

**ACT 217**

H.B. NO. 1893

A Bill for an Act Relating to Education.

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

SECTION 1. The University of Hawaii is the designated State of Hawaii recipient of funds granted by the United States Department of Education under a program entitled Gaining Early Awareness and Readiness for Undergraduate Pro-

grams (“GEAR UP”), established pursuant to P.L. 105-244, the 1998 Amendments to the Higher Education Act of 1985, codified at 20 U.S.C. §1070a-21 et seq.

In order to award scholarships consistent with the requirements for scholarships under GEAR UP, the University of Hawaii must establish a separate charitable trust to hold funds received under GEAR UP until they can be awarded to individual students from among the class of eligible scholarship recipients. This Act confirms the authority of the University of Hawaii to establish such a charitable trust; and exempts the establishment of such a trust and specification of scholarship recipient eligibility criteria therein, consistent with requirements of participation in the GEAR UP program and any conditions or criteria imposed by the University of Hawaii, from the definitions of “rules” or “rulemaking” within the meaning of and subject to the provisions of chapter 91, and the processes and procedures mandated therefore, and from any other provisions of chapter 91.

This Act also confirms the private nature of the trust established for the purposes described above, and confirms that neither the charitable trust, nor any trustee thereof, shall be deemed a department, office, agency, board, commission, bureau, instrumentality, committee, authority, or office of the State or any of its political subdivisions, or otherwise deemed a public or quasi-public entity, nor shall the initial funding of or a future transfer to the trust by the University of Hawaii, or any of its subdivisions, constitute a state grant or subsidy.

SECTION 2. Chapter 304, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**“§304- GEAR UP Hawaii scholarship trust fund.** (a) The University of Hawaii, in its sole discretion, may establish a charitable trust, recognized as tax-exempt under section 501(c)(3) of the Internal Revenue Code of 1986, as amended, to be known as the “GEAR UP Hawaii scholarship trust fund” and appoint one or more trustees thereof. The purpose of the trust is to establish and maintain a financial assistance program to award scholarships to eligible students in accordance with the requirements of funds received from the United States Department of Education under the program entitled Gaining Early Awareness and Readiness for Undergraduate Programs (“GEAR UP”), established pursuant to P.L. 105-244, the 1998 Amendments to the Higher Education Act of 1985, codified at 20 U.S.C. §1070a-21 et seq. The University shall transfer to the trust all funds received under GEAR UP upon such terms and conditions consistent with the requirements of GEAR UP, as it may be amended, and as the University of Hawaii, as settlor of the trust, may determine in its discretion.

(b) The establishment of the trust described in subsection (a), including, but not limited to the specification by the University of Hawaii as its settlor, of any specific criteria or other eligibility requirements for scholarship awards, shall not be deemed to be “rules” or “rulemaking” subject to chapter 91, or otherwise be subject to chapter 91.

(c) Neither the trust established by the University of Hawaii pursuant to subsection (a), nor any trustee thereof, shall be a department, office, agency, board, commission, bureau instrumentality, committee, authority, or office of the State or any of its political subdivisions, or otherwise deemed a public or quasi-public entity, nor shall the initial funding of, or a transfer to, the trust constitute a state grant or subsidy. The trust shall not be subject to laws or rules governing state and other public or quasi-public entities, including but not limited to chapters 23, 36, 37, 38, 40, 42F, 76, 78, 84, 89, 91, 92, 92F 103, and 103D.

(d) This section shall be liberally construed so as not to hinder or impede the University of Hawaii in its participation in GEAR UP including, but not limited to, the establishment of the trust and its operation.”

SECTION 3. New statutory material is underscored.<sup>1</sup>

SECTION 4. This Act shall take effect upon its approval.

(Approved July 13, 2004.)

**Note**

1. Edited pursuant to HRS §23G-16.5.