

# OVERVIEW

THE AUDITOR  
STATE OF HAWAII

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## Study of Costs Incurred by Financial Institutions to Comply with Investigative Subpoenas

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### Summary

Act 273, Session Laws of Hawaii 1992, required our office to study the actual costs incurred by financial institutions in producing materials in response to investigative subpoenas issued by the attorney general or the county prosecuting attorneys under Section 28-2.5, Hawaii Revised Statutes.

Investigative subpoenas are used to obtain information prior to taking legal action. Most subpoenas served on financial institutions are issued on Oahu by the attorney general or the Honolulu prosecuting attorney to obtain records useful for cash flow analysis. These records include deposits, withdrawals, and balances of personal, business, or government accounts and are used mostly in investigating suspected white collar crimes. The Honolulu Police Department is the most frequent requester of investigative subpoenas.

The attorney general and the Honolulu prosecuting attorney have complained that financial institutions have charged substantial and widely varying fees to reproduce documents in response to these subpoenas. The purpose of Act 273 was to set reasonable and uniform rates. The original bill adopted the fees paid by federal law enforcement agencies, which are \$10 per hour for research and 15 cents per page for reproduction. The enacted version set rates of \$15 per hour for research time and 50 cents per page for reproduction, and it directed our office to conduct this study.

We sought to determine whether the financial institutions' charges prior to Act 273 reflected the actual costs of researching and reproducing financial records. We obtained information from law enforcement agencies, and we surveyed the 14 banks and savings and loans institutions that accounted for most of the subpoena activity.

We found that in FY1991-92 the Department of the Attorney General and the Honolulu Police Department paid a total of about \$40,000 to Hawaii's financial institutions for documents and other materials provided in response to 106 investigative subpoenas.

The financial institutions charged a wide range of rates. Research charges ranged from \$10 to \$40 per hour and reproduction charges ranged from 15 cents to \$3 per page.

The financial institutions varied in describing their costs. For example, they differed in what they identified as the components of costs and in the values they assigned to cost items.

We found no consistent relationship between charges and the costs reported by financial institutions. In some cases, charges were higher than reported costs; in other cases they were lower; in still others it was impossible to tell because of the nature of the cost breakdown. This was true for both research and reproduction.

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## Conclusions and Responses

The fees set in Act 273 offer a reasonable compromise. They exceed the amounts financial institutions receive from federal law enforcement agencies. The new fees also equal or exceed the fees that some institutions were charging prior to Act 273. At the same time, Hawaii's law enforcement agencies will be paying fees that are lower than what most of the institutions were charging prior to Act 273.

The Department of the Attorney General supports our conclusion. The department also suggests that there is no reason for financial institutions to charge the State more than they charge the federal government.

The Honolulu Police Department concurs also. The Department supports Act 273 as an acceptable compromise which mandates reasonable and consistent reimbursement to financial institutions for costs incurred in complying with administrative subpoenas.

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