

ACT 82

S.B. NO. 1732

A Bill for an Act Relating to the Establishment of an Educational Non-Profit Public Corporation to Administer and Operate the Center for Cultural and Technical Interchange Between East and West.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Short title. This Act shall be known and may be cited as the "East-West Center Corporation Act."

SECTION 2. Statement of findings and declaration of purpose. The legislature hereby finds and declares that: (a) the United States Congress, in order to promote better relations and understanding between the United States and the nations of Asia and the Pacific (hereinafter referred to as "the East") through cooperative study, training, and research has enacted legislation authorizing the establishment in the State of Hawaii of a center for cultural and technical interchange between East and West (hereinafter referred to as the "East-West center") where scholars and students in various fields from the nations of the East and West may study, give and receive training, exchange views and ideas, and maintain a balance of cultural and technical programs, and conduct other activities in support of the objectives of the acts

of the Congress promoting the international educational, cultural, and related activities of the United States; (b) the Congress has designated the State of Hawaii as the location of the East-West center because of its geographical position and its unique multi-cultural society, which make Hawaii an important link between the United States and the East; (c) the secretary of state, at the direction of the Congress, has provided for the establishment of the East-West Center in Hawaii as an educational institution and has provided for grants, fellowships, scholarships and other payments to outstanding scholars and authorities and qualified students from the nations of the East and West and has further provided for making the facilities thereof available for study or training to other qualified persons; (d) the Congress has appropriated funds thus far in the amount of approximately \$95 million to enable the secretary of state to provide for the establishment and continued operation of the East-West center and otherwise to carry out the provisions of the authorizing legislation by making such funds available by grant to the University of Hawaii, which the governor of the State had heretofore designated as the appropriate agency of the State to make arrangements with the secretary of state to administer the East-West center; (e) the State, and particularly the university, have closely cooperated with and assisted the secretary of state in this endeavor by making available land, facilities and services and desire to give continuing assistance to the East-West center; (f) as the result of the combined efforts of these parties, the East-West center has attained a high degree of international recognition and stature as a national educational institution dedicated to the promotion of better relations and mutual understanding between the East and West; (g) the existence of the East-West center in Hawaii has greatly benefitted the United States as well as the State, particularly in their relations with the nations of the East; (h) the East-West center has now attained that degree of institutional and programmatic maturity such that its further development and its effective fulfillment of its objectives can best be achieved through the establishment of an educational non-profit public corporation to make arrangements with the secretary of state to administer and operate the East-West center; (i) the establishment of such corporation would continue and enhance the special and unique relationship between the State and the rest of the United States which is embodied in the East-West center; (j) the governor has indicated that he will designate such corporation to make arrangements with the secretary of state to administer the East-West center; (k) it is also desirable and appropriate that such corporation enhance the role of the East-West center among the nations of the East and the West by making available and promoting the use of the facilities of the East-West center by qualified persons for study, training, and research in matters of East-West significance; (l) for these purposes, there should be created an educational non-profit public corporation known as the "Center For Cultural And Technical Interchange Between East And West, Inc." which would make arrangements with the secretary of state to administer and operate the East-West center as an educational institution and would make available the facilities of the East-West center for study, training, and research in matters of East-West significance to promote better relations and mutual

understanding between East and West; and (m) it is declared as a matter of legislative determination that such an educational non-profit public corporation organized for such purposes, with the powers and authorities necessary to accomplish them, and continuing and enhancing the special and unique relationship between the State and the rest of the United States cannot be created under any general law, and that such a corporation being necessary and proper to obtain the ends heretofore recited, it should be created by a special act of the legislature.

SECTION 3. Definitions. As used in this Act:

(a) "Authorizing legislation" means Public Law 86-472, chapter VII, enacted by the United States Congress.

(b) "East-West center" means the center for cultural and technical interchange between East and West established in Hawaii pursuant to the authorizing legislation.

(c) "Corporation" means the educational non-profit public corporation created by this Act.

(d) "Governor" means the chief executive officer of the State.

(e) "Secretary of state" means the secretary of state of the United States department of state.

(f) "Assistant secretary of state" means the assistant secretary of state for educational and cultural affairs of the United States department of state, or his successor.

(g) "University" means the University of Hawaii or the board of regents of the University of Hawaii, or both, as the context shall indicate.

(h) "Legislature" means the legislature of the State of Hawaii.

SECTION 4. Establishment of the Center for Cultural and Technical Interchange Between East and West, Inc. There is created an educational non-profit public corporation to be known as the "Center For Cultural And Technical Interchange Between East And West, Inc." The corporation shall be devoted to the educational purposes of this Act and shall not be used to conduct non-educational foreign policy goals of the United States or any other governments. The corporation shall not be considered a department, agency, or public instrumentality of the State, and shall not be subject to the laws of the State applying to departments, agencies and public instrumentalities of the State, except that the corporation shall be subject to all the laws of the State pertaining to non-profit corporations.

SECTION 5. Purposes of the corporation. The corporation shall have the following purposes:

(a) To promote better relations and understanding between the United States and the nations of the East through the administration and operation of the East-West center as an educational institution operating in furtherance of the objectives of the act of the United States Congress authorizing the establishment of the East-West center, and to accomplish this purpose as the appropriate agency designated by the governor to make arrangements with the secretary of state therefor;

(b) To promote among the nations of the East and the West the use of the East-West center by qualified persons for cooperative study, training and research in matters of East-West significance, and thus lead to better relations and understanding as to such matters;

(c) To provide grants, fellowships, and other payments to outstanding scholars and authorities from the nations of the East and the West as may be necessary to attract such scholars and authorities to the East-West center; and

(d) To provide grants, scholarships, and other payments to qualified students from the nations of the East and the West as may be necessary to enable such students to engage in study or training at the East-West center.

SECTION 6. Powers and duties of the corporation. Except as otherwise limited by this Act, the corporation shall have the following powers and duties and shall:

(a) Have succession and corporate existence in perpetuity;

(b) To adopt, amend and repeal bylaws providing for its organization and internal management and governing the conduct of its business and the performance of the powers and duties granted to or imposed upon it by law consistent with this Act and the Act of the United States Congress authorizing the establishment of the East-West center and other relevant laws of the United States and the State; provided that all meetings for the adoption, amendment and repeal of bylaws shall be open to the public, and public notice of any such meeting, including an agenda of items to be discussed at the meeting, shall be announced at least fourteen days in advance and published at least twice in a newspaper of general circulation in the State within the fourteen days but at least seven days prior to the meeting.

(c) Adopt and use a common seal;

(d) Acquire in any lawful manner any property, real, personal, or mixed, tangible or intangible, or any interest therein; to hold, maintain, use, manage, and operate the same; and to sell, lease, rent, or otherwise dispose of the same at such time, in such manner, and to the extent deemed necessary or appropriate to carry out its purposes;

(e) Enter into and perform such contracts, leases, cooperative agreements, or other arrangements as may be necessary to carry out the purposes of this Act and on such terms as it may deem appropriate with any agency or instrumentality of the United States, another nation, a state, territory, or possession, or with any political subdivision of any of the foregoing, or with any person, firm, association, institution, corporation, or organization, whether private, governmental, or international and whether located within or outside of the United States;

(f) Determine the character of and necessity for its obligations and expenditures, and the manner in which the same shall be incurred, allowed, and paid;

(g) Seek, receive and accept from public and private sources whether located within or outside of the United States, by grants, gifts, devices, bequests or otherwise money and property, real, personal, or mixed, tangible

or intangible, absolutely or in trust, to be used in carrying out the purposes of this Act;

(h) Serve as trustee and be named a beneficiary under the terms of any gift, indenture or will;

(i) Appoint and discharge a chief executive officer, subordinate officers, employees, and agents as the business of the corporation requires, and to classify, prescribe the duties and qualifications, and fix the compensation and benefits of all officers, employees, and agents of the corporation;

(j) Establish such policies and procedures as may be necessary, including a personnel system and a budget system;

(k) Enter into employee collective bargaining agreements in conformance with all applicable laws;

(l) Establish an international advisory board of not less than seven nor more than eleven members, whose terms shall be as set forth in the bylaws of the corporation, to advise the corporation on programmatic matters, and to establish such other committees, boards, and bodies as it may from time to time deem desirable, and to prescribe their duties and responsibilities;

(m) Grant a special certificate to individuals who have successfully completed programs of study, training and research conducted by the East-West center;

(n) Establish and maintain, and to assist in establishing and maintaining, scholarships, fellowships, lectureships, chairs, and other staff positions, and to enter into contracts, agreements, and other arrangements with any person, firm, association, institution, corporation, or organization, whether private, governmental, or international and whether located within or outside of the United States, for this purpose, and to pay the necessary and appropriate costs and expenses therefor;

(o) Collect fees and other charges for programs, facilities, services, and educational products, and to hold copyright;

(p) Sue and be sued in its corporate name, except that the corporation shall be immune from any writ of attachment and execution against its assets;

(q) Delegate any of the powers of the corporation to any standing or special committee, board, or body, or to any officer or agent, upon such terms as it deems fit except for the powers granted under subsection (b) hereof;

(r) Execute, in accordance with its bylaws, all contracts and other instruments necessary or appropriate for the exercise of its powers under this Act; and

(s) To do any and all things necessary or appropriate to carry out its purposes and exercise the powers given and granted in this Act.

SECTION 7. Board of governors; appointment; tenure; qualifications; meetings.

(a) The corporation shall have a board of governors which shall manage and control the affairs of the corporation and shall exercise all of the powers of the corporation, except to the extent that they have been delegated by this Act or pursuant to action by the board of governors. The board shall consist of eighteen members as follows:

- (1) The governor, or his designee, shall be an ex officio member, and the governor shall appoint five members who are residents of the State of Hawaii to serve at his pleasure during their terms of office as provided herein;
- (2) The assistant secretary of state, or his designee, shall be an ex officio member, and the secretary of state shall appoint five members to serve at his pleasure during their terms of office as provided herein;
- (3) The president of the university shall be an ex officio, non-voting member who shall serve as the chairman until such time that a chairman is elected by the board from the membership.
- (4) The remaining five members shall be elected by the members of the board.

(b) The term of each appointed or elected member of the board shall be three years, except for those members of the initial board who shall be appointed or elected, as the case may be, and serve terms as follows:

- (1) The governor shall appoint two members for terms of one year, two members for terms of two years and one member for a term of three years.
- (2) The secretary of state shall appoint two members for terms of one year, two members for terms of two years and one member for a term of three years.
- (3) Of the remaining members, two members shall be elected for terms of one year, two members for terms of two years and one member for a term of three years.

Each appointed or elected member, and each initial member appointed or elected for a particular term, of the board shall continue to serve until the successor to such member has been appointed or elected. The term of the initial members shall be computed from the date of the first meeting of the board. The term of each elected member other than the initial members shall be computed from the date of termination of the preceding term, or if there is no preceding term, then from the date of the first meeting of the board following such member's appointment or election. Any member appointed or elected to fill a vacancy occurring prior to the expiration of the term for which such member's predecessor was chosen shall serve for the remainder of such term. No appointed or elected member may serve more than three terms, except that those initial members appointed to a term of less than three years may be appointed or elected to serve for not more than three subsequent terms.

(d) In connection with all appointments or elections to the board, due consideration shall be given to the selection of distinguished individuals who represent a cross-section of educational, cultural, business, labor and public service backgrounds, possess knowledge of, experience in, or profound interest in international, cultural and educational affairs, and in due course reflect as appropriate the different geographical areas encompassed by the programs and activities of the East-West center. Due consideration shall also be given to ensuring that the board appropriately reflects the national character of the East-West center.

(e) Except for the president of the University of Hawaii, employees on the academic, professional, and administrative staff of the East-West center and the University of Hawaii shall be ineligible to be appointed or elected to serve on the board;

(f) The board shall meet at least twice a year and at such time as the board deems necessary. At least half of the number of all meetings of the board in any year shall be held in the State. Public notice of a board meeting, including an agenda of items to be discussed at such meeting, shall be given at least fourteen days in advance. The notice shall be mailed to all persons who have made a timely request of the board for advance notice of its meeting and shall be published at least twice in a newspaper of general circulation in the State.

SECTION 8. Officers and employees.

(a) The board shall appoint a chief executive officer of the corporation, who shall serve at the pleasure of the board and shall be designated by an appropriate title, to administer the East-West center.

(b) The chief executive officer, subject to approval by the board, shall appoint and remove such subordinate officers and other employees and duly authorized representatives of the corporation as he determines, in consultation with the board, to be necessary to carry out the purposes of the corporation; provided that the board shall have the right to delegate to the chief executive officer or to committees or otherwise the right to appoint such subordinate officers, employees, and duly authorized representatives without approval of the board.

(c) The chief executive officer, employees and duly authorized representatives of the corporation shall be compensated at rates determined by the board.

(d) The chief executive officer, or his designee, shall be available for monthly meetings with participants on matters of mutual interest.

(e) All employees of the corporation shall have full rights under all applicable laws to self-organization, to form, join, or assist labor organizations to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection and shall have the right to refrain from any or all such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as may be permitted under all applicable laws; provided that the corporation shall recognize the continuing effect of collective bargaining agreements in effect on the effective date of this Act covering employees of the East-West center until such agreements are altered or amended by the parties in conformance with all applicable laws.

(f) Except as otherwise specifically provided in this Act, the chief executive officer, any subordinate officers, and other employees and duly authorized representatives of the corporation shall not be considered officers or employees of the State for the purposes of any state law, regulation or executive order.

SECTION 9. Academic freedom. The corporation shall uphold and preserve academic freedom in all of the programs and activities of the East-West center. The corporation shall adopt a policy statement on academic freedom which shall extend to all programs and activities and all participants and staff of the East-West center. The corporation shall neither conduct nor support any classified activity or research and it shall make the results of its activities and research available to the public.

SECTION 10. (Not used.)

SECTION 11. Special limitations.

(a) The corporation shall have no power to issue any shares of stock, or to declare or pay any dividends.

(b) No part of the income or assets of the corporation shall inure to the benefit of any member of the board, the chief executive officer, any employee, or any individual, except as reasonable compensation for services or reimbursement for expenses.

(c) The corporation shall not undertake to influence the policy and passage or defeat of any legislation by the United States Congress or by any state or local legislative bodies or by any legislative body of any other nation, except that members of the board and personnel of the corporation may testify or make other appropriate communications where formally requested to do so by a legislative body or a committee or a member thereof, or in connection with legislation or appropriations directly affecting the East-West Center.

(d) The corporation shall not contribute to, participate or intervene in, or otherwise support or assist any political party or association, or the campaign of any candidate for public or party office.

SECTION 12. Records and reports.

(a) The corporation shall keep accurate and complete books of account and minutes of the proceedings of the board and of any committees, boards, or bodies to which the board has delegated any of its powers.

(b) The corporation shall publish an annual report which shall be filed by the corporation with the governor and the secretary of state, the legislature, the president of the University of Hawaii, and the director of regulatory agencies who shall maintain a copy for public inspection during regular office hours.

SECTION 13. Dissolution. In the event of the dissolution or liquidation of the corporation, all assets remaining after satisfaction of, or provision for satisfaction of, all obligations, debts, and liabilities of the corporation shall be distributed to a non-profit fund, foundation, or corporation which is organized and operated exclusively for educational purposes and which has established its tax exempt status under section 501(c)(3) of the Internal Revenue Code of 1954, as amended, or to the United States, or to the State; provided that all lands designated in perpetuity for the East-West center by the board of regents and the buildings and fixtures thereon or hereafter constructed thereon and affixed thereto shall remain in the University of Hawaii.

SECTION 14. Transition provisions.

(a) The disposition of the rights and powers acquired, and the duties, obligations, and liabilities incurred, by the university in its administration of the East-West Center as well as the disposition of the assets, equipment, appropriated funds, property, and records involved in the administration of the East-West Center shall be covered by agreements concluded by the university, the board of governors of the corporation, and the secretary of state, to enter into full force and effect upon the effective date of this Act;

(b) No later than six months from the effective date of this Act, all persons who were working for the East-West Center as of December 31, 1974 and who (i) fall within the definition of "employee" contained in chapter 89 or are top-managerial and administrative personnel or are individuals concerned with confidential matters affecting employer-employee relations, and (ii) are covered under the employment security provisions of any applicable collective bargaining agreements then in effect, shall elect to become or not to become employees of the corporation. Each such person who elects not to become an employee of the corporation shall continue in his employment arrangements existing prior to such date, with appropriate reimbursement for future services by the corporation to the university, and shall thereupon be subject to the following provisions, as applicable:

- (1) An employee who is a board of regents appointee shall be entitled to receive not more than two reasonable offers from the university for employment with the university in positions appropriate to his specialty, rank, and compensation. If such employee declines both offers, the university shall be under no further obligation with respect to the employment of such employee, subject to any applicable collective bargaining agreements then in existence, as may be amended from time to time.
- (2) An employee who is a State civil service employee shall be placed on the select priority list of the department of personnel services in accordance with section 2.303a(1) of the rules and regulations of such department, and shall be entitled to receive not more than two reasonable offers for positions within the State civil service for which he applies and is qualified. If such employee declines both offers, the department of personnel services shall be under no further obligation with respect to the employment of such employee, subject to any collective bargaining agreements then in existence, as may be modified from time to time.

It is the intent of the legislature that the transfer of those so electing to positions within the university or other State departments be accomplished with maximum consideration of their interests as employees.

(c) (1) In determining the service credits of its employees, the corporation shall credit service with the university or the State performed by board of regents appointees or State civil service employees who elect to become employees of the corporation within the six-month election period provided for in subsection (b) above on the same basis as it would credit such service had the same been performed in the employ of the corporation, provided that

the corporation shall not credit such service for those employees of the corporation electing either of the options under subsection (e)(1) or (2) of this Act for the purpose of determining membership service in the retirement system established by the corporation.

(2) In determining the service credits of board of regents appointees, the university, in accordance with applicable university policies and collective bargaining agreements then in effect, shall credit service with the East-West center performed by such employees who elect to remain employees of the university no later than six months from the effective date of this Act as provided for in subsection (b) above on the same basis as it would credit such service had the same been performed in the employ of the university.

(d) (1) In determining the vacation and sick leave of its employees, the corporation shall credit the vacation and sick leave accumulated and earned by board of regents appointees or State civil service employees who elect to become employees of the corporation within the six-month election period provided for in subsection (b) above as of the date of such election on the same basis that such accumulated and earned vacation and sick leave would have been credited for such employees prior to the effective date of the Act. The university shall transfer to the corporation any funds accumulated for vacation credits on behalf of those board of regents appointees and State civil service employees who elect to become employees of the corporation.

(2) In determining the vacation and sick leave of board of regents appointees, the university shall credit the vacation and sick leave accumulated and earned by such employees who elect to remain employees of the university no later than six months from the effective date of this Act as provided for in subsection (b) above on the same basis as it would credit such vacation and sick leave had the same been accumulated and earned in the employ of the university. The corporation shall, at the time such employee accepts other employment as provided in subsections (b)(1) or (2) above, transfer to the university funds adequate to meet his vacation credits earned while working at the East-West center.

(e) No later than six months from the effective date of this Act, all persons who were working for the East-West center as of December 31, 1974 who (i) fall within the definition of "employee" contained in chapter 88 and (ii) elect to become employees of the corporation, shall elect one of the following options:

- (1) To continue to be a member in the State retirement system established by chapter 88, and the corporation shall deposit currently in such system an amount equal to the combined total amount of the employee deductions and employer contributions required by chapter 88; for the purpose of this subparagraph (1) only, the employee of the corporation shall be considered as an "employee" under chapter 88; or
- (2) To cease to be a member in the State retirement system but to receive an annuity and other benefits as provided in chapter 88, and to become a member of the retirement system established by the corporation; or

(3) To cease to be a member in the State retirement system and to withdraw his contributions in accordance with chapter 88 and to become thereafter a member of the retirement system established by the corporation.

(f) Collective bargaining agreements in effect on the effective date of this Act covering employees of the East-West center shall continue in full force and effect and shall be recognized by the corporation until the termination date of such agreements, or until mutually modified by the parties. On the effective date of this Act, the corporation shall succeed to all of the rights, powers, duties, and obligations of the university thereunder as the same pertain to and affect the East-West center, and the corporation and the recognized employee representative thereunder shall, as mutually agreed upon, modify such agreements to reflect such succession.

(g) The legislature expresses its desire that the assistant secretary of state, or his designee, shall take such action as may be necessary and desirable, with the president of the university, to arrange for and ensure the orderly continuation of programs and activities in effect on the effective date of this Act in which both the university and the East-West center are involved.

SECTION 15. No residential dormitory space within the University of Hawaii Manoa campus, except those certain residential dormitory buildings identified as Hale Manoa and Lincoln Hall, may be converted for other than residential dormitory use.

SECTION 16. Except for the original area of land made available by the university for East-West center purposes, pursuant to the grant-in-aid agreements previously entered into by the university and the department of State, as continued and amended, any disposition of land or granting of any right or interest in land by the university to the corporation or the federal government for the purposes of the corporation shall be subject to the approval by a majority vote of each house of the legislature in joint session.

SECTION 17. Any development and construction of improvements for new East-West center buildings on the University of Hawaii Manoa campus shall be subject to the prior approval of the university.

SECTION 18. Severability. If any provision of this Act, or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable.

SECTION 19. Sections affected.

(a) Section 88-21, Hawaii Revised Statutes, is amended by amending the definition of "employee" to read as follows:

"Employee": any employee or officer of the State or any county, including inspectors, principals, teachers and special teachers, regularly employed in the public schools, cafeteria managers and cafeteria workers, apprentices and on-the-job trainees whether or not supported in whole or in

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part by any federal grants, members of the legislature and other elective officers, legislative employees who are employed on a full time basis during and between sessions, probationary and provisional employees, any employee of the educational nonprofit public corporation as provided in section 88- , per diem employees and others who are made eligible by reason of their employment to membership in the system by or pursuant to any other provision of law, but excluding:

- (1) Per diem employees who elect to withdraw or not to become members as provided in section 88-42;
- (2) Members of the legislature who do not elect to be members as provided in section 88-42;
- (3) Persons excluded by rules of the board pursuant to section 88-43.

An individual is an employee during the period of a leave of absence if he is in service, as defined in this part, during the period of the leave of absence and the board shall determine who are employees within the meaning of this part.”

(b) Chapter 88, Hawaii Revised Statutes, is amended by adding a new section to read:

“**Section 88. East-West center employees.** Any employee of the center for cultural and technical interchange between East and West, Inc., a Hawaii educational non-profit public corporation, who elected to remain a member of the system pursuant to section 14(e)(1) of the Act establishing such corporation, shall be entitled to all benefits and required to make all employee contributions under the system for the period during which such employee remains in the employ of such corporation and a member of the system, and such corporation shall be responsible for the remittance of all employer and employee contributions required to be made under the system.”

(c) New material is underscored. In printing this Act, the revisor of statutes need not include the underscoring.*

SECTION 20. This Act shall take effect on July 1, 1975.

(Approved May 14, 1975.)

*Edited accordingly.