
A BILL FOR AN ACT

RELATING TO THE PERFORMING ARTS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. The purpose of this Act is to enhance and
2 broaden the purposes of the State of Hawaii endowment fund,
3 which is a separate fund of the Honolulu symphony trust. The
4 legislature finds that the income and capital gains from the
5 endowment fund should also be used for music production,
6 performances, and music education, in addition to the current
7 limited purpose of the production of music by an Oahu-based
8 symphony orchestra.

9 The legislature notes that, to date, the state foundation
10 on culture and the arts has not played a significant role in the
11 management and administration of the fund. More importantly, as
12 of December 2010, the Honolulu symphony society filed for
13 Chapter 7 bankruptcy. After the bankruptcy of the Honolulu
14 Symphony, the Honolulu Symphony Foundation, a separate,
15 nonprofit fundraising entity, has helped manage the Hawaii
16 Symphony Orchestra and raised enough funds to begin funding
17 performances again and to fill the cultural void created by the
18 Honolulu Symphony's departure. In addition to the Hawaii



1 Symphony Orchestra's rebirth, it has a new mission. Performing
2 and music production remain large parts of their mission, but
3 now the Hawaii Symphony Orchestra will also focus on music
4 education, particularly through the Honolulu Youth Symphony.

5 The purpose of this Act is to amend the endowment fund to
6 give more flexibility for use by the Hawaii Symphony Foundation
7 for music production, performance, and youth education.

8 SECTION 2. Section 40-88, Hawaii Revised Statutes, is
9 amended to read as follows:

10 **"§40-88 State of Hawaii endowment fund created. (a)**

11 There shall be established [~~as a separate fund of the Honolulu~~
12 ~~symphony trust created by the trust agreement dated December 5,~~
13 ~~1986,~~] a fund to be known as the State of Hawaii endowment fund.
14 The income and capital gains from the [~~\$2,000,000 contributed by~~
15 ~~the State of Hawaii shall be transferred on a quarterly basis to~~
16 ~~the state foundation on culture and the arts, performing and~~
17 ~~visual arts events private contribution account to]~~ fund shall
18 be used for the production of music by an Oahu-based symphony
19 orchestra or for the education of children in school in
20 preparation for the production of music with instruction by a
21 performer from an Oahu-based symphony orchestra existing prior
22 to the enactment of Act , Session Laws of Hawaii 2012, as



1 determined by the state foundation on culture and the arts. The
2 State of Hawaii endowment fund shall be subject to the
3 restrictions that:

4 (1) No part of the principal amount contributed to the
5 fund by the State [~~or by matching grants~~] shall be
6 used for operations of the [~~Honolulu~~] Oahu-based
7 symphony[+] orchestra; provided that in exigent
8 circumstances, as determined by the state foundation
9 on culture and the arts, the foundation may permit no
10 more than three per cent of the principal amount to be
11 used, pursuant to rules adopted under chapter 91;

12 (2) Income and capital gains from the fund shall not be
13 distributed for use in the operations of the
14 [~~Honolulu~~] Oahu-based symphony orchestra during any
15 period that the value of the fund shall be less than
16 the principal amounts contributed to the fund[~~and~~];
17 provided that in exigent circumstances, as determined
18 by the state foundation on culture and the arts, the
19 foundation may permit no more than three per cent of
20 income and capital gains from the fund to be used,
21 pursuant to rules adopted under chapter 91;



1 (3) The amounts contributed to the fund by the State shall
2 revert to the State to the extent that [~~matching or~~
3 ~~other~~] conditions to the grant of the funds are not
4 met[, ~~and the~~]; and

5 (4) The fund [~~also~~] shall be subject to additional
6 restrictions as may be imposed with respect to
7 transfers of funds in future legislation appropriating
8 sums to be contributed to the fund.

9 [~~(b) Matching conditions set forth in legislation~~
10 ~~appropriating funds to be contributed to the State of Hawaii~~
11 ~~endowment fund, including conditions in previous legislation~~
12 ~~appropriating sums for the fund, shall be satisfied to the~~
13 ~~extent that any of the following shall be received prior to the~~
14 ~~date by which the funds are to be matched:~~

15 ~~(1) Cash, including the United States dollar equivalent of~~
16 ~~foreign currency, on the date of its contribution to~~
17 ~~the fund,~~

18 ~~(2) Personal property, including securities and cash value~~
19 ~~of life insurance policies, and real property~~
20 ~~transferred to the symphony, valued by appraisal,~~
21 ~~market quotations or other generally accepted~~



1 ~~valuation methods as of a date on or about the date of~~
2 ~~contribution of the property to the fund; and~~
3 ~~(3) All portions of pledges that are payable not later~~
4 ~~than five full years following the date by which the~~
5 ~~funds contributed by the State are to be matched;~~
6 ~~provided that any sums appropriated by the State and~~
7 ~~matched by such pledges within the matching period~~
8 ~~shall revert to the general fund to the extent the~~
9 ~~sums appropriated by the State are not matched by~~
10 ~~actual payment of such pledges within the five year~~
11 ~~period.~~

12 ~~(e)]~~ (b) In the event that any funds contributed by the
13 State are to revert to the general fund of the State, pursuant
14 to subsection (a) (3) [~~or (b) (3),~~], the amount of the reversion
15 shall be equal to the principal amount of the funds contributed
16 by the State [~~that have not been matched,~~] for which conditions
17 to the grant of funds have not been met and no part of any
18 interest, gains, or other earnings on said principal amount
19 shall revert to the State.

20 ~~(d)]~~ (c) The aggregate principal sum in the fund shall be
21 invested in accordance with the provisions of the Honolulu
22 symphony trust in a manner intended to maximize the rate of



1 return on investment of the fund consistent with the objective
2 of preserving the principal amounts contributed to the fund. In
3 the event of the termination of the Honolulu symphony trust, the
4 principal amount of all contributions made by the State to the
5 State of Hawaii endowment fund shall be distributed to the
6 general fund of the State and any other amounts remaining in the
7 State of Hawaii endowment fund shall be distributed in
8 accordance with the provisions of the Honolulu symphony trust.
9 An annual audit by an independent auditor covering the State of
10 Hawaii endowment fund shall be submitted to the department of
11 accounting and general services by the [~~Honolulu~~] Oahu-based
12 symphony[-] orchestra."

13 SECTION 3. Act 97, Session Laws of Hawaii 2006, section 2,
14 as amended by Act 156, Session Laws of Hawaii 2007, section 1,
15 as amended by Act 65, Session Laws of Hawaii 2009, section 1, is
16 amended to read as follows:

17 "SECTION 2. There is appropriated out of the general
18 revenues of the State of Hawaii the sum of \$4,000,000 or so much
19 thereof as may be necessary for fiscal year 2006-2007 to be
20 deposited into the State of Hawaii endowment fund, from which
21 the income and capital gains shall be used for the production of
22 music by an Oahu-based symphony orchestra[~~;- provided that the~~



1 ~~funds appropriated in this section are matched, dollar for~~
2 ~~dollar, by private funds or pledges pursuant to section 40-88,~~
3 ~~Hawaii Revised Statutes; provided further that all pledges or~~
4 ~~portions of pledges not collected by February 28, 2013, shall~~
5 ~~cause any unexpended or unencumbered balance from the~~
6 ~~appropriation to revert to the general fund.] or for the~~
7 education of children in school in preparation for the
8 production of music with instruction by a performer from an
9 Oahu-based symphony orchestra, including any Oahu-based youth
10 symphony orchestra existing prior to the enactment of this Act.

11 The sum appropriated shall be expended by the department of
12 accounting and general services for the purposes of this Act."

13 SECTION 4. There is appropriated out of the general
14 revenues of the State of Hawaii the sum of \$ or so
15 much thereof as may be necessary for fiscal year 2012-2013 for
16 the production of music by an Oahu-based symphony orchestra or
17 for the education of children in school in preparation for the
18 production of music with instruction by a performer from an
19 Oahu-based symphony orchestra, including any Oahu-based youth
20 symphony orchestra existing prior to the enactment of this Act.

21 The sum appropriated shall be expended by the department of
22 accounting and general services for the purposes of this Act.

1 SECTION 5. Statutory material to be repealed is bracketed
2 and stricken. New statutory material is underscored.

3 SECTION 6. This Act shall take effect on July 1, 2012.



Report Title:

Oahu-based Symphony Orchestra; State Foundation on Culture and the Arts

Description:

Increases the flexibility of funds from the State of Hawaii endowment fund and expands its use to allow for music education by professional musicians; allows a portion of the fund to be used for the operations of an Oahu-based symphony orchestra during exigent circumstances; and eliminates matching conditions for funds. Makes an appropriation for an Oahu-based symphony orchestra. Effective July 1, 2012. (HB2297 HD1)

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