yellow Book requirements and the knowledge base of peers from similar offices. The review provided a collective assessment of the Office of the State Auditor's quality assurance and review processes, how those quality processes were used to develop the Office of the State Auditor's performance audits, and the qualifications and independence of staff. Specifically, the peer review team sought to determine whether the sample of reports reviewed, as well as the processes that underlie the reports, met the following criteria: (1) work is professional, independent, and objectively designed and executed; (2) evidence is competent and reliable, (3) conclusions are supported, (4) products are fair and balanced, and (5) staff is competent to perform work required.

An onsite visit took place July 8-12, 2019. A meeting of the peer review team and entire staff was held. During the meeting, everyone introduced themselves and provided short

descriptions of their backgrounds, including education and relevant work experience. The peer review team reviewed documentation relating to the function of the Office of the State Auditor, its audit-related policies and procedures, and four performance audits. The audits were selected by members of the peer review team from a list of audits released between 2016 and 2019. Each peer review team member took lead responsibility for review of two performance audits. This included reviewing the performance audits in depth, reviewing the supporting working papers, and interviewing current staff who worked on the performance audit.²⁶

To evaluate staff competence, continuing professional education (CPE) records were reviewed to determine whether staff received 80 hours of required training every two years. The team discussed its preliminary conclusions with the State Auditor. The team also met with the State Auditor, Deputy Auditor, General Counsel, and other key staff to further discuss conclusions.

In the peer review team's opinion, the Office of the State Auditor has a quality control system that is suitably designed and followed, providing reasonable assurance that the Office is performing and reporting performance audit engagements in conformity with applicable *Government Auditing Standards* for the period reviewed. Based on its professional judgment, the peer review team gave a rating of "pass" to the Office of the State Auditor.

The peer review team found many positive aspects of the Office of the State Auditor's work, including:

- The work atmosphere in the Office is positive;
- The Office has strong internal memoranda on independence;
- The Office's risk assessment document merges analysis of risk likelihood with significance;
- The Office's planning guide is well written;
- Color and graphics are used effectively in the Office's reports;
- 2011 Standard 7.37 states in part, "If the auditors disagree with the [audited entity's] comments, they should explain in the report their reasons for disagreement." In specific instances when it was deemed necessary to rebut an agency, the peer review team noted that the Office's language choices were made carefully,

²⁶ The December 2019 Peer Review Report issued by the National Conference of State Legislatures did not consider the criteria of issuing timely reports in accordance with state law, which is an important criteria in determining the Office of the State Auditor's compliance with the Hawaii State Constitution.

thoughtfully, yet firmly; and

- The Office's CPE tracking program is easy to use.

The Office of the State Auditor is authorized by article VII, section 10, of the Hawaii State Constitution. Chapter 23, Hawai'i Revised Statutes, gives the Office of the State Auditor broad powers to examine all books, records, files, papers and documents, and financial affairs of every agency. These authorities provide the Office of the State Auditor with assurance that the Office can function independently and exercise its responsibilities in conformity with the Yellow Book.

The Office of the State Auditor has a process for internal disclosure of potential impairments to independence on the part of staff assigned to audits. The process is set forth in the Office of the State Auditor's manual of guides. The State Auditor reviews and assesses the independence of staff when assigning them to an audit project. Staff also complete independence statements.

The Office of the State Auditor has also established internal procedures for planning audits, supervising staff, obtaining evidence, and documenting and reporting that ensure its reliability. The Office of the State Auditor's procedure manual is referenced to the *Government Auditing Standards, 2011 Revision*. The written guidance materials are clear and comprehensive. Auditors use professional judgment in planning and performing audits. The Office of the State Auditor's work process provides for the application of collective professional judgment of the Office.

The Office of the State Auditor includes experienced, well-educated staff. The staff's diverse backgrounds and skills are beneficial to the Office of the State Auditor. The staff assigned to perform audits collectively possess adequate professional competence for the tasks required.

Competence may be maintained through a commitment to continued learning and development. Training is available both in-house and through many outside resources, including NCSL and the National Legislative Program Evaluation Society. Every two years, the audit staff must complete at least 80 hours of required continuing education. Staff CPE training is tracked through an electronic system.

During its review, the peer review team offered additional technical and procedural suggestions for management of the Office of the State Auditor to consider. The suggestions were not criticisms of the Office of the State Auditor; rather, they were provided as opportunities to further refine its practice of the audit profession and do not affect the peer review team's overall judgment of the Office or its compliance with *Government Auditing Standards*.

Appendix 4: Interviewee Results

INTERVIEW NUMBER	CATEGORY	IS AUDIT EXPERIENCE NEEDED?	IS MANAGEMENT STYLE IMPORTANT?	IS OVERSIGHT NEEDED?	COMMENTS
1-2	Former Hawai'i State Department Directors	YES	YES	YES	<p>State Auditor is intrusive, inconsiderate, and insensitive to auditee operations.</p> <p>State Auditor must be reasonable.</p>
3-4	Peers	YES	YES	YES	<p>No major problems with State Auditor.</p> <p>Unaware of State Auditor problems.</p>
5-13	Former State Auditor Employees	YES	YES	YES	<p>Employee quit due to State Auditor inexperience, frequent rewrites, missed deadlines, and lengthy delays.</p> <p>State Auditor is confrontational and difficult to work with.</p> <p>State Auditor is inexperienced with auditing and the desire for sensational, news making reports resulted in frequent rewrites, lengthy delays, and missed deadlines. Management style is unpredictable and arbitrary.</p> <p>Employee quit due to State Auditor inexperience with auditing; desire for sensational, news making reports; frequent rewrites; lengthy delays; and missed deadlines.</p> <p>Employee quit due to State Auditor inexperience with auditing, unnecessary delays, missed deadlines, and hiring of new personnel without auditing experience.</p> <p>Frustrated employee was terminated due to disagreement over State Auditor inexperience with auditing; desire for sensational, news making</p>

Appendices

INTERVIEW NUMBER	CATEGORY	IS AUDIT EXPERIENCE NEEDED?	IS MANAGEMENT STYLE IMPORTANT?	IS OVERSIGHT NEEDED?	COMMENTS
					<p>reports; frequent rewrites; lengthy delays; and missed deadlines. Management style is capricious and unpredictable.</p> <p>Employee quit due to State Auditor inexperience with auditing; desire for sensational, news making reports; frequent rewrites; lengthy delays; missed deadlines; audit standards violations; and reports that were not supported by the audit evidence.</p> <p>To be successful, auditors must have audit experience. Experience can be developed on-the-job.</p> <p>State Auditor inexperience with auditing and desire for sensational, news making reports resulted in frequent rewrites, lengthy delays, and missed deadlines. Frustrated employees quit or were arbitrarily terminated.</p>
14-17	CPA Firms, Contractors, Consultants	YES	YES	YES	<p>State Auditor is arrogant and difficult to work with. Firm refuses to work with the State Auditor or bid on government contracts.</p> <p>State Auditor is inexperienced. Firm must spend a lot of time explaining audit concepts and practices to the State Auditor.</p>
Total		17	17	17	

Source: Working Group Interview Results

Appendix 5. Types of Audits

TYPES OF AUDITS	TYPES OF AUDITORS		
	INTERNAL AUDITOR	EXTERNAL AUDITOR	LEGISLATIVE AUDITOR
PERFORMANCE	Internal Auditor reports to CFO, BUDGET – FINANCE DIRECTOR, BOARD OF DIRECTORS, AUDIT COMMITTEE	External Auditor reports to CFO, BUDGET – FINANCE DIRECTOR, BOARD OF DIRECTORS, AUDIT COMMITTEE	Legislative Auditor (e.g., GAO, STATE AUDITOR, CITY AUDITOR) report to the Legislative Branch (e.g., U.S. Congress, State Legislature, City Council)
FINANCIAL	Internal Auditor reports to CFO, BUDGET – FINANCE DIRECTOR, BOARD OF DIRECTORS, AUDIT COMMITTEE	External Auditor reports to CFO, BUDGET – FINANCE DIRECTOR, BOARD OF DIRECTORS, AUDIT COMMITTEE	CPA, ACCOUNTING FIRMS report to Legislative Auditor or Contract Administrator for Financial Audits
ATTESTATION	Internal Auditor reports to CFO, BUDGET – FINANCE DIRECTOR, BOARD OF DIRECTORS, AUDIT COMMITTEE	External Auditor reports to CFO, BUDGET – FINANCE DIRECTOR, BOARD OF DIRECTORS, AUDIT COMMITTEE	Legislative Auditor (e.g., GAO, STATE AUDITOR, CITY AUDITOR) report to the Legislative Branch (e.g., U.S. Congress, State Legislature, City Council)
NON-AUDIT SERVICES	Internal Auditor reports to CFO, BUDGET – FINANCE DIRECTOR, BOARD OF DIRECTORS, AUDIT COMMITTEE	External Auditor reports to CFO, BUDGET – FINANCE DIRECTOR, BOARD OF DIRECTORS, AUDIT COMMITTEE	Legislative Auditor (e.g., GAO, STATE AUDITOR, CITY AUDITOR) report to the Legislative Branch (e.g., U.S. Congress, State Legislature, City Council)
COMPLIANCE	Internal Auditor reports to CFO, BUDGET – FINANCE DIRECTOR, BOARD OF DIRECTORS, AUDIT COMMITTEE	External Auditor reports to CFO, BUDGET – FINANCE DIRECTOR, BOARD OF DIRECTORS, AUDIT COMMITTEE	Legislative Auditor (e.g., GAO, STATE AUDITOR, CITY AUDITOR) report to the Legislative Branch (e.g., U.S. Congress, State Legislature, City Council)

TYPES OF AUDITS	TYPES OF AUDITORS		
	INTERNAL AUDITOR	EXTERNAL AUDITOR	LEGISLATIVE AUDITOR
INFORMATION TECHNOLOGY	Internal Auditor reports to CFO, BUDGET – FINANCE DIRECTOR, BOARD OF DIRECTORS, AUDIT COMMITTEE	External Auditor reports to CFO, BUDGET – FINANCE DIRECTOR, BOARD OF DIRECTORS, AUDIT COMMITTEE	Legislative Auditor (e.g., GAO, STATE AUDITOR, CITY AUDITOR) report to the Legislative Branch (e.g., U.S. Congress, State Legislature, City Council)
DATA ANALYTICS AND OTHER EVOLVING AUDITS	Internal Auditor reports to CFO, BUDGET – FINANCE DIRECTOR, BOARD OF DIRECTORS, AUDIT COMMITTEE	External Auditor reports to CFO, BUDGET – FINANCE DIRECTOR, BOARD OF DIRECTORS, AUDIT COMMITTEE	Legislative Auditor (e.g., GAO, STATE AUDITOR, CITY AUDITOR) report to the Legislative Branch (e.g., U.S. Congress, State Legislature, City Council)
OTHER (FUNDS, SUNRISE-SUNSET, HEALTH INSURANCE, FOLLOW-UP AUDITS)	Internal Auditor reports to CFO, BUDGET – FINANCE DIRECTOR, BOARD OF DIRECTORS, AUDIT COMMITTEE	External Auditor reports to CFO, BUDGET – FINANCE DIRECTOR, BOARD OF DIRECTORS, AUDIT COMMITTEE	Legislative Auditor (e.g., GAO, STATE AUDITOR, CITY AUDITOR) report to the Legislative Branch (e.g., U.S. Congress, State Legislature, City Council)

Source: Working Group

Appendix 6: State Auditor Reports Produced (FY 1994-1995 to FY 2020-2021)²⁷

FISCAL YEAR	PERFORMANCE AUDITS	FINANCIAL AUDITS	OTHER REPORTS	TOTAL REPORTS	OTHER REPORTS TYPES				
					FUNDS REVIEW	SUNRISE SUNSET EVALUATION	HEALTH INSURANCE	FOLLOW-UP	OTHER REPORTS
2020-2021	1	7	13	21	4	1	0	2	6
2019-2020	1	25	15	41	4	0	1	3	7
2018-2019	8 ²⁸	31	16	55	7	0	2	7	0

²⁷ Disclaimer: The tables are the results of the Working Group analysis of the Office of the State Auditor website data and are best estimates. The State Auditor would not allow access to any information, data, or files needed to verify the accuracy of the data. The information was compiled and analyzed as of January 2021.

²⁸ For FY 2018-2019, the Office of the State Auditor website reported 16 performance audits were completed. We discovered the total included 7 follow-up audits, 1 fund audit and 8 performance audits. Of the 8 performance audits, 4 were HART Audits. If the HART Audits were counted as one audit as requested in Act 1, the performance audit production declined to 5 performance audit reports.

Appendices

FISCAL YEAR	PERFORMANCE AUDITS	FINANCIAL AUDITS	OTHER REPORTS	TOTAL REPORTS	OTHER REPORTS TYPES				
					FUNDS REVIEW	SUNRISE SUNSET EVALUATION	HEALTH INSURANCE	FOLLOW-UP	OTHER REPORTS
2017-2018-	6	26	14	46	5	1	1	3	4
2016-2017	1	26	7	34	4	0	0	1	2
2015-2016	3	28	17	48	6	0	0	5	6
2014-2015	8	28	17	53	3	1	2	7	4
2013-2014	4	50	10	64	4	0	0	2	4
2012-2013	8	29	13	50	1	1	1	3	7
2011-2012	2	26	3	31	1	0	0	0	2
2010-2011	6	35	6	47	1	0	1	0	4

Appendices

FISCAL YEAR	PERFORMANCE AUDITS	FINANCIAL AUDITS	OTHER REPORTS	TOTAL REPORTS	OTHER REPORTS TYPES				
					FUNDS REVIEW	SUNRISE SUNSET EVALUATION	HEALTH INSURANCE	FOLLOW-UP	OTHER REPORTS
2009-2010	5	34	10	49	2	0	1	0	7
2008-2009	5	14	7	26	0	1	1	0	5
2007-2008	3	18	8	29	1	0	0	0	7
2006-2007	4	18	3	25	1	0	0	0	2
2005-2006	8	4	6	18	1	0	0	2	3
2004-2005	7	2	7	16	1	0	2	1	3
2003-2004	8	2	9	19	2	0	0	2	5
2002-2003	11	2	12	25	2	2	0	1	7

Appendices

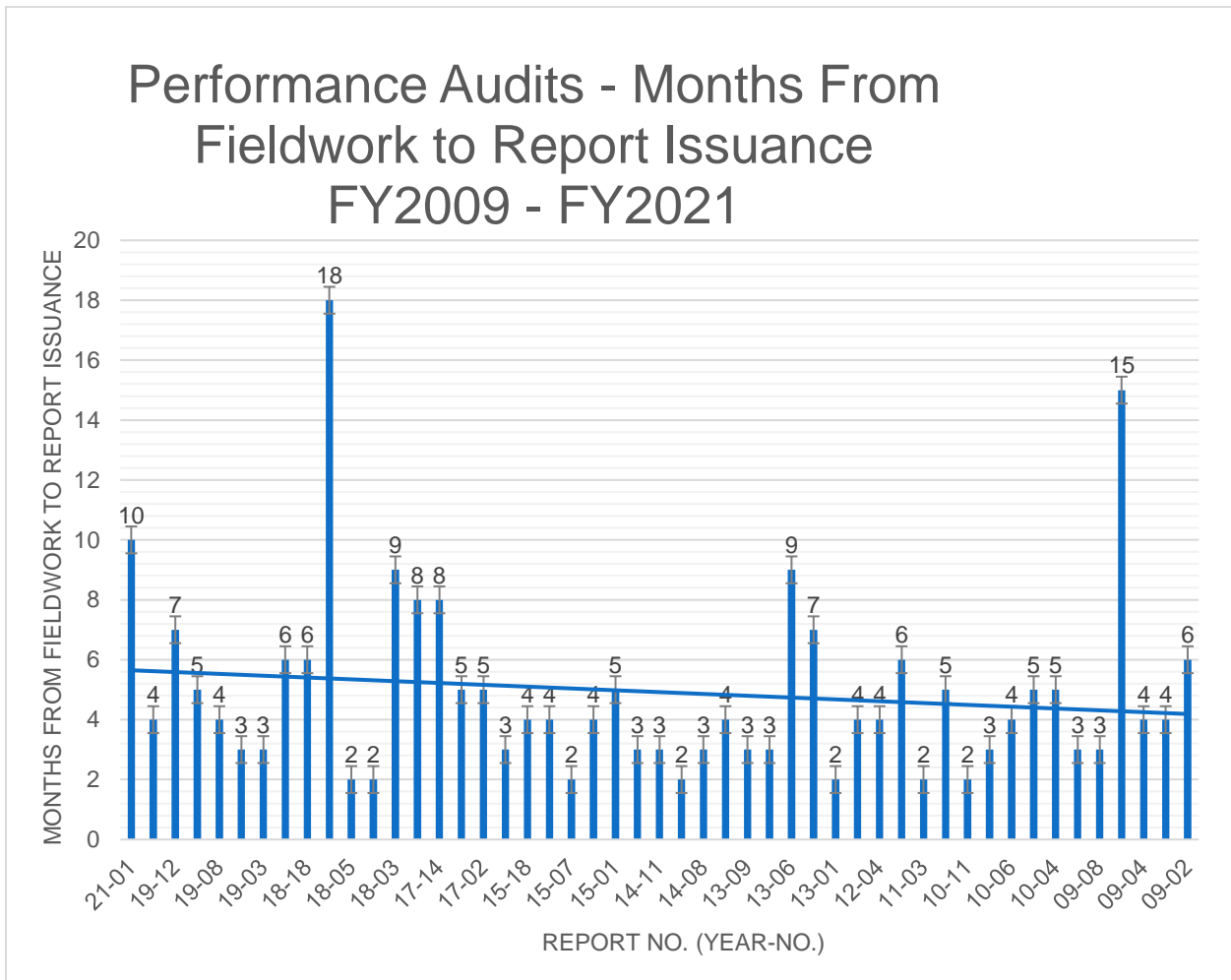
FISCAL YEAR	PERFORMANCE AUDITS	FINANCIAL AUDITS	OTHER REPORTS	TOTAL REPORTS	OTHER REPORTS TYPES				
					FUNDS REVIEW	SUNRISE SUNSET EVALUATION	HEALTH INSURANCE	FOLLOW-UP	OTHER REPORTS
2001-2002	7	2	11	20	2	1	0	3	5
2000-2001	6	4	8	18	1	2	1	1	3
1999-2000	11	3	13	27	1	0	3	1	8
1998-1999	10	4	8	22	0	0	1	0	7
1997-1998	14	1	8	23	1	0	1	3	3
1996-1997	13	5	12	30	1	0	0	5	6
1995-1996	18	7	21	46	1	1	1	6	12
1994-1995	5	4	22	31	2	8	1	0	11

FISCAL YEAR	PERFORMANCE AUDITS	FINANCIAL AUDITS	OTHER REPORTS	TOTAL REPORTS	OTHER REPORTS TYPES				
					FUNDS REVIEW	SUNRISE SUNSET EVALUATION	HEALTH INSURANCE	FOLLOW-UP	OTHER REPORTS
Total	183	435	296	914	59	19	20	58	140

Source: Office of the State Auditor Website

Appendix 7: Delays in Processing and Issuing Performance Reports²⁹

Note: The blue trend line below shows a 2-month increase from 2009 - 2021 in the time it takes to draft and issue performance reports after conducting fieldwork. Average of 6.2 months from 2017 - part of 2021; about 3.8 months from 2013 - 2016; & 4.7 months from 2009 - 2012.



²⁹ Disclaimer: The appendix, charts, and tables are the results of the Working Group analysis of the Office of the State Auditor website data and are best estimates. The State Auditor would not allow access to any information, data, or files needed to verify the accuracy of the data. Information was compiled and analyzed as of January 2021.

Table A: Fieldwork to Issuing Performance Audit Reports (Months) From May 2016 – January 2021.³⁰

Report No.	Performance Audit	Date	Fieldwork Dates	Estimated Fieldwork Duration (in Months)	Estimated Time from Fieldwork to Issue Report (in Months)
21-01	Audit of the Agribusiness Development Corporation	1/14/2021	6/2019 to 3/2020	10	10
19-13	Audit of the Department of Education's Administration of School Impact Fees	9/24/2019	2/2019 to 6/2019	5	4
19-12	Audit of the Department of Land and Natural Resources' Special Land and Development Fund (Contractor – KKDLY LLC)	6/27/2019	6/2017 to 12/2018	19	7
	Honolulu Authority for Rapid Transportation: Contract and Vendor Compliance Report (Contractor – Baker Tilly Virchow Krause LLP)	5/2/2019	Not noted in posted report	N/A	N/A
19-11	Review of the Department of Accounting and General Services' Verification of the Honolulu Authority for Rapid Transportation's Invoices	3/28/2019	6/2018 to 11/2018	6	5
19-08	Financial and Program Audit of the Department of Health's Deposit Beverage Container Program, June 30, 2018 (Contractor – KMH LLP: Report Date January 18, 2019)	3/5/2019	8/2018 to 11/2018	4	4

³⁰ Note: The information in the first four columns of this table was retrieved from the Office of the State Auditor's website. Follow-up and performance audits included under one report number were not included in this table. The third column includes the earlier of the date posted on the website or report date. Information was compiled and analyzed as of January 2021.

Report No.	Performance Audit	Date	Fieldwork Dates	Estimated Fieldwork Duration (in Months)	Estimated Time from Fieldwork to Issue Report (in Months)
19-04	Audit of the Honolulu Authority for Rapid Transportation: Report 2	1/15/2019	3/2018 to 11/2018	9	3
19-03	Audit of the Honolulu Authority for Rapid Transportation: Report 1	1/15/2019	3/2018 to 11/2018	9	3
19-01	Audit of the Department of Land and Natural Resources' Land Conservation Fund	1/4/2019	6/2017 to 7/2018	14	6
18-18	Audit of Health Care Assurance's Adult Residential Care Homes Program	11/9/2018	8/2017 to 5/2018	10	6
18-09	Audit of the Department of the Attorney General's Asset Forfeiture Program	6/2018	6/2016 to 1/2017	8	18
18-05	Audit of Public Utilities Commission	2/28/2018	6/2017 to 1/2018	8	2
18-04	Audit of the Hawai'i Tourism Authority	2/22/2018	7/2017 to 1/2018	7	2
18-03	Audit of the Office of Hawaiian Affairs	2/13/2018	11/2016 to 5/2017	7	9
18-01	Audit of the Hawai'i State Energy Office	1/2/2018	11/2016 to 5/2017	7	8
17-14	Audit of the Disease Outbreak Control Division of the Department of Health	12/28/2017	11/2016 to 5/2017	7	8
17-05	Audit of Hawai'i Department of Agriculture's Plant Quarantine Branch	7/12/2017	6/2016 to 2/2017	9	5
17-02	Financial and Program Audit of the Deposit Beverage Container Program June 30, 2016 (Contractor – N&K CPAs, Inc.)	3/17/2017	7/2016 to 11/2016	5	5

Source: Analysis of Performance Audit Reports issued by the Office of the State Auditor

Table B: Fieldwork to Issuing Performance Audit Reports (Months) February 2013 – April 2016 ³¹

Report No.	Performance audit	Date	Fieldwork Dates	Estimated Fieldwork Duration (in Months)	Estimated Time from Fieldwork to Issue Report (in Months)
15-20	Audit of the Department of Human Services' KOLEA System: \$155 Million KOLEA Project Dues Not Achieve All ACA Goals	12/30/2015	5/2015 to 10/2015	6	3
15-18	Audit of the Department of Transportation's Energy Performance Contracts: Improved Oversight Is Needed to Ensure Savings	12/17/2015	5/2015 to 9/2015	5	4
15-10	Audit of the Hawai'i Health Connector's Mansha Contracts: Connector Board and Management Wasted and Abused Millions in Public Funds	9/1/2015	12/2014 to 5/2015	6	4
15-07	Audit of the Research Corporation of the University of Hawai'i: RCUH's Weak Plans Limit Role, Reduce Accountability for Hiring and Procurement Exemptions	6/2/2015	1/2015 to 4/2015	4	2
15-02	Financial and Program Audit of the Deposit Beverage Container Program, June 30, 2014	4/14/2015	8/2014 to 12/2014	5	4
15-01	Audit of the Hawai'i Health Connector: Inadequate Planning and Improper	1/29/2015	1/2014 to 9/2014	9	5

³¹ Note: The information in the first four columns of this table was retrieved from the Office of the State Auditor's website. Follow-up and performance audits included under one report number were not included in this table. The third column includes the earlier of the date posted on the website or report date. Information was compiled and analyzed as of January 2021.

Report No.	Performance audit	Date	Fieldwork Dates	Estimated Fieldwork Duration (in Months)	Estimated Time from Fieldwork to Issue Report (in Months)
	Procurement Led to an Unsustainable Health Connector				
14-16	Audit of the Department of Health's Glass Advance Disposal Fee Program	12/30/2014	7/2014 to 10/2014	4	3
14-11	Audit of the Hawai'i State Foundation on Culture and the Arts	11/26/2014	5/2014 to 9/2014	5	3
14-10	Study of Proposed Mandatory Health Insurance for Hearing Aids	10/23/2014	5/2014 to 9/2014	5	2
14-08	Study of Proposed Mandatory Health Insurance for Treatment of Orofacial Anomalies	9/17/2014	5/2014 to 7/2014	3	3
14-02	Audit of the Department of Human Services' Med-QUEST Division and its Medicaid Program	1/17/2014	6/2013 to 10/2013	5	4
13-09	Audit of Major Contracts and Agreements of the Hawai'i Tourism Authority	12/11/2013	6/2013 to 9/2013	4	3
13-08	Management and Financial Audit of the Deposit Beverage Container Program, June 30, 2012	11/5/2013	3/2013 to 8/2013	6	3
13-06	Audit of the Kahoolawe Rehabilitation Trust Fund	7/2013	7/2012 to 11/2012	5	9
13-02	Audit of the Department of Hawaiian Home Lands' Homestead Services Division	4/2013	6/2012 to 10/2012	5	7
13-01	Management Audit of the Department of Agriculture's Measurement Standards Branch	2/21/2013	10/2012 to 1/2013	4	2

Source: Analysis of Performance Audit Reports issued by the Office of the State Auditor

Table C: Fieldwork to Issuing Performance Audit Reports (Months) January 2009 – December 2012³²

Report No.	Performance audit	Date	Fieldwork dates	Estimated Fieldwork Duration (in Months)	Estimated Time from Fieldwork to Issue Report (in Months)
	State of Hawai'i Deposit Beverage Container Deposit Special Fund Financial and Program Audit, June 30, 2010 (Contractor – Accuity LLP)	11/14/2012	N/A	N/A	N/A
	State of Hawai'i Deposit Beverage Container Deposit Special Fund Financial and Program Audit, June 30, 2008 (Contractor – Accuity LLP)	11/14/2012	N/A	N/A	N/A
12-07	Management Audit of the Department of Education's School Bus Transportation Services	8/2012	1/2012 to 5/2012	5	4
12-04	Study of the Transfer of Non-general Funds to the General Fund	7/2012	6/2011 to 4/2012	11	4
12-03	Management Audit of the Natural Energy Laboratory of Hawai'i Authority	5/2012	7/2008 to 1/2009; 7/2011 to 12/2011	13	6
11-03	Performance Audit of the Hawai'i Public Charter School System	12/2011	1/2011 to 11/2011	11	2
11-01	Management Audit of the Hawai'i Public Housing Authority	6/2011	7/2010 to 2/2011	8	5
10-11	Management and Financial Audit of Department of Taxation Contracts	12/2010	6/2010 to 11/2010	6	2

³² Note: The information in the first four columns of this table was retrieved from the Office of the State Auditor's website. Follow-up and performance audits included under one report number were not included in this table. The third column includes the earlier of the date posted on the website or report date. Information was compiled and analyzed as of January 2021.

Report No.	Performance audit	Date	Fieldwork dates	Estimated Fieldwork Duration (in Months)	Estimated Time from Fieldwork to Issue Report (in Months)
10-10	Management Audit of the Public Safety's Contracting for Prison Beds and Services	12/2010	5/2010 to 10/2010	6	3
10-06	Audit of the Department of Public Safety, Sheriff Division	6/2010	7/2009 to 3/2010	9	4
10-05	Program and Management Audit of the State's Purchasing Card Program	6/2010	10/2009 to 2/2010	5	5
10-04	Management Audit of the Aloha Tower Development Corporation	4/2010	3/2009 to 12/2009	10	5
10-03	Financial Examination of the Department of Budget and Finance	3/2010	8/2009 to 1/2010	6	3
09-08	Management Audit of Information Technology Within the Office of Hawaiian Affairs	6/2009	3/2009 to 4/2009	2	3
09-06	Audit of the State of Hawai'i's Information Technology: Who's in charge?	3/2009	6/2007 to 1/2008	8	15
09-04	Procurement Audit of the Department of Education: Part 2	2/2009	8/2007 to 11/2008	4	4
09-03	Procurement Audit of the Department of Education: Part 1 (Contracted some work with Grant Thornton LLP)	2/2009	8/2007 to 11/2008	16	4
09-02	Management and Financial Audit of Hawai'i Tourism Authority's Major Contracts	1/2009	1/2008 to 8/2008	8	6

Source: Analysis of Performance Audit Reports issued by the Office of the State Auditor

Appendix 8: Excerpts from the Revised Charter of the City and County of Honolulu 1973 (Amended 2017 Edition)

CHAPTER 5 – CITY AUDITOR

Section 3-501. Office Established; City Auditor –

1. There is established within the legislative branch an office of the city auditor, to be headed by a city auditor who shall be appointed by the city council and shall serve for a period of six years, and thereafter, until a successor is appointed. The council shall fix the salary of the city auditor. The council, by a two-thirds vote of its membership, may remove the auditor from office at any time for cause.

2. The city auditor shall possess adequate professional proficiency for the office, demonstrated by relevant certification, such as certification as a certified internal auditor or certified public accountant, or have an advanced degree in a relevant field with at least five years' experience in the field of government auditing, evaluation, or analysis. A certified internal auditor or certified public accountant shall be preferred. The city auditor shall have a bachelor's degree in accounting, business administration, or public administration or related field. If financial statement audits are conducted, the city auditor shall be a certified public accountant.

3. Except for exercising the right to vote, neither the auditor nor any member of the office of the city auditor shall support, advocate, or aid in the election or defeat of any candidate for city public office.

4. The city auditor may appoint the necessary staff for which appropriations have been made by the council. Subject to the provisions of this charter and applicable rules and regulations adopted thereunder, the auditor shall have the same powers with respect to the personnel of the office of the city auditor as executive branch department heads have over their personnel. Staff shall be appointed by the auditor in a manner consistent with the merit principles set forth in Section 6-1102 of this charter, but shall not otherwise be subject to the provisions of Chapter 11 of Article VI of this charter, pursuant to Section 6-1104 of this charter.

(Reso. 02-39)

Revision Note

Citation error, Section 11-302 replaced with Section 6-1102; Section 11-304 replaced with Section 6-1104.

Section 3-502. Powers, Duties, and Functions –

1. It shall be the duty of the city auditor to conduct or cause to be conducted:
 - (a) The annual financial audit of the city, as required by Section 3-114;
 - (b) Performance audits of the funds, programs, and operations of any agency or operation of the city as requested by the council by resolution, as authorized by Section 3-114;
 - (c) Performance and financial audits of the funds, programs, and operations of any agency or operation of the city, as determined by the auditor to be warranted. Before the commencement of each fiscal year, a plan of the audits proposed to be conducted by the auditor during the fiscal year shall be transmitted to the council for review and comment, but not approval. The plan also shall be transmitted to the mayor and filed with the city clerk as public record; and
 - (d) Follow-up audits and monitoring of compliance with audit recommendations by audited entities. The city auditor shall conduct or cause to be conducted all audits in accordance with government auditing standards.
 2. Audit findings and recommendations shall be set forth in written reports of the city auditor, a copy of which shall be transmitted to the mayor and to the council and filed with the city clerk as public record.
 3. For the purposes of carrying out any audit, the auditor shall have full, free, and unrestricted access to any city officer or employee and shall be authorized to examine and inspect any record of any agency or operation of the city, to administer oaths and subpoena witnesses and compel the production of records pertinent thereto. If any person subpoenaed as a witness or compelled to produce records shall fail or refuse to respond thereto, the proper court, upon request of the auditor, shall have the power to compel obedience to any process of the auditor and to punish, as a contempt of the court, any refusal to comply therewith without good cause. The auditor may retain special counsel, in the manner authorized by the council, to represent the auditor in implementing these powers.
- False swearing by any witness shall constitute perjury and shall be referred by the auditor to the prosecuting attorney for prosecution. In any audit which concerns the alleged gross misconduct or alleged criminal conduct on the part of any individual, such individual shall have the right to be represented by counsel and the right to have the auditor compel the attendance of witnesses on behalf of the individual.

4. The city auditor's performance shall be evaluated annually by the council. The city auditor's audit activities shall be subject to quality review in accordance with applicable government auditing standards by a professional, non-partisan, objective 24 group. The written report of the independent review shall be transmitted to the council and mayor and filed with the city clerk as public record.

5. For the purpose of this section and Section 3-114: "Agency or operation of the city" includes any executive agency, semi-autonomous agency, council office, and other establishment of city government supported, in whole or in part, by city or public funds.

"Council office" includes the council itself, the office of a councilmember and the councilmember's immediate staff, the office of the city clerk, the office of council services, a reapportionment commission, and a charter commission. This definition applies only to those sections. It shall not be construed as excluding the office of the city auditor from the legislative branch.

"Record" includes any account, book, paper, and document, and any financial affair, notwithstanding whether any of the preceding is stored on paper or electronically.

(Reso. 02-39)

Section 3-503. Audit Committee –

1. The council may establish an audit committee, the members of which shall individually advise the city auditor on the following: formulation of the plan of audits proposed to be conducted by the auditor pursuant to Section 3-502.1(c); conduct of audits; follow up of audits; selection of private contractors to perform audits for the city auditor; evaluation of preliminary audit findings and recommendations and city agency, officer, or employee responses to the preliminary findings and recommendations; and evaluation of the city auditor's performance during each fiscal year. If established, the audit committee shall consist of five members:

- (a) One member shall be the chair of the council committee with jurisdiction over the executive budget ordinances; and
- (b) The other members shall be appointed by the council. The council shall appoint members who are qualified by experience, expertise, and independence to perform the duties of the audit committee. A member appointed by the council shall not hold any other office or position with the city while on the audit committee. The method of appointment, terms, and specific qualifications of the appointed members shall be

established by the council by ordinance or rule. The council also may establish by ordinance or rule provisions for the removal of an appointed member for cause.

The audit committee shall be within the office of the city auditor.

2. Members of the audit committee shall have the power to render advice to the city auditor only on an individual basis. The members may gather and render the advice at meetings closed to the public.

The audit committee shall not have the power to take official actions or make collective decisions based on voting by the members. A quorum shall not be required for the audit committee to meet.

The audit committee is intended to have the duty of advising the city auditor on preliminary audit findings and recommendations and other confidential matters which should not be disclosed prematurely at meetings open to the public. Thus, this subsection is intended to permit the audit committee to gather in closed meetings without violating the state law on open meetings for public agencies.

If, however, a court of competent jurisdiction rules that the audit committee is subject to the state law on open meetings, the audit committee shall comply with the state law. Or, the audit committee may suspend its operation until appropriate amendment is made to the state law to permit the committee to gather in closed meetings.

3. **The chair of the audit committee shall be appointed by the council** in the manner provided by ordinance or rule. A meeting of the audit committee may be called by the chair or auditor.

4. Members appointed by the council shall not be entitled to compensation for serving on the committee. The member from the council shall not be entitled to compensation for serving on the committee that is additional to the compensation received as a councilmember. All members, however, shall be entitled to be reimbursed for travel and other necessary expenses incurred by them in the performance of their official duties.

5. Section 13-103 shall not apply to the members of the audit committee.

(Reso. 02-39)

Revision Note

Section revised to conform with the numbering format used in the Charter.

Appendix 9: Excerpts from the Charter of the County of Kauai (2020 Codified Version)

ARTICLE XXXII

COUNTY AUDITOR

Section 32.01. Office of the County Auditor.

A. There is established within the legislative branch an office of the county auditor, to be headed by a county auditor who shall be appointed by the county council and shall serve for a period of six years, and thereafter, until a successor is appointed. The salary commission shall fix the salary of the county auditor. The county council, by two-thirds vote of its membership, may remove the county auditor from office at any time for cause.

B. The county auditor shall possess adequate professional proficiency for the office, demonstrated by relevant certification, such as certification as a certified internal auditor or certified public accountant, or have an advanced degree in a relevant field with at least five years of experience in the field of government auditing, evaluation, or analysis. A certified internal auditor or certified public accountant shall be preferred. The county auditor shall have a bachelor's degree in accounting, business administration, or public administration or related field. If financial statement audits are conducted, the county auditor shall be a certified public accountant.

C. Except for exercising the right to vote, neither the auditor nor any member of the office of the county auditor shall support, advocate, or aid in the election or defeat of any candidate for county public office.

D. The county auditor may appoint the necessary staff for which appropriations have been made by the county council. Subject to the provisions of this charter and applicable rules and regulations adopted thereunder, the county auditor shall have the same powers with respect to the personnel of the office of the county auditor as department heads have over their personnel. Staff shall be appointed by the county auditor in a manner consistent with the merit principles, devoid of any bias or prejudice. (Amended 2008)

Section 32.02. Powers, Duties, and Functions.

A. Pursuant to county charter article III, section 3.17, Investigation, the county council is empowered to establish the office of county auditor. It shall be the duty of the auditor to conduct or cause to be conducted:

1. The independent annual or biennial audit of all county funds and accounts to be conducted by a certified public accountant or firm of certified public accountants as required by section 3.12 of the county charter;

2. Performance audits of the funds, programs, and operations of any agency or operation of the county as requested by the council by resolution, as authorized by section 3.12;

3. Performance and financial audits of the funds, programs, and operations of any agency or operation of the county, as determined by the county auditor to be warranted. **Before the commencement of each fiscal year, a plan of the audits proposed to be conducted by the county auditor during the fiscal year shall be transmitted to the county council for review and comment, but not approval.** The plan also shall be transmitted to the mayor and filed with the county clerk as public record; and

4. Follow-up audits and monitoring of compliance with audit recommendations by audited entities. The county auditor shall conduct or cause to be conducted all audits in accordance with government auditing standards.

B. Audit findings and recommendations shall be set forth in written reports of the county auditor, a copy of which shall be transmitted to the mayor and to the county council and filed with the county clerk as public record.

C. For the purposes of carrying out any audit, the county auditor shall have full, free, and unrestricted access to any county officer or employee and shall be authorized to examine and inspect any record of any agency or operation of the county, to administer oaths and subpoena witnesses and compel the production of records pertinent thereto. If any person subpoenaed as a witness or compelled to produce records shall fail or refuse to respond thereto, the proper court, upon the request of the county auditor, shall have the power to compel obedience to any process of the county auditor and to punish, as a contempt of the court, any refusal to comply therewith without good cause. The county auditor may retain special counsel, in the manner authorized by the county council, to represent the county auditor in implementing these powers. False swearing by any witness shall constitute perjury and shall be referred by the county auditor to the prosecuting attorney for prosecution. In any audit which concerns the alleged gross misconduct or alleged criminal conduct on the part of any individual, such individual shall have the right to be represented by counsel and the right to have the county auditor compel the attendance of witnesses on behalf of the individual.

D. **The county auditor's performance shall be evaluated annually by the county council.** The county auditor's audit activities shall be subject to quality review in accordance with applicable government auditing standards by a professional, non-partisan, objective group. The written report of the independent review shall be transmitted to the county council and mayor and filed with the county clerk as public record.

E. For the purpose of this section and section 3.12: "An agency or operation of the county" includes any administrative agency, semi-autonomous agency, council office, and other establishment of county government supported, in whole or in part, by county or public funds.

"Council office" includes the county council itself, the office of a councilmember and the councilmember's immediate staff, the office of the county clerk. This definition applies only to those sections. It shall not be construed as excluding the office of the county auditor and the legislative branch.

"Record" includes any account, book, paper, and document, and any financial affair, notwithstanding whether any of the preceding is stored on paper or electronically. (Amended 2008)

Section 32.03. Audit Committee.

A. The county council may establish an audit committee, the members of which shall individually advise the county auditor on the following: formulation of the plan of audits proposed to be conducted by the county auditor pursuant to section 32.02 C; conduct of audits, follow up of audits; selection of private contractors to perform audits for the county auditor; evaluation of preliminary audit findings and recommendations and county agency, officer, or employee responses to the preliminary findings and recommendations; and evaluation of the county auditor's performance during each fiscal year. If established, the audit committee shall consist of five members.

1. One member shall be the chair of the county council committee with jurisdiction over the administrative budget ordinances; and

2. The other members shall be appointed by the county council. The county council shall appoint members who are qualified by experience, expertise, and independence to perform the duties of the audit committee. A member appointed by the county council shall not hold any other office or position with the county while on the audit committee. The method of appointment, terms, and specific qualifications of the appointed members shall be established by the county council by ordinance or rule. The county council also may establish by ordinance or rule provisions for the removal of an appointed member for cause. The audit committee shall be within the office of the county auditor.

B. Members of the audit committee shall advise the county auditor. All audit committee meetings shall be open to the public except as provided for in chapter 92, Hawai'i Revised Statutes

C. The chair of the audit committee shall be appointed by the county council in the manner provided by ordinance or rule. A meeting of audit committee may be called by the committee chair or county auditor.

D. Members appointed by the county council shall not be entitled to compensation for serving on the committee. The member from the county council shall not be entitled to compensation for serving on the committee that is additional to the compensation received as a councilmember. All members, however, shall be entitled to be reimbursed for travel and other necessary expenses incurred by them in the performance of their official duties.

E. Section 23.02. Boards and Commissions shall not apply to the members of the audit committee. (Amended) 2008)

Section 32.04. Transition Provision Concerning the Transfer of Audit Functions to the Office of the County Auditor.

A. All lawful obligations and liabilities owed by or to the office of the county clerk relating to financial and performance audits on June 30, 2009, shall remain in effect on July 1, 2009. The obligations and liabilities shall be assumed by the office of the county auditor. All contracts held by the office of the county clerk relating to financial and performance audits, which are to remain effective after June 30, 2009, shall be assumed by the office of the county auditor. The contracts shall continue in effect until fulfilled or lawfully terminated. All financial and performance audit activities administered by the office of the county clerk on June 30, 2009, shall be assumed by the office of the county auditor on July 1, 2009.

B. On July 1, 2009, all records, data, and information held by the office of the county clerk relating to financial and performance audits which have not been completed as of June 30, 2009, shall be transferred to office of the county auditor.

C. The legislative auditor (program analyst V) and program support tech positions in the office of the county clerk on June 30, 2009 shall continue with the office of the county auditor on July 1, 2009. These employees, if positions were already filled, shall continue service without any loss of vacation allowance, sick leave, service credits, retirement benefits, or other rights and privileges because of the charter amendments. Nothing in this subsection, however, shall be construed as preventing future changes in the employees' status pursuant to the county auditor's powers with respect to personnel in the office of the county auditor. (Amended 2008)

Appendix 10: Excerpts from the Charter of the County of Maui (2019)

Section 3-9.1. Office of the County Auditor and County Auditor.

1. There is established an office of the county auditor, to be headed by a county auditor who shall be appointed by the county council, by a majority vote of its membership, and shall serve for a term of six years. The county auditor may be re-appointed, or a successor appointed, by the council for subsequent terms of six years. The county auditor may hold over until a successor is appointed. The salary of the county auditor shall be determined by the salary commission. The council, by a two-thirds vote of its membership, may remove the county auditor from office at any time for cause. The county auditor shall be exempt from civil service.

2. The county auditor shall possess adequate professional proficiency for the office, demonstrated by relevant certification as a certified 10 internal auditor or certified public accountant, and have at least five years of experience in the field of auditing, evaluation, or analysis. The county auditor shall have a bachelor's degree in accounting, business administration, or public administration or related field.

3. Except for exercising the right to vote, neither the county auditor nor any staff member of the office of the county auditor shall support, advocate, or aid in the election or defeat of any candidate for county public office.

4. The county auditor shall appoint the necessary staff as shall be authorized by law. Persons appointed to such positions shall be exempt from civil service and shall serve at the pleasure of the county auditor. (Amended 2012)

Section 3-9.2. Powers, Duties, and Functions.

1. The county auditor shall have the duty and power to conduct or cause to be conducted:

a. The independent annual financial audit of the county, as authorized by Section 9-13 of this charter;

b. Other program, financial, or performance audits or evaluations regarding county organizations, operations, and regulations; and

c. Performance or financial audits of the funds, programs, or activities of any agency or function of the county, as the county auditor deems warranted; provided that, before each fiscal year, the auditor shall transmit a plan of the audits proposed to be conducted during the fiscal year to the mayor and the council, for review and comment, but not approval.

2. Audit findings and recommendations shall be set forth in written reports of the county auditor, a copy of which shall be transmitted to the mayor and to the council, which shall be public records, except as provided by law.

3. For the purposes of carrying out any audit, the county auditor shall have full, free, and unrestricted access to any county officer or employee and shall be authorized to examine and inspect any record of any agency or operation of the county, to administer oaths and subpoena witnesses, and compel the production of records pertinent thereto. If any person subpoenaed as a witness or compelled to produce records shall fail or refuse to respond thereto, the proper court, upon request of the county auditor, shall have the power to compel obedience to any process of the county auditor and to punish, as a contempt of the court, any refusal to comply therewith without good cause. Notwithstanding Section 3-6.6, the county auditor may, without council approval, retain special counsel to represent the county auditor in implementing these powers.

4. The county auditor shall submit its budget to the county council and its budget shall include the cost of government's budget subject to Article 9, Section 9-2.1. (Amended 2012)

Section 3-9.3. Cost of Government Commission. For the purpose of carrying out the policy set forth herein, in accordance with section 13-2 of this charter, the mayor with the approval of the council shall appoint a cost of government commission consisting of nine members. The commission shall be advisory to the county auditor.

The commission shall have the power and duty to:

1. Study and investigate the organizations and methods of operations of all departments, commissions, boards, offices, and other instrumentality of all branches of the county government and determine what changes, if any, may be desirable to accomplish the policy set forth herein.

2. Be authorized to secure directly from any department, commission, board, office, or any other instrumentalities of all branches of the county government or from any individual officer or employee of the county, information, suggestions, estimates, and statistics necessary to carry out its duties.

3. Submit an annual report of its findings and recommendations to the mayor, council, and county auditor. (Amended 2012)

Section 3-9.4. Definitions. For the purpose of this section, the following definitions shall apply:

"Agency or operation of the county" includes any executive agency, semi-autonomous agency, council office, and other establishment of county government supported, in whole or in part, by county or public funds.

"Council office" includes the council itself, the office of a council member and the council member's immediate staff, the office of the county clerk, and the office of council services. This definition shall not be construed as excluding the office of the county auditor from the legislative branch.

"Record" includes any account, book, paper, and document, and any financial affair, notwithstanding whether any of the preceding is stored on paper or electronically. (Amended 2012).

Appendix 11: Legislative Requests to the Auditor for Calendar Years 2016-2020

The following table identifies audits or other reports requested by the Legislature, either by bill or by resolution, from the Auditor for calendar years 2016 through 2020. Each document is hyperlinked to the status page on the Capitol website. Information analyzed as of January 2021.

Document	Request	Requested Fulfillment Date	Actual Fulfillment Date	Late (Due 12/31)
Act 188 (2016)	Study on closed claims in the State's worker's compensation system.	20 days before the Regular Session of 2018	-	YES (Not Done)
Act 243 (2016) ; see also H.R. No. 144 (2016)	Financial and performance audit of the plant quarantine branch of the Department of Agriculture.	20 days before the Regular Session of 2017	July 12, 2017	YES
Act 245 (2016) , amended by Act 177 (2017)	Statutorily established mandatory audits of certain income tax and financial institution tax credits, exclusions, and deductions beginning in 2020.	20 days before every Regular Session beginning with the Regular Session of 2021.	-	YES (Not Done)
Act 261 (2016) , amended by Act 177 (2017)	Statutorily established mandatory audits of certain general excise tax, use tax, public service company tax, and insurance premium tax credits, exclusions, and deductions beginning in 2019.	20 days before every Regular Session beginning with the Regular Session of 2020.	June 25, 2020	YES

Document	Request	Requested Fulfillment Date	Actual Fulfillment Date	Late (Due 12/31)
<u>H.C.R. No. 4 (2016)</u>	Audit of the Asset Forfeiture Program of the Department of the Attorney General.	20 days before the Regular Session of 2017	<u>June 14, 2018</u>	YES
<u>H.C.R. No. 65 H.D. 1 (2016)</u>	Sunrise analysis of the regulation of certified midwives.	20 days before the Regular Session of 2017	<u>January 17, 2017</u>	YES
<u>H.R. No. 100 (2016)</u>	Sunrise analysis of mandatory insurance coverage for STD screenings.	20 days before the Regular Session of 2017	-	YES (Not Done)
<u>Act 84 (2017)</u>	Sunrise analysis on the effects of regulation of dental assistants in the State via the certification requirements offered by Kapiolani Community College.	20 days before the Regular Session of 2018.	<u>January 24, 2018</u>	YES
<u>Act 198 (2017)</u>	Management audit of the Public Utilities Commission.	20 days before the Regular Session of 2018	<u>February 28, 2018</u>	YES
<u>Act 209 (2017)</u>	Performance audit of the Special Land and Development Fund and Land Conservation Fund.	20 days before the Regular Session of 2019	<u>January 4, 2019</u> <u>June 27, 2019</u>	YES

Document	Request	Requested Fulfillment Date	Actual Fulfillment Date	Late (Due 12/31)
<u>Act 1 (1st Special Session 2017)</u>	Audit of the Honolulu Authority for Rapid Transportation.	20 days before the Regular Session of 2019	<u>January 10, 2019</u> <u>January 15, 2019</u> <u>March 28, 2019</u> <u>May 3, 2019</u>	YES
<u>H.R. No. 86 (2017)</u>	Performance audit of the Department of Agriculture's hiring process.	20 days before the Regular Session of 2018	-	YES (Not Done)
<u>S.C.R. No. 105 S.D. 1, H.D. 1 (2017)</u>	Mandated health insurance coverage assessment for cognitive rehabilitation therapy.	20 days before the Regular Session of 2018	<u>December 15, 2017</u>	NO
<u>H.C.R. No. 52 H.D.1, S.D.1 (2018)</u>	Mandated health insurance coverage assessment for medically necessary transportation to the continental United States.	20 days before the Regular Session of 2019	<u>February 1, 2019</u>	YES
<u>H.C.R. No. 123 S.D. 1 (2018)</u>	Study to examine the potential energy savings costs for state departments and agencies.	20 days before the Regular Session of 2019	-	YES (Not Done)

Document	Request	Requested Fulfillment Date	Actual Fulfillment Date	Late (Due 12/31)
<u>H.R. No. 69</u> <u>H.D. 1 (2018)</u>	Management audit of the Special Land and Development Fund and the operating budget of the Land Division of the Department of Land and Natural Resources.	20 days before the Regular Session of 2019	-	YES (Not Done)
<u>S.C.R. No. 27</u> <u>S.D. 1 (2018)</u>	Sunrise analysis of the licensure and regulation of home inspectors.	20 days before the Regular Session of 2019	<u>March 7, 2019</u>	YES
<u>S.C.R. No. 83</u> <u>S.D. 1, H.D. 1 (2018)</u>	Mandated health insurance coverage assessment for port-wine stains.	20 days before the Regular Session of 2019	<u>December 13, 2018</u>	NO
<u>Act 28 (2019)</u>	Performance audit of the Agribusiness Development Corporation.	20 days before the Regular Session of 2021	<u>January 14, 2021</u>	YES
<u>Act 37 (2019)</u>	Financial and management audit of the Office of Hawaiian Affairs.	20 days before the Regular Session of 2020	-	YES (Not Done)
<u>H.C.R. No. 193</u> <u>S.D. 1 (2019)</u> , see also <u>H.R. No. 174 (2019)</u>	Follow-up study to the 2015 study of departmental engineering sections that manage capital improvement projects.	20 days before the Regular Session of 2020	<u>January 24, 2020</u>	YES

Document	Request	Requested Fulfillment Date	Actual Fulfillment Date	Late (Due 12/31)
<u>H.R. No. 34 (2019)</u>	Performance audit of state human resource management personnel.	20 days before the Regular Session of 2020	-	YES (Not Done)
<u>S.C.R. No. 171 S.D. 1 (2019)</u> , see also <u>H.R. No. 88 (2019)</u> and <u>S.R. No. 138 S.D. 1 (2019)</u>	Mandated health insurance coverage assessment for clinical victim support services for victims of sexual violence and abuse.	20 days before the Regular Session of 2020	<u>December 27, 2019</u>	NO
<u>S.R. No. 31 S.D. 1 (2019)</u>	Evaluate the 2017 University of Hawai'i internal audit of travel policy compliance.	None specified *	-	YES (Not Done)
<u>S.R. No. 76 S.D. 1 (2019)</u>	Mandated health insurance coverage assessment for cannabidiol oil derived from industrial hemp.	20 days before the Regular Session 2020	-	YES (Not Done)

Source: Office of the Speaker of the House of Representatives, Hawai'i State Legislature