



REPUBLIC OF THE MARSHALL ISLANDS
Office of the Auditor-General

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August 9, 2012

Hon. Jeban Riklon
Senator/Chairman
Judicial & Governmental Relations Committee (J&GR)
Nitijela of the Marshall Islands
Majuro, MH 96960

Re: Office of the Auditor-General's views on the existing Ethics in Government Act of 1993 and proposed legislation or Bill No. 5 (Ethics in Government Act 2012)

Dear Honorable Chairman Riklon:

In response to the request by the Nitijela Committee on Judicial & Governmental Relations (the Committee) for a detailed analysis of the differences between the Ethics in Government Act of 1993 and Nitijela Bill No. 5 (Ethics in Government Act 2012), I am pleased to provide the Office of the Auditor-General's (OAG) views based on its review of the existing legislation and the proposed Bill.

1. Proposed legislation (Bill No. 5) is more comprehensive:

While both call for the Government to conduct its business in accordance with established ethical guidelines, the proposed legislation provides a more detailed explanation of what these guidelines mean in practice. Further, the proposed law provides guidance on how to address non-compliance with the Ethics Code. For example, it clearly defines "conflict of interest" and provides specific guidelines on how government officials and employees should address situations in which they have a conflict of interest.

In addition, the proposed law requires every public official and certain government employees to file a comprehensive Financial Disclosure Statement within a specific timeframe after taking office or commencing their appointment. As a mandatory requirement failure to file within the specified time would be a breach of the Ethics Code. This mechanism will greatly increase government transparency and strengthen the faith and confidence of the people of RMI in the integrity of their government. Such legislation is accepted best practice and is used extensively throughout the world. It promotes integrity in government by acting as an effective safeguard against the misuse of public office for private gain.

Furthermore, the Financial Disclosure requirement would compliment the investigatory functions of the OAG. For example, a complaint that raised concerns about the financial practices of a public official or a subject public employee could be assessed against a record of their known assets and wealth.

2. Enforcement identified as key issue in the existing legislation:

The OAG is of the view that “enforcement” has been the key weakness in existing law. It created a Government Ethics Board, which is comprised of the Attorney-General, Auditor-General and the Chief Secretary, to oversee general compliance with the Ethics Code and promulgate specific regulations to ensure compliance with these ethical guidelines and impose remedies as appropriate.

To date, the Government Ethics Board has not been functioning as an organized body and has not prescribed specific rules and regulations to ensure compliance with the Act. In practice each member of the Board has worked independently from each other. For instance, the Auditor-General has setup a Hotline on Fraud, Waste and Abuse in which any member of the public may call to report wrongdoings in government, government agencies and the local government arena. The following have been identified as possible reasons why the Board has not functioned effectively:

- I. Absence of the Chairman of the Board: The law created the Board but does not specify a Chairman. In every Board, the Chairman occupies a key leadership spot that is considerably different from other Members. The Chairman has a responsibility to arrange for the meeting of the Board, get the Board into an organized body, and to focus the board’s attention on the responsibility for which the Board was created.
- II. Board Composition: Of the three Board members, only the Auditor-General has statutory independence that is charged with oversighting.
 - a. *Chief Secretary:* The Chief Secretary “is head of the Public Service and the chief administrative and advisory officer of the Government of the Republic of the Marshall Islands” and is “responsible to the Cabinet for the general direction of the work of all Departments and offices of government”.
 - b. *Attorney-General:* is the chief legal advisor to the Government

A key indicator of an effective oversight body is its independence from those that it is tasked with oversighting. Independence safeguards against political interference and increases public confidence in the integrity of the oversight process.

Remedies identified as weakness in the existing legislation:

Under the current law the Board’s power to impose sanctions against public officials that have breached the Ethics Code is substantially undermined by the President’s “power to veto any action of the Government Ethics Board with respect to any Member of the Nitijela.....” and

vice versa. Under the current setup, one would imply that the power(s) of the Government Ethics Board to impose sanctions and/or remedial actions *is limited* to government employees (and not public official).

Conclusion:

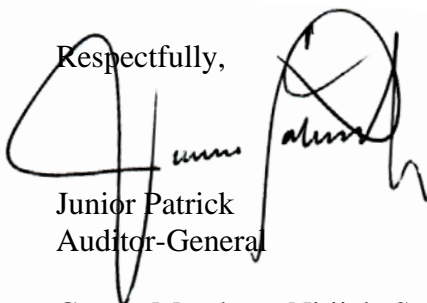
The OAG is of the view that the proposed legislation provides a more detailed and comprehensive explanation of the Ethics Code, as well as guidance on how to address non-compliance, both through remedial and punitive action. Further, it clearly identifies the primary functions of the Auditor-General, Attorney-General, and the Public Service Commission (PSC) with regards enforcement of the Ethics Code. The OAG will be charged with receiving complaints and investigating alleged breached of the Ethics Code; the PSC will review alleged breaches involving government employees and where appropriate impose administrative sanctions; and the Attorney-General will prosecute all cases against public officials and criminal cases involving government employees

Importantly, under the proposed legislation it would be the courts that would decide whether or not a public official had breached the Ethics Code and it would be for the judiciary to impose appropriate penalties. Unlike the current regime where decisions of the Government Ethics Board involving public officials are easily revocable, decisions of the court are far less vulnerable to arbitrary revocation. The inclusion of the court as an independent and politically neutral body will increase public confidence in the oversight process and the integrity of the public sector.

The OAG, while acknowledging the high ethical standards and professionalism of the Attorney-General’s Office, is of the view that breaches of the Ethics Code would be better prosecuted by an independent body. This is accepted best practice and ensures that prosecution decisions are both free from political interference and, importantly, seen to free from such. One of the key roles of this legislation is to promote public confidence in the integrity of government. An independent oversight process sends the strongest possible message that those who have accepted public office will be held accountable if they fail to uphold the high ethical standards expected of them. To this end we would respectfully suggest that an Independent Special Prosecutor be engaged to prosecute alleged breaches of the Ethics Code by public officials.

Finally, the OAG would like to solicit the Committee’s assistance and support to ensure that the OAG is adequately resourced and funded to effectively fulfill its duties, including the ones contained in Bill No. 5.

Respectfully,



Junior Patrick
Auditor-General

Cc: Members, Nitijela Standing Committee on Judicial & Governmental Relations