

A Bill for an Act Relating to Education.

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

SECTION 1. The legislature finds that a strong public library system contributes to the economic, educational, and cultural vitality of the State.

The legislature further finds that under existing law, the state librarian may issue licenses, revocable permits, concessions, and rights of entry to only two entities: the Hawaii State Library Foundation and Friends of the Library of Hawaii. The legislature finds that there are other private entities that may be able to provide an equal or greater benefit to the Hawaii state public library system if given an equal opportunity to participate.

The purpose of this Act is to, among other things:

- (1) Authorize the board of education to enter into certain arrangements or contracts, approved by the governor, with any 501(c)(3) tax-exempt nonprofit corporation whose primary purpose is the support of a state library branch;
- (2) Amend section 312-3.7, Hawaii Revised Statutes, to require that the results of the annual audit of the Hawaii state library foundation trust fund be submitted to the legislature and the board of education;
- (3) Authorize the head librarian of each library branch to receive requests for and to issue licenses, revocable permits, concessions, or rights of entry for the use of library facilities and grounds, with the approval of the state librarian, in consultation with the board of education;
- (4) Authorize affiliates of the Friends of the Library of Hawaii and certain nonprofit organizations supporting state library branches to use state library facilities for concessions, vending machines, and other activities and to maintain their own accounts for the net proceeds under specified conditions;
- (5) Require that the Friends of the Library of Hawaii and specified tax-exempt nonprofit organizations report on the proceeds and accounts; and
- (6) Authorize the board of education to adopt rules pursuant to chapter 91, Hawaii Revised Statutes, to carry out the purposes of section 312-3.8, Hawaii Revised Statutes.

It is the intent of the legislature that this Act will provide the opportunity for every individual and every entity to support their public library at the community level. Nothing in this Act should be construed to limit the ability of individuals and entities to support their local libraries.

SECTION 2. Section 312-2, Hawaii Revised Statutes, is amended to read as follows:

“§312-2 Powers of board; special fund. The board of education may:

- (1) Except as provided in section 312-3.9, make arrangements or contracts as are approved by the governor, with any county, city, association, society, person, or persons, for the purpose of benefiting the libraries and increasing their facilities and use;
- (2) Subject to section 26-12, enter into such arrangement or contract as is approved by the governor, with the Friends of the Library of Hawaii, affiliates of the Friends of the Library of Hawaii, and

any tax-exempt nonprofit organization recognized under section 501(c)(3) of the Internal Revenue Code whose primary purpose is to support a state library branch for the purpose of obtaining the use of the books and property and income of the Friends of the Library of Hawaii[;], its affiliates, and such tax-exempt nonprofit organizations;

- (3) Cooperate by exchange and otherwise with libraries now existing or hereafter to be formed;
- (4) Receive, use, manage, or invest moneys or other property, real, personal, or mixed which may be given, bequeathed, devised, or in any manner received from sources other than the legislature or any federal appropriation for any or all purposes of the libraries;
- (5) Deposit with the director of finance in a special fund all moneys donated to the board for library services;
- (6) Unless otherwise provided for by the terms and conditions of the donation, convert, at such time as the board may at its sole discretion determine, any or all donations of property, real, personal, or mixed, into money to be deposited into the special fund; and
- (7) Expend the moneys in the special fund in accordance with the terms and conditions of each donation for the purposes of the libraries.

The board shall be the trustee of the special fund and all moneys therein shall be deemed to have been appropriated to the use and for the purposes of the board in providing library services. Nothing in this section shall be construed to limit the powers and duties of the board hereinbefore expressed, or to empower the board to obligate the State financially in any sum which shall not have been appropriated by the legislature for the use of the board.”

SECTION 3. Section 312-3.7, Hawaii Revised Statutes, is amended by amending subsection (d) to read as follows:

“(d) The Hawaii state library foundation shall require an annual audit of the trust fund, the results of which shall be submitted to the [department] board of education and the legislature not more than thirty days after receipt by the foundation. The foundation shall retain for a period of three years, any documents, papers, books, records, and other evidence that is pertinent to the trust fund, and permit inspection or access thereto by the [department] board of education, the state librarian, the department of accounting and general services, state legislators, and the state auditor, or their duly authorized representatives.”

SECTION 4. Section 312-3.8, Hawaii Revised Statutes, is amended to read as follows:

“§312-3.8 ~~[Hawaii state library foundation and friends of the library of Hawaii concessions; use]~~ Use of public library facilities. (a) Notwithstanding any law to the contrary, the ~~[Hawaii state public library system, through the state librarian, shall be authorized to issue]~~ head librarian of each library branch may request the issuance of licenses, revocable permits, concessions, or rights of entry to [the Hawaii state library foundation and the friends of the library of Hawaii and]¹:

- (1) The Friends of the Library of Hawaii;
- (2) Affiliates of the Friends of the Library of Hawaii, through and with approval of the Friends of the Library of Hawaii; and
- (3) Any tax-exempt nonprofit organization recognized by the Internal Revenue Service under section 501(c)(3) of the Internal Revenue Code whose primary purpose is to support a state library branch,

for the use of public library system facilities and grounds, with the approval of the state librarian, in consultation with the board of education,² for such periods of use as deemed appropriate by the state librarian. The state librarian shall administer any licenses, revocable permits, concessions, or rights of entry issued pursuant to this section. All such dispositions, including those in excess of fourteen days, need not be approved by the board of land and natural resources; provided that approval by the board of land and natural resources shall be required when such dispositions are for periods in excess of one year.

(b) Notwithstanding any law to the contrary, all net [income or] proceeds received by [the Hawaii state library foundation and the friends of the library of Hawaii] the Friends of the Library of Hawaii from the operation of any concession, vending machine, or other [for-profit business enterprise] activity through a state-wide contract within, or on the grounds of, any state library facility shall be deposited into the [Hawaii state library foundation trust fund or the friends of the library of Hawaii trust fund, as appropriate.] Friends of the Library of Hawaii trust fund. All funds deposited into the trust [funds,] fund, including income and capital gains earned therefrom, shall be used exclusively for state library programs.

(c) Notwithstanding any law to the contrary, all net proceeds received by the Friends of the Library of Hawaii, an affiliate of the Friends of the Library of Hawaii, or any nonprofit organization from the operation of any concession, vending machine, or other activity within, or on the grounds of, any state library facility shall be deposited into an account in a federally insured financial institution, with such account being held in that organization's name and controlled exclusively by that organization, which shall have sole authority and discretion in the disbursement of its funds. All funds deposited into the account, including income and capital gains earned therefrom, shall be used exclusively for the state library or libraries that the Friends of the Library of Hawaii, affiliate of the Friends of the Library of Hawaii, or nonprofit organization is organized to support.

(d) No later than September 30 of each year, the Friends of the Library of Hawaii and any nonprofit organization that has been issued a license, revocable permit, concession, or right of entry for the use of state public library system facilities and grounds shall submit to the state librarian an annual financial statement. The annual financial statement shall include:

- (1) The name and address of any financial institution in which the net proceeds from the operation of any concession, vending machine, or other activity within, or on the grounds of, any state library facility were deposited and held;
- (2) The name of any account, account number, and balance of all such accounts;
- (3) A reasonable description of deposits into the account; and
- (4) A reasonable description of withdrawals and disbursements including how the withdrawals and disbursements were used to support the appropriate state library.

The annual financial statement of the Friends of the Library of Hawaii shall include the financial statements, satisfying the criteria set forth above, of all of its affiliates that were issued a license, revocable permit, concession, or right of entry for the use of state library system facilities and grounds.

(e) The Friends of the Library of Hawaii, affiliates of the Friends of the Library of Hawaii, and any nonprofit organization that receives net proceeds from the operation of any concession, vending machine, or other activity within, or on the grounds of, any state library facility shall keep true and accurate records as to their activities in a form that will accurately provide support for the

information required by this section. Upon demand, the records shall be made available to the state librarian for inspection. Records shall be retained for a period of not less than five years.

(f) The state librarian shall, upon ten days notice, revoke any license, permit, concession, or right of entry issued if the Friends of the Library of Hawaii, any affiliate of the Friends of the Library of Hawaii, or any tax-exempt nonprofit organization recognized by the Internal Revenue Service under section 501(c)(3) of the Internal Revenue Code whose primary purpose is to support a state library branch fails to comply with any provision of this section, including the submission of an annual financial statement. The state librarian may, at the state librarian's discretion, in consultation with the board of education, re-issue a license, permit, concession, or right of entry upon compliance with this section.

(g) For purposes of this section:

"Affiliate of the Friends of the Library of Hawaii" means any organization or entity that enters into a written agreement with the Friends of the Library of Hawaii to be an affiliate. The affiliate is not required to be recognized by the Internal Revenue Service as a tax-exempt nonprofit organization.

"Net proceeds" means all revenue generated from the operation of any concession, vending machine, or other activity within, or on the grounds of, any state library facility minus the costs incurred in generating those revenues, including but not limited to payments to third-party vendors and any expenses associated with operating the organization.

(h) The board of education may adopt rules pursuant to chapter 91 to carry out the purpose of this section."

SECTION 5. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 6. This Act shall take effect upon its approval.

(Approved July 9, 2012.)

Notes

1. So in original.
2. Prior to amendment "and" appeared here.