

EXECUTIVE CHAMBERS

HONOLULU

June 20, 2003

STATEMENT OF OBJECTIONS TO SENATE BILL NO. 474

Honorable Members
Twenty-Second Legislature
State of Hawaii

Pursuant to Section 16 of Article III of the Constitution of the State of Hawaii, I am returning herewith, without my approval, Senate Bill No. 474, entitled "A Bill for an Act Relating to the Auditor."

The purpose of Senate Bill No. 474 is to facilitate the acquisition of FERPA-protected information by making the Legislative Auditor an "authorized representative" of the Department of Education (DOE) and of the Department of Health (DOH).

The Federal Family Educational and Privacy Rights Act, 20 U.S.C. § 1232g (FERPA), generally prohibits the disclosure of personally identifiable information about students. There are, however, exceptions. The DOE may disclose such records pursuant to a subpoena together with prior notification to the students' parents, or to a recipient who is an "authorized representative" of the DOE. FERPA sometimes slows down the work of the Hawaii State Legislative Auditor ("Legislative Auditor") when auditing programs within the DOE and DOH by necessitating the issuance of a subpoena and notification to parents.

According to the Department of the Attorney General, enactment of Senate Bill No. 474 would subject the State to a significant risk of lawsuits. Specifically, the disclosure of education records without prior parental notification or issuance of a subpoena would probably result in expensive lawsuits filed by parents challenging this bill as an invalid attempt to circumvent federal law. In my opinion, this potential liability clearly exceeds any possible benefit that might result from this bill.

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It should be noted that auditors in some states are automatically considered authorized representatives of educational agencies for purposes of FERPA compliance. These are states in which the person or organization conducting the audit is hired by the educational agency and conducts a single audit of federal funds received by the educational agency, which is clearly not the case with the Legislative Auditor in Hawaii.

The Family Policy Compliance Office ("Compliance Office"), U.S. Department of Education, which is the federal agency authorized to administer FERPA, contends that the FERPA exception in question applies only when the "authorized representative" is an executive branch auditor or an outside auditor hired by the educational agency or the state to conduct a single audit of federal funds received by the educational agency or the state. Hawaii's Legislative Auditor does not conduct the type of single audit that falls within the FERPA exception. Therefore, under the Compliance Office's interpretation of FERPA, the DOE would not be allowed to disclose education records to the Legislative Auditor even after enactment of Senate Bill No. 474, and so this bill would not accomplish its intended goal in any event.

For the foregoing reasons, I am returning Senate Bill No. 474 without my approval.

Respectfully,

LINDA LINGLE
Governor of Hawaii

P R O C L A M A T I O N

WHEREAS, under Section 16 of Article III of the Constitution of the State of Hawaii, the Governor is required to give notice, by a proclamation, of the Governor's plan to return with the Governor's objections any bill presented to the Governor less than ten days before adjournment sine die or presented to the Governor after adjournment sine die of the Legislature; and

WHEREAS, Senate Bill No. 474, entitled "A Bill for an Act Relating to the Auditor," passed by the Legislature, was presented to the Governor within the aforementioned period; and

WHEREAS, Senate Bill No. 474 is unacceptable to the Governor of the State of Hawaii;

NOW, THEREFORE, I, LINDA LINGLE, Governor of the State of Hawaii, do hereby issue this proclamation, pursuant to the provisions of Section 16 of Article III of the Constitution of the State of Hawaii, giving notice of my plan to return Senate Bill No. 474 with my objections thereon to the Legislature as provided by said Section 16 of Article III of the Constitution.

DONE at the State Capitol, Honolulu,
State of Hawaii, this 20th day
of June, 2003.



LINDA LINGLE
Governor of Hawaii