SENATE RESOLUTION

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

WHEREAS, the University of Hawaii (University) is established as the state university and a body corporate pursuant to the Constitution of the State of Hawaii (Hawaii State Constitution) and state law, and is currently the sole provider of public higher education for the State; and

WHEREAS, the Research Corporation of the University of Hawaii (RCUH) is a body corporate established pursuant to section 304A-3001, Hawaii Revised Statutes, as a public instrumentality of the State that is a part of the University for administrative purposes; and

WHEREAS, the mission of the RCUH is to support and enhance research, development, and training in Hawaii, with a focus on the University of Hawaii; and

WHEREAS, to carry out its purposes and objectives, the RCUH is granted flexibility in the hiring of its personnel and in the handling and disbursement of monies, by being excepted from certain state laws, including:

(1) Obligations to reimburse the state general fund for central service and administrative expenses under sections 36-27 and 36-30, Hawaii Revised Statutes;

(2) Chapter 103D, Hawaii Revised Statutes, the Hawaii Public Procurement Code, relating to the advertisement for bids and purchases to be made in Hawaii whenever public moneys are expended;

(3) The Hawaii Public Procurement Code with respect to construction contracts, provided that the exception does not apply where state funds are used and...
compliance with the code is required by a bill enacted by the Legislature;

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

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

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

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

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

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

WHEREAS, when the University contracts out sponsored research and training activities to the RCUH, the University retains portions of the extramural funds and grants it receives, as internal costs computed by using internal cost rates;

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

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

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

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

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

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

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

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

(1) Vice President for Research and Innovation of the University, who is requested to serve as the chairperson of the task force;

(2) Executive Director of the RCUH;

(3) Director of Finance of the RCUH;

(3) Chairperson of the Board of Regents of the University or the Chairperson's designee; and

(4) Three members representing the University to be appointed by the President of the University; and

BE IT FURTHER RESOLVED that the Office of the Vice President for Research and Innovation is requested to provide the task force with administrative support as the office's resources may permit; and

BE IT FURTHER RESOLVED that the task force is requested to submit a report of its findings and recommendations, including the following and any proposed legislation, to the Legislature no later than twenty days prior to the convening of the Regular Session of 2022:

(1) The history of the relationship between the University and the RCUH and itemization of the services the University received or is receiving from the RCUH, including:

(A) Descriptions of the projects;

(B) Types of services received or being received from the RCUH;

(C) Duration of RCUH's services;
(D) Breakdowns of the fees paid or being paid by the University to the RCUH; and

(E) Breakdown of the extramural funds and grants received by the University, including:

(i) Total amount of extramural funds and grants received by the University;

(ii) Amount of extramural funds retained by the University as internal costs, the formulae and rates used to compute the amount of internal costs, and an explanation of the basis for the formulae and rates;

(iii) Amount of extramural funds and grants contracted out to the RCUH; and

(iv) Accounting items for which the internal costs retained by the University were spent;

(2) An assessment of the terms and conditions of the Service Agreement, including but not limited to:

(A) A summary of the terms and conditions;

(B) The reasonableness, necessity, and feasibility of each of the terms and conditions from the University's standpoint, in consideration of the University's existing research needs, research priorities, limited resources, anticipated 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

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