

ACT 279

H.B. NO. 3513

A Bill for an Act Relating to Oversight.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 23-4, Hawaii Revised Statutes, is amended to read as follows:

**“§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 [such] any other time or times during the fiscal year as the auditor [shall deem] 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) The auditor, in conducting postaudits, to the extent practicable and applicable to the audit scope and objectives, shall review [all] and assess the audited agency's rules [submitted to it] as [provided] defined in section [91-4.1.] 91-1.

[(c) The auditor shall maintain and keep current a compilation of all rules adopted pursuant to chapter 91.]”

SECTION 2. Section 26-9, Hawaii Revised Statutes, is amended by amending subsections (n) and (o) to read as follows:

“(n) Each board and commission, as well as the director, by written order, may delegate to the executive secretary or other personnel of the department any of its powers or duties as it deems reasonable and proper for the administration of the licensing laws [in section 26H-4 which] that are within the jurisdiction of the department of commerce and consumer affairs. The delegated powers and duties may be exercised by the executive secretary or other personnel of the department in the name of the board, commission, or the director. [The] However, neither a board, a commission, [and] nor the director shall [not, however,] delegate [its] the authority to adopt, amend, or repeal rules[,] or take final disciplinary action against a licensee.

(o) Every person licensed under any chapter [subject to section 26H-4,] within the jurisdiction of the department of commerce and consumer affairs, other than chapter 468, and every person licensed subject to chapter 485 or registered under chapter 467B shall pay upon issuance of a license, permit, certificate, or registration a fee and a subsequent annual fee to be determined by the director and adjusted from time to time to ensure that the proceeds, together with all other fines, income, and penalties collected under this section, do not surpass the annual operating costs of conducting compliance resolution activities required under this section. The fees may be collected biennially or pursuant to rules adopted under chapter 91, and [which] shall be deposited into the special fund established under this subsection. Every filing pursuant to chapter 514E or section 485-6(15) shall be assessed, upon initial filing and at each renewal period in which a renewal is required, a fee that shall be prescribed by rules adopted under chapter 91, and that shall be deposited into the special fund established under this subsection. Any unpaid fee shall be paid by the licensed person, upon application for renewal, restoration, reactivation, or reinstatement of a license, and by the person responsible for the renewal, restoration, reactivation, or reinstatement of a license, upon the application for renewal, restoration, or reinstatement of the license. If the fees are not paid, the director may deny renewal, restoration, reactivation, or reinstatement of the license. The director may establish, increase, decrease, or repeal the fees when necessary pursuant to rules adopted under chapter 91.

There is created in the state treasury a special fund to be known as the compliance resolution fund to be expended by the director's designated representatives as provided by this subsection. Notwithstanding any law to the contrary, the moneys in the fund shall consist of annual fees collected under this

subsection, section 514A-95, penalties or fines assessed as a result of action brought by department personnel, and penalties, fines, or reimbursement of costs or [attorneys] attorneys' fees assessed as a result of actions brought for violations of chapters 480 and 487. Any law to the contrary notwithstanding, the director may use the moneys in the fund to employ, without regard to chapters 76 and 77, hearings officers, investigators, attorneys, accountants, and other necessary personnel to implement this subsection. In addition, the moneys in the fund shall defray all other administrative costs, including personnel costs of operating the regulated industries complaints office and costs incurred by supporting offices and divisions. The moneys in the fund may be used to train personnel as the director deems necessary[,] and for any other activity related to compliance resolution.

As used in this subsection, unless otherwise required by the context, "compliance resolution" means a determination of whether:

- (1) Any licensee or applicant under any chapter subject to [section 26H-4,] the jurisdiction of the department of commerce and consumer affairs, other than chapter 468, has complied with that chapter;
- (2) Any person subject to chapter 485 has complied with that chapter;
- (3) Any person submitting any filing required by chapter 514E or section 485-6(15) has complied with chapter 514E or section 485-6(15);
- (4) Any person has complied with the prohibitions against unfair and deceptive acts or practices in trade or commerce; or
- (5) Any person subject to chapter 467B has complied with that chapter.

The director shall prepare and submit an annual report to the governor and the legislature on the use of the compliance resolution fund. The report shall describe expenditures made from the fund including nonpayroll<sup>1</sup> operating expenses. This subsection shall be repealed effective July 1, 2001."

SECTION 3. Section 26H-4, Hawaii Revised Statutes, is amended to read as follows:

**"§26H-4 Repeal dates[.] for newly enacted professional and vocational regulatory programs.** [(a) The following chapters are hereby repealed effective December 31, 1994:

- (1) Chapter 447 (Dental Hygienists)
- (2) Chapter 457 (Board of Nursing)
- (3) Chapter 457A (Nurse Aides)
- (4) Chapter 457B (Board of Examiners of Nursing Home Administrators)
- (5) Chapter 461 (Board of Pharmacy)
- (6) Chapter 468L (Travel Agencies)
- (b) The following chapters are hereby repealed effective December 31,

1995:

- (1) Chapter 437 (Motor Vehicle Industry Licensing Board)
- (2) Chapter 437B (Motor Vehicle Repair Industry Board)
- (3) Chapter 440 (Boxing Commission)
- (4) Chapter 445 Part V (Pawnbrokers)
- (5) Chapter 448H (Elevator Mechanics Licensing Board)
- (6) Chapter 451A (Board of Hearing Aid Dealers and Fitters)
- (7) Chapter 453 (Board of Medical Examiners)
- (8) Chapter 463E (Podiatry)

(c) The following chapters and sections are hereby repealed effective December 31, 1996:

- (1) Sections 321-13 to 321-15 (laboratory directors, laboratory technologists, laboratory supervisors, laboratory technicians, and sanitarians)
- (2) Chapter 321, Part XXX, (Tattoo Artists)
- (3) Chapter 321, Part XXXI, (Midwives)
- (4) Sections 431:10A-116(4) and 432:1-605 (Mammogram Screening)
- (5) Chapter 448F (Electrologists)
- (6) Chapter 466J (Board of Radiologic Technology)
- (d) The following chapters are hereby repealed effective December 31,

1997:

- (1) Chapter 438 (Board of Barbers)
- (2) Chapter 448 (Board of Dental Examiners)
- (3) Chapter 455 (Board of Examiners in Naturopathy)
- (4) Chapter 459 (Board of Examiners in Optometry)
- (5) Chapter 460J (Pest Control Board)
- (6) Chapter 462A (Pilotage)
- (7) Chapter 471 (Board of Veterinary Examiners)
- (e) The following chapters are hereby repealed effective December 31,

1998:

- (1) Chapter 373 (Commercial Employment Agencies)
- (2) Chapter 441 (Cemetery and Funeral Trusts)
- (3) Chapter 443B (Collection Agencies)
- (4) Chapter 463 (Board of Private Detectives and Guards)
- (5) Chapter 468 (Solicitors; Business of Taking Orders)
- (f) The following chapters are hereby repealed effective December 31,

1999:

- (1) Chapter 436E (Board of Acupuncture)
- (2) Chapter 442 (Board of Chiropractic Examiners)
- (3) Chapter 444 (Contractors License Board)
- (4) Chapter 448E (Board of Electricians and Plumbers)
- (5) Chapter 452 (Board of Massage Therapy)
- (6) Chapter 460 (Board of Osteopathic Examiners)
- (7) Chapter 461J (Board of Physical Therapy)
- (8) Chapter 464 (Professional Engineers, Architects, Surveyors and Landscape Architects)
- (9) Chapter 465 (Board of Psychology)
- (10) Chapter 468E (Speech Pathology and Audiology)
- (11) Chapter 514E (Time Sharing Plans)
- (g) The following chapters are hereby repealed effective December 31,

2000:

- (1) Chapter 439 (Board of Cosmetology)
- (2) Chapter 448F (Electrologists)
- (3) Chapter 454 (Mortgage Brokers and Solicitors)
- (4) Chapter 454D (Real Estate Collection Servicing Agents)
- (5) Chapter 466 (Board of Public Accountancy)
- (6) Chapter 467 (Real Estate Commission)
- (h) The following chapter is hereby repealed effective December 31,

2001:

(1) Chapter 458 (Board of Dispensing Opticians)] Any professional or vocational regulatory program enacted after July 1, 1994, shall be repealed at the

end of the third full calendar year following the program's enactment. The auditor shall perform an evaluation of the program, pursuant to section 26H-5, prior to its repeal date."

SECTION 4. Section 26H-5, Hawaii Revised Statutes, is amended to read as follows:

**"§26H-5 Evaluation; report.** (a) The legislative auditor shall evaluate each board, commission, and regulatory program [created under a chapter repealed] subject to repeal by section 26H-4 and shall submit an evaluation report to the legislature prior to the convening of the regular session of the year of the repeal date[; provided that the legislative auditor shall evaluate each board, commission, and regulatory program at least once every ten years]. The evaluation shall assess whether the regulatory program as established [by the chapter] complies with the policies established by section 26H-2 and whether the public interest requires that the [chapter] law establishing the regulatory program be reenacted, modified, or permitted to expire.

(b) If the auditor finds that the [chapter] law establishing the regulatory program should be modified, the auditor shall incorporate in the auditor's report, drafts of recommended legislation to be considered for enactment and [which,] that if enacted, would improve the policies, procedures, and practices of the regulatory program evaluated. The auditor may request the assistance of the legislative reference bureau in drafting [such] recommended legislation. Any other law to the contrary notwithstanding, the auditor may release copies of preliminary reports to the legislative reference bureau if the auditor requests the legislative reference bureau's assistance under this subsection. The legislative reference bureau shall comply with the auditor's request if the auditor provides a copy of the preliminary report to the bureau at the same time the report is provided to a board, commission, or regulatory program pursuant to subsection (d).

(c) Each board or commission and the director shall assist the auditor in collecting and reporting [such] data as the auditor may require to conduct the evaluation. Even if the auditor finds that the [chapter] law establishing the regulatory program should not be reenacted, the auditor shall evaluate the effectiveness and efficiency of the regulatory program and make appropriate recommendations to improve the policies, procedures, and practices. The legislature may hold a public hearing on each evaluation report. If the auditor finds that [a] the law establishing a regulatory program [within the chapter] should be permitted to expire, the auditor shall make recommendations, if needed, for appropriate restrictions to be placed on the program subsequent to the termination of regulation.

(d) The legislative auditor shall provide each board, commission, or regulatory program evaluated pursuant to this chapter not less than thirty days to review and comment upon the evaluation report prior to submission of the report to the legislature; provided that if the legislative auditor fails to provide the thirty day review and comment period to the board, commission, or regulatory program being evaluated, the [chapter] law establishing the regulatory program that is subject to repeal shall be automatically reenacted for a period of one year. If the legislative auditor receives written comments from the board, commission, or department of commerce and consumer affairs, the legislative auditor shall append the written comments to each copy of the evaluation report prior to submission to the legislature.

(e) Except as provided in this chapter, no board, commission, or regulatory program shall be evaluated automatically by the auditor. Nothing in this

section is intended to prevent the auditor from conducting an evaluation of a board, commission, or regulatory program at the specific request or direction of the legislature."

SECTION 5. Section 91-4.1, Hawaii Revised Statutes, is amended to read as follows:

**"[§91-4.1] Review of rules. (a) Rulemaking actions; copies in Ramseyer format.** Each state agency adopting, amending, or repealing a rule[, after approval thereof by the governor,] shall [submit certified copies thereof, which shall be drafted] prepare a certified copy of the rule changes according to the Ramseyer format[, to the legislative auditor]. Each state agency shall maintain a file of the copies in the Ramseyer format and shall make the file available for public inspection and copying at a reasonable cost.

(b) The office of the legislative auditor shall review each rule and rule amendment submitted by a state agency under this section to determine if the rule or amendment violates the substantive authority under which the rule or amendment was adopted. The office shall submit to each regular session of the legislature a report concerning its findings itemizing the agency and rules which may be in violation of the substantive authority under which the rule or amendment was adopted. The legislature shall take such action in response to the report as it finds appropriate and shall notify each agency or department whose rule is itemized in the report of the report's findings.]"

SECTION 6. Section 91-5, Hawaii Revised Statutes, is amended to read as follows:

**"§91-5 Publication of rules. (a)** Each agency shall[, as soon as practicable after January 2, 1962,] compile, index, and publish, in the manner prescribed by the format established by the revisor of statutes under section 91-4.2(1), all rules adopted by the agency and remaining in effect. Compilations shall be supplemented as often as necessary and shall be revised at least once every ten years. [Within two years of June 21, 1979, each agency shall have compiled and published all of its rules in effect in the manner specified by the revisor of statutes' format rules.

(b) Each agency, as soon as practicable after July 1, 1979, shall provide to the office of the legislative auditor free of charge, a current compilation of all rules adopted by the agency and in effect as of July 1, 1979.

(c) (b) Compilations and supplements shall be made available free of charge upon request by the state officers in the case of a state agency and by the county officers in the case of a county agency. As to other persons, each agency may fix a price to cover mailing and publication costs. Each state agency adopting, amending, or repealing a rule shall file [forthwith] a copy with the revisor of statutes."

SECTION 7. Section 91-13.1, Hawaii Revised Statutes, is amended to read as follows:

**"§91-13.1 Administrative review of denial or refusal to issue license or certificate of registration.** Except as otherwise provided by law, any person aggrieved by the denial or refusal of any board or commission [listed in section 26H-4] subject to the jurisdiction of the department of commerce and consumer

affairs, to issue a license or certificate of registration, shall submit a request for a contested case hearing pursuant to chapter 91 within sixty days of the date of the refusal or denial. Appeal to the circuit court under section 91-14, or any other applicable statute, may only be taken from a board or commission's final order."

SECTION 8. Section 26H-8, Hawaii Revised Statutes, is repealed.

SECTION 9. There is appropriated out of the general revenues of the State of Hawaii the sum of \$200,000, or so much thereof as may be necessary for fiscal year 1994-1995, for the auditor to carry out the purposes of this Act.

The sum appropriated shall be expended by the office of the auditor for the purposes of this Act.

SECTION 10. Statutory material to be repealed is bracketed.<sup>2</sup> New statutory material is underscored.

SECTION 11. This Act shall take effect on July 1, 1994.

(Approved July 6, 1994.)

#### Notes

1. "Nonpayroll" should be hyphenated.
2. Edited pursuant to HRS §23G-16.5.