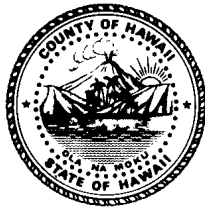


BRENDA J. FORD

*Council Member
District 7 - Central Kona*



Phone: (808) 326 -5684

Fax: (808) 329- 4786

E-Mail: bford@co.hawaii.hi.us

HAWAI'I COUNTY COUNCIL

County of Hawai'i
Kailua Trade Center
75-5706 Hanama Place, Suite 109
Kailua-Kona, Hawai'i 96740

September 28, 2009

Aloha Charter Commissioners,

This is a request for a charter amendment to Article III, Section 3-18, Legislative Branch, County Council, of the Hawai'i County Charter 2000 (2008 edition), to establish budgetary independence for the office of the legislative auditor and revise the provision relating to retention of legal counsel.

The City of San Francisco and the City of Toronto (Canada) both use a percentage of their budgets to fund the auditor's office. The Association of Local Government Auditors (ALGA) recommends that funding as a percentage of the total budget prevents a conflict of interest, independence in fact and appearance in order to permit the office of the legislative auditor to conduct and report on county operations free of political influence or bias and without the threat of censorship or retaliation. A lack of budgetary independence potentially presents a conflict of interest, and diminishes the perception that the legislative auditor is independent of the executive and legislative branches of government.

A handwritten signature in cursive script that reads "Brenda J. Ford".

Amendment to **Section 3-18. Office of the Legislative Auditor.**

(a) Purpose. The purpose of this ordinance is to establish budgetary independence for the office of the legislative auditor from the executive and legislative branches of county government. This ordinance amends Hawai'i County Charter 2000 (2008 edition) article III, Legislative Branch, County Council, by amending section 3-18 to fund the independent audit function of the office of the legislative auditor as a percentage of the total annual operating and special funds budgets.

Budgetary independence is at the heart of autonomy for the office of the legislative auditor. Principles and procedures shall exist to ensure that auditors cannot be unduly influenced or restricted, either by the county council or by the administration, in its ability to carry out its duties through the denial or unreasonable control of funding, staffing, or other resources.

COMM. 40

A lack of budgetary independence may also potentially disallow an auditor the capacity to review and report openly on issues relating to those persons in control of funding. The ability to restrict the funding of the office of the legislative auditor is in direct conflict with the intent of the voter-mandated Charter Amendment which was to give the office of the legislative auditor independence in fact and appearance in order to permit the office of the legislative auditor to conduct and report on county operations free of political influence or bias and without the threat of censorship or retaliation. A lack of budgetary independence potentially presents a conflict of interest, and diminishes the perception that the Legislative Auditor is independent of the executive and legislative branches of government.

To support budgetary independence, some municipalities calculate a percentage of the government's operational and special funds budgets to determine the allotment of funds to provide financial assurance for auditing functions. All funds allotted to the office of the legislative auditor shall derive from the general fund, not any special fund. This practice reduces the potential politicization and conflicts of interest for the budgetary development and approval process.

~~[(a)]~~ (b) 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)]~~ (c) 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.

~~(e) — 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 annual operating budget shall include an allocation to cover the expenses of the office of the legislative auditor:

- (1) The basis for the calculation of funding for the office of the legislator auditor shall be a percentage of the combined total of the operating and special funds budgets
- (2) The percentage calculated from the combined total of the operating and special funds budgets shall be a minimum of one-quarter of one percent (0.0025). This percentage shall be allocated from the general fund.
- (3) Any unexpended or unencumbered funds shall revert to the general fund balance.
- (4) Funds that are not anticipated to be used by the office of the legislative auditor may be returned to the general fund at any time, at

the discretion of the legislative auditor.

(e) The legislative auditor on behalf of the county council shall hire at-will staff necessary to fulfill the duties of the office of the legislative auditor with the following constraints:

- (1) The office of the legislative auditor shall submit its budget to the mayor following the standard procedures set for each budget cycle for all departments;**
- (2) The budget of the office of the legislative auditor shall be subject to the same scrutiny and justification as all other departments of the county government.**
- (3) Staff shall be hired within the budgetary constraints of the office of the legislative auditor; and**

[~~(d)~~] (f) 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)~~] (g) 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:

(h) For purposes of performing the duties of the office of the legislative auditor, 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)~~] **(i)** 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.

Association of Local Government Auditors



President
Jerry Shaubel
Director, Auditor General's Office
Toronto, Ontario, Canada

President Elect
Amanda Noble
Deputy City Auditor
Atlanta, GA

Secretary
Ross Tate
Maricopa County Auditor
Phoenix, AZ

Treasurer
Mike Edmonds
Chief Deputy City Auditor
Oakland, CA

Past President
George McGowan
Manager, Audit Services
and Management Support
Orlando, FL

BOARD MEMBERS AT LARGE

Beth Breier
Audit Manager
Tallahassee, FL

Bill Greene
Deputy City Auditor
Phoenix, AZ

Drummond Kahn
Audit Services Director
Portland, OR

Jay Poole
City Auditor
Chesapeake, VA

MEMBER SERVICES

449 Lewis Hargett Circle
Suite 290
Lexington, KY 40503
Phone: (859) 276-0686
Fax: (859) 278-0507

www.governmentauditors.org
memberservices@governmentauditors.org

June 9, 2009

Brenda Ford
Council Member
Hawaii County Council District 7
75-5706 Hanama Place
Suite 109
Kailua-Lona, Hawaii 96740

Dear Ms. Ford:

Subject: Budgetary Independence

Thank you for your recent e-mail to Fay Kurkjy, NASACT Peer Review Coordinator and Training Seminars Administrator, ALGA Member Services. She has forwarded your request to me.

By way of background, I am a past president of the Association of Local Government Auditors (ALGA) and currently serve as Chair of ALGA's Advocacy Committee. ALGA is a professional organization committed to supporting and improving local government auditing through advocacy, collaboration and training, while upholding the highest standards of professional ethics. ALGA has more than 300 organizational members and over 2,000 individual members. ALGA's membership represents a wide diversity of local government audit organizations ranging from one-person audit shops to others with more than 75 professionals.

Your issue in regard to budgetary independence is one of significant concern to ALGA members and has been an issue recently raised at the City of Toronto.

The following is an extract from a report that was recently submitted to Toronto City Council concerning budgetary independence which may be useful to you.

“Budgetary independence is at the core of independence for the office of the Auditor General. Principles and processes must be in place to ensure that auditors cannot be controlled or fettered either by a government of the day, or by the administration, in their ability to carry out their duties through the denial or unreasonable control of funding, staffing, or other resources. A lack of budgetary independence can also potentially deny an auditor the capacity to criticize those very sources of funding. Not only does this represent a potential conflict of interest, but also limits the ability of auditors to be perceived as independent of government – a critical factor in building credibility with the public.

To support and reinforce budgetary independence, some jurisdictions set aside a percentage of the government’s budget to provide more budgetary certainty for these functions. This practice reduces the potential politicization of the budget development and approval process. For example, the Quebec *Cities and Towns Act* requires that, “the budget of the municipality shall include an appropriation to provide for payment of a sum to the chief auditor to cover the expenses relating to the exercise of the chief auditor’s duties.” The amount legislated for audit services in municipalities with a budget in excess of \$1 billion is 0.11 per cent of the total City budget. The City of San Francisco also provides a dedicated source of revenue for their government audit function equivalent to two-tenths of one per cent of their City budget.”

I hope my comments are of assistance. I would be pleased to discuss this further if you so wish. I can be contacted at 416-392-8461 or by email at jeff.griffiths@toronto.ca.

Yours very truly,



Jeff Griffiths
Chair, Advocacy Committee

cg