

**Testimony for the Maui County Charter Commission, July 20, 2011**

Sally Kaye \* 511 Ilima Avenue \* Lanai City, HI 96763 \* 808-565-6276 \* [skaye@runbox.com](mailto:skaye@runbox.com)

1. Please consider strengthening the selection process for boards and commissions to ensure that Lana`i and Moloka`i are represented.

"Section 13-2 (3). Boards and Commissions. Except for the several planning commissions, the mayor shall select appointees giving due consideration to balanced geographic representation and ensure, to the extent practicable, that one member of each board or commission include a qualified resident of Lana`i and Moloka`i."

2. Please consider amending Section 3-2 (Election of Council and Term of Office) to re-institute a closed primary system. Hawaii is among a handful of states with open primaries, and voter turnout has fallen from 75% in 1978, the last year of closed primaries, to a little over 40% in the past two elections.
3. Please consider amending Section 3-2(5) to extend council terms to 4 years, or in the alternative, eliminating term limits. "5. The term of office of council members shall be for four (4) two (2) years, beginning at twelve o'clock meridian on the second day of January following their election. ~~No member of the county council shall serve more than five consecutive full terms of office.~~
4. Reject district voting. Consider amending Section 3-3 (Qualifications). "To be eligible for election or appointment to the council, a person must be a citizen of the United States, a voter in the county, a resident of the county and the area from which the person seeks to be elected for a period of one year ninety (90) days next-preceding the filing of nomination papers and at the time of filing of nomination papers.
5. Recommend amending the Charter to eliminate the Department of Transportation, as a stand alone, and incorporate a deputy position in Public Works. DOT administration cost for 2011 was over a million dollars (\$1,079,568).
6. Consider amending the charter to require all 15 department heads to be approved by county council. At a minimum Section 8-8.2. (Planning Director) and Section 8-4.2 (Director of Finance) should be amended to require council approval as these positions are too critical to be by mayoral appointment only.
7. Amend Section 8-8.3(6). Powers, Duties, and Functions of the Planning Department to add an every 5-year audit of projects that received conditional zoning. Pursuant to Section 19.510.050 county council may impose conditions when a change in zoning is applied for. Section C requires the conditions to be performed prior to council action or within 5 years from the date of the ordinance effectuating the change in zoning. We have learned that compliance with imposed conditions is rarely enforced or even reviewed, and section (F) "failure to fulfill any conditions on a zone change within the specified time limitations may be grounds for the enactment of ordinances to restore the [prior] zoning" has virtually never been enforced. The Finance and

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Property Departments should also be included since land has been rezoned here but never assessed increased tax liability. "The planning director shall: 6. Prepare, administer, and enforce zoning ordinances, zoning maps and regulations and any amendments or modifications thereto, and every 5 years prepare for county council and the finance department a review of ordinances granting conditional zoning for compliance or possible reversion."

8. Consider establishing a county auditor, rather than hiring an independent body.

Kauai County Charter Authority

Section 32.01. Office Established; 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 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.

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, nonpartisan, 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.

#### 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.

#### 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 the 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 employee's status pursuant to the county auditor's powers with respect to personnel in the office of the county auditor.

Fairfax A. Reilly  
468 Ahakea Street  
P.O. Box 630111  
Lanai City, HI 96763

Joshua A. Stone, Chair  
Charter Commission  
County of Maui

July 20, 2011

Chair Stone, Member Okamoto and Members,

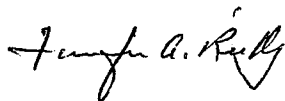
Thank you for providing Lana'i residents the opportunity to present comments to you in person.

**ARTICLE 3 COUNTY COUNCIL: Section 3-1. Composition.**

**RETAIN** the composition of the Council as stated in the Charter of Maui County (2003) as amended.

- All voters within each "district" wish to have the maximum influence within the Council to realize goals supporting their respective "district."
- The writers of the Charter have recognized the unique conditions of separate islands within the County.
- Requiring candidates for Council to receive votes from throughout the entire County seems to be a condition forcing the candidates to become familiar with the voters' desires throughout the entire County while ensuring familiarity with the less populated areas of their designated seats.
- The goal seems to have been to recognize the issues of locales with smaller populations and also to fully understand the needs of the major population locales.
- I see an advantage in placing seats from locales that remain rural. Representatives from the rural areas bring perspective to the issues of the more developed regions.
- I believe this mix is a strength for the Council process rather than a weakness.

Sincerely,



Fairfax A. Reilly

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