

ACT 171

H.B. NO. 2353

A Bill for an Act Relating to Public Libraries.

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

SECTION 1. 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~~] an 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~~] the aforementioned 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~~] that 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~~] the library 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~~] the 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 Hawaii state public library system 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]~~ that shall not have been appropriated by the legislature for the use of the board."

SECTION 2. Section 312-3.5, Hawaii Revised Statutes, is amended to read as follows:

"§312-3.5 Detention of ~~[books and other]~~ public library materials; penalty. (a) A person who detains ~~[a book, newspaper, plate, picture, photograph, engraving, painting, drawing, map, magazine, document, letter, government record, microform, sound recording, audio-visual materials in any format, magnetic or other tapes, artifacts, or other documentary (written or printed)]~~ any public library materials belonging to any community, school, or public library [or similar institution controlled by the State] for one day after the due date of the public library materials, shall be subject to a nominal charge established by the board of education.

(b) A person detaining ~~[such books or]~~ any public library materials thirty days or more after the due date of the materials shall be subject to a charge commensurate with the replacement value of the ~~[books or]~~ public library materials."

SECTION 3. Section 312-3.7, Hawaii Revised Statutes, is amended to read as follows:

"§312-3.7 ~~[Hawaii state library foundation trust]~~ Friends of the library of Hawaii program fund. (a) There is established as a separate fund of the ~~[Hawaii state library foundation,]~~ Friends of the Library of Hawaii, a Hawaii nonprofit corporation, the ~~[Hawaii state library foundation trust]~~ friends of the library of Hawaii program fund. All ~~[funds]~~ moneys contributed to the ~~[trust]~~ fund, including income and capital gains earned therefrom, shall be used exclusively for state library programs as defined in the articles, bylaws, resolutions, and other instruments executed on behalf of the ~~[Hawaii state library foundation]~~ Friends of the Library of Hawaii or by the state librarian. The ~~[trust]~~ fund may receive any and all types of private contributions, and the income and capital gains earned by the fund; provided that ~~[funds]~~ moneys or properties donated for library use and patrons' deposits shall be deposited and accounted for in accordance with rules adopted by the comptroller. The ~~[trust]~~ fund shall be subject to the following restrictions:

- (1) All ~~[funds,]~~ moneys, and the income and capital gains earned by investment of those ~~[funds,]~~ moneys, shall be expended only for the support of state library programs; and
 - (2) Other restrictions imposed by the legislature with respect to the transfer or appropriation of ~~[funds,]~~ moneys.
- (b) Any ~~[funds]~~ moneys deposited in the ~~[trust]~~ fund, and any income and capital gains earned therefrom, not used for state library programs, shall be invested in accordance with the provisions of the articles, bylaws, resolutions, or other instruments executed on behalf of the ~~[Hawaii state library foundation,]~~

Friends of the Library of Hawaii, and in a manner intended to maximize the rate of return on investment of the fund.

(c) If the ~~[trust]~~ fund is terminated or the ~~[Hawaii state library foundation]~~ Friends of the Library of Hawaii is dissolved, all ~~[funds,] moneys,~~ including the income and capital gains earned by the investment of ~~[funds,] moneys,~~ shall be distributed in accordance with the articles and bylaws of the ~~[Hawaii state library foundation.]~~ Friends of the Library of Hawaii.

(d) The ~~[Hawaii state library foundation]~~ Friends of the Library of Hawaii shall require an annual audit of the ~~[trust]~~ fund, the results of which shall be submitted to the board of education and the legislature not more than thirty days after receipt by the ~~[foundation.]~~ Friends of the Library of Hawaii. The ~~[foundation]~~ Friends of the Library of Hawaii 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 board of education, the state librarian, the department of accounting and general services, state legislators, and the state auditor, or their duly authorized representatives.

(e) The purpose of this section is to create by statute a private charitable ~~[trust]~~ fund to financially support state library programs. The ~~[trust]~~ fund shall be subject to the terms and conditions provided in this section. The ~~[trust]~~ fund shall not be placed in the state treasury and the State shall not administer the fund nor be liable for its operation or solvency. The fund shall be a private charitable ~~[trust fund administered by a private trust company as trustee.]~~ account in a federally insured financial institution with such account being held in the name of the Friends of the Library of Hawaii."

SECTION 4. Section 312-3.8, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

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

SECTION 5. Section 312-21, Hawaii Revised Statutes, is amended by amending subsections (a) and (b) to read as follows:

"(a) The state librarian shall:

- (1) Provide for the establishment and ongoing operation of a fee for enhanced ~~[service]~~ services program, which includes but is not limited to the planning, programming, and budgeting of operating, research and development, and capital investment programs; and
- (2) Administer a special fund to be known as the "library fee for enhanced services special fund".

(b) Notwithstanding ~~[sections]~~ section 312-3.6 ~~[and 312-4]~~, all moneys collected through the fee for enhanced services program shall be deposited into the library fee for enhanced services special fund established under section 312-22."

SECTION 6. Section 312-22, Hawaii Revised Statutes, is amended by amending subsections (b) and (c) to read as follows:

"(b) The special fund shall be administered by the state librarian who~~;~~ after consultation with the library advisory committee, shall determine the annual amount that each public library shall receive. Allocations shall be based

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on the balance in the special fund on the first day of each fiscal year and made in quarterly installments not more than thirty days after the close of each fiscal quarter.

(c) Moneys allocated from the special fund shall be used by each community, school, or public library to operate its fee for enhanced services program. Each library shall post in a conspicuous place a list of expenditures made by the library from the special fund during the preceding fiscal quarter.”

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

SECTION 8. This Act shall take effect on July 1, 2018.

(Approved July 10, 2018.)