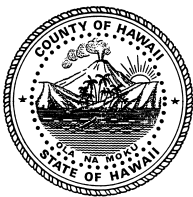


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## County of Hawai'i

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## MEMORANDUM

Date: September 16, 2009  
To: Chair Edmund Haitsuka and Charter Commissioners  
Hawai'i County Charter Commission  
Subject: Proposed Charter Amendments to Sections 3-18, 10-13, and 13-13

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Attached for your consideration is a proposed Charter amendment to section 3-18, Office of the Legislative Auditor, which provides the auditor with "the authority to retain independent legal counsel".

Attached for your consideration is a proposed Charter amendment to section 10-13, Post-Audit, which:

- Amends the section title from "Post-Audit" to "Audit of Accounts and Financial Transactions" (for better clarity).
- Provides that the audit shall be conducted "in accordance with recognized government auditing standards" (to define performance criteria).
- Sets forth the scope of the audit as well as distribution requirements for the audit report (modeled on Honolulu and Kauai charter language).
- Provides that the finance director "may" rather than "shall" cause an audit of respective accounts upon the death, resignation, removal, or term expiration of any administrative officer (in line with current practice).

Attached is a proposed Charter amendment to section 13-13, Contracts, which provides for a "right-to-audit" in contracts with private parties.

Thank you for your study and review of these proposed Charter amendments.

**COMM. 38**

### **Section 3-18. Office of the Legislative Auditor.**

- (a) There is established within the legislative branch an independent office of the legislative auditor to be headed by a legislative 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 council, by a two-thirds vote of its membership, may remove the legislative auditor from office at any time for cause.
- (b) The legislative 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 an advanced degree in a relevant field, and at least three years of general auditing experience which shall include a minimum of one year's experience in the field of government auditing. A certified internal auditor or certified public accountant shall be preferred. All financial audits shall be conducted by a certified public accountant.
- (c) The legislative auditor shall submit an annual budget to the county council. The legislative auditor on behalf of the county council shall hire the necessary staff for which appropriations have been made by the county council.
- (d) The legislative auditor shall conduct or cause to be conducted:
  - (1) The annual financial audit of the county, as required in article X, Financial Procedures, section 10-13, Post-audit.
  - (2) Performance and/or financial audits of the funds, programs, services, and operations of any county agency, executive agency, or program, as set forth by the legislative auditor in an annual audit plan that shall be transmitted to the county council and the mayor and filed with the county clerk as a public record.
  - (3) Follow-up audits and monitoring of responses to audit recommendations by audited entities.
- (e) For purposes of this section, "county agency" or "executive agency" includes any office, department, board, commission, agency, semi-autonomous agency, or other governmental unit of the county in the executive or legislative branch that is supported, in whole or in part, by county funds.
- (f) For purposes of carrying out any audit, the legislative auditor shall have:
  - (1) Full, free, and unrestricted access to any county officer or employee.
  - (2) Full, free, and unrestricted access to and authority to examine and inspect any record of any county agency, executive agency, or program except for any record protected from disclosure by law, rule or privilege.
  - (3) Full, free, and unrestricted access to and authority to examine and inspect any property, facility, or equipment of any county agency, executive agency, or program pertinent to the audit or to a contract.
  - (4) Full, free, and unrestricted access to and authority 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.]~~
  - (5) The authority to retain independent legal counsel.**

- (g) The legislative auditor shall conduct or cause to be conducted all audits in accordance with government auditing standards, and shall set forth final audit findings and recommendations in written reports, copies of which shall be transmitted to the county council and the mayor and filed with the county clerk as public records.

**Section 10-13. [Post-audit] Audit of Accounts and Financial Transactions.**

The county council shall provide at least once every year for an independent audit of the accounts and other evidences of financial transactions of the county and of every county agency and executive agency. The audit shall be made by a certified public accountant or firm of certified public accountants, designated by the council, who have no personal interest, direct or indirect, in the fiscal affairs of the county or of any of its agencies or executive agencies. The audit shall include both financial accountability and adequacy of the financial and accounting system **in accordance with recognized government auditing standards.** If the State makes such an audit, the council may accept it as satisfying the requirements of this section. **The scope of the audit shall be in accordance with the terms of a written contract to be signed by the presiding officer of the council, which contract shall encourage recommendations for better financial controls and procedures and shall provide for the completion of the audit within a reasonable time after the close of the audited fiscal year. A copy of the audit report shall be transmitted to the mayor and to the council, shall be filed with the county clerk, and shall be a public record.**

Either the council or the mayor may at any time order an examination or audit of the accounts or program of any county agency or executive agency. Upon the death, resignation, removal or expiration of the term of any county administrative officer, the director of finance **[shall] may** cause an audit and investigation of the accounts maintained by the officer and the officer's agency or executive agency to be made and shall report the results thereof to the mayor and the council. In the case of the death, resignation or removal of the director of finance, the council may cause an audit to be made of the accounts of all agencies and executive agencies. If, as a result of any such audit, an officer be found indebted to the county, the mayor shall proceed forthwith to collect the indebtedness.

### **Section 13-13. Contracts.**

The county may enter into contracts with private parties, other counties, the State or the United States for the performance of any function or activity which the county is authorized to perform. All written contracts to which the county is a party shall:

- (a) Be approved by the corporation counsel as to form and legality.
- (b) Be authorized by the council by resolution if legislative action is necessary to implement the contract.
- (c) Except as otherwise provided, be signed by the mayor.
- (d) Be approved by the director of finance as to the availability of funds in the amounts and for the purposes set forth therein if they involve financial obligations of the county. Such contracts shall not extend beyond the term for which an appropriation to finance such obligations has been made, except as otherwise provided by this charter. This provision shall not apply to obligations for the procurement of utility services.
- (e) Contain a “right to audit” clause to provide the Legislative Auditor, or a certified public accountant or firm of certified public accountants hired by the Legislative Auditor, access and authority to examine and inspect any records, property, facility, and/or equipment pertinent to a contract with any private party.**