Study of the Fiscal Relationship Between Hawaii's Legislative and Executive Branches

A Report to the Governor and the Legislature of the State of Hawai'i

Report No. 93-2
January 1993

THE AUDITOR
STATE OF HAWAI'I

The Office of the Auditor

The missions of the Office of the Auditor are assigned by the Hawaii State Constitution (Article VII, Section 10). The primary mission is to conduct post audits of the transactions, accounts, programs, and performance of public agencies. A supplemental mission is to conduct such other investigations and prepare such additional reports as may be directed by the Legislature.

Under its assigned missions, the office conducts the following types of examinations:

1. *Financial audits* attest to the fairness of the financial statements of agencies. They examine the adequacy of the financial records and accounting and internal controls, and they determine the legality and propriety of expenditures.

2. *Management audits*, which are also referred to as *performance audits*, examine the effectiveness of programs or the efficiency of agencies or both. These audits are also called *program audits*, when they focus on whether programs are attaining the objectives and results expected of them, and *operations audits*, when they examine how well agencies are organized and managed and how efficiently they acquire and utilize resources.

3. *Sunset evaluations* evaluate new professional and occupational licensing programs to determine whether the programs should be terminated, continued, or modified. These evaluations are conducted in accordance with criteria established by statute.

4. *Sunrise analyses* are similar to sunset evaluations, but they apply to proposed rather than existing regulatory programs. Before a new professional and occupational licensing program can be enacted, the statutes require that the measure be analyzed by the Office of the Auditor as to its probable effects.

5. *Health insurance analyses* examine bills that propose to mandate certain health insurance benefits. Such bills cannot be enacted unless they are referred to the Office of the Auditor for an assessment of the social and financial impact of the proposed measure.

6. *Analyses of proposed special funds* and existing *trust and revolving funds* determine if proposals to establish these funds and existing funds meet legislative criteria.

7. *Procurement compliance audits* and other *procurement-related monitoring* assist the Legislature in overseeing government procurement practices.

8. *Fiscal accountability reports* analyze expenditures by the state Department of Education in various areas.

9. *Special studies* respond to requests from both houses of the Legislature. The studies usually address specific problems for which the Legislature is seeking solutions.

Hawaii's laws provide the Auditor with broad powers to examine all books, records, files, papers, and documents and all financial affairs of every agency. The Auditor also has the authority to summon persons to produce records and to question persons under oath. However, the Office of the Auditor exercises no control function, and its authority is limited to reviewing, evaluating, and reporting on its findings and recommendations to the Legislature and the Governor.

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OVERVIEW

THE AUDITOR
STATE OF HAWAII

Study of the Fiscal Relationship Between Hawaii's Legislative and Executive Branches

Summary

The legislative and executive branches of government share in governance. Over the years, the executive branch has increased its authority over fiscal matters while the Legislature's role has eroded. This led the Legislature to request that the State Auditor examine the fiscal relationship between the executive and legislative branches. Our review focused on two key budget processes: (1) the budget review and appropriations process and (2) the budget execution process.

In budget review, we found that Hawaii's Planning, Programming, and Budgeting (PPB) System has fallen short of expectations. The system generates a massive amount of data that is not very useful. Current budget documents are obscure and difficult to use, budget requests and information are not submitted in a timely manner, and legislative staffing is insufficient.

PPB budget documents do not present information legislators need to understand and analyze the budget. They do not give a good overall picture of the amount of spending and the sources and types of revenues to support this spending. Budget documents do not break down the cost of maintaining the current program, the cost of workload increases, or the cost of any new initiatives, or priorities among them. The appropriation committees and their staff must rely on supplementary budget information from departments that is not always forthcoming in a timely manner.

The executive's recent practice of submitting additional budgetary requests after the start of the session has also hampered the Legislature. During 1989, the Legislature received four separate governor's messages requesting additional funding for 333 items. These requests were submitted an average of 48 days after the statutory deadline for submittal of the executive budget. "Add-ons" are supposed to be used only in emergency or unanticipated situations, but the requests were for items that should be a normal part of an agency's budget.

Legislative independence is compromised by insufficient staffing. Appropriation committees often "borrow" staff from the executive branch. This is contrary to the national trend of developing

professional legislative staff capable of providing legislators with needed analysis and information.

The National Conference of State Legislatures reports that, to increase their independence from the executive branch, about 20 state legislatures now have direct, on-line access to agency expenditure data. In addition, some 38 states use fiscal notes that assess the financial impact of proposed legislation on state revenues and expenditures. These are avenues the Legislature should continue to pursue.

In the budget execution process, we found that the Legislature is undermined by routinely including provisions in the appropriation acts that allow the governor to make transfers among programs. This flexibility has been used by the executive to implement and expand programs without legislative authorization, to transfer funds among programs and appropriations, and to use savings from one state program to supplement appropriations for another program.

The State's allotment system also adds to executive flexibility. The executive may reduce appropriations to any program to promote savings and efficient management. The executive authority to restrict appropriations and to make budget cuts makes it difficult to ensure that legislative priorities are met.

Recommendations and Response

We recommend that the Legislature establish a joint committee to propose amendments to Chapter 37, Hawaii Revised Statutes, to simplify and make more useful and understandable the State's budgeting system. It should consider making the supplementary materials it uses part of the official budget submission. We believe the Legislature should strengthen its resources by expanding its staff, gaining independent access to detailed information on revenues and expenditures, and adopting tools such as fiscal notes. We also recommend that the Legislature consider enacting legislation or exercising the authority it already has to limit executive flexibility in transferring and restricting appropriations.

In its response, the Department of Budget and Finance responded that, in general, it supports the recommendations in the report and would lend its assistance and support to any legislative endeavor to amend or change budget policies. It says, however, that it would hesitate to endorse strict limitations on executive flexibility because of unanticipated contingencies and emergencies.

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Governor
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Hawaii

Submitted by

THE AUDITOR
STATE OF HAWAII

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Foreword

This report was prepared in response to House Concurrent Resolution No. 72 of the Regular Session of 1992. The resolution requested the State Auditor to assess the current balance of power between the executive and legislative branches in fiscal matters and to examine the specific forms of flexibility granted to the executive branch in the allotment system and in provisions in general appropriation bills.

We wish to express our appreciation for the cooperation and assistance extended to us by legislators, particularly the appropriation committees and their staffs, and the officials and staff of the Department of Budget and Finance.

Marion M. Higa
State Auditor

Table of Contents

Chapter 1
Introduction

In 1992 the Legislature requested in House Concurrent Resolution No. 72 that the State Auditor study the fiscal relationship between Hawaii's legislative and executive branches.

The resolution notes that the executive branch has increased its authority over spending matters while the Legislature's role has eroded. It asks the State Auditor to assess the current balance of power between the executive and legislative branches in fiscal matters. It also asks the State Auditor to examine the specific forms of flexibility allowed the executive branch including the allotment system and other provisions in the general appropriations bills.

Background

The separation of powers among the executive, legislative, and judicial branches of government is a basic principle of the political system in the United States. The purpose is to create a balance that would prevent the concentration of power in any one branch.

The legislative and the executive branches share in governance. The legislature enacts policy and appropriates resources to carry it out while the executive implements policy. The power and authority of the legislature is a function of its control over the purse.

In the United States, the power to appropriate funds has traditionally been an exclusive prerogative of the legislative branch. On the federal level, this right is enunciated in Article I, Section 9, of the Constitution of the United States which requires that appropriations be made by law before any moneys are drawn from the treasury.

In Hawaii, legislative power of the purse is clearly established by Article VII, Section 5, of the State Constitution which states that no public money shall be expended unless an appropriation is made by law.

The legislative and executive branches have struggled over the power of the purse for centuries. The balance of power has swung from the dominance of European sovereigns prior to the thirteenth century to the growing influence of legislatures and parliaments in the nineteenth century and back to the executive in the twentieth century as society became more complex and technological.

Executive dominance in the United States evolved with the executive budget movement in the first quarter of this century. Before this, budgeting and spending had been marked by poor preparation, weak controls, and fragmentation. The new movement formalized and centralized the budget preparation and execution processes under a single chief executive, but at the same time, it weakened legislative control of the budget.

In Hawaii, fiscal conflict between the State's legislative and executive branches has spanned several decades. A 1978 Constitutional Convention study found that no single issue affected the relationship of the executive and legislative branches more than the continuing conflict over the Legislature's power to appropriate and the executive's power to execute the appropriations.[1] The basic issue is the balance between the Legislature's need for authority and independence and the executive's need for fiscal flexibility and discretion.

The conflict surfaced at different times in different ways. In 1976 two legislators filed a suit in circuit court challenging the governor's authority to restrict legislative appropriations. The court dismissed the suit filed by the two legislators on the basis that they lacked standing to institute the action. That same year, the Legal Aid Society filed another suit challenging the administration's withholding of program funds. In the Legal Aid suit, the court upheld the administration's authority to make budget cuts.[2]

In another example, the Senate in 1977 proposed a bill to establish a joint Senate-House controlling committee to oversee legislative appropriations and authorize transfers of appropriations. The bill also created a fund for emergencies that the controlling committee could allocate for unforeseen contingencies. The director of finance objected that the bill conflicted with the separation of powers doctrine and eroded the powers of the governor. The director also questioned the constitutionality of delegating this authority to a select group of legislators.[3]

This report examines strategies to strengthen and improve the Legislature's relationship with the executive branch and the resources that could help the Legislature meet its fiscal and budgetary responsibilities.

Objectives of the Study

Our study had the following objectives:

1. To examine the existing budgetary process and identify specific areas that the Legislature can control or influence.

2. To identify resources or "tools" that would help the Legislature to properly meet its responsibilities in this fiscal area.

3. If appropriate, to recommend alternatives to the Legislature.

Scope and Methodology

To accomplish the objectives of the study, we examined certain executive and legislative practices during two key phases of the budget process: (1) budget review and appropriation and (2) budget execution.

We reviewed the laws and literature concerning budgeting in general and more specifically in Hawaii. We interviewed legislators and staff who play key rôles in the State's budgeting process, in particular the chairpersons, vice-chairpersons, and staff of the House Committee on Finance and the Senate Committee on Ways and Means. We also interviewed the director of finance and his staff because of the crucial role of the Department of Budget and Finance in preparing and executing the budget. We contacted resource persons from the National Conference of State Legislatures, the National Association of State Budget Officers, and other states to identify ways of strengthening the Legislature's authority in fiscal affairs.

Our work was performed from May 1992 through December 1992 in accordance with generally accepted government auditing standards.

Chapter 2

Strengthening Legislative Control Over the Budget

In this chapter we examine the Legislature's role in two key budget processes: (1) the budget review and appropriations process and (2) the budget execution process. We identify improvements that would strengthen the Legislature's power to set policy for the State through its control of appropriations and expenditures for programs.

Summary of Findings

We believe that legislative control over both budget review and budget execution has diminished over the years. Specifically, we find that:

1. With respect to budget review, the Legislature lacks the resources to deal with the executive branch on an equal footing. Current budget documents are obscure and difficult to use, much of the needed information is missing, budget requests and information are not submitted in a timely manner, and staffing is insufficient.

2. With respect to budget execution, the Legislature has granted the executive so much latitude that legislative power to direct state policies through program appropriations has been undermined.

Hawaii's Planning, Programming, and Budgeting (PPB) System Has Not Met Expectations

The Legislature is at a disadvantage in dealing with the executive branch because it does not receive adequate information under the current state PPB system. Official budgeting documents are not user friendly and do not generate the information legislators need for budgeting.

When the State enacted a PPB system in 1970, Hawaii was considered a forerunner in budget reform. The PPB system (codified as Chapter 37, HRS) attempted to integrate planning and budgeting to accomplish program objectives. It was expected to rationalize and quantify budget decisions across all government programs. The concept was attractive but experience has shown that the reality has fallen far short of expectations. The system generates a massive amount of data that is not very useful.

Dissatisfaction with PPB is not new.[1] A legislative conference committee report on the 1979 general appropriations bill noted that "the budget documents which should be the most important recurring documents of the state government, have been little used in recent years by the legislature and have little impact on appropriation decisions." The report said that the budget documents have sunk to a low order of importance because program cost data is sometimes incorrect and often suspect, program effectiveness measures are often irrelevant with artificial and inflated data, program issues are not discussed in any meaningful way, and program plans are virtually carbon copies from one biennial budget to the next with little evidence of program analysis.

As the scale and scope of Hawaii's government have expanded, the gap between available and needed information has widened. A 1991 review by our office found that the Legislature receives a massive amount of information, but it often cannot make effective use of the data it receives.[2]

Other states that have adopted forms of PPB budgeting have had similar experiences. In a review of its budget process, Virginia reported that it had made a concerted effort to use program budgeting but found it cumbersome and time-consuming. Staff involved in the process noted that program budgeting had resulted in excessive paperwork and most of the effort was useless for budgetary decision making. Other states that Virginia contacted expressed similar concerns about excessive time and resources. Virginia found that many that had used program budgeting have developed more realistic requirements.[3]

Recently, a fiscal affairs staff member of the National Conference of State Legislatures (NCSL) reported that "PPB has also been documented to have fallen far short of expectations due to a lack of emphasis on useful data for decision makers, bureaucratic inflexibility and problems with measuring outcomes."[4]

PPB documents not useful

Hawaii's PPB documents are not easily understood, and they do not serve the Legislature's need for complete, concise, and clear financial information. They may not be worth the time and the effort to prepare and understand.

Under Chapter 37, HRS, the Executive Budget Act, the governor must submit the following official PPB documents to the Legislature: a proposed budget and a six-year program and financial plan--these have been combined into the *Multiyear Program and Financial Plan* (PFP), *Program Memoranda* that describe state programs, and a *Variance Report* that compares actual and budgeted financial and program results for the last complete fiscal year.

The documents are difficult to use. They do not supply information that would enable legislators to distinguish the current budget base from proposed changes in programs or to see the big picture of revenues and expenditures.

PFP not user friendly

The PFP contains the budget submittal, but it is not user friendly. It is voluminous, arranged by program structure numbers, and without any index by subject or agency.

PFP not concise

The PFP is a multi-volume set almost 2,000 pages long. It does not package needed information in a concise way. Its length does not compare favorably with budgets of other states. In attempting to improve its budget process, South Carolina analyzed the FY1983-84 budget documents of other states. It found that most states have a concise single-volume document averaging about 700 pages. South Carolina, with its 3,000 page budget, had the longest budget document in the nation. At the time, Hawaii had the third longest budget document.[5]

PFP arrangement obscure

Information on programs is difficult to locate because material in the PFP is arranged numerically according to the program structure of the State. The State's program structure consists of 11 programs: economic development, employment, transportation facilities, health, environmental protection, social services, formal education, culture and recreation, public safety, individual rights, and government-wide support. Programs and subprograms are assigned program structure numbers. These numbers must be used to locate information in the PFP.

For example, to find budget information in the PFP on a major program such as Medicaid—a program with a budget over $345 million--one would have to determine that it falls under the social services program (06), then under the assured standard of living program (06 02) and then under health care payments (06 02 03). The program structure number 06 02 03 must be used to search the PFP for Medicaid information. Even when the program is found in the PFP, there is no reference to related budget requests such as administrative costs for Medicaid that must be searched for under different program structure numbers.

The PFP has no detailed table of contents or any subject or agency indexes that would make it easy to locate budget information. In a survey of state budget practices, South Carolina found that 68 percent of states have budget documents with indexes and 85 percent have a detailed table of contents. In addition, many budgets are tab-sectioned for ease of use.[6]

PFP information unclear

The information presented in the PFP is presented in an obscure, misleading way. For example, it is difficult to tell whether the figures presented in the document represent appropriations, actual expenditures, planned expenditures, or projected expenditures.

All pages in the PFP presenting financial information are titled "Program Expenditures." Summary information is given on operating costs, means of financing, and number of positions for each program for eight fiscal years. Although everything is listed under expenditures, the dollar amounts listed for the different fiscal years are not comparable expenditures. The amount for the completed fiscal year is supposed to represent actual expenditures. The amount for the fiscal years in progress represents planned expenditures. The amounts for the fiscal years in the budget biennium are the budget requests. The amounts for the remaining outlying fiscal years are projections. Volume 1 of the PFP contains a definitions section but no definition is given of the term "program expenditures."

No big picture

The Legislature does not receive information that would give it a good overall picture of spending nor of the amount and types of revenues to support this spending. Volume 1 of the PFP has several short sections including a brief message from the governor, an economic backdrop, basis for revenue estimates, state receipt and revenue plans, and total program expenditures by agencies. The message from the governor presents the total recommended budget for the biennium, a breakdown of the 11 programs of the State's budget structure, and some illustrations of specific budget requests.

These short sections do not summarize economic and financial information in a useful, meaningful way. Changes in expenditures are not related to changes in revenues. No information is presented on percentage increases in specific sources of revenues or percentage growth in expenditures in specific program areas. Other than total amounts requested for the 11 program areas, there is no summary of the executive budget request.

Some states, such as Virginia, submit a budget summary or a budget in brief as a companion to the more detailed and comprehensive executive budget document. Virginia's easy-to-read summary explains some complex issues, provides perspectives on emerging trends, describes major demographic and economic changes, and summarizes the administration's proposed budget. It gives the cost of continuing current services, moneys available for new initiatives, and percentage increases in the budget. The summary identifies where the money comes from and where it goes. The document also discusses the budget in each of Virginia's program categories and highlights changes, initiatives, operations, and services. The summary also shows each agency's adjusted appropriation for the preceding year and recommended budget for the next two years.[7]

We believe that this type of separate budget summary would be useful in giving both legislators and the general public an overview of Hawaii's financial picture and proposed budget. Some of the summary information in the State Comptroller's *Comprehensive Annual Financial Report* would be useful to have in a budget summary. For example, the report shows the percentage of total expenditures for various government functions such as health and public safety, and the amount and percentage increase in each of these over the past year. The report also shows the net increases in dollar amounts and percentages in revenues from specific sources. Such a summary would serve to educate Hawaii's legislators and citizens and familiarize them quickly with the State's financial situation.

Basic information missing

Information critical for understanding and analyzing the budget request is missing from the PFP. A narrative about each program accompanies the financial tables, but the narrative offers little information about the agency and organizational unit that is responsible for carrying out the program. Nor is there any information on the statutory authorization for the program. This is important because major programs, such as the State's marine patrol, have expanded without any legislation establishing their mission or program.

Analysis is difficult because the PFP supplies no information on how much of the requested amounts represent the budget base—or the cost of continuing the current program—and how much represents workload increases and proposed changes to the base by the department or by the governor. The budget request is not broken down according to actual program expenditures and proposed increases to the base and priorities for changes in the program.

To get this type of information, legislators and their staff must rely on unofficial supplementary data from the executive branch. Legislative analysis of the budget occurs mostly through these supplementary budget submissions. Since these supplemental materials are not part of the official budget submissions, the information is scattered and usually late in arriving, leaving legislative staff at the mercy of executive departments.

Supplementary materials needed

Legislative staff of the Senate Committee on Ways and Means and House Committee on Finance rely on budget testimony and program expenditure reports from departments. For information on base budgets, they must ask, department by department, for the amount of the previous appropriation and any adjustments to the appropriation such as vacant positions, restrictions, non-recurring cost items, collective bargaining increases, and inflation. Staff also ask departments for their proposed additions to the base due to workload increases and program change requests. In addition, staff ask the executive branch for information on positions deleted from appropriations and exclusions or additions to the budget base.

Committee staff also rely on detailed budget journal (BJ) tables that the executive branch uses to summarize the total operating costs of agencies including costs for all personnel, personal services, other current expenses, equipment, and motor vehicles, as well as revenues and capital improvement projects.

Since these documents are not part of the official budget submission, they are not always delivered in a timely manner. For example, in late February 1992, the Senate Ways and Means Committee was still requesting information from departments on their base.

The Legislature is seeking to remedy this problem by including in the Supplemental Appropriations Act of 1992 a provision that the director of finance shall submit to the presiding officers and money committees no later than December 31, 1992 budget details of all appropriations. These details must include BJ tables on personnel showing full salary amounts for each position, personal services, temporary positions, other current expenses, equipment, and motor vehicles.

Additional budget requests burdensome

Legislative staff are also set behind by the recent executive practice of submitting addenda, known as "add-ons," to the official executive budget request. During 1989 the Legislature received four separate governor's messages requesting additional funding for 333 items. The governor submitted these requests an average of 48 days after the statutory deadline for submittal of the executive budget.

Add-ons were intended to allow the governor to meet emergency or unanticipated situations. But there has been growing concern that the governor is using them inappropriately for non-emergency purposes or as vehicles for major new initiatives. The chair of the Senate Committee on Ways and Means noted that this practice creates a serious problem since it reduces the already short review time by three to four weeks. This diminishes the ability of legislators as policy makers to fulfill their duty to the public.[8]

A governor's message on January 23, 1992 made 65 additional requests for operating funds and 20 for additional capital improvement projects. They included items that are a customary part of agency budgets such as an additional $1.5 million for textbooks and classroom equipment for schools and $4 million for the Healthy Start Program for child health care. Capital improvement project requests included $9 million for improvements to the Women's Community Correctional Center and $28 million for an affordable housing project. These kinds of requests are not emergencies and are not likely to be oversights but the message contained little justification about them.[9]

In 1989, legislators sought to correct this problem through legislation that would require the governor to submit separate bills for additional budget requests. The legislation required information on (1) the reasons why the additional budget request was not included in the original budget submission, (2) the reasons why these additional requests should be considered for inclusion in the budget, and (3) the applicable changes to the state's program and financial plan. This legislation was not enacted, but the Legislature should reconsider legislation that would establish guidelines for budget addenda.

Budget reform needed

The State needs to simplify its budget system and improve the usability and usefulness of budget documents. The Legislature needs more timely and better quality information. A recent NCSL presentation noted that at least 16 states are attempting to reform their budgeting process. Each state has tried to learn something from the past and avoid the biggest mistakes of prior reform efforts.[10]

The Legislature should consider establishing a joint committee to work with the executive branch in amending Chapter 37, HRS, and in changing the State's budgeting system. To assist in this effort, it may be useful to have the expertise of an organization like the National Conference of State Legislators or the National Association of State Budget Officers.

The Legislature should consider requiring a budget summary; a revised budget format that would provide information on the budget base, proposed program changes and initiatives ranked in priority order; information on amounts and percentage changes in sources of general and nongeneral fund revenues, and balances in special or revolving funds. It should also consider establishing guidelines for the submission of budget requests in addition to the official request.

Staff and Other Resources Should Be Strengthened

In addition to improving the clarity and usefulness of budgetary data, the Legislature should consider strengthening its staff, gaining independent access to fiscal data, and developing fiscal notes.

Improving legislative staffing

To better meet its responsibilities as an independent branch of government, the Legislature should strengthen its staffing. Nationally, the trend has been towards developing professional legislative staff who can provide legislators with the information for making difficult decisions.[11]

Legislative committees in Hawaii, particularly the money committees, continue to be inadequately staffed. The House Committee on Finance and the Senate Committee on Ways and Means each have small core staffs and must rely on inexperienced, temporary staff during legislative sessions. The committees may also "borrow" executive agency staff for the session. An NCSL study on Hawaii's legislative service agencies noted these deficiencies and concluded that the use of executive personnel undermines independence. The lack of staff continuity, experience, and "institutional memory" detracts from thorough and high-quality budget reviews. The NCSL recommended that the Legislature develop its own independent, full-time fiscal analysis capability and discontinue the practice of borrowing staff from executive agencies.[12]

Based in part on this recommendation, the Legislature passed Act 347 during the 1990 session establishing a permanent joint legislative committee on fiscal, budgetary, and tax matters and an Office of the Legislative Analyst. The office was to be responsible for research and analysis of current and projected state revenues and expenditures, economic and fiscal policy, economic reports and studies on the State's economy, and budget and tax studies. The office has yet to be operational. We encourage the Legislature to consider establishing and clarifying the responsibilities of the committee and the Office of the Legislative Analyst.

Independent access to fiscal data

Legislative staff do not have independent access to fiscal data but must rely on agencies to give them the information they need. Currently about 20 state legislatures have direct, on-line access to agency expenditure information. Fifteen states receive monthly updates. Fourteen states have on-line access to revenue data.

According to NCSL, direct on-line access is essential for effective monitoring of the budget. It allows legislatures to (1) monitor current agency operations and determine how much agencies have spent to date and how expenditures are allocated among programs, (2) conduct continuous oversight and reduce information gaps that occur when information is not readily available, and (3) select the specific fiscal information that would be useful to them in organizing and analyzing the budget.

The Iowa General Assembly reports that its fiscal staff track intent language in the appropriations bills and as a result, agency compliance with legislative intent has improved significantly.[13]

The director of the Ohio Legislative Budget Office states that legislative fiscal staff must have independent access to information. He says that "this access is critical for the production of high-quality, credible information. Access to accounting systems is especially important because they provide the information needed to evaluate the costs of programs, forecast revenues and expenditures, monitor agency compliance with legislative intent, monitor cash flow, and alert legislators to emerging fiscal problems."[14]

We note that the Legislature is moving in this direction. The Supplemental Appropriations Act of 1992 included a provision that the executive branch shall provide the Legislature with electronic access to executive budget data such as BJ tables and base numbers, as well as other types of information the Legislature might deem important. We believe that this is an important step forward.

Fiscal notes helpful

Various legislatures use fiscal notes to assess the fiscal or financial impact of proposed legislation on state revenues and expenditures. A fiscal note will examine, for example, whether the bill will increase or reduce expenditures, change the yield of an existing tax, affect personnel requirements or levels of service, affect the tax bases, or change funding for existing programs. Fiscal notes help to control spending by making legislators aware of the cost implications of new legislation.

The Hawaii House Majority Staff Office reported in 1991 that 38 states rely on fiscal notes as a means of promoting fiscal accountability.[15] Some states such as Colorado, Connecticut, and Florida, require the notes to be prepared by a legislative body. Other states, including Maryland and New York, require an executive agency to prepare fiscal notes. The format, content, and length of fiscal notes vary among states, but most are one to two pages long and include: (1) basic information about the bill such as bill number and title, bill sponsor, name of the analyst preparing the note, and citations for statutes affected; (2) a summary of the bill highlighting sections having a fiscal impact; (3) a statement of fiscal impact; and (4) any other assumptions, questions, or concerns.

We believe that fiscal notes prepared by legislative staff would safeguard and promote the independence of the Legislature. In order to analyze the fiscal impact of bills, the Legislature should require the executive to submit information on long term program costs for all new programs. No new program should be implemented prior to careful scrutiny by the Legislature of the executive's fiscal rationale.

Legislature Is Undermined by Flexibility Granted to Executive

In Hawaii, legislative control of policy has been weakened by giving the executive increasing authority over the enacted budget. The Legislature has regularly included provisions in the general appropriations acts that allow the governor to make transfers among appropriations and programs. The governor needs some flexibility to deal with changes in the State's financial situation, but these provisions have weakened the Legislature and undermined the democratic process.

It should be noted that Section 37-74(d) of the Executive Budget Act prohibits such administrative transfers. It requires transfers or changes between programs or agencies to have legislative authorization. It further requires that, when made, transfers or changes must be reported to the Legislature. Despite these statutory limitations, the appropriation acts have commonly included flexibility provisions.

As far back as 1971, the general appropriations act included a provision that allowed the governor or the director of finance to transfer appropriations. The Legislature imposed no conditions on such transfers, allowing them anywhere within the operating budget. More important, the provision did not require these transfers to be authorized by the Legislature or meet legislative intent.

The 1973 biennial budget act also gave the governor wide latitude. However, it contained a requirement that the transfers be made among programs in the same major program area. Again, the Legislature did not require the transfers to be authorized or approved by the Legislature.

In 1975, the Legislature limited some executive authority. The 1975 appropriations act contained a provision authorizing the governor to transfer funds between appropriations within a department for research and development and operating purposes, provided that such transfers were made with the concurrence of the President of the Senate and the Speaker of the House.

Legislative efforts to regain control have been largely unsuccessful. In practice, the governor would transfer appropriations and subsequently notify the legislative presiding officers. A 1978 report by our office concluded that legislative efforts to reassert control in the two previous appropriations acts had been ineffectual, since the governor informed the Legislature of transfers only after the fact.[16]

Legislative appropriations acts continue to routinely include provisions allowing the chief executive to transfer appropriations. The General Appropriations Act of 1991 contained at least eight provisions including ones authorizing the governor to: transfer funds among programs and appropriations, use savings from other state programs to maintain federally funded programs that are cut back, establish ten permanent positions to allocate to any program, and transfer savings from appropriated funds of any program to supplement appropriations for any other program to cope with recession or other emergencies.

The Chair of the Senate Committee on Ways and Means noted in 1991 that the flexibility provisions were intended to be used only in emergency situations. The committee found instead that the provisions have been used on a regular basis—almost as a standard operating procedure. He stated that the committee found this usage to be improper, compromising the thorough and comprehensive planning essential to the budget preparation process.[17]

The Legislature should seriously consider whether these flexibility provisions are necessary and warrant carry-over from one legislative appropriations act to the next. The governor should be given some flexibility but this should be limited. Most states do not allow such transfers without legislative approval or they limit it by dollar amount or by percentage of an agency's appropriation.[18]

Unauthorized use of funds

The flexibility granted to the executive branch has allowed it to implement programs without legislative authorization. This not only violates the Legislature's constitutional authority over state expenditures but also undermines the democratic process. It makes irrelevant public participation in the political process through public hearings, testimony, and open meetings on bills making appropriations.

An example of an executive initiative is the expansion of the Department of Education (DOE) distance learning technology videotex program. In 1989, the Legislature authorized the Department of Budget and Finance (B&F) to initiate pilot projects using videotex. The DOE pilot videotex project involved developing online information services for use in classes, training teachers and students in using online information services, and deploying over 500 terminals. It included a terminal take home program in seven schools and the installation of terminals and printers in the libraries of 237 DOE schools.

In 1991, the Legislature discovered that B&F had allocated an additional $3.8 million to expand the DOE videotex program. It learned that B&F had made moneys available for videotex by transferring funds from an appropriation for collective bargaining. In an opinion dated October 1991, the attorney general stated that money appropriated for collective bargaining cost items can be allotted to the DOE only to pay salary increases but any surpluses in any DOE program resulting from this allotment may be transferred and used for expanding the videotex program.[19] In essence, this removed any limitation on transfers.

Concerns generated by the the videotex project and other projects implemented without clear legislative approval or contrary to legislative intent prompted the 1992 Senate Committee on Ways and Means to issue a memorandum to all department heads. The memorandum asked them to report on the impact of any restrictions made by the governor or director of finance and how these moneys were used or redirected when they were released.[20] The Legislature should continue its attempt to reassert its authority to authorize programs and expenditures. Paying closer attention to transfers by the executive branch is an essential place to start.

Executive authority to restrict

The State's allotment system also adds to executive flexibility. Under the allotment system, appropriations are the maximum amounts authorized and the governor and the director of finance may reduce appropriations to promote savings and efficient management. The purpose is to give the executive flexibility to meet unforeseen changes in the economy when revenues may be less than anticipated. The allotment system divides the fiscal year into four quarters and permits appropriations to be released only when the director of finance approves a department's expenditure plan.

Legislative priorities unrecognized

The executive's power to restrict appropriations makes it difficult to ensure that legislative priorities are met. The issue of budget restrictions is a timely one for many states including Hawaii. For fiscal year 1992, 35 states reported that they cut or were planning to cut their appropriations.[21]

In most states the authority to cut appropriations lies primarily with the executive branch. In 15 states, including Hawaii, the executive is granted unlimited authority to make budget cuts. Legislators have been concerned that the first appropriations to be withheld are those that the Legislature adds to the executive budget.

The governor's authority to make cuts in appropriations is unlimited. In July 1992 the governor announced that the state budget would be cut by approximately $200 million.[22] State departments were to cut their budgets by an average of 15 percent. It appears that this action was taken with little involvement on the part of the Legislature.

The Legislature can protect its priorities by enacting legislation limiting the governor's authority to make cuts. Some states require cuts to be made across the board, thereby protecting legislative programs from being targeted by the executive. Other states limit the executive to cuts that do not exceed a specified percentage. Mississippi combines these two restrictions by requiring the governor to cut five percent across the board before cutting any agency further.

This type of limitation should also be applied to our executive's authority to restrict appropriations. As far back as 1976, the chairman of the Committee on Finance summarized legislative concerns by stating that the governor should use his line item veto in cases where he disagrees with legislative appropriations because everything is open and the Legislature has the opportunity to override the veto.[23]

Budgeting to safeguard legislative priorities

The Legislature could also consider adopting a multi-part budget that can accommodate revenue shortfalls while keeping legislative priorities intact.

The 1979 Legislature enacted a multi-part appropriations act that established legislative priorities and required these priorities to be observed. Appropriations for operating programs were divided between Part A and Part B. Part A included programs essential to the economic well-being, health, safety, and welfare of the State. Part B included less urgent programs. The appropriations act protected legislative priorities by allowing adjustments only to Part B appropriations in the event of a revenue shortfall.

During the 1992 legislative session the Senate Committee on Ways and Means proposed a multi-part budget modeled in part on the 1979 act. The committee believed this would allow the Legislature to control priorities during a time of decreasing revenues. The committee developed a three-tiered budget and included language that required funding for the first tier to be available before funding on the next tier. The Senate's proposal was not enacted.

Target budgeting is a form of multi-part budgeting that allows departments as well as legislators to set priorities. In the first part of the budget, departments prioritize what will be funded within a target set either by the executive or the legislative. In the second part of the budget, departments prioritize other needs that are not accommodated within the target. The Legislature decides how much funding it will allocate to each part of the budget request. In most cases targets are set as a percentage of the appropriation of the previous year. Target budgeting considers both executive and legislative priorities. In contrast, the multi-part budget used by the 1979 Legislature considers only legislative priorities.

Appropriating funds in a multi-part budget would force legislators to establish funding priorities. By defining their priorities, legislators would be able to make the executive clearly accountable for meeting legislative intent.

Conclusion

There is much the Legislature can do to regain its authority over the State's fiscal policy. It can amend the budget process to make it simpler, more understandable, and more productive. It can improve its staffing and the tools under its disposal. It should also limit executive flexibility to transfer and restrict appropriations. It has already taken a number of steps in this direction. It is important for the Legislature to regain its power so that it can play its rightful role in the democratic process.

Recommendations

1. The Legislature should establish a joint committee to propose amendments to Chapter 37, Hawaii Revised Statutes, and to simplify and make more useful and understandable the State's budgeting system. It should consider making the supplementary materials it uses part of the official budget submission. It may wish to call on the assistance of an organization like the National Conference of State Legislatures in making these changes.

2. The Legislature should strengthen its resources by expanding its fiscal staff, gaining independent access to detailed information on revenues and expenditures, and adopting tools such as fiscal notes.

3. The Legislature should consider enacting legislation, or exercising the authority it already has, to limit executive flexibility to make transfers and to restrict appropriations.

Notes

Chapter 1

1. Hawaii Legislative Auditor, *Hawaii Constitutional Studies*, Honolulu, Hawaii, 1978, p. 3.

2. Ibid., p. 9.

3. Testimony to the Senate Committee on Ways and Means on Senate Bill No. 790 from Eileen R. Anderson, Director of Finance, March 3, 1977.

Chapter 2

1. Conference Committee Report No. 20 on House Bill No. 1, Regular Session of 1979.

2. Hawaii, Office of the Auditor, *Legislative Review of State Programs*, Honolulu, Hawaii, February 1991, Report No. 91-11, p. 5.

3. Virginia, Joint Legislative Audit and Review Commission, *Review of Virginia's Budget Process*, Richmond, Virginia, 1992, p. 17.

4. Tony Hutchison, "A Perspective on Budget Reform, Presentation to the Mississippi Joint Legislative Budget Committee," October 20, 1992, Jackson, Mississippi.

5. South Carolina, State Reorganization Commission, *The Budget Process in South Carolina, a Management Study*, June 1985, pp. 41-42.

6. Ibid., p. 45.

7. Virginia, Department of Planning and Budget, *Virginia: The Challenge of Growth, 1990-92*, Richmond, VA, 1990.

8. Memorandum to All Ways and Means Committee Members from Senator Mamoru Yamasaki, Chairman, Senate Committee on Ways and Means, Subject: Governor's Messages, February 11, 1992.

9. Letter to Senator Richard S. Wong, President of the Senate, from John Waihee, Governor, January 23, 1992.

10. Tony Hutchison, "A Perspective on Budget Reform," n.p.

11. National Conference of State Legislature, *Strengthening Legislative Capacity: A Study of the Hawaii Legislative Service Agencies*, Denver, Colorado, October 1989, pp. 84-85.

12. Ibid., p. 84.

13. Corina L. Eckl, *Legislative Authority Over the Enacted Budget*, National Conference of State Legislatures, Denver, Colorado, July 1992, p. 16.

14. Ibid., p. 8.

15. Hawaii State Legislature, House Majority Staff Office, *A Survey of Selected Legislative Practices and Procedures*, Honolulu, Hawaii, January 1991, p. 72.

16. Hawaii, Legislative Auditor, *Hawaii Constitutional Convention Studies 1978, Article VI: Taxation and Finance*, Honolulu, Hawaii, June 1978, p. 11.

17. Memorandum to Yukio Takemoto, Director, Department of Budget and Finance, from Senator Mamoru Yamasaki, Chairman, Senate Committee on Ways and Means, Subject: Proposed Flexibility Provisions, April 12, 1991.

18. Eckl, *Legislative Authority Over the Enacted Budget*, pp. 26-34.

19. Letter to Yukio Takemoto, Director of Finance, from Warren Price, III, Attorney General, Subject: Use of Surplus Appropriations Resulting from Allocation of Sums Appropriated by Act 172, SLH 1989, October 14, 1991.

20. Memorandum to All department Heads from Senator Mamoru Yamasaki, Chairman, Senate Committee on Ways and Means, Subject: Restrictions, February 4, 1992.

21. Eckl, *Legislative Authority Over the Enacted Budget*, p. 35.

22. "Waihee Orders $200 Million Knocked Out of State's Budget," *Honolulu Star-Bulletin*, July 28, 1992.

23. News Release from Representative Jack Suwa, June 15, 1976, in Hawaii, Legislative Auditor, *Hawaii Constitutional Convention Studies*, p. 9.

Response of the Affected Agency

Comments on Agency Response

We transmitted a draft of this report to the Department of Budget and Finance on December 31, 1992. A copy of the transmittal letter to the department is included as Attachment 1 and the department's response is included as Attachment 2.

The Department of Budget and Finance responded that, in general, it supports the recommendations proposed in the report. It says that it would hesitate to endorse strict, codified limitations on executive flexibility to implement legislated appropriations because revenue projections are never guaranteed and contingencies and emergencies cannot be anticipated. Flexibility in executing the budget allows the executive to address such contingencies without major disruptions in government services. The department says it will gladly lend its assistance and support to any legislative endeavor to amend or to change budget policies.

ATTACHMENT 1

STATE OF HAWAII
OFFICE OF THE AUDITOR
465 S. King Street, Room 500
Honolulu, Hawaii 96813-2917

MARION M. HIGA
State Auditor

(808) 587-0800
FAX: (808) 587-0830

December 31, 1992

COPY

The Honorable Yukio Takemoto
Director of Finance
Hemmeter Center, Room 305
Honolulu, HI 96813

Dear Mr. Takemoto:

Enclosed are three copies, numbered 6 through 8, of our draft report, *Study of the Fiscal Relationship Between Hawaii's Legislative and Executive Branches.* Although the draft has no recommendations directed to the Department of Budget and Finance, you may wish to respond to our draft report. We ask that you telephone us by Monday, January 4, 1993, on whether you intend to comment on our recommendations. If you wish your comments to be included in the report, please submit them no later than Friday, January 8, 1993.

The Governor and presiding officers of the two houses of the Legislature have also been provided copies of this draft report.

Since this report is not in final form and changes may be made to it, access to the report should be restricted to those assisting you in preparing your response. Public release of the report will be made solely by our office and only after the report is published in its final form.

Sincerely,

Marion M. Higa

Marion M. Higa
State Auditor

Enclosures

JOHN WAIHEE
GOVERNOR

YUKIO TAKEMOTO
DIRECTOR

EUGENE S. IMAI
DEPUTY DIRECTOR

THOMAS I. YAMASHIRO
DEPUTY DIRECTOR

EMPLOYEES' RETIREMENT SYSTEM
HAWAII INC
HAWAII PUBLIC EMPLOYEES HEALTH FUND
HOUSING FINANCE AND DEVELOPMENT CORPORATION
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PUBLIC UTILITIES COMMISSION

STATE OF HAWAII
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BUDGET, PROGRAM PLANNING AND MANAGEMENT DIVISION
FINANCIAL PLANNING AND POLICY DEVELOPMENT DIVISION
INFORMATION AND COMMUNICATION SERVICES DIVISION
TREASURY OPERATIONS DIVISION

January 8, 1993

RECEIVED
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OFC. OF THE AUDITOR
STATE OF HAWAII

Ms. Marion M. Higa, State Auditor
State of Hawaii
Office of the Auditor
465 S. King Street, Room 500
Honolulu, Hawaii 96813-2917

Dear Ms. Higa:

Thank you for allowing us to respond to your draft report "Study of the Fiscal Relationship Between Hawaii's Legislative and Executive Branches."

We would like to clarify a statement in Chapter 2, page 16, pertaining to "Concerns generated by the (sic) videotex project, and other projects implemented without legislative approval or contrary to legislative intent . . ." It should be noted that Act 347, SLH 1990, specifically authorized funding for the implementation of the videotex program. Due to the need for additional funding for the program for purchase of videotex equipment, a transfer of program savings in the Department of Education (DOE) was made, as permitted by budget proviso. It is my understanding that due to the Administration's failure to obtain legislative approval for the additional equipment, the transferred savings were lapsed by the DOE.

In general, the Department of Budget and Finance supports the recommendations proposed by your report, although we would hesitate to endorse strict, codified limitations on executive flexibility to implement legislated appropriations. Revenue projections before the fact are never guaranteed, nor can all program contingencies and emergencies be anticipated with certainty. As such, flexibility in the execution of the budget allows the executive to expeditiously address such contingencies without major disruptions in government service.

Your conclusions appropriately recognize that budget policies, including the current PPB system, are initiatives of the legislative branch, and that any amendment or change to that process should also properly originate from that body. We would, of course, gladly lend our assistance and support to any legislative endeavor in this regard.

Thank you again for this opportunity to respond. We hope our comments will be of some assistance in your review.

Sincerely,

YUKIO TAKEMOTO
Director of Finance