



GOV. MSG. NO. 1187

EXECUTIVE CHAMBERS  
HONOLULU

NEIL ABERCROMBIE  
GOVERNOR

May 31, 2013

The Honorable Donna Mercado Kim,  
President  
and Members of the Senate  
Twenty-Seventh State Legislature  
State Capitol, Room 409  
Honolulu, Hawaii 96813

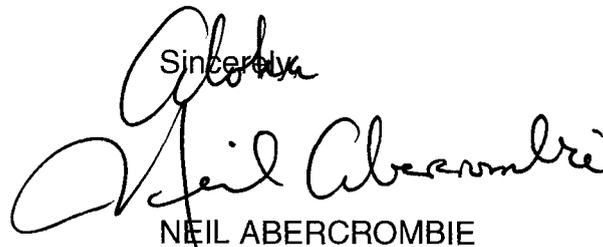
The Honorable Joseph M. Souki,  
Speaker and Members of the  
House of Representatives  
Twenty-Seventh State Legislature  
State Capitol, Room 431  
Honolulu, Hawaii 96813

Dear President Kim, Speaker Souki, and Members of the Legislature:

This is to inform you that on May 31, 2013, the following bill was signed into law:

HB114 HD3 SD2 CD1

RELATING TO HIGHER EDUCATION  
**ACT 087 (13)**

Sincerely,  
  
NEIL ABERCROMBIE  
Governor, State of Hawaii

Approved by the Governor  
on MAY 31 2013

ORIGINAL

ACT 087

HOUSE OF REPRESENTATIVES  
TWENTY-SEVENTH LEGISLATURE, 2013  
STATE OF HAWAII

H.B. NO.

114  
H.D. 3  
S.D. 2  
C.D. 1

---

---

# A BILL FOR AN ACT

RELATING TO HIGHER EDUCATION.

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:**

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18

PART I

SECTION 1. The legislature finds that the prudent and transparent management of public funds appropriated by the legislature and expended by the University of Hawaii is a matter of statewide concern and therefore under the legislature's purview pursuant to article X, section 6, of the Hawaii state constitution.

The purpose of this Act, therefore, is to:

- (1) Repeal the authority of the president of the University of Hawaii to serve as the chief procurement officer for construction contracts and professional services related to construction contracts and to assign those responsibilities to the administrator of the state procurement office; and
- (2) Establish an independent audit committee within the board of regents of the University of Hawaii to assist the board in discharging its constitutional powers and duties with respect to the university.



PART II

SECTION 2. Section 103D-203, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) The chief procurement officer for each of the following state entities shall be:

- (1) The judiciary--the administrative director of the courts;
- (2) The senate--the president of the senate;
- (3) The house of representatives--the speaker of the house of representatives;
- (4) The office of Hawaiian affairs--the chairperson of the board;
- (5) The University of Hawaii--the president of the University of Hawaii; provided that, except as specified in section 304A-2672(2), for contracts for construction and professional services furnished by licensees under chapter 464, the administrator of the state procurement office of the department of accounting and general services shall serve as the chief procurement officer;



- 1 (6) The department of education, excluding the Hawaii  
2 public library system--the superintendent of  
3 education;
- 4 (7) The Hawaii health systems corporation--the chief  
5 executive officer of the Hawaii health systems  
6 corporation; and
- 7 (8) The remaining departments of the executive branch of  
8 the State and all governmental bodies administratively  
9 attached to them--the administrator of the state  
10 procurement office of the department of accounting and  
11 general services."

12 SECTION 3. Section 304A-105, Hawaii Revised Statutes, is  
13 amended by amending subsection (b) to read as follows:

14 "(b) The board of regents shall develop internal policies  
15 and procedures for the procurement of goods, services, and  
16 construction, consistent with the powers of the board set forth  
17 in section 304A-2672, and the goals of public accountability and  
18 public procurement practices, subject to chapter 103D."

19 SECTION 4. Section 304A-2672, Hawaii Revised Statutes, is  
20 amended to read as follows:

21 "[~~§~~304A-2672~~§~~] Powers of the board. Notwithstanding  
22 any law to the contrary, the board may:



- 1 (1) Designate as a university project, any undertaking,  
2 improvement, or facility on any one or more of the  
3 areas in one or more of the educational institutions  
4 under the jurisdiction of the board;
- 5 (2) Construct and maintain university projects, including  
6 a university project included or to be in a university  
7 system; provided that all procurements for  
8 professional services furnished by licensees under  
9 chapter 464 for construction projects shall be  
10 coordinated with the department of accounting and  
11 general services on behalf of the board; provided  
12 further that the department of accounting and general  
13 services shall not be responsible for procurements  
14 determined by both the University of Hawaii and the  
15 department of accounting and general services to be  
16 professional services furnished by licensees under  
17 chapter 464 for repair and maintenance;
- 18 (3) Combine two or more university projects into a  
19 university system on one or more of the areas on any  
20 one or more of the educational institutions under the  
21 jurisdiction of the board, and to maintain the system;



- 1 (4) Combine two or more university projects, university  
2 systems, or university projects and university systems  
3 into a network, on any one or more of the areas on any  
4 one or more of the educational institutions under the  
5 jurisdiction of the board, and to maintain the  
6 network;
- 7 (5) Prescribe and collect rents, fees, and charges for the  
8 use of or services furnished by any university project  
9 and the facilities thereof, and pledge any  
10 appropriation to any university project and the  
11 facilities thereof that in aggregate, produces revenue  
12 of the university at least sufficient to comply with  
13 section 304A-2681;
- 14 (6) With the approval of the governor, issue revenue bonds  
15 under this subpart in such principal amount as may be  
16 authorized by the legislature from time to time to  
17 finance in whole or in part the cost of construction  
18 or the cost of maintenance of any university project,  
19 including funding reserves therefor;
- 20 (7) Pledge to the punctual payment of revenue bonds and  
21 interest thereon, all or any part of the revenue of  
22 the university, including any appropriation, in an



1 amount sufficient to pay the revenue bonds and  
 2 interest as the same become due and to create and  
 3 maintain reasonable reserves therefor;  
 4 (8) Establish a loan program or a commercial paper program  
 5 upon terms and conditions that the board may  
 6 determine; and  
 7 (9) Advance moneys of the university, not otherwise  
 8 required, and do any and all other lawful acts as may  
 9 be necessary, convenient, or desirable, for carrying  
 10 into execution and administering this subpart."

PART III

12 SECTION 5. Chapter 304A, Hawaii Revised Statutes, is  
 13 amended by adding a new subpart to part I to be appropriately  
 14 designated and to read as follows:

" . INDEPENDENT AUDIT COMMITTEE

16 **§304A- Independent audit committee; established; powers;**  
 17 **duties.** (a) There is established within the board of regents  
 18 of the University of Hawaii an advisory body to be known as the  
 19 independent audit committee.

20 (b) The independent audit committee shall consist of at  
 21 least three members but not more than five members who shall be  
 22 appointed by the chairperson of the board of regents, from among



1 the members of the board of regents, except as provided in this  
2 subsection. The chair of the independent audit committee shall  
3 be selected by and from among its members.

4 The independent audit committee shall include one or more  
5 individuals with financial expertise. If no member of the board  
6 of regents has the requisite skills, the board of regents shall  
7 execute other arrangements, which may include the appointment of  
8 members of the general public who possess the requisite  
9 financial expertise to the independent audit committee to ensure  
10 that the independent audit committee has the capacity to carry  
11 out its duties.

12 (c) The board of regents shall generally:

- 13 (1) Establish the charter of the independent audit  
14 committee and set forth its members' roles and  
15 responsibilities;
- 16 (2) Consider changes to the independent audit committee's  
17 charter that are necessary in response to new laws,  
18 regulations, and best practices; and
- 19 (3) Conduct an annual review of the independent audit  
20 committee's charter to reassess its adequacy and adopt  
21 any proposed and necessary changes to the charter.



1 (d) The independent audit committee shall be exempt from  
2 chapter 91 and part I of chapter 92 to the extent that the  
3 independent audit committee is engaging in discussions or  
4 proceedings arising from an investigation by the independent  
5 audit committee relating to potentially actionable civil or  
6 criminal conduct, whether or not the investigation is pending or  
7 outstanding.

8 (e) The independent audit committee shall undertake  
9 professional development to improve the financial expertise of  
10 the independent audit committee as a whole, including:

- 11 (1) Attendance at seminars and conferences;
- 12 (2) Attendance at educational sessions including special  
13 speakers; and
- 14 (3) The study of analytical tools for audit committees.

15 (f) The independent audit committee shall engage in  
16 operations relating to enterprise risk management including:

- 17 (1) Providing oversight of risk management, which shall  
18 include determining overall strategy and influencing  
19 the university's risk philosophy;
- 20 (2) Inquiring of the president of the University of  
21 Hawaii, the chief financial officer of the university,



1 and external auditors about significant risks or  
2 exposures faced by the university;

3 (3) Assessing steps that the president of the University  
4 of Hawaii has taken or proposes to take to minimize  
5 those risks to the university and periodically  
6 reviewing compliance with those steps; and

7 (4) Reviewing with the general counsel of the University  
8 of Hawaii, external auditors, external counsel, and  
9 the chief financial officer of the university legal  
10 and regulatory matters that, in the opinion of the  
11 president of the University of Hawaii, may have a  
12 material impact upon the financial statements, related  
13 organization compliance policies, and programs and  
14 reports received from regulators.

15 (g) The independent audit committee shall hold meetings as  
16 needed to address matters on its agenda, not less frequently  
17 than twice per year. The independent audit committee may  
18 request the president of the University of Hawaii or others to  
19 attend its meetings or to provide pertinent information as  
20 necessary. The board of regents shall provide in the charter of  
21 the independent audit committee for the independent audit  
22 committee to take action between meetings by unanimous consent.



1 (h) The independent audit committee shall review its  
2 effectiveness annually and shall prepare, or oversee the  
3 preparation of, an annual report to the board of regents.

4 (i) The annual report of the independent audit committee  
5 shall address other matters affecting the management and  
6 organization of the University of Hawaii by engaging in  
7 functions, including:

- 8 (1) Reviewing with the president of the University of  
9 Hawaii and an external auditor retained pursuant to  
10 subsection (r) the effect of any regulatory and  
11 accounting initiatives and unique transactions,  
12 including relationships with legally separate  
13 entities, to determine whether the accounting for  
14 those transactions applied best practices;
- 15 (2) Reviewing significant related party transactions;
- 16 (3) Reviewing with the president of the University of  
17 Hawaii and the chief financial officer of the  
18 university, any interim financial reports or reports  
19 on internal control issued with respect to the  
20 university since the last meeting of the independent  
21 audit committee; and



- 1 (4) Reviewing with an external auditor who performs an  
2 audit the following:
- 3 (A) All critical accounting policies and practices  
4 used by the external auditor; provided that:
- 5 (i) All alternative treatments of financial  
6 information within generally accepted  
7 accounting principles have been discussed  
8 with the president of the University of  
9 Hawaii;
- 10 (ii) The ramifications of each alternative are  
11 discussed; and
- 12 (iii) The treatment preferred by the university is  
13 discussed;
- 14 (B) Any consultation with audit firms other than the  
15 external auditor, including the reasons for, and  
16 results of, the consultation; and
- 17 (C) Any other information relating to significant  
18 estimates and judgments.
- 19 (j) The independent audit committee shall also review with  
20 any external auditor and the chief financial officer of the  
21 university matters affecting internal control and an internal  
22 audit, including:



- 1           (1) The adequacy of the University of Hawaii's internal  
2           control, including computerized information system  
3           controls and security; and
- 4           (2) Any related significant findings and recommendations  
5           of the internal and external auditors, together with  
6           the responses of the president of the University of  
7           Hawaii.
- 8           (k) The independent audit committee shall also review  
9           matters affecting the accounting policies and procedures of the  
10          University of Hawaii by:
- 11          (1) Ensuring that accounting policies, procedures, and  
12          related controls are documented and reviewed with the  
13          independent audit committee;
- 14          (2) Reviewing accounting controls annually;
- 15          (3) Reviewing with the president of the University of  
16          Hawaii policies and procedures with respect to  
17          officers, key employees, and disqualified persons as  
18          defined under section 4958 of the Internal Revenue  
19          Code of 1986, as amended; and
- 20          (4) Inquiring of the president of the University of Hawaii  
21          and the chief financial officer regarding the  
22          financial health of the university.



1 (l) The independent audit committee shall review the  
2 University of Hawaii's antifraud programs and controls and aid  
3 in discovering and remedying incidences of fraud.

4 (m) Notwithstanding part V of chapter 378, the independent  
5 audit committee shall review:

6 (1) Procedures for the receipt, retention, and treatment  
7 of complaints received by the University of Hawaii  
8 regarding accounting, internal accounting controls,  
9 auditing matters, or suspected fraud that may be  
10 submitted by any party internal or external to the  
11 university; and

12 (2) As the independent audit committee deems necessary,  
13 complaints that may have been received, the current  
14 status of such complaints, and the resolution of such  
15 complaints, if any resolution has been reached;

16 provided that any person who makes a complaint covered by this  
17 section shall be accorded the same protections as under part V  
18 of chapter 378.

19 (n) With regard to internal control and any internal  
20 audit, the independent audit committee shall also:



- 1 (1) Review with any external auditor, the chief financial  
2 officer of the university, and the comptroller the  
3 audit scope and plan of the internal auditors;
- 4 (2) Address the coordination of audit efforts to ensure  
5 the completeness of coverage, reduction of redundant  
6 efforts, and the effective use of audit resources; and
- 7 (3) Discuss with the chief financial officer of the  
8 university and the external auditor opportunities for  
9 reliance by the external auditor on the audit  
10 activities of any internal audit.
- 11 (o) For internal audits, the independent audit committee  
12 shall review the following with the president of the University  
13 of Hawaii and the chief financial officer of the university:
- 14 (1) Significant findings of internal audits conducted  
15 during the university's previous and current fiscal  
16 year and the president's responses;
- 17 (2) Whether internal auditors have encountered  
18 difficulties in discharging their responsibilities in  
19 the course of their audits, such as any restrictions  
20 on the scope of their work or access to required  
21 information;
- 22 (3) Any changes required in the scope of internal audits;



- 1 (4) The budget and staffing of internal audit operations;  
2 (5) An audit plan to govern internal audits; and  
3 (6) The compliance of internal audits with the Institute  
4 of Internal Auditors' International Standards for the  
5 Professional Practice of Internal Auditing.
- 6 (p) Internal auditors shall meet separately with any  
7 external auditor to coordinate audit plans to optimize the  
8 ability of the external auditor to rely upon the results of the  
9 internal audit team.
- 10 (q) The independent audit committee shall annually  
11 evaluate the performance of any internal audit, including:
- 12 (1) The adequacy of the audit plan;  
13 (2) The management of the execution of the audit plan;  
14 (3) The adequacy of human and other resources available to  
15 execute the audit plan;  
16 (4) The ability of any external auditor to rely upon the  
17 internal audit work product in the annual audit  
18 performed by an external auditor retained pursuant to  
19 subsection (r); and  
20 (5) The nature of the findings or results of any internal  
21 audits.



1 (r) Subject to approval by the board of regents, the  
2 independent audit committee shall select one or more external  
3 auditors to be retained by the University of Hawaii. The  
4 independent audit committee shall:

5 (1) Approve an audit plan;

6 (2) Establish the audit fees of any external auditor;

7 (3) Pre-approve any non-audit services provided by the  
8 external auditor, including tax services, before such  
9 services are rendered;

10 (4) Review with the president of the University of Hawaii  
11 the significance of contracting out audit services;  
12 and

13 (5) Ensure that single audit obligations are incorporated  
14 into an annual audit plan.

15 (s) The independent audit committee shall review all  
16 material written communications between any external auditor and  
17 the president of the University of Hawaii, including any  
18 management letter or schedule of unadjusted differences.

19 (t) The independent audit committee shall annually  
20 evaluate any external auditor; provided that communications with  
21 the external auditor in the evaluation shall be done so as to



1 maintain the open flow of communication between the external  
2 auditor and the independent audit committee.

3 (u) The independent audit committee shall review the  
4 following matters relating to any annual audit with the  
5 president of the University of Hawaii and any external auditor:

- 6 (1) The university's annual financial statements and  
7 related footnotes;
- 8 (2) The external auditor's audit of the financial  
9 statements and the external auditor's report;
- 10 (3) The external auditor's judgments about the quality of  
11 the university's accounting principles as applied in  
12 the university's financial reporting;
- 13 (4) Any significant changes required in the external  
14 auditor's audit plan;
- 15 (5) Any serious difficulties or disputes with the  
16 president of the University of Hawaii encountered  
17 during the audit; and
- 18 (6) Matters to be discussed by the Statement on Auditing  
19 Standards No. 114, The Auditor's Communication with  
20 those Charged with Governance (AICPA, Professional  
21 Standards), related to the conduct of any annual  
22 audit.



1 (v) The independent audit committee may hire external  
2 auditors, legal counsel, or other consultants as necessary, to  
3 address any issues arising from:

- 4 (1) The execution of the whistleblower protection  
5 procedures subject to subsection (m);
- 6 (2) Any statutory or contractual procedures when engaging  
7 external resources; and
- 8 (3) The detection of fraud.

9 (w) The independent audit committee shall submit an annual  
10 report to the board of regents and the legislature no later than  
11 twenty days prior to the convening of each regular session of  
12 the legislature on matters that include the following:

- 13 (1) All instances of material weakness in internal  
14 control, including the responses of university  
15 management; and
- 16 (2) All instances of fraud, including the responses of  
17 university management."

18 PART IV

19 SECTION 6. The administrator of the state procurement  
20 office shall submit a report to the legislature, no later than  
21 twenty days prior to the convening of the regular session of  
22 2016, of the administrator's findings and recommendations,



1 including any proposed legislation, relating to the  
2 transparency, efficiency, and compliance of the University of  
3 Hawaii's procurement of construction contracts and construction-  
4 related consultant services pursuant to chapter 103D, Hawaii  
5 Revised Statutes.

6 PART V

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

9 SECTION 8. This Act does not affect rights and duties that  
10 matured, penalties that were incurred, and proceedings that were  
11 begun before its effective date.

12 SECTION 9. This Act shall take effect on July 1, 2013.

APPROVED this 31 day of MAY, 2013

*Neil Abernethy*  
GOVERNOR OF THE STATE OF HAWAII

