

ACT 218

S.B. NO. 1414

A Bill for an Act Making Appropriations for Uniform Laws.

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

SECTION 1. In 1889, the New York Bar Association appointed a special committee on uniformity of laws. In the next year, the New York legislature authorized the appointment of commissioners “to examine certain subjects of national importance that seemed to show conflict among the laws of the several commonwealths, to ascertain the best means to effect an assimilation or uniformity in the laws of the states, and especially whether it would be advisable for the State of New York to invite the other states of the Union to send representatives to a convention to draft uniform laws to be submitted for approval and adoption by the several states.” In that same year, the American Bar Association passed a resolution recommending that each state provide for commissioners to confer with the commissioners of other states on the subject of uniformity of legislation on certain subjects. In August 1892, the first National Conference of Commissioners on Uniform State Laws (commonly referred to as the “NCCUSL” or the “Uniform Law Commissioners”) convened in Saratoga, New York, three days preceding the annual meeting of the American Bar Association. By 1912, every state was participating in the NCCUSL. As it has developed, the NCCUSL is a confederation of state interests. It

arose out of the concerns of state government for the improvement of the law and for better interstate relationships. Its sole purpose has been, and remains, service to state government and improvement of state law.

The NCCUSL, as a state service organization, depends upon state appropriations for its continued operation. All states, the District of Columbia, Puerto Rico, and the U.S. Virgin Islands are asked to contribute a specific amount, based on population, for the maintenance of the NCCUSL. In addition, each state commission requests an amount to cover its travel to the NCCUSL annual meeting.

The NCCUSL is a unique institution created to consider state law and to determine in which areas of the law uniformity is important. The work of the NCCUSL has been a valuable addition over time and has improved state law in a great many subject areas. Included in that work have been acts such as the Uniform Commercial Code, the Uniform Partnership Act, the Uniform Limited Partnership Act, the Uniform Reciprocal Enforcement of Support Act, the Uniform Child Custody Jurisdiction Act, the Uniform Anatomical Gift Act, and the Model State Administrative Procedure Act, acts which have been adopted uniformly by nearly all the states or which have been heavily utilized by most state legislatures. Even with acts that have not been uniformly adopted, the texts consistently contribute to the improvement of the law and have served as valuable references for the legislatures in their effort to improve the quality of state law.

The procedures of the NCCUSL ensure meticulous consideration of each uniform or model act. The NCCUSL spends a minimum of two years on each draft. Sometimes, the drafting work extends much longer. The drafting work for such large-scale acts as the Uniform Commercial Code, the Uniform Probate Code, and the Uniform Land Transactions Act took nearly a decade to complete. No single state has the resources necessary to duplicate this meticulous, careful, and non-partisan effort. Without the NCCUSL, nothing like the existing body of uniform state laws would be available to the states.

The NCCUSL also permits the states to tap the skills and resources of the legal profession for very little cost. No uniform law commissioner is paid for services rendered. The uniform law commissioner receives reimbursement solely for actual expenses incurred. The NCCUSL estimates that each commissioner devotes approximately 200 hours a year to NCCUSL work, including work on various drafting committees and attendance at the annual meeting. These are hours mainly spent on research and drafting work — solid, substantive hours. The cumulative value of this donated time in the development of uniform and model acts averages about \$6,000,000 per year, a conservative estimate. The total requested contribution of all the states for the operation of the NCCUSL is \$1,405,000 in 2000-2001. The smallest state contribution is \$8,500 (U.S. Virgin Islands) and the largest is \$121,600 (California). Hawaii's contribution is \$13,970, which represents an extraordinarily good, cost-effective investment for the citizens of Hawaii. Even a modest use of the work product of the NCCUSL guarantees any state a substantial return on each dollar invested. The average number of current uniform and model acts adopted in all states is seventy. Hawaii has had one hundred nine enactments of uniform acts, amendments to uniform acts, and revised uniform acts. For every dollar invested by each state, it has received very substantial and valuable services.

The NCCUSL works efficiently for all of the states because individual lawyers are willing to donate time to the uniform law movement, and because it is a genuine cooperative effort of all the states. The NCCUSL seemed like a very good idea to its founders in 1892. They dealt with nearly insolvable problems resulting from the rapid growth of the United States, set against a backdrop of increasingly inadequate and confusing state laws.

The NCCUSL continues to be a very good idea. The states have chosen to maintain the NCCUSL because it has been useful to them and because it strengthens

the states in a federal system of government. Different laws in different states continue to present problems. Unless the states can solve these problems, the issues are usually decided in the United States Congress. Without a state-sponsored national institution like the NCCUSL, more and more legislative activity would shift from the state capitols to Capitol Hill in Washington, D.C.

The procedures for preparing an act are the result of long experience with the creation of legislation. The NCCUSL maintains a standing committee called the Scope and Program Committee that considers new subject areas of state law as potential areas for uniform or model acts. That committee studies suggestions from many sources, including the organized bar, state government, and private persons. If a subject area cannot be adequately studied by the Scope and Program Committee, it is likely to be given to a special study committee. Study committees report back to the Scope and Program Committee. Recommendations from the Scope and Program Committee go to the NCCUSL Executive Committee and to the entire NCCUSL for approval or disapproval, however the case may be.

Once a subject receives approval for drafting, a drafting committee is selected, and a budget is established for the committee work. A reporter is usually engaged to provide professional drafting assistance, although a few committees work without professional assistance. Most often, the reporters are law professors who work with the drafting committees for very modest honorariums and have specific expertise in the area of law being addressed.

Advisors and participating observers are solicited to assist every drafting committee. The American Bar Association appoints official advisors for every committee. Participating observers may come from state government, from organizations with interests and expertise in a subject, and from the ranks of recognized experts in a subject. Advisors and participating observers are invited to work with drafting committees and to contribute comments. They do not make final decisions with respect to the final contents of an act. Only the NCCUSL members who compose the drafting committee may do this.

A committee meets according to the needs of the project. Meetings ordinarily begin on Friday morning and finish by Sunday noon, so as to minimize overlap with ordinary working hours. A short act may require one or two committee meetings. Major acts may require a meeting per month for a considerable period of time. Some acts require several years of deliberation. A given committee may produce a number of successive drafts as an act evolves.

The NCCUSL is convened as a body once a year. It meets for a period of eight to twelve days, usually in July or August. At each annual meeting, during its working life, each drafting committee must present its latest working draft to the whole body of the NCCUSL. The entire text of each working draft is actually read aloud — a reading of a proposed uniform law is not by title only, but is considered section by section either by section title or word for word — and debated during proceedings of the committee of the whole. This scrutiny continues from annual meeting to annual meeting until a final draft satisfies the whole body of the commissioners. No proposed uniform law becomes officially recognized as a uniform act without at least two years' consideration, meaning every act receives at least one interim reading at an annual meeting and a final reading at a subsequent annual meeting. As noted previously, there is often more than one interim reading and a drafting process that exceeds two years in duration. A draft becomes an official act by a majority vote of the states (one vote to each state). The vote by states completes the drafting work and the act is ready for consideration by the state legislatures.

The cost of this process to the states consists of travel expenses, paper and publication costs, and meeting costs. Nearly all the professional services are do-

nated, thereby eliminating the single greatest cost factor. For the states, with their necessary cost consciousness, the system has extraordinary value.

The governing body of the NCCUSL is the NCCUSL Executive Committee, which is composed of the officers, certain ex officio members, and members appointed by the President of the NCCUSL. Certain activities are conducted by standing committees. As mentioned above, the Committee on Scope and Program considers all new subject areas for possible uniform acts. The Legislative Committee superintends the relationships of the NCCUSL to the state legislatures.

A small staff located in Chicago operates the national office of the NCCUSL. The national office handles meeting arrangements, publications, legislative liaison, and general administration for the NCCUSL.

The NCCUSL has consciously limited its staff to prevent accrual of needless administrative costs. The full-time staff numbers six people. Included in that number are the Chief Administrative Officer, the Legislative Director/Legal Counsel, and the Communications Officer, who are the only executive staff. The Executive Director's position is part-time, and is traditionally occupied by someone from the law school community. In addition, the NCCUSL contracts with professional, independent contractors for part of its public information and educational materials.

The NCCUSL maintains relations with several sister organizations. Official liaison is maintained with the American Bar Association, which contributes an amount each year to the operation of the NCCUSL. Liaison is also maintained with the American Law Institute, the Council of State Governments, and the National Conference of State Legislatures on an ongoing basis. Liaison and activities may be conducted with other associations as interests and activities necessitate.

Hawaii created a commission to participate in the NCCUSL in 1911. The Hawaii commission to promote uniform legislation is presently within the department of the attorney general and, pursuant to section 26-7, Hawaii Revised Statutes, is advisory to the attorney general and to the legislature on matters relating to the promotion of uniform legislation. Pursuant to sections 3-1 and 26-7, Hawaii Revised Statutes, the commission consists of five members, who are appointed by the governor, with the advice and consent of the senate, for staggered terms of four years and until their successors are appointed and qualified. The NCCUSL Constitution requires that each commissioner be a lawyer. A deputy attorney general, assigned by the attorney general to coordinate the review and preparation of legislative bills, sits with the commission to provide technical assistance, as necessary, and is recognized as an associate member of Hawaii's delegation to the NCCUSL.

The work of the NCCUSL cannot be accomplished independently by a small state such as the State of Hawaii. Consequently, the continued support of and participation in the NCCUSL by this State is essential to continue the work of drafting and revising uniform laws concerning matters of state interest. The purpose of this Act is to provide the necessary funds for Hawaii's contribution to the costs of the NCCUSL for fiscal year 2001-2002 and for the costs of sending Hawaii's delegation to the NCCUSL 2001 annual meeting.

SECTION 2. There is appropriated out of the general revenues of the State of Hawaii the sum of \$12,500, or so much thereof as may be necessary for fiscal year 2001-2002 to fund Hawaii's contribution to the costs of the National Conference of Commissioners on Uniform State Laws and to fund registration and travel expenses for the delegation of the Hawaii commission to promote uniform legislation to attend the 2001 annual meeting of the National Conference of Commissioners on Uniform State Laws.

The sum appropriated shall be expended by the department of the attorney general for the purposes of this Act.

ACT 218

SECTION 3. This Act shall take effect on July 1, 2001.

(Approved June 2, 2001.)