

MAR 12 2021

SENATE CONCURRENT RESOLUTION

REQUESTING THE UNIVERSITY OF HAWAII TO CONVENE A TASK FORCE TO
REVIEW ITS ARRANGEMENT FOR SERVICES WITH THE RESEARCH
CORPORATION OF THE UNIVERSITY OF HAWAII.

1 WHEREAS, the University of Hawaii (University) is
2 established as the state university and a body corporate
3 pursuant to the Constitution of the State of Hawaii (Hawaii
4 State Constitution) and state law, and is currently the sole
5 provider of public higher education for the State; and
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7 WHEREAS, the Research Corporation of the University of
8 Hawaii (RCUH) is a body corporate established pursuant to
9 section 304A-3001, Hawaii Revised Statutes, as a public
10 instrumentality of the State that is a part of the University
11 for administrative purposes; and
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13 WHEREAS, the mission of the RCUH is to support and enhance
14 research, development, and training in Hawaii, with a focus on
15 the University of Hawaii; and
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17 WHEREAS, to carry out its purposes and objectives, the RCUH
18 is granted flexibility in the hiring of its personnel and in the
19 handling and disbursement of monies, by being excepted from
20 certain state laws, including:
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22 (1) Obligations to reimburse the state general fund for
23 central service and administrative expenses under
24 sections 36-27 and 36-30, Hawaii Revised Statutes;
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26 (2) Chapter 103D, Hawaii Revised Statutes, the Hawaii
27 Public Procurement Code, relating to the advertisement
28 for bids and purchases to be made in Hawaii whenever
29 public moneys are expended;
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31 (3) The Hawaii Public Procurement Code with respect to
32 construction contracts, provided that the exception



1 does not apply where state funds are used and
2 compliance with the code is required by a bill enacted
3 by the Legislature;

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5 (4) Chapter 76, Hawaii Revised Statutes, the Civil Service
6 Law;

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8 (5) Section 78-1, Hawaii Revised Statutes, relating to
9 public employment; and

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11 (6) Laws relating to collective bargaining in public
12 employment under chapter 89, Hawaii Revised Statutes,
13 with regard to services provided to the University
14 pursuant to section 304A-112, Hawaii Revised Statutes;
15 and

16
17 WHEREAS, the RCUH has utilized its exemptions from the
18 Hawaii Public Procurement Code as a pass-through for various
19 projects, including the construction of the University's West
20 Oahu campus; and

21
22 WHEREAS, under section 304A-112, Hawaii Revised Statutes,
23 when the University determines that neither the University nor
24 another state agency can more effectively or efficiently
25 accomplish the purposes of sponsored research and training
26 activities, the University must contract with the RCUH to
27 receive management and other services to support such research
28 and training activities; and

29
30 WHEREAS, the support services provided by the RCUH to the
31 University pursuant to section 304A-112, Hawaii Revised
32 Statutes, may include procurement of goods and services,
33 employment of personnel, and provision of advance funding for
34 research and training contracts and grants; and

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36 WHEREAS, the terms and conditions of the services provided
37 by the RCUH to the University, including the factors and method
38 by which fees charged by the RCUH are computed, are set forth in
39 an agreement (Service Agreement) between the two parties; and

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41 WHEREAS, concerns have been raised over the transparency of
42 the RCUH's operations and its handling of expenses, as well as



1 the increasing amount of fees it charges and collects from the
2 University; and

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4 WHEREAS, the University and RCUH are public corporations,
5 and therefore, their board members and officers occupy fiduciary
6 positions under which they owe duties of care and loyalty to the
7 respective entities; and

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9 WHEREAS, Section 6 of article X of the Hawaii State
10 Constitution, which grants the Board of Regents of the
11 University exclusive jurisdiction over the internal structure,
12 management, and operation of the University, specifically
13 provides that the power of the Legislature to enact laws of
14 statewide concern shall not be limited and that the Legislature
15 shall have the exclusive jurisdiction to identify laws of
16 statewide concern; and

17
18 WHEREAS, the Legislature deems that it is a matter of
19 statewide concern to assure that the fees committed and paid by
20 the University to the RCUH for its support services are
21 reasonable and commensurate with and balanced against the needs,
22 priorities, and other demands placed on the University's limited
23 resources; and

24
25 WHEREAS, it would benefit the State to have the terms and
26 conditions of the Service Agreement between the University and
27 RCUH examined and assessed, considering the University's
28 existing research needs, research priorities, limited resources,
29 anticipated opportunities for extramural sponsored research, the
30 State's current economic and financial situation due to the
31 disruptions caused by the coronavirus disease 2019 (COVID-19)
32 pandemic, and predicted increase in fees charged by the RCUH;
33 now, therefore,

34
35 BE IT RESOLVED by the Senate of the Thirty-first
36 Legislature of the State of Hawaii, Regular Session of 2021, the
37 House of Representatives concurring, that the University is
38 requested to convene a task force to examine the terms and
39 conditions of the Service Agreement and determine whether
40 amendments are warranted; and

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1 BE IT FURTHER RESOLVED that the task force is requested to
2 include the following as members:

- 3
4 (1) The Vice President for Research and Innovation of the
5 University, who is requested to serve as the
6 chairperson of the task force;
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8 (2) The Executive Director of the RCUH;
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10 (3) The Chairperson of the Board of Regents of the
11 University or the Chairperson's designee; and
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13 (4) Four members representing the University to be
14 appointed by the President of the University; and
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16 BE IT FURTHER RESOLVED that the Office of the Vice
17 President for Research and Innovation is requested to provide
18 the task force with administrative support as the office's
19 resources may permit; and
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21 BE IT FURTHER RESOLVED that the task force is requested to
22 submit a report of its findings and recommendations, including
23 the following and any proposed legislation, to the Legislature
24 no later than twenty days prior to the convening of the Regular
25 Session of 2022:

- 26
27 (1) The history of the relationship between the University
28 and the RCUH and itemization of the services the
29 University received or is receiving from the RCUH,
30 including descriptions of the projects, types of
31 services received or being received from the RCUH,
32 duration of the services, and breakdowns of the fees
33 paid or being paid by the University to the RCUH;
34
35 (2) An assessment of the terms and conditions of the
36 Service Agreement, including but not limited to:
37
38 (A) A summary of the terms and conditions;
39
40 (B) The reasonableness, necessity, and feasibility of
41 each of the terms and conditions from the
42 University's standpoint, in consideration of the



1 University's existing research needs, research
2 priorities, limited resources, anticipated
3 opportunities for extramural sponsored research,
4 the State's current economic and financial
5 situation due to the disruptions caused by the
6 COVID-2019 pandemic, and predicted increase in
7 fees charged by the RCUH; and
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9 (3) A determination of whether amendments to the terms and
10 conditions of the Service Agreement are suggested; and
11

12 (4) Any proposed amendments to the terms and conditions
13 the Service Agreement with an explanation of the basis
14 of the amendments, for terms including but not limited
15 to the:

16
17 (A) Term (duration) of the agreement and whether
18 there should be a provision requiring the parties
19 to periodically review and revise its terms and
20 conditions;

21
22 (B) Scope of the RCUH's services, including an
23 exclusion of projects supported by funds
24 appropriated by the Legislature;

25
26 (C) Fees paid by the University to the RCUH and its
27 structure, including but not limited to the:

28
29 (i) Method and factors used to compute the
30 amount of fees;

31
32 (ii) Means to index;

33
34 (iii) Maximum amount of fees, if placing one is
35 deemed appropriate by the task force; and

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37 (iv) Predicted increases of fees in the future;
38 and

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40 (D) The University's means to fund its payment of
41 fees to the RCUH; and
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1 BE IT FURTHER RESOLVED that the task force is requested to
2 dissolve on July 1, 2022; and

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4 BE IT FURTHER RESOLVED that certified copies of this
5 Concurrent Resolution be transmitted to the Chairperson of the
6 Board of Regents of the University and President of the
7 University.

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OFFERED BY: *Jana Mercado K.*

