

S.B. NO. 2941

JAN 27 2016

A BILL FOR AN ACT

RELATING TO UNIVERSITY OF HAWAII RULEMAKING.

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

1 SECTION 1. The legislature finds that under the framework
2 established by chapter 91, Hawaii Revised Statutes, concerning
3 administrative rules, a state agency is allowed to issue
4 regulations concerning its internal management without having to
5 follow various requirements for adopting administrative rules,
6 such as public notice, public hearing, and gubernatorial
7 approval. The legislature further finds that the board of
8 regents for the University of Hawaii must conduct its business
9 at an open meeting under the framework established by chapter
10 92, Hawaii Revised Statutes.

11 Currently, there is a lack of consistency between the use
12 of chapter 91 procedures and chapter 92 procedures as written in
13 some sections of chapter 304A, Hawaii Revised Statutes, for
14 matters internal to the University of Hawaii. This Act
15 continues to maintain the public's opportunity -- including
16 members of the university community such as students, faculty,
17 and staff -- to observe and comment in an open meeting, but

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1 makes the use of chapter 91 procedures more uniform throughout
2 chapter 304A.

3 The purpose of this Act is to align the processes to which
4 the board of regents for the University of Hawaii conducts its
5 business to consistently fall under the "open meeting" process
6 under chapter 92 rather than the "rule making" process under
7 chapter 91 for matters internal to the university. This will
8 ensure consistency among sections of chapter 304A and thus
9 reduce uncertainty among other agencies and the general public
10 when it comes to adoption of policies and procedures at the
11 University of Hawaii.

12 SECTION 2. Section 304A-105, Hawaii Revised Statutes, is
13 amended by amending subsection (a) to read as follows:

14 "(a) The board of regents shall have management and
15 control of the general affairs, and exclusive jurisdiction over
16 the internal structure, management, and operation of the
17 university. The board may:

18 (1) Appoint a treasurer and other officers as it deems
19 necessary;

20 (2) Authorize any officer, elected or appointed by it, to
21 approve and sign on its behalf any voucher or other
22 document that the board may approve and sign;

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(3) 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;

(4) Purchase or otherwise acquire lands, buildings, appliances, and other property for the purposes of the university; and

(5) Expend any sums of money as, from time to time, may be placed at the disposal of the university from whatever source; provided that notwithstanding any other law to the contrary, all documents regarding expenditures and changes thereto, made by the board shall be disclosed in open meetings for the purpose of public comment; provided further that all expenditure requests, proposals, and any other budgetary documents used by the board at an open meeting shall be made available to the public at least six calendar days before the meeting.

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, in accordance with this section and other law, shall manage the inventory, equipment, surplus

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1 property, and expenditures of the university and~~[, subject to~~
2 ~~chapter 91, may adopt rules, further]~~ at an open public meeting
3 subject to the requirements of chapter 92 may adopt regulations
4 controlling and regulating the same."

5 SECTION 3. Section 304A-402, Hawaii Revised Statutes, is
6 amended to read as follows:

7 "[+] §304A-402 [+] Residence for tuition purposes~~[, basic~~
8 ~~rule]~~. The board of regents shall adopt the necessary ~~[rules]~~
9 regulations at an open public meeting subject to the
10 requirements of chapter 92 defining residence for tuition
11 purposes ~~[herein]~~; provided that the basic ~~[rule]~~ principle
12 shall be that a student shall qualify for the resident tuition
13 fee at the university only if the following criteria are met:

14 (1) The adult student, or in the case of a minor student,
15 the student's parents or guardians, has or have been a
16 bona fide resident of this State for at least twelve
17 consecutive months next preceding the student's first
18 day of officially scheduled instruction for any
19 semester or term in which the student is enrolling at
20 the particular college or campus; and

21 (2) The adult or minor student has not been claimed as a
22 dependent for tax purposes for at least twelve months
23 next preceding the student's first day of officially

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1 scheduled instruction for any semester or term in
2 which the student is enrolling at the particular
3 college or campus by the student's parents or
4 guardians who are nonresidents of the State; provided
5 that this provision shall not apply in cases where the
6 parent claiming the student as a dependent is entitled
7 to do so under a child support order or agreement
8 issued or entered into in conjunction with a divorce
9 proceeding or legal separation agreement and the other
10 parent and the student meet the criteria set forth in
11 paragraph (1)."

12 SECTION 4. Section 304A-604, Hawaii Revised Statutes, is
13 amended to read as follows:

14 " [f] §304A-604 [f] [Rules] Regulations governing state
15 higher education loan fund. The board of regents shall [have
16 the power, in accordance with chapter 91, to] at an open public
17 meeting subject to the requirements of chapter 92 adopt [rules]
18 regulations necessary for the administration of the state higher
19 education loan fund. The state higher education loan fund is
20 limited to students at the University of Hawaii or the community
21 colleges who have been residents of the State pursuant to
22 section 304A-601."

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SECTION 5. Section 304A-2160, Hawaii Revised Statutes, is amended to read as follows:

"[+] §304A-2160[+] State higher education loan fund. There is established a special fund to be known as the state higher education loan fund. The fund shall be a revolving fund and all interest and payments received on account of principal shall be credited to the fund. The fund shall be administered by the board of regents and shall be disbursed to needy students that meet eligibility requirements under section [+] 304A-601[+] pursuant to ~~[rules]~~ regulations adopted by the board."

SECTION 6. Section 304A-2601, Hawaii Revised Statutes, is amended to read as follows:

"[+] §304A-2601[+] **Parking; control by board of regents.**

(a) The board of regents may ~~[make rules governing]~~ regulate the traffic and parking conditions on the roadways and other areas under the jurisdiction of the university.

(b) The board may:

(1) Assess fees for parking on roadways and in the parking areas under the jurisdiction of the university;

(2) Install parking meters on roadways and in parking areas; and

(3) ~~[Make rules relating to the assessments of]~~ Assess fees for parking and the installation of parking

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1 meters. The ~~[rules shall be adopted pursuant to~~
2 ~~chapter 91.]~~ regulations shall be adopted at an open
3 public meeting subject to the requirements of chapter
4 92.

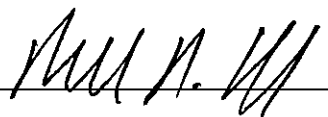
5 The fees shall be deposited in the university parking
6 revolving fund established under section [‡]304A-2275[‡].

7 (c) For the purposes of this subpart, parking facilities
8 shall be considered university projects, and the board shall
9 possess all powers conferred by [‡]subpart D[‡]."

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

12 SECTION 8. This Act shall take effect upon its approval.

13
14 INTRODUCED BY: _____



15 BY REQUEST

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Report Title:

University of Hawaii; Rulemaking; Adoption of Regulations

Description:

Exempt certain adoption of regulations by the University of Hawaii from chapter 91, Hawaii Revised Statutes; require certain adoption of regulations by the University of Hawaii be subject to chapter 92, Hawaii Revised Statutes.

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.

JUSTIFICATION SHEET

DEPARTMENT: University of Hawaii

TITLE: A BILL FOR AN ACT RELATING TO UNIVERSITY OF HAWAII RULEMAKING.

PURPOSE: Align the processes to which the Board of Regents for the University of Hawaii conducts its business to consistently fall under the "open meeting" process under the Sunshine Law under chapter 92, Hawaii Revised Statutes (HRS), rather than by the "rule making" process under chapter 91, HRS, for matters internal to the University. This will ensure consistency among sections of chapter 304A, HRS, and thus reduce uncertainty among other agencies and the general public when it comes to adoption of policies and procedures at the University of Hawaii.

MEANS: Amend sections 304A-105(a), 304A-402, 304A-604, 304A-2160, and 304A-2601, HRS.

JUSTIFICATION: Under the framework established by chapter 91 concerning public "rules", a state agency is allowed to issue regulations concerning its internal management without having to follow various requirements for adopting public rules, such as public notice, public hearing, and gubernatorial approval. Currently, there is a lack of consistency between the use of chapter 91 procedures and chapter 92 procedures as written in some sections of chapter 304A for matters internal to the University. This proposal continues to maintain the public's opportunity --including members of the university community such as students, faculty, and staff-- to observe and comment in an open meeting, but makes the use of chapter 91 procedures more uniform throughout chapter 304A.

Chapter 92 requires that the public be given advance notice when the Board intends to meet, that the public be given the opportunity to submit written or oral testimony on any item on the meeting agenda, that the Board deliberate and decide issues in an open meeting for public observation, except for those circumstances where an executive session closed to the public is permitted, and that the Board maintain public written minutes of its meetings. As Board meetings concerning proposed internal regulations are conducted pursuant to part I of chapter 92, the public is given ample opportunity to comment on proposed regulations.

Impact on the public: None.

Impact on the department and other agencies:
The proposed amendments will ensure consistency among sections of chapter 304A and thus reduce uncertainty. Authorizing the University to adopt regulations pursuant to part I of chapter 92 will allow the University to create and update its internal management regulations in a more timely and responsive manner while maintaining public transparency.

GENERAL FUND: None.

OTHER FUNDS: None.

PPBS PROGRAM
DESIGNATION: UOH-900, UOH-800, UOH-700, UOH-210, UOH-100.

OTHER AFFECTED
AGENCIES: None.

EFFECTIVE DATE: Upon approval.