

ACT 87

H.B. NO. 114

A Bill for an Act Relating to Higher Education.

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

PART I

SECTION 1. The legislature finds that the prudent and transparent management of public funds appropriated by the legislature and expended by the University of Hawaii is a matter of statewide concern and therefore under the legislature's purview pursuant to article X, section 6, of the Hawaii state constitution.

The purpose of this Act, therefore, is to:

- (1) Repeal the authority of the president of the University of Hawaii to serve as the chief procurement officer for construction contracts and professional services related to construction contracts and to assign those responsibilities to the administrator of the state procurement office; and
- (2) Establish an independent audit committee within the board of regents of the University of Hawaii to assist the board in discharging its constitutional powers and duties with respect to the university.

PART II

SECTION 2. Section 103D-203, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) The chief procurement officer for each of the following state entities shall be:

- (1) The judiciary—the administrative director of the courts;
- (2) The senate—the president of the senate;
- (3) The house of representatives—the speaker of the house of representatives;
- (4) The office of Hawaiian affairs—the chairperson of the board;
- (5) The University of Hawaii—the president of the University of Hawaii; provided that, except as specified in section 304A-2672(2), for contracts for construction and professional services furnished by licensees under chapter 464, the administrator of the state procurement office of the department of accounting and general services shall serve as the chief procurement officer.
- (6) The department of education, excluding the Hawaii public library system—the superintendent of education;
- (7) The Hawaii health systems corporation—the chief executive officer of the Hawaii health systems corporation; and
- (8) The remaining departments of the executive branch of the State and all governmental bodies administratively attached to them—the administrator of the state procurement office of the department of accounting and general services.”

SECTION 3. Section 304A-105, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) The board of regents shall develop internal policies and procedures for the procurement of goods, services, and construction, consistent with the powers of the board set forth in section 304A-2672, and the goals of public accountability and public procurement practices, subject to chapter 103D.”

SECTION 4. Section 304A-2672, Hawaii Revised Statutes, is amended to read as follows:

“~~§~~**304A-2672** **Powers of the board.** Notwithstanding any law to the contrary, the board may:

- (1) Designate as a university project, any undertaking, improvement, or facility on any one or more of the areas in one or more of the educational institutions under the jurisdiction of the board;
- (2) Construct and maintain university projects, including a university project included or to be in a university system; provided that all procurements for professional services furnished by licensees under

chapter 464 for construction projects shall be coordinated with the department of accounting and general services on behalf of the board; provided further that the department of accounting and general services shall not be responsible for procurements determined by both the University of Hawaii and the department of accounting and general services to be professional services furnished by licensees under chapter 464 for repair and maintenance;

- (3) Combine two or more university projects into a university system on one or more of the areas on any one or more of the educational institutions under the jurisdiction of the board, and to maintain the system;
- (4) Combine two or more university projects, university systems, or university projects and university systems into a network, on any one or more of the areas on any one or more of the educational institutions under the jurisdiction of the board, and to maintain the network;
- (5) Prescribe and collect rents, fees, and charges for the use of or services furnished by any university project and the facilities thereof, and pledge any appropriation to any university project and the facilities thereof that in aggregate, produces revenue of the university at least sufficient to comply with section 304A-2681;
- (6) With the approval of the governor, issue revenue bonds under this subpart in such principal amount as may be authorized by the legislature from time to time to finance in whole or in part the cost of construction or the cost of maintenance of any university project, including funding reserves therefor;
- (7) Pledge to the punctual payment of revenue bonds and interest thereon, all or any part of the revenue of the university, including any appropriation, in an amount sufficient to pay the revenue bonds and interest as the same become due and to create and maintain reasonable reserves therefor;
- (8) Establish a loan program or a commercial paper program upon terms and conditions that the board may determine; and
- (9) Advance moneys of the university, not otherwise required, and do any and all other lawful acts as may be necessary, convenient, or desirable, for carrying into execution and administering this subpart."

PART III

SECTION 5. Chapter 304A, Hawaii Revised Statutes, is amended by adding a new subpart to part I to be appropriately designated and to read as follows:

" . INDEPENDENT AUDIT COMMITTEE

§304A- Independent audit committee; established; powers; duties. (a) There is established within the board of regents of the University of Hawaii an advisory body to be known as the independent audit committee.

(b) The independent audit committee shall consist of at least three members but not more than five members who shall be appointed by the chairperson of the board of regents, from among the members of the board of regents, except as provided in this subsection. The chair of the independent audit committee shall be selected by and from among its members.

The independent audit committee shall include one or more individuals with financial expertise. If no member of the board of regents has the requisite

skills, the board of regents shall execute other arrangements, which may include the appointment of members of the general public who possess the requisite financial expertise to the independent audit committee to ensure that the independent audit committee has the capacity to carry out its duties.

- (c) The board of regents shall generally:
 - (1) Establish the charter of the independent audit committee and set forth its members' roles and responsibilities;
 - (2) Consider changes to the independent audit committee's charter that are necessary in response to new laws, regulations, and best practices; and
 - (3) Conduct an annual review of the independent audit committee's charter to reassess its adequacy and adopt any proposed and necessary changes to the charter.
- (d) The independent audit committee shall be exempt from chapter 91 and part I of chapter 92 to the extent that the independent audit committee is engaging in discussions or proceedings arising from an investigation by the independent audit committee relating to potentially actionable civil or criminal conduct, whether or not the investigation is pending or outstanding.
- (e) The independent audit committee shall undertake professional development to improve the financial expertise of the independent audit committee as a whole, including:
 - (1) Attendance at seminars and conferences;
 - (2) Attendance at educational sessions including special speakers; and
 - (3) The study of analytical tools for audit committees.
- (f) The independent audit committee shall engage in operations relating to enterprise risk management including:
 - (1) Providing oversight of risk management, which shall include determining overall strategy and influencing the university's risk philosophy;
 - (2) Inquiring of the president of the University of Hawaii, the chief financial officer of the university, and external auditors about significant risks or exposures faced by the university;
 - (3) Assessing steps that the president of the University of Hawaii has taken or proposes to take to minimize those risks to the university and periodically reviewing compliance with those steps; and
 - (4) Reviewing with the general counsel of the University of Hawaii, external auditors, external counsel, and the chief financial officer of the university legal and regulatory matters that, in the opinion of the president of the University of Hawaii, may have a material impact upon the financial statements, related organization compliance policies, and programs and reports received from regulators.
- (g) The independent audit committee shall hold meetings as needed to address matters on its agenda, not less frequently than twice per year. The independent audit committee may request the president of the University of Hawaii or others to attend its meetings or to provide pertinent information as necessary. The board of regents shall provide in the charter of the independent audit committee for the independent audit committee to take action between meetings by unanimous consent.
- (h) The independent audit committee shall review its effectiveness annually and shall prepare, or oversee the preparation of, an annual report to the board of regents.
- (i) The annual report of the independent audit committee shall address other matters affecting the management and organization of the University of Hawaii by engaging in functions, including:

- (1) Reviewing with the president of the University of Hawaii and an external auditor retained pursuant to subsection (r) the effect of any regulatory and accounting initiatives and unique transactions, including relationships with legally separate entities, to determine whether the accounting for those transactions applied best practices;
- (2) Reviewing significant related party transactions;
- (3) Reviewing with the president of the University of Hawaii and the chief financial officer of the university, any interim financial reports or reports on internal control issued with respect to the university since the last meeting of the independent audit committee; and
- (4) Reviewing with an external auditor who performs an audit the following:
 - (A) All critical accounting policies and practices used by the external auditor; provided that:
 - (i) All alternative treatments of financial information within generally accepted accounting principles have been discussed with the president of the University of Hawaii;
 - (ii) The ramifications of each alternative are discussed; and
 - (iii) The treatment preferred by the university is discussed;
 - (B) Any consultation with audit firms other than the external auditor, including the reasons for, and results of, the consultation; and
 - (C) Any other information relating to significant estimates and judgments.
- (j) The independent audit committee shall also review with any external auditor and the chief financial officer of the university matters affecting internal control and an internal audit, including:
 - (1) The adequacy of the University of Hawaii's internal control, including computerized information system controls and security; and
 - (2) Any related significant findings and recommendations of the internal and external auditors, together with the responses of the president of the University of Hawaii.
- (k) The independent audit committee shall also review matters affecting the accounting policies and procedures of the University of Hawaii by:
 - (1) Ensuring that accounting policies, procedures, and related controls are documented and reviewed with the independent audit committee;
 - (2) Reviewing accounting controls annually;
 - (3) Reviewing with the president of the University of Hawaii policies and procedures with respect to officers, key employees, and disqualified persons as defined under section 4958 of the Internal Revenue Code of 1986, as amended; and
 - (4) Inquiring of the president of the University of Hawaii and the chief financial officer regarding the financial health of the university.
- (l) The independent audit committee shall review the University of Hawaii's antifraud programs and controls and aid in discovering and remedying incidences of fraud.
- (m) Notwithstanding part V of chapter 378, the independent audit committee shall review:
 - (1) Procedures for the receipt, retention, and treatment of complaints received by the University of Hawaii regarding accounting, internal accounting controls, auditing matters, or suspected fraud that may be submitted by any party internal or external to the university; and

- (2) As the independent audit committee deems necessary, complaints that may have been received, the current status of such complaints, and the resolution of such complaints, if any resolution has been reached;

provided that any person who makes a complaint covered by this section shall be accorded the same protections as under part V of chapter 378.

(n) With regard to internal control and any internal audit, the independent audit committee shall also:

- (1) Review with any external auditor, the chief financial officer of the university, and the comptroller the audit scope and plan of the internal auditors;
- (2) Address the coordination of audit efforts to ensure the completeness of coverage, reduction of redundant efforts, and the effective use of audit resources; and
- (3) Discuss with the chief financial officer of the university and the external auditor opportunities for reliance by the external auditor on the audit activities of any internal audit.

(o) For internal audits, the independent audit committee shall review the following with the president of the University of Hawaii and the chief financial officer of the university:

- (1) Significant findings of internal audits conducted during the university's previous and current fiscal year and the president's responses;
- (2) Whether internal auditors have encountered difficulties in discharging their responsibilities in the course of their audits, such as any restrictions on the scope of their work or access to required information;
- (3) Any changes required in the scope of internal audits;
- (4) The budget and staffing of internal audit operations;
- (5) An audit plan to govern internal audits; and
- (6) The compliance of internal audits with the Institute of Internal Auditors' International Standards for the Professional Practice of Internal Auditing.

(p) Internal auditors shall meet separately with any external auditor to coordinate audit plans to optimize the ability of the external auditor to rely upon the results of the internal audit team.

(q) The independent audit committee shall annually evaluate the performance of any internal audit, including:

- (1) The adequacy of the audit plan;
- (2) The management of the execution of the audit plan;
- (3) The adequacy of human and other resources available to execute the audit plan;
- (4) The ability of any external auditor to rely upon the internal audit work product in the annual audit performed by an external auditor retained pursuant to subsection (r); and
- (5) The nature of the findings or results of any internal audits.

(r) Subject to approval by the board of regents, the independent audit committee shall select one or more external auditors to be retained by the University of Hawaii. The independent audit committee shall:

- (1) Approve an audit plan;
- (2) Establish the audit fees of any external auditor;
- (3) Pre-approve any non-audit services provided by the external auditor, including tax services, before such services are rendered;
- (4) Review with the president of the University of Hawaii the significance of contracting out audit services; and

- (5) Ensure that single audit obligations are incorporated into an annual audit plan.
- (s) The independent audit committee shall review all material written communications between any external auditor and the president of the University of Hawaii, including any management letter or schedule of unadjusted differences.
 - (i) The independent audit committee shall annually evaluate any external auditor; provided that communications with the external auditor in the evaluation shall be done so as to maintain the open flow of communication between the external auditor and the independent audit committee.
 - (u) The independent audit committee shall review the following matters relating to any annual audit with the president of the University of Hawaii and any external auditor:
 - (1) The university's annual financial statements and related footnotes;
 - (2) The external auditor's audit of the financial statements and the external auditor's report;
 - (3) The external auditor's judgments about the quality of the university's accounting principles as applied in the university's financial reporting;
 - (4) Any significant changes required in the external auditor's audit plan;
 - (5) Any serious difficulties or disputes with the president of the University of Hawaii encountered during the audit; and
 - (6) Matters to be discussed by the Statement on Auditing Standards No. 114, The Auditor's Communication with those Charged with Governance (AICPA, Professional Standards), related to the conduct of any annual audit.
 - (v) The independent audit committee may hire external auditors, legal counsel, or other consultants as necessary, to address any issues arising from:
 - (1) The execution of the whistleblower protection procedures subject to subsection (m);
 - (2) Any statutory or contractual procedures when engaging external resources; and
 - (3) The detection of fraud.
 - (w) The independent audit committee shall submit an annual report to the board of regents and the legislature no later than twenty days prior to the convening of each regular session of the legislature on matters that include the following:
 - (1) All instances of material weakness in internal control, including the responses of university management; and
 - (2) All instances of fraud, including the responses of university management."

PART IV

SECTION 6. The administrator of the state procurement office shall submit a report to the legislature, no later than twenty days prior to the convening of the regular session of 2016, of the administrator's findings and recommendations, including any proposed legislation, relating to the transparency, efficiency, and compliance of the University of Hawaii's procurement of construction contracts and construction-related consultant services pursuant to chapter 103D, Hawaii Revised Statutes.

PART V

SECTION 7. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 8. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun before its effective date.

SECTION 9. This Act shall take effect on July 1, 2013.
(Approved May 31, 2013.)