

MAR 12 2021

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# SENATE 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  
33 does not apply where state funds are used and  
34 compliance with the code is required by a bill enacted  
35 by the Legislature;



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- 2 (4) Chapter 76, Hawaii Revised Statutes, the Civil Service
- 3 Law;
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- 5 (5) Section 78-1, Hawaii Revised Statutes, relating to
- 6 public employment; and
- 7
- 8 (6) Laws relating to collective bargaining in public
- 9 employment under chapter 89, Hawaii Revised Statutes,
- 10 with regard to services provided to the University
- 11 pursuant to section 304A-112, Hawaii Revised Statutes;
- 12 and
- 13

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

18  
 19 WHEREAS, under section 304A-112, Hawaii Revised Statutes,  
 20 when the University determines that neither the University nor  
 21 another state agency can more effectively or efficiently  
 22 accomplish the purposes of sponsored research and training  
 23 activities, the University must contract with the RCUH to  
 24 receive management and other services to support such research  
 25 and training activities; and

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

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

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 38 WHEREAS, concerns have been raised over the transparency of  
 39 the RCUH's operations and its handling of expenses, as well as  
 40 the increasing amount of fees it charges and collects from the  
 41 University; and

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

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

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

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

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

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

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

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



the State's current economic and financial situation due to the disruptions caused by the COVID-2019 pandemic, and predicted increase in fees charged by the RCUH; and

(3) A determination of whether amendments to the terms and conditions of the Service Agreement are suggested; and

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

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

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

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

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

(ii) Means to index;

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

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

(D) The University's means to fund its payment of fees to the RCUH; and

BE IT FURTHER RESOLVED that the task force is requested to dissolve on July 1, 2022; and



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1 BE IT FURTHER RESOLVED that certified copies of this  
2 Resolution be transmitted to the Chairperson of the Board of  
3 Regents of the University and President of the University.

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OFFERED BY: *Jose Mercado K.*

