

**ACT 115**

H.B. NO. 2560

A Bill for an Act Relating to the University of Hawaii.

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

SECTION 1. The legislature finds as follows:

- (1) An essential ingredient of economic vitality for Hawaii is the development and maintenance of preeminent institutions of higher learning;
- (2) Under Article X, section 5 of the Hawaii State Constitution, the University of Hawaii is established as our state university, constituted as a body corporate, and designated as holding title “to all the real and

personal property now or hereafter set aside or conveyed to it,” to be “held in public trust for its purposes, to be administered and disposed of as provided by law”;

- (3) The governor, president of the senate, and the speaker of the house of representatives convened an economic revitalization task force to evaluate and propose comprehensive measures to regenerate Hawaii’s economy;
- (4) One of the task force’s principal recommendations was to provide greater “autonomy” to the University of Hawaii, meaning the devolution to the board of regents and the university community of substantially increased decision-making authority and responsibility with respect to fulfillment of the university’s constitutional role and administration of its constitutionally-designated assets and public trust undertakings;
- (5) The task force’s conclusion, which this legislature endorses and this Act implements, was that autonomy for the university would materially enhance the university’s performance of its constitutional responsibilities and thereby contribute significantly to economic revitalization;
- (6) Under this Act, the university board of regents and administration are delegated substantially increased authority and decision-making power over the real and personal assets held in public trust pursuant to the Constitution and the management of the human resources and programs of the university, including but not limited to the ability to:
  - (A) Develop real and personal assets and obtain and retain revenues therefrom;
  - (B) Develop and administer procurement regulations appropriate specifically to the university; and
  - (C) Retain legal counsel and resolve disputes using university assets; and as a public educational institution, the university should have unencumbered use of all its assets and resources;
- (7) Under this Act, it is the legislature’s expectation that the university board of regents and administration will implement autonomy through devolution in turn to the appropriate levels of the university system, particularly provosts, chancellors, deans, and directors, to realize fully the benefits of creativity, dynamism, and rapid adjustment ability which accrue from devolution and decentralization;
- (8) Under this Act, the university board of regents and administration are also delegated substantially increased responsibility and accountability for the consequences of their decisions and actions on matters within the purview of their autonomous authority; and
- (9) Under this Act, the university’s fulfillment of its autonomous functions and constitutional responsibilities is also assured in a number of ways, primarily:
  - (A) Continued periodic reports to the legislature on benchmark and performance indicators;
  - (B) Periodic reports to the legislature on:
    - (i) The revenues and expenditures of the programs included under three funds created by this Act;
    - (ii) The University of Hawaii tuition and fees special fund; and
    - (iii) Administrative decentralization efforts;
  - (C) Internal and external financial audits in compliance with federal and state regulations; and

- (D) Continued accreditation and program reviews, including regional accreditation by the Western Association of Schools and Colleges and specialized program accreditation.

By having autonomy over its revenues and other resources, the university will be empowered with full fiscal benefit, responsibility, and oversight to determine its future, thereby enhancing the quality of education and the greater public good.

The granting of autonomy to the University of Hawaii will achieve its worthy goals only if collaboration characterizes the way in which the university operates. Internally, the University President and those who report directly to the President must communicate with, and invite participation from, every level of the organization in making policy decisions. This kind of participation should permeate the entire organization. In many cases, students should also be invited to participate in the decision-making process. True collaboration will lead to a feeling of belonging, a sense of unity, and a common purpose among all members of the university community.

In addition to collaboration within the University community, collaboration between the University and the broader community is also critical. The broader community represents both the beneficiaries of the University, as well as resources that can help advance the University. All levels of the University should communicate and collaborate with representatives of commerce and industry, labor organizations, the public school system, other government agencies at the county, state, and federal levels, alumni, and other constituencies. Collaboration, both internal and external, is key to realizing the highest potential for both the University and the broader community.

The concept of collaboration is not inconsistent with the principals of collective bargaining, and the intent of this Act is to support this hard-earned right of employees. This Act extends collective bargaining by authorizing members of bargaining unit (7) to make retirement benefits an issue of their collective bargaining so that those benefits can be considered as part of the total cost package of the settlement.

It is the legislature’s intent that the autonomy provided to the university under this Act be fully implemented, all with the overall goal of increasing the strength and reputation of the university as a world-class educational institution and thereby contributing to overall economic revitalization.

SECTION 2. Chapter 304, Hawaii Revised Statutes, is amended by adding twelve new sections to be appropriately designated and to read as follows:

**“§304- University attorneys.** The board of regents may appoint or retain by contract one or more attorneys who are independent of the attorney general, to provide legal services for the university, including:

- (1) Representation for the university in civil actions to which the university is a party, either directly or through the acts or omissions of its officers or employees;
- (2) Advice and assistance to ensure the lawful and efficient administration and operation of the university;
- (3) Review and approval of documents relating to the acquisition of land or interest in land by the university; and
- (4) Other legal service specified by the board of regents.

The board of regents may fix the compensation of the attorneys appointed pursuant to this section. Attorneys appointed or retained by contract shall be exempt from chapters 76, 77, and 89.

**§304- Indemnification of collaborating institutions.** (a) The board of regents may indemnify collaborating institutions from claims arising against them for the gross negligence or wilful misconduct of the university's officers, employees, and agents in the course of their employment, in connection with the university's use, storage, or disposal of materials owned or licensed by a collaborating institution that are purchased by the university from or transferred to the university by the collaborating institution for research or training purposes.

(b) The university shall use the materials transfer agreements recommended and approved by the Association of University Technology Managers to confer the indemnification authorized by this section.

(c) Indemnification claims authorized by this section shall be payable solely from the moneys and property of the university, and shall not constitute a general obligation of the State, or be secured directly or indirectly by the full faith and credit of the State or the general credit of the State, or by any revenues or taxes of the State. The board of regents may obtain loss insurance to cover the liability of the university that may arise under this section; provided that loss insurance for the university shall be at the university's expense.

**§304- Contracts for services provided by the research corporation of the University of Hawaii.** (a) Notwithstanding any law to the contrary, when the university determines that neither the university nor another state agency can more effectively or efficiently accomplish the purposes of the sponsored research and training activities, the university shall contract with the research corporation of the University of Hawaii established under chapter 307 to provide management and other services as described in subsection (b) to support the university's research and training activities. Contracts by the university with the research corporation pursuant to this section shall be limited to sponsored research and training projects, except that university projects supported by state-appropriated funds may also be contracted to the research corporation pursuant to rules adopted by the university.

(b) Management and other support services provided by the research corporation pursuant to this section may include:

- (1) The procurement of goods and services;
- (2) Employment of personnel; and
- (3) The provision of advance funding for research and training contracts and grants.

These services may be provided by the corporation to the university without regard to chapter 76, 77, 78, 89, or 103D.

**§304- University of Hawaii community services special fund.** (a) There is established the University of Hawaii community services special fund. Except as otherwise provided by law, all revenues, including interest, derived and collected from the university's provision of public service programs shall be deposited into the University of Hawaii community services special fund. The university may establish and collect fees and charges for public service programs. All revenues deposited into the University of Hawaii community services special fund shall be used exclusively for the costs of providing public service programs. The university may establish accounts under the community services special fund to facilitate the administration of this fund among the various campuses and operating units of the University of Hawaii system. All expenditures from this fund shall be subject to legislative appropriation.

- (b) As used in this section, "public service programs" means:
- (1) Noncredit educational programs in professional development and training, personal growth, and cultural enrichment; and
  - (2) Cooperative extension and consultative services.

**§304- University of Hawaii auxiliary enterprises special fund.** (a)

There is established the University of Hawaii auxiliary enterprises special fund. Except as otherwise provided by law, all revenues, including interest, derived and collected from the university's provision of auxiliary services shall be deposited into the University of Hawaii auxiliary enterprises special fund and shall be expended solely for the costs of providing these services. The university may establish and collect fees and charges for the costs of providing these services. The university also may transfer other funds into the University of Hawaii auxiliary enterprises special fund to offset the cost of these services. The university may establish accounts under the University of Hawaii auxiliary enterprises special fund to facilitate the administration of this fund among the various campuses and operating units of the University of Hawaii system. All expenditures from this fund shall be subject to legislative appropriation.

(b) As used in this section, "auxiliary services" means those services provided by the university to students, faculty, staff, and others that are ancillary to, but facilitate the instruction, research, and public service missions of the university, and may include food services, transportation services, counseling and guidance, and laboratory animal services.

**§304- University of Hawaii facilities use revolving fund.** (a)

There is established the University of Hawaii facilities use revolving fund, into which shall be deposited all revenues collected by the university for the use of university facilities, except as otherwise provided by law. The board of regents may establish fees and charges, including those for the use of university facilities, which include land, buildings, grounds, furnishings, and equipment. The board of regents shall be exempt from the public notice and public hearing requirements of chapter 91 in establishing and amending the fees and charges. The university may establish separate accounts within the revolving fund for major program activities. Funds deposited into the revolving fund accounts shall be expended to pay the costs of operating university facilities, including maintenance, administrative expenses, salaries, wages, and benefits of employees; contractor services, supplies, security, furnishings, equipment, janitorial services, insurance, utilities, and other operational expenses. All expenditures from this fund shall be subject to appropriation.

(b) As used in this section, "maintenance" includes repairs, replacement, renewals, operation, and administration.

**§304- University of Hawaii equipment.**

The board of regents may define or establish the value, useful life, and any other characteristic of the university's nonexpendable, tangible personal property, for all purposes for which these characteristics must be defined or established, including inventory and surplus property control and the preparation of financial statements, but excluding the determination of cost elements related to the issuance of general obligation bonds.

**§304- Appropriations for special and revolving funds of the University of Hawaii.**

In any fiscal year if the amount of revenues deposited into a special or revolving fund of the university exceeds the amount appropriated from that fund for that year, the president may approve expenditures in excess of the amount appropriated, up to the amount by which revenues for that fund exceed the appropriations from that fund for a fiscal year; provided the university shall submit annually a report to the governor and the legislature of all expenditures in excess of each fund's appropriation for each fiscal year.

**§304- Management of special and revolving funds of the University of Hawaii.** In managing special and revolving funds under its control, the university board of regents shall ensure that:

- (1) The purposes for which special and revolving funds are expended, encumbered, or transferred, benefit those upon whom fees and charges are imposed through these funds; and
- (2) Fees and charges are fair and equitable with respect to the level and quality of services provided to those upon whom fees and charges are imposed.

**§304- University of Hawaii workers' compensation and unemployment insurance compensation special fund.** There is established a University of Hawaii workers' compensation and unemployment insurance compensation special fund into which shall be deposited all revenues derived from assessments for workers' compensation costs and unemployment insurance compensation costs against the special fund payroll of University of Hawaii employees. Revenues deposited into this account may be expended by the university for all costs and expenses associated with the administration of the university's workers' compensation and unemployment insurance compensation programs, including benefits payments, claims administration, settlements, insurance premiums, and legal fees.

**§304- University of Hawaii workers' compensation and unemployment insurance compensation revolving fund.** There is established a University of Hawaii workers' compensation and unemployment insurance compensation revolving fund into which shall be deposited all revenues derived from assessments for workers' compensation costs and unemployment insurance compensation costs against the revolving fund payroll of University of Hawaii employees. Revenues deposited into this account may be expended by the university for all costs and expenses associated with the administration of the university's workers' compensation and unemployment insurance compensation programs, including benefits payments, claims administration, settlements, insurance premiums, and legal fees.

**§304- Special and revolving fund fees and charges.** In establishing or amending fees or charges that generate receipts for deposit into any University of Hawaii special or revolving fund, the board of regents shall be exempted from the public notice, public hearing, and gubernatorial approval requirements of chapter 91. The fees and charges may be established at an open meeting subject to the requirements of chapter 92. These fees and charges may include laboratory fees, special instructional fees, fees for admission to events, rental rates for facilities, equipment, or real property, and services provided to other government agencies and to the public.'

SECTION 3. Chapter 88, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**“§88- University of Hawaii optional retirement system.** (a) Notwithstanding any other law to the contrary, the board of regents may establish without regard to the public notice or public hearing requirements of chapter 91, a retirement system separate from the state employees' retirement system to provide retirement allowances and other benefits for University of Hawaii employees who are:

- (1) Members of bargaining unit (7); or
- (2) Other employees of the University of Hawaii or the community college system who are excluded from bargaining unit (7) pursuant to chapter 89.

(b) The general administration and the responsibility for the proper operation of the optional retirement system of the University of Hawaii shall be vested in the board of regents. The board of regents may manage the optional retirement system within the University of Hawaii or contract for the management of the optional retirement system.

(c) The board of regents may establish vesting periods for the members of the optional retirement system of the University of Hawaii that are different from those established in this chapter.

(d) The board of regents may establish retirement allowances and other benefits for the optional retirement system of the University of Hawaii.

(e) The employer’s share of the cost of the optional retirement plan of the optional retirement system of the University of Hawaii shall not exceed the equivalent amount for any other group covered by this chapter.

(f) Any member of the state employees’ retirement system when the optional retirement system of the University of Hawaii is established who is also:

- (1) A member of bargaining unit (7); or
- (2) Other employees of the University of Hawaii or the community college system who are excluded from bargaining unit (7) pursuant to chapter 89,

shall remain a member of the state employees’ retirement system unless the person elects in writing on a form prescribed by the board of regents to terminate the person’s membership. The form shall be submitted to the state employees’ retirement system no later than ninety days after the establishment of the optional retirement system of the University of Hawaii.

(g) Any person hired after the establishment of the optional retirement system of the University of Hawaii who is:

- (1) A member of bargaining unit (7); or
- (2) Other employees of the University of Hawaii or the community college system who are excluded from bargaining unit (7) pursuant to chapter 89,

shall elect to be a member of the state employees’ retirement system or the optional retirement system of the University of Hawaii. Upon an election the person may not transfer from one system to the other.

(h) Notwithstanding any other law to the contrary, retirement benefits for the optional retirement system of the University of Hawaii shall be a subject of collective bargaining negotiations for bargaining unit (7).’

SECTION 4. Section 26-52, Hawaii Revised Statutes, is amended to read as follows:

“**§26-52 Department heads and executive officers.** The salaries of the following state officers shall be as follows:

- (1) The salary of the superintendent of education shall be \$90,041 a year;
- (2) The salary of the president of the University of Hawaii shall be set by the board of regents; [provided that effective July 1, 2011, the salary of the president of the University of Hawaii shall be set by the legislature;]
- (3) The salaries of all department heads or executive officers of the departments of accounting and general services, agriculture, attorney general, budget and finance, business, economic development, and tourism, commerce and consumer affairs, Hawaiian home lands, health, human resources development, human services, labor and industrial relations, land and natural resources, public safety, taxation, and transportation shall be \$85,302 a year; and

- (4) The salary of the adjutant general shall be \$85,302 a year; provided that if this salary is in conflict with the pay and allowance fixed by the tables of the regular army or air force of the United States, the latter shall prevail.”

SECTION 5. Section 28-8.3, Hawaii Revised Statutes, is amended as follows:

1. By amending subsection (a) to read:

“(a) No department of the State other than the attorney general may employ or retain any attorney, by contract or otherwise, for the purpose of representing the State or the department in any litigation, rendering legal counsel to the department, or drafting legal documents for the department; provided that the foregoing provision shall not apply to the employment or retention of attorneys:

- (1) By the public utilities commission, the labor and industrial relations appeals board, and the Hawaii labor relations board;
- (2) By any court or judicial or legislative office of the State;
- (3) By the legislative reference bureau;
- (4) By any compilation commission that may be constituted from time to time;
- (5) By the real estate commission for any action involving the real estate recovery fund;
- (6) By the contractors license board for any action involving the contractors recovery fund;
- (7) By the trustees for any action involving the travel agency recovery fund;
- (8) By the office of Hawaiian affairs;
- (9) By the department of commerce and consumer affairs for the enforcement of violations of chapters 480 and 485;
- (10) As grand jury counsel;
- (11) By the Hawaiian home lands trust individual claims review panel;
- (12) By the Hawaii health systems corporation or any of its facilities;
- (13) By the auditor;
- (14) By the office of ombudsman;
- (15) By the insurance division; [or]
- (16) By the University of Hawaii; or
- [(16)] (17) By a department, in the event the attorney general, for reasons deemed by the attorney general good and sufficient, declines, to employ or retain an attorney for a department; provided that the governor thereupon waives the provision of this section.”

2. By amending subsection (c) to read:

“(c) Every attorney employed by any department on a full-time basis, except an attorney employed by the public utilities commission, the labor and industrial relations appeals board, the Hawaii labor relations board, the office of Hawaiian affairs, the Hawaii health systems corporation, the department of commerce and consumer affairs in prosecution of consumer complaints, insurance division, the University of Hawaii, the Hawaiian home lands trust individual claims review panel, or as grand jury counsel, shall be a deputy attorney general.”

SECTION 6. Section 36-27, Hawaii Revised Statutes, is amended to read as follows:

“**§36-27 Transfers from special funds for central service expenses.** Except as provided in this section, and notwithstanding any other law to the

contrary, from time to time the director of finance, for the purpose of defraying the prorated estimate of central service expenses of government in relation to all special funds, except the:

- (1) Special summer school and intersession fund under section 302A-1310;
- (2) School cafeteria special funds of the [community colleges and the] department of education;
- (3) Special funds of [the student housing, summer session, college of continuing education and community service, campus center, Kau'iokahaloa Iki faculty housing development, and the bookstores of] the University of Hawaii;
- (4) State educational facilities improvement special fund;
- (5) Convention center capital special fund under section 206X-10.5 and the convention center operations special fund under section 206X-10.6;
- (6) Special funds established by section 206E-6;
- (7) Housing loan program revenue bond special fund;
- (8) Housing project bond special fund;
- (9) Aloha Tower fund created by section 206J-17;
- (10) Domestic violence prevention special fund under section 321-1.3;
- (11) Spouse and child abuse special account under section 346-7.5;
- (12) Spouse and child abuse special account under section 601-3.6;
- (13) Funds of the employees' retirement system created by section 88-109;
- (14) Unemployment compensation fund established under section 383-121;
- (15) Hawaii hurricane relief fund established under chapter 431P; and
- [(16) The University of Hawaii tuition and fees special fund; and
- (17)] (16) [Division of community hospitals'] Hawaii health systems corporation special funds;

shall deduct five percent of all receipts of all other special funds, which deduction shall be transferred to the general fund of the State and become general realizations of the State. All officers of the State and other persons having power to allocate or disburse any special funds shall cooperate with the director in effecting these transfers. To determine the proper revenue base upon which the central service assessment is to be calculated, the director shall adopt rules pursuant to chapter 91 for the purpose of suspending or limiting the application of the central service assessment of any fund. No later than twenty days prior to the convening of each regular session of the legislature, the director shall report all central service assessments made during the preceding fiscal year.”

SECTION 7. Section 36-30, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

- “(a) Each special fund, except the:
- (1) Transportation use special fund established by section 261D-1;
  - (2) Special summer school and intersession fund under section 302A-1310;
  - (3) School cafeteria special funds of [the community colleges, and] the department of education;
  - (4) Special funds of the [student housing, summer session, college of continuing education and community service, campus center, Kau'iokahaloa Iki faculty housing development and bookstores of the] University of Hawaii;
  - (5) State educational facilities improvement special fund;
  - (6) Special funds established by section 206E-6;
  - (7) Aloha Tower fund created by section 206J-17;
  - (8) Domestic violence prevention special fund under section 321-1.3;
  - (9) Spouse and child abuse special account under section 346-7.5;

- (10) Spouse and child abuse special account under section 601-3.6;
- (11) Funds of the employees' retirement system created by section [89-109;] 88-109;
- (12) Unemployment compensation fund established under section 383-121;
- (13) Hawaii hurricane relief fund established under chapter 431P;
- (14) Convention center capital special fund established under section 206X-10.5 and the convention center operations special fund established under section 206X-10.6; and
- [(15) The University of Hawaii tuition and fees special fund; and
- (16)] (15) [Division of community hospitals'] Hawaii health systems corporation special funds;

shall be responsible for its pro rata share of the administrative expenses incurred by the department responsible for the operations supported by the special fund concerned."

SECTION 8. Section 37-53, Hawaii Revised Statutes, is amended to read as follows:

**"§37-53 Transfer of special funds.** At any time during a fiscal year, notwithstanding any other law to the contrary, any department may, with the approval of the governor or the director of finance if so delegated by the governor, transfer from any special fund relating to such department to the general revenues of the State all or any portion of moneys determined to be in excess of fiscal year requirements for such special fund, except for special funds under the control of the department of transportation relating to highways, airports, transportation use, and harbors activities, [and] special funds under the control of the [division of community hospitals of the department of health.] Hawaii health systems corporation, and special funds of the University of Hawaii. At any time the department of transportation, with the approval of the governor or the director of finance if so delegated by the governor, may transfer from any special fund under the control of the department of transportation, or from any account within any such special fund, to the general revenues of the State or to any other special fund under the control of the department of transportation all or any portion of moneys determined to be in excess of requirements for the ensuing twelve months determined as prescribed by rules adopted pursuant to chapter 91; provided that no such transfer shall be made which would cause a violation of federal law or federal grant agreements."

SECTION 9. Section 37-68, Hawaii Revised Statutes, is amended to read as follows:

**"§37-68 Responsibilities of agencies.** Under such rules as may be prescribed by the director of finance with the approval of the governor:

- (1) Every agency assigned the task of developing programs and preparing program and financial plans, budgetary requests, and program performance reports shall develop such programs and prepare such plans, requests, and reports and submit the same to the director of finance at such times, on such forms, and in such manner as the director may prescribe. For informational purposes, the University of Hawaii shall submit its program and financial plans, budgetary requests, and program performance reports to the legislature at the same time the university submits them to the director of finance. Where new programs are being proposed, every agency shall demonstrate that the program:
  - (A) Is an appropriate function of state government; and, as applicable

- (B) Can be implemented by the public sector as cost-effectively as the private sector while meeting the same plans, goals, objectives, standards, measures of effectiveness, wage, salary, conditions of employment, and employee benefit programs of the State[.];
- (2) Every agency administering state programs and every agency responsible for the formulation of programs and the preparation of program and financial plans, budgetary requests, and program performance reports, shall furnish the department of budget and finance all such documents and information as the department may from time to time require. Each agency shall make available to the legislature and any member or committee of either house of the legislature, all documents and information as may be requested[.]; and
- (3) The director of finance or any employee of the department of budget and finance, when duly authorized, for the purpose of securing information, shall have access to and may examine any books, documents, papers, or records of any agency.”

SECTION 10. Section 37-74, Hawaii Revised Statutes, is amended by amending subsection (d) to read as follows:

“(d) No appropriation transfers or changes between programs or agencies shall be made without legislative authorization; provided that:

- (1) Authorized transfers or changes, when made, shall be reported to the legislature;
- (2) Except with respect to appropriations to fund financing agreements under chapter 37D, the University of Hawaii shall have the flexibility to transfer [general fund appropriations] appropriated funds and positions for the operating cost category among programs [with the same or similar objectives], among cost elements in a program, and between quarters, as applicable; and the Hawaii health systems corporation shall have the flexibility to transfer special fund appropriations among community hospitals facilities as applicable; provided that the Hawaii health systems corporation shall maintain the integrity and services of each individual facility and shall not transfer appropriations out of any facility which<sup>1</sup> would result in a reduction of services offered by the facility, with due regard for statutory requirements, changing conditions, the needs of the programs, and the effective utilization of resources; and
- (3) The university shall account for each transfer implemented under this subsection in quarterly reports to the governor and annual reports at the end of each fiscal year to the legislature and the governor, which shall be prepared in the form and manner prescribed by the governor and shall include information on the sources and uses of the transfer.”

SECTION 11. Section 78-1, Hawaii Revised Statutes, is amended to read as follows:

**“§78-1 Citizenship and residence of government officials and employees; exceptions.** (a) All elective officers in the service of the government of the State or in the service of any county or municipal subdivision of the State shall be citizens of the United States and residents of the State for at least three years immediately preceding assumption of office.

(b) All appointive officers in the service of the government of the State or in the service of any county or municipal subdivision of the State who are employed as department heads, first assistants, first deputies, second assistants, or second deputies to a department head shall be citizens of the United States and residents of the State for at least one year immediately preceding their appointment; however, all others appointed in the service of the government of the State or in the service of any county or municipal subdivision of the State shall be citizens, nationals, or permanent resident aliens of the United States and residents of the State at the time of their appointment. A national or permanent resident alien appointed pursuant to this section shall not be eligible for continued employment unless such person diligently seeks citizenship upon becoming eligible to apply for United States citizenship.

(c) All employees in the service of the government of the State or in the service of any county or municipal subdivision of the State shall be citizens, nationals, or permanent resident aliens of the United States and residents of the State at the time of their application for employment.

“Resident” means a person who is physically present in the State at the time the person claims to have established the person’s domicile in the State and shows the person’s intent is to make Hawaii the person’s permanent residence. In determining this intent, the following factors shall be considered:

- (1) Maintenance of a domicile or permanent place of residence in the State;
- (2) Absence of residency in another state.

(d) For the purpose of obtaining services which are essential to the public interest for which no competent person with the qualifications under subsection (c) applies within forty-five days after the first public notice of the position or a notice of an examination therefor, which notice has been given more than once, and not more often than once a week, statewide, a person without the qualifications, upon prior certification by the state director of human resources development or the personnel director of the appropriate county, and with the approval of the chief executive officer for the State or the political subdivision concerned, may be employed.

(e) For the positions involved in the performance of services in planning and executing measures for the security of Hawaii and the United States, the employees shall be citizens of the United States in addition to meeting the requirement of residency in subsection (c).

[(f) The requirements of subsections (c), (d), and (g) shall not apply to persons recruited by the University of Hawaii under the authority of section 304-11; provided that:

- (1) All persons recruited as administrative/professional/technical personnel of the University of Hawaii shall be subject to the requirement of residency as defined under subsection (c) and the requirement of subsection (g); and
- (2) Appointment of persons to positions requiring highly specialized technical and scientific skills or knowledge may be made without consideration of residency.

(g) [(f)] A preference shall be granted to state residents who have filed resident income tax returns within the State or who have been claimed as a dependent on such a return at the time of their application for employment with the State or any county or municipal subdivision of the State.

For residents applying for positions covered by chapters 76 and 77, the preference shall be accomplished as provided in section 76-23.

For residents applying for positions not covered by chapters 76 and 77, the preference shall be accomplished by giving first consideration to such residents, if all other factors are relatively equal.

(g) This section shall not apply to persons recruited by the University of Hawaii under the authority of section 304-11.”

SECTION 12. Section 83-2, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) [The] Except in the case of the University of Hawaii, the period of each temporary intergovernmental assignment shall not exceed two years; provided that an extension of up to two additional years may be granted by the director of human resources development of the State, the director of civil service of a county or the administrative director of the courts for officers and employees of the respective jurisdictions. The temporary intergovernmental assignment program for the University of Hawaii shall be under the jurisdiction of the board of regents which shall have the authority to approve all assignments; provided that the total period of an intergovernmental assignment shall not exceed five years. An agreement may be made between the sending and receiving agencies on matters relating to a temporary intergovernmental assignment, including but not limited to, the supervision of duties, the costs of salary and benefits, and travel and transportation expenses, none of which shall be contrary to the provisions of this chapter. Elected officials shall not be assigned from a sending agency nor detailed to a receiving agency. It shall not be mandatory for any employee to participate in any temporary intergovernmental assignment.”

SECTION 13. Section 89-9, Hawaii Revised Statutes, is amended by amending subsection (d) to read as follows:

“(d) Excluded from the subjects of negotiations are matters of classification and reclassification, benefits of but not contributions to the Hawaii public employees health fund, retirement benefits[,] except as provided in section 88-\_\_\_\_(h), and the salary ranges now provided by law; provided that the number of incremental and longevity steps, the amount of wages to be paid in each range and step, and movement between steps within the salary range shall be negotiable. The employer and the exclusive representative shall not agree to any proposal which would be inconsistent with merit principles or the principle of equal pay for equal work pursuant to sections 76-1, 76-2, 77-31, and 77-33, or which would interfere with the rights of a public employer to (1) direct employees; (2) determine qualification, standards for work, the nature and contents of examinations, hire, promote, transfer, assign, and retain employees in positions and suspend, demote, discharge, or take other disciplinary action against employees for proper cause; (3) relieve an employee from duties because of lack of work or other legitimate reason; (4) maintain efficiency of government operations; (5) determine methods, means, and personnel by which the employer’s operations are to be conducted; and take such actions as may be necessary to carry out the missions of the employer in cases of emergencies; provided that the employer and the exclusive representative may negotiate procedures governing the promotion and transfer of employees to positions within a bargaining unit, procedures governing the suspension, demotion, discharge or other disciplinary actions taken against employees, and procedures governing the layoff of employees; provided further that violations of the procedures so negotiated may be the subject of a grievance process agreed to by the employer and the exclusive representative.”

SECTION 14. Section 105-6, Hawaii Revised Statutes, is amended to read as follows:

**“§105-6 Inscription on state motor vehicles.** Unless excepted, every motor vehicle owned or controlled by the State shall bear on both sides thereof a facsimile of the state seal and beneath the seal the words “For Official Use Only” and the name of the department, commission, board, bureau, office, agency, or instrumentality thereof controlling or possessing such motor vehicle. This section shall not apply to such motor vehicles as are furnished the governor, lieutenant governor, chief justice of the supreme court, and the president of the University of Hawaii or to such motor vehicles as are used in any ridesharing program of the State, for undercover investigative work, law enforcement, and other functions as approved by the comptroller. Motor vehicles owned or controlled by the University of Hawaii may bear the University of Hawaii logo or seal, or both, in lieu of the state seal.”

SECTION 15. Section 304-4, Hawaii Revised Statutes, is amended to read as follows:

**“§304-4 Powers of regents; official name.** (a) The board of regents shall have management and control of the general affairs, and exclusive jurisdiction over the internal organization and management, of the university. It may appoint a treasurer and such other officers as it deems necessary. It may authorize any officer, elected or appointed by it, to approve and sign on its behalf any voucher or other document which the board may approve and sign. It may delegate to the president or the president’s designee the authority to render the final decision in contested case proceedings subject to chapter 91, as it deems appropriate. It may purchase or otherwise acquire lands, buildings, appliances, and other property for the purposes of the university and expend such sums of money as may be from time to time placed at the disposal of the university from whatever source. All lands, buildings, appliances, and other property so purchased or acquired shall be and remain the property of the university to be used in perpetuity for the benefit of the university. The board of regents, in accordance with law, shall manage the inventory, equipment, surplus property, and expenditures of the university and, subject to chapter 91, may adopt rules, further controlling and regulating the same.

(b) The board may charge [a] resident and nonresident tuition [fee] fees for regular courses of instruction at any University of Hawaii campus, including any community college; provided that the tuition fee for nonresident students, both undergraduate and graduate, shall be not less than two times the tuition fee for resident students, but in no event less than two times the undergraduate tuition fee for resident students at the Manoa Campus].

The board may also charge other fees for special programs of instruction, as well as laboratory fees, course fees, fees for student activities, and an information technology user fee. The board may charge other fees for summer session or evening courses, including differential fees for nonresident students.

The board may waive entirely or reduce the tuition fee or any of the other fees for graduate teaching and research assistants. The board may enter into agreements with government and university officials of any other state or foreign country to provide for reciprocal waiver of the nonresident tuition and fee differential. The board may waive the nonresident tuition and fee differential for selected students from Pacific and Asian jurisdictions when their presence would be beneficial to the university or the State. The board may waive entirely or reduce the tuition fee or any of the other fees for students, resident or nonresident. The board shall determine the percentage of allowable tuition and fee waivers for financial need and other university priorities. These tuition waivers and waivers of the nonresident tuition and fee differential shall be awarded in accordance with guidelines established by the board.

(c) The board shall adopt the necessary rules defining residence for tuition purposes herein; provided that the basic rule shall be that a student shall qualify for the resident tuition fee only if the following criteria are met:

- (1) The adult student, or in the case of a minor student, the student's parents or guardians, has been a bona fide resident of this State for at least twelve consecutive months next preceding the student's first day of officially scheduled instruction for any semester or term in which the student is enrolling at the particular college or campus; and
- (2) The adult or minor student has not been claimed as a dependent for tax purposes for at least twelve months next preceding the student's first day of officially scheduled instruction for any semester or term in which the student is enrolling at the particular college or campus by the student's parents or guardians who are nonresidents of the State; provided that this provision shall not apply in cases where the parent claiming the student as a dependent is entitled to do so under a child support order or agreement issued or entered into in conjunction with a divorce proceeding or legal separation agreement, and the other parent and the student meet the criteria set forth in paragraph (1).

(d) The board shall develop internal policies and procedures for the procurement of goods, services, and construction, consistent with the goals of public accountability and public procurement practices, but not subject to chapter 103D. However, where possible, the board is encouraged to use the provisions of chapter 103D; provided that the use of one or more provisions of chapter 103D shall not constitute a waiver of the exemption of chapter 103D and shall not subject the board to any other provision of chapter 103D.

(e) The board may enter into concession agreements without regard to chapter 102.

~~[(d)]~~ (f) The official name of the board shall be Board of Regents, University of Hawaii, and the board shall adopt and use a common seal by which all official acts shall be authenticated.”

SECTION 16. Section 304-6, Hawaii Revised Statutes, is amended to read as follows:

**“§304-6 Suits.** (a) The university may sue and be sued in its corporate name[; however, it]. Notwithstanding any other law to the contrary, all claims arising out of the acts or omissions of the university or the members of its board of regents, its officers, or its employees, including claims permitted against the State under chapter 661, and claims for torts permitted against the State under chapter 662, may be brought only pursuant to this section, and only against the university. However, the university shall be subject to suit only in the manner provided for suits against the State, including section 661-11, and any liability incurred by the university in such a suit shall be solely the liability of the [State. For the purposes of this provision, members of the board of regents are “employees of the State” as the term is used in chapter 662.] university, shall be payable solely from the moneys and property of the university, and shall not constitute a general obligation of the State, or be secured directly or indirectly by the full faith and credit of the State or the general credit of the State, or by any revenue or taxes of the State. All defenses available to the State, as well as all limitations on actions against the State, shall be applicable to the university.

(b) The university shall be represented by attorneys appointed or hired by the board of regents pursuant to section 304- , and the board of regents, upon the advice of its attorneys, may arbitrate, compromise, or settle any claim, action, or suit brought against the university pursuant to this section. Any claim compromised or

settled under this subsection shall be payable solely from the moneys and property of the university and shall not constitute a general obligation of the State, or be secured directly or indirectly by the full faith and credit of the State or the general credit of the State, or by any revenue or taxes of the State.

(c) Rights and remedies conferred by this section shall be exclusive and shall not be construed to authorize any other claim, suit, or action against the State. In addition, a judgment, compromise, or settlement in an action brought against the university under this section shall constitute a complete bar to any action brought by the claimant, by reason of the same subject matter, against the State or an officer or employee of the university.

(d) The university may purchase insurance to cover any claims anticipated under this section.”

SECTION 17. Section 304-7.5, Hawaii Revised Statutes, is amended to read as follows:

**“[[§304-7.5]] Budget appropriations; University of Hawaii.** (a) Beginning in fiscal year [1997-1998,] 1998-1999, and every year thereafter, the [legislature shall formulate general fund budget appropriations for the University of Hawaii by combining:

- (1) A base figure representing all operating general fund amounts appropriated to the University of Hawaii for fiscal year 1994-1995; and
- (2) All costs borne by the University of Hawaii for:
  - (A) All collective bargaining agreements entered into after fiscal year 1995-1996;
  - (B) Any new program or expansion of an existing program mandated by the legislature;
  - (C) Tuition waivers mandated by the legislature;
  - (D) Increases in enrollment; and
  - (E) Adjustments for inflation.

(b) general fund budget appropriations for the University of Hawaii shall be an amount not less than three times and not greater than five times the amount of regular tuition and related fee revenues estimated for that fiscal year.

(b) Any general fund budget appropriation for the University of Hawaii for operating purposes for any fiscal year shall include the consideration of:

- (1) The fiscal condition of the State;
- (2) Enrollment;
- (3) Access to educational opportunity;
- (4) The mix of resident and nonresident students; and
- (5) Community service and noninstruction programs.

(c) No revenue received by the University of Hawaii pursuant to the University of Hawaii tuition and fees special fund established under section 304-16.5 may be used by the governor or the director of finance as a justification for reducing any budget request or allotment to the University of Hawaii unless the university requests such a reduction.”

SECTION 18. Section 304-8, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

**“(a) Moneys appropriated by the legislature for the university shall be payable by the director of finance, upon vouchers approved by the board of regents or by any officer elected or appointed by the board under section 304-4 and authorized by the board to approve such vouchers on behalf of the board. All moneys received by or on behalf of the board of the university shall be deposited with the**

director of finance, except that any moneys received from the federal government or from private contributions shall be deposited and accounted for in accordance with conditions established by the agencies or persons from whom the moneys are received and except that with the concurrence of the director of finance, moneys received from the federal government for research, training, and other related purposes of a transitory nature and moneys in trust, special, or revolving funds administered by the university may be deposited in depositories other than the state treasury[.]; provided that the university informs the director of finance of the depositories in which moneys from the funds have been deposited, and submits copies of annual statements from each of the depositories in which the moneys from the funds are deposited. All income from regular credit tuition and tuition related course and fee charges against students shall be deposited to the credit of the [student] University of Hawaii tuition and fees special fund pursuant to section 304-16.5. [Income derived from the sale of goods or services shall be deposited to the credit of the general fund of the State; provided that income] Income from university projects as defined and described in sections 306-1 to 306-12, may be credited to special or other funds.”

SECTION 19. Section 304-11, Hawaii Revised Statutes, is amended to read as follows:

“**§304-11 [Faculty.] Personnel.** [The faculty] Personnel of the university not subject to chapters 76 and 77 shall be under the direction of a president who shall be appointed by the board of regents. The board shall appoint such deans, directors, [other] members of the faculty, and other employees as may be required to carry out the purposes of the institution, prescribe their salaries and terms of service, where such salaries and terms of service are not specifically fixed by legislative enactment, make and enforce rules governing sabbatical and professional improvement leaves with or without pay, consistent with the practice of similar institutions on the mainland, and notwithstanding the laws of the State relating to vacations of the officers and employees of the State.”

SECTION 20. Section 304-16.5, Hawaii Revised Statutes, is amended to read as follows:

“**§304-16.5 University of Hawaii tuition and fees special fund; tuition schedule and waivers.** (a) There is established the University of Hawaii tuition and fees special fund into which shall be deposited all revenue collected by the university for regular, summer, and continuing education credit tuition, tuition related course and fee charges, and any other charges to students, except as provided by law. Moneys deposited into the fund shall be expended to maintain or improve the university’s programs and operations and shall not be:

- (1) Used as a justification for reducing any budget request or allotment to the University of Hawaii unless the university requests such a reduction;
- (2) Transferred unless otherwise authorized by the legislature; and
- (3) Restricted by the governor or the director of finance without the prior approval of the legislature.

Any rule, policy, or action of any agency or individual in contravention of this subsection shall be void as against public policy.

[ (b) Notwithstanding section 304-4, resident undergraduate tuition shall not exceed thirty per cent of the estimated average annual cost of education; provided that the tuition for any apprenticeship training program at the community colleges shall be at least 30 cents per clock hour.

For the purposes of this subsection, the “estimated average annual cost of education”, as formulated by the university, shall include, but not be limited to, all instructional costs, all student service costs, and a pro rata share of institutional support, academic support, and fringe benefits.

(c) (b) The board of regents, or its designated representatives, is authorized to grant, modify, or suspend tuition waivers. The board of regents shall provide a report and make recommendations as appropriate to the legislature on all tuition waivers no later than twenty days prior to the convening of each regular session. This<sup>2</sup> report shall include[,] but not be limited to[,] the number of tuition waivers and scholarships, stipends, and mandatory fees granted to financially needy students from ethnic groups that are under-represented in the student population of the University of Hawaii through the Hawaii opportunity in education endowment special fund.

(d) (c) Any law to the contrary notwithstanding, the board of regents may authorize expenditures from this fund for the purpose of generating private donations for deposit into the University of Hawaii [foundation] Foundation for the purposes of the university. Any expenditure authorized pursuant to this subsection shall be for a public purpose and shall not be subject to chapters 42F, 103, 103D, and 103F. The university shall submit a comprehensive report to the legislature every regular session detailing the use of any funds authorized by the board under this subsection.”

SECTION 21. Section 304-32, Hawaii Revised Statutes, is amended to read as follows:

**“§304-32 Aquarium admission fee.** The board of regents may charge the public a fee for admission to the aquarium. In establishing the aquarium admission fee, the board of regents shall be exempt from the public notice, public hearing, and gubernatorial approval requirements of chapter 91. The fees may be established at an open public meeting subject to the requirements of chapter 92.

[All funds collected from fees charged in accordance with this section shall be deposited in the state aquarium special fund.]”

SECTION 22. Section 304-33, Hawaii Revised Statutes, is amended to read as follows:

**“§304-33 State aquarium special fund.** There is established [a] the state aquarium special fund into which shall be deposited all revenues derived from all admission fees collected in conjunction with the operation of the state aquarium. The special fund may be deposited in depositories other than the state treasury; provided that the university:

- (1) Informs the director of finance of the depositories in which moneys from the special fund have been deposited; and
- (2) Submits copies of annual statements from each of the depositories in which the moneys from the special fund are deposited.

Moneys deposited in this fund shall be expended for the operation of the state aquarium. The special fund shall not be subject to sections 36-27 and 36-30 relating to special fund reimbursements to the state general fund.”

SECTION 23. Section 304-111, Hawaii Revised Statutes, is amended to read as follows:

**“§304-111<sup>3</sup> Participation and membership in the Western Governors University[.] and other educational consortia.** [On behalf of the State of Hawaii,

the governor shall serve as a member of the Western Governors University, a Utah nonprofit corporation.] The board of regents of the University of Hawaii [is authorized to] may participate in [the activities of the Western Governors University. The board of regents shall perform any act that may be deemed requisite for membership in the Western Governors University.] and perform any act related to membership in an educational consortium involving other institutions or jurisdictions that advance the instruction, research, or service mission of the university, including the Western Governors University.”

SECTION 24. Section 12 of Act 321, Session Laws of Hawaii 1986, as amended by section 69 of Act 283, Session Laws of Hawaii 1987, as amended by section 7 of Act 371, Session Laws of Hawaii 1989, as amended by section 3 of Act 163, Session Laws of Hawaii 1991, as amended by section 2 of Act 314, Session Laws of Hawaii 1993, as amended by section 22 of Act 8, Special Session Laws of Hawaii 1993, and as amended by section 1 of Act 180, Session Laws of Hawaii 1997, is amended to read as follows:

“SECTION 12. This Act shall take effect on July 1, 1986, and be repealed as of June 30, [2000;] 2005; provided that on repeal sections 40-1, 40-2, 40-4, 40-6, and 40-81, Hawaii Revised Statutes, are reenacted in the form in which they read on June 30, 1986; and section 40-58, Hawaii Revised Statutes, is reenacted in the form in which it read on June 30, 1991.”

SECTION 25. The University of Hawaii shall abolish the following administratively-created special funds:

- (1) University of Hawaii at Manoa summer session special fund;
- (2) University of Hawaii at Manoa college of continuing education and community service special fund;
- (3) University of Hawaii at Manoa theater group special fund;
- (4) University of Hawaii at Manoa center for student development special fund;
- (5) University at Manoa food service special fund;
- (6) University of Hawaii at Manoa laboratory school cafeteria special fund;
- (7) University of Hawaii at Hilo continuing education and community service special fund;
- (8) University of Hawaii at Hilo theater group special fund;
- (9) University of Hawaii at Hilo summer session special fund;
- (10) West Oahu college summer session special fund;
- (11) University of Hawaii at Manoa laboratory animal service special fund;
- (12) University of Hawaii at Manoa transportation services special fund;
- (13) University of Hawaii at Manoa auxiliary services special fund; and
- (14) University of Hawaii at Hilo auxiliary services special fund.

All fund balances for the University of Hawaii at Manoa summer session special fund, the University of Hawaii at Hilo summer session special fund, and the West Oahu College summer session special fund remaining unencumbered and unexpended as of June 30, 1998, shall be transferred to the credit of the University of Hawaii tuition and fees special fund. All fund balances of the University of Hawaii at Manoa continuing education and community services special fund, the University of Hawaii at Manoa theater group special fund, the University of Hawaii at Hilo continuing education and community service special fund, and the University of Hawaii at Hilo theater group special fund, remaining unencumbered and unexpended as of June 30, 1998, shall be transferred to the credit of the University of Hawaii community services special fund established in section 2 of this Act. All fund balances of the University of Hawaii at Manoa center for student development

special fund, the University of Hawaii at Manoa food service special fund, the University of Hawaii at Manoa laboratory school cafeteria special fund, the University of Hawaii at Manoa transportation services special fund, the University of Hawaii at Manoa auxiliary services special fund, the University of Hawaii at Hilo auxiliary services special fund, and the University of Hawaii at Manoa laboratory animal services special fund remaining unencumbered and unexpended as of June 30, 1998, shall be transferred to the credit of the University of Hawaii auxiliary enterprises special fund established in section 2 of this Act. All encumbrances of the administratively created special funds listed above remaining unliquidated as of June 30, 1998, shall become obligations of those funds into which unencumbered and unexpended balances are transferred.

SECTION 26. The president of the University of Hawaii shall submit to the legislature an annual report of the revenues and expenditures of the individual programs of the University of Hawaii community service special fund, and the University of Hawaii auxiliary enterprises special fund, and the University of Hawaii facilities use revolving fund and the University of Hawaii tuition and fees special fund no later than twenty days prior to the convening of each regular session until, and including, the regular session of 2003.

SECTION 27. The president of the University of Hawaii shall submit to the legislature an annual report of decentralized decision-making in the university system no later than twenty days prior to the convening of each regular session until, and including, the regular session of 2003. The report shall also include the improving of communication and collaboration within the university system.

SECTION 28. The board of regents and the director of finance shall work cooperatively to reach a mutual agreement on a mechanism or procedure for financing the purchase of equipment for University of Hawaii buildings. This mechanism or procedure shall be designed to provide substantial flexibility for the university.

SECTION 29. The board of regents, the director of finance, and the attorney general shall work cooperatively to reach a mutual agreement on procedures designed to substantially facilitate the use of financing agreements by the University of Hawaii under chapter 37D, Hawaii Revised Statutes, for implementation no later than January 4, 1999. The director of finance shall submit a report of these procedures no later than twenty days prior to the convening of the regular session of 1999.

SECTION 30. There is appropriated out of the University of Hawaii facilities use revolving fund the following sums for fiscal year 1998-1999 to the following programs to further the purposes of the revolving fund:

UOH100, University of Hawaii at Manoa	\$ 150,000
UOH210, University of Hawaii at Hilo	100,000
UOH800, University of Hawaii Community Colleges	200,000

The sums appropriated shall be expended by the University of Hawaii for the purposes of this Act.

SECTION 31. There is appropriated out of the funding sources indicated below the following sums or so much thereof as may be necessary for fiscal year 1998-1999, to be expended for the following programs:

UOH900, systemwide support, workers' compensation costs and unemployment insurance compensation costs of University of Hawaii state employees

## ACT 115

University of Hawaii workers' compensation and unemployment insurance compensation special fund	\$ 300,000
University of Hawaii workers' compensation and unemployment insurance compensation revolving fund	\$ 300,000

The sums appropriated shall be expended by the University of Hawaii for the purposes of this Act.

SECTION 32. Statutory material to be repealed is bracketed. New statutory material is underscored.<sup>4</sup>

SECTION 33. This Act shall take effect on July 1, 1998; provided that the amendments made to sections 36-27 and 36-30 by this Act shall not be repealed when those sections are reenacted on July 1, 2000, pursuant to section 13 of Act 216, Session Laws of Hawaii 1997.

(Approved June 16, 1998.)

### Notes

1. Prior to amendment "that" appeared here.
2. Prior to amendment "the" appeared here.
3. So in original.
4. Edited pursuant to HRS §23G-16.5.