

Chapters 17—19

(RESERVED)

Chapter 20

AMERICAN SAMOA COMMUNITY COLLEGE

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16.2001 Establishment of the American Samoa Community College.

There is establishment an institution of higher learning known as the American Samoa Community College within the executive branch of the government.

History: 1992, PL 22-30.

16.2002 Powers and duties of the College.

The American Samoa Community College:

- (1) may sue and be sued;
- (2) may adopt and use a seal;
- (3) may make contracts, as authorized in this chapter;
- (4) may adopt, amend and repeal bylaws;
- (5) may purchase or lease and hold personal property it considers necessary or convenient in the transaction of its business, may dispose of personal property held by it;
- (6) has the power in the name of the government to purchase, lease, or sell real estate, and accept title to that real estate in the name of the government; to accomplish the purposes of this chapter;
- (7) may procure or contract for the procurement of supplies, equipment, materials, personal services other than by employees, and construction with any public or private entity upon terms and conditions as it finds necessary to the full and convenient exercise of its purposes and powers, subject to all applicable laws and rules of American Samoa; and shall receive and account for its inventory of materials;
- (8) shall develop a program of education to meet the current and future needs of American Samoa, which shall be accredited under appropriate procedures existing in the United States for higher education;
- (9) shall develop and establish a Samoan and Pacific Studies Program to promote

interest in, and awareness of the culture, including language, and affairs of American Samoa and other islands of the Pacific; the Samoan and Pacific Studies Program shall include, but not limited to programs for the development of cultural, educational, training, and research programs for the people of Polynesia and other islands of the Pacific.

(10) shall develop and establish an Adult Education and Literacy Program for American Samoa;

(11) shall develop and establish a program in response to Federal laws relating to the Land Grant Program;

(12) shall fix schedules of tuition rates and fees for educational service and shall establish rules and procedures, in accordance with 4.1001 et seq., for the provision of such services;

(13) may accept on behalf of the government from any other government or governmental agency, or from any other public or private body, or from any other source, grants, contributions of money or property which the college may use for or in aid of any of its purposes;

(14) adopt other rules pursuant to 4.1001 et seq., not inconsistent with the provisions of this chapter or with the rules of government, that are necessary and proper for the administration and operation of the college;

(15) exercise all other powers, not inconsistent with the provisions of this chapter or with the rules of the government, which may be reasonably necessary or incidental to the establishment, maintenance, and operation of an institution of higher learning.

History: 1992. PL 22-30.

16.2003 Establishment of –Board of Higher Education.

(a) The Board of Higher Education is established. The Board shall consist of the Director of Education and 7 members, 6 of whom are appointed by the Governor with the advice and consent of the Legislature. The Board members shall serve without compensation or other emoluments.

(b) In order to provide continuity in the work of the Board, the term of office of 6 of the Board members shall be for 4 years and shall be so arranged as not to expire at the same time. Members shall serve until their successors have been qualified. Vacancies shall be filled in the same manner as original appointments.

The 7th member of the Board is a 2nd year student of the college elected at a schoolwide election during the first week of school. This member serves a one-year term and may be reelected. Vacancies are filled by an election held within 1 week of the knowledge of a vacancy.

History: 1992. PL 22-30.

16.2004 Board of Higher Education--Powers and duties.

The Board of Higher Education, in addition to other provisions of this chapter:

(1) shall serve in a supervisory capacity and as such, shall function to supervise the implementation of the powers and duties of the college;

(2) shall select its chairman and other officers from among its own membership;

(3) may change the name of the college, with approval of the Legislature;

- (4) shall review and approve the educational program of the college;
- (5) shall grant diplomas, certificates, degrees or other honors; and
- (6) shall adopt the seal of the college.

History: 1992, PL 22-30.

16.2005 **President of the College.**

The Board of Higher Education shall select the President of the college. The selection of the President shall conform to rules, regulations and criteria promulgated by the board and made available for public inspection. Subject to government employee laws 7.0101 et. seq., and rules and procedures of the college, the President serves at the pleasure of the Board.

History: 1992, PL 22-30, 2003, PL 28-1.

16.2006 **Personnel.**

All officers and employees of the college, except the president, are appointed or hired and compensated in accordance with the requirements of the government employee laws 7.0101 et. seq., except that the college may adopt administrative rules, pursuant to 4.1001 et seq., to supplant government employee laws and rules in the specific categories of personnel recruitment, assignment, transfer, employment, termination of employee services, disciplinary actions, and compensation at levels comparable to higher education management and employee levels.

History: 1992, PL 22-30.

16.2007 **Assumption of role.**

The college shall assume, upon approval of this Act, full responsibility and right to operate all items of property, including any construction in progress, equipment, and machinery used under the previous status of operation by the college. All property jointly used by the college and government, except the infirmary located on campus, are hereby transferred to the college. Future capital contributions to the college from the government must be by separate authorization and appropriation. The Legislature has the exclusive power to provide supplemental funding for the operations of the college.

History: 1992, PL 22-30.

16.2008 **Budget.**

(a) The basic source of financing the college is the government through its regular budget process. The government shall provide a minimum appropriation from local revenues for the operation and programs of the college based on the actual cost of \$2,820 per full time equivalent student, as has been determined by current, actual fall and projected spring and summer class schedules, with an annual inflationary adjustment of 4.8 percent.

(b) At the appropriate time the college shall submit to the Governor, upon approval of the board, a budget of estimated expenditures for the next fiscal and academic years. The budget shall contain separate estimates for capital outlay expenses and operational expenses and shall be submitted in such form and detail as may be required by applicable

laws and rules of the government.

(c) Each budget shall identify clearly the amount or amounts requested to be appropriated, the amount or amounts available or estimated to be available from gifts, grants, donations, or other sources, and the amount or amounts for which application is being made or is to be made for federal aid.

History: 1992. PL 22-30.

16.2009 Fiscal Management

Further to 16.1001 and 16.1004, the college is responsible for the management and operation of its fiscal affairs. It shall establish procedures based on principles of sound bookkeeping and fiscal management, with the approval of the Board, for the administration of all accounting systems, including but not limited to general ledger, fixed assets, accounts receivable, accounts payable, payroll, and cash. The college shall submit quarterly performance reports to the Office of Program Planning and Budget as required by 10.0509.

History: 1992. PL 22-30.

16.2010 Independent audit reports--consultants--Annual Reports.

(a) The college shall employ a firm of independent certified public accountants to examine and report each year upon the status of financial records and accounts, and may renew that employment annually. Copies of these reports shall be furnished by the college to the Governor and Legislature.

(b) The college may make intergovernmental or contractual agreements for expert consultants to advise or consult with it in all matters related to the operation of the college, including tuition fees, systems design, plant design, planning, budgeting, and legal matters.

(c) The college shall provide an annual report for each fiscal year, which shall estate investment trusts, and other securities selected by the Board with the care of a prudent man. The word "property" excludes lands for sites or experimental farms of the college, and buildings including the purchase, erection, and preservation or repair thereof, except as permitted by federal laws.

History: 1992. PL 22-30.

16.2011 American Samoa community college land grant endowment fund.

(a) For the purpose of compliance with federal law designating the American Samoa Community College as a Land Grant College established for the benefit of agriculture and mechanical arts, there is established the American Samoa Community College Land Grant Endowment Fund. The Fund shall be maintained separate and apart from any other funds of the government. Use of the fund shall be administered and controlled by the Board of Higher Education. Independent records and accounts shall be maintained in connection with the fund by the Treasurer of American Samoa. An annual fiscal year financial statement of the fund shall be submitted by the Board of Higher Education and

the Treasurer to the Governor and Legislature no later than 15 December 1987.

(b) The \$3,000,000 received from the United States Government in support of the college as a Land Grant College is hereby credited to the Fund. The Board of Higher Education and Government shall comply with all conditions pertaining to the Fund and the income therefrom as set forth in federal laws, including but not limited to the requirement that the principal sum shall remain forever undiminished.

(c) All income from investment of the principal sum shall be credited to the account of the Fund, and shall be appropriated by the Legislature in the annual fiscal year appropriations act solely for the operation of the Land Grant programs of the college. Appropriations of income shall be made only after the Board of Higher Education has submitted to the Legislature recommendations on the use of the income. The Legislature may authorize reinvestment of the income to accumulate sufficient funds for specific purposes, related to land grant operations.

(d) The Board of Higher Education has full power and authority, subject to approval of the Legislature, to direct the investment and reinvestment of the fund without distinction between principal and income as it considers desirable; as long as the investment income is available for appropriation in accordance with subsection (c) in property as defined in subsection (e) provided that the investment shall yield a fair and reasonable annual rate of return, which is fixed at no less than 5 percentum per annum of the amount invested. The Board may invest and reinvest the fund in property in which a prudent man familiar with those matters and using care, skill, prudence, and diligence would invest in the conduct of an enterprise of like character and with like aims, insuring that the investments of the fund are diversified so as to minimize the risk of large losses unless to do so would clearly not be prudent. The power to manage investments includes, but is not limited to, the power to hold, purchase, sell, convey, assign, transfer, dispose of, lease, subdivide, or partition any assets held or proceeds thereof, to execute or cause to be executed relevant documents; to enter into protective agreements, executives proxies, and grant consent; and to do all other things necessary or appropriate to its position as an owner or creditor.

(e) Except as otherwise provided herein, the word "property" means real property, United States Government securities and agency issues, state and municipal bonds, corporate bonds, real estate mortgages, common and preferred stock, mutual funds, convertibles, real estate investment trusts, and other securities selected by the Board with the care of a prudent man. The word "property" excludes lands for sites or experimental farms of the college, and buildings including the purchase, erection, and preservation or repair thereof, except as permitted by federal laws.

History: 1992, PL 22-30.

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Chapter 21

AMERICAN SAMOA COLLEGE RESEARCH FOUNDATION

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16.2101 American Samoa College Research Foundation established.

There is established the American Samoa College Research Foundation. The Foundation shall be a non-profit, tax exempt public corporation having the purpose of supporting the American Samoa Community College in accordance with this chapter. The Foundation shall have neither members nor stock. This chapter is the charter of the Foundation.

History: 1987, PL 20-22 § 2.

16.2102 Research Foundation—Objective and functions.

The functions of the Foundation are to:

(a) Promote all educational, scientific, literary, Samoan cultural and humanitarian pursuits by encouraging, initiating, aiding, supplementing, developing and implementing educational programs which contribute to the attainment of the goals and objectives of the College.

(b) Enter into and administer grant contracts or agreements with federal, territorial and international governmental agencies, and other relevant agencies, which will enable the research foundation to perform the functions stated in subsection (a).

(c) Receive and administer funds from grants, contracts, endowments, individuals, gifts or bequests of property and to prudently invest such in a manner that will promote maximum financial growth.

(d) Serve as trustee or beneficiary under terms of gifts, endowments, indentures or wills.

(e) Apply for, and obtain, receive, hold, and dispose of copyrights, patent rights, licenses, assignments of inventions, discoveries, processes and other property.

(f) Conduct research, studies, investigations, experiments and tests in all fields of study.

(g) Coordinate and correlate all other activities of the college, both administrative and fiscal, as are delegated to the Foundation from the Board of Higher Education.

(h) Establish, maintain, or assist in the establishment and maintenance of scholarships, professorships, sabbatical leaves and staff positions at the college.

(i) Prepare, print and publish manuscripts, research articles, reports, and documents of

similar nature.

History: 1987, PL 20-22 § 2.

16.2103 Foundation--Corporate powers.

The corporate powers of the Foundation shall be as follows:

(a) The Foundation shall begin its corporate existence upon the issuance of a certificate of incorporation by the Treasurer after approval by the Governor.

(b) The principal office of the Foundation shall be located on the island of Tutuila, American Samoa.

(c) The Foundation is authorized to engage in and carry out the functions set forth in section 16.2102.

(d) In performing the functions authorized in subsection (c), the Foundation shall have and exercise all lawful powers normally exercised by eleemosynary corporations under the laws of American Samoa not inconsistent with the provisions of this chapter, including but not limited to the following:

(1) adopt, alter and use a corporate seal;

(2) adopt, amend and repeal bylaws governing the conduct of its business and exercise of its powers;

(3) sue and be sued in its corporate name;

(4) acquire in any lawful manner, real, personal, or mixed property, either tangible or intangible, to hold, maintain, use and operate such property, and to sell, lease, or otherwise dispose of such property.

(e) The bylaws shall provide for the management of the business of the Foundation, the organization, meetings, and procedures of the Board, the duties of the officers of the Foundation the officers required to furnish bonds and the amounts thereof, the form of the seal of the Foundation and the preparation and submission of required reports. Bylaws may not be adopted, amended or repealed except after one week's written notice to each trustee.

History: 1987, PL 20-22 § 2.

16.2104 Board of Trustees.

(a) The affairs and corporate powers of the Foundation shall be managed and exercised by a Board of Trustees.

(b) There shall be 11 members of the Board, nine whom shall be voting members and two of whom shall be non-voting ex-officio members. The voting members shall be comprised of 1 paramount chief or other traditional community leader, 1 member of the Board of Higher Education other than the chairperson, 1 member of the college administrative staff other than the President, 2 members of the college faculty, 3 members of the general public, and 1 member of the college student government association. The non-voting ex-officio members shall be the President of the college, who shall be the Chairperson of the Board, and Chairperson of the Board of Higher Education.

(c) The first Board shall be chosen by the 2 ex-officio members in compliance with representative capacities set forth in subsection (b) and serve terms of 18 months from the issuance of the certificate of incorporation of the Foundation.

(d) Other than the student, college administrative staff and college faculty members,

succeeding Boards shall be elected by the incumbent members from nominations by the general public and serve terms of 1 year. Nominations shall be solicited from the general public no later than 90 days and the election shall be held no later than 30 days before the end of the term of office of the current Board. Elections shall be by secret ballot requiring two-thirds majority to win.

(e) The student member shall be elected by the members of the student government association. The college faculty members shall be elected by the college faculty. The college administrative staff member shall be appointed by the college president.

(f) Vacancies in the Board by reason of resignation, death or other cause shall be filled for the remainder of the term of office by appointment of the Chairperson; provided that the appointment fulfills the membership category requirement of the vacancy.

(g) The initial meeting of the Board shall be convened by the Chairperson at which time they shall elect a vice-chairperson, secretary, and treasurer.

(h) Five voting members of the Board shall constitute a quorum and the concurrence of a majority of the members present shall be necessary for the validity of its official actions.

(i) The Chairperson shall be the agent of the Foundations upon whom any process, notice or demand required or permitted by law to be served upon the Foundation may be served. In the absence of the Chairperson, any other member of the Board shall be the agent for receiving service of process, notice or demand.

History: 1987. PL 20-22 § 2.

16.2105 Board--Powers and duties.

(a) The Board shall have the following powers and duties:

- (1) serve as Trustees of the Foundation;
- (2) enter into and be responsible for the performance of local, territorial, federal and international contracts and grants;
- (3) sell, lease, rent, hold, maintain, use and operate any property held by the Foundation in accordance with applicable law;
- (4) coordinate programs with the Community College, government and any other relevant agency;
- (5) stimulate and promote cooperative educational projects and activities;
- (6) establish, maintain, or assist in the establishment and maintenance of scholarships, professorships and sabbatical leaves;
- (7) be available for monthly Board meetings;
- (8) refrain from political activities or pressures when dealing with Foundation business; and
- (9) do all acts reasonably necessary to carry out the functions of the foundation.

(b) The Board may establish standing or ad hoc committees to assist in carrying out its powers and duties.

History: 1987. PL 20-22 § 2.

16.2106 Personnel—Duties.

(a) The Board shall appoint an Executive Director of the Foundation. The Executive Director shall be in charge of the administration of the detailed affairs of the Foundation.

He shall keep all books, records, files, and accounts of the Foundation. He shall prepare periodic reports relative to the operations of the Foundation and an annual report at the close of each fiscal year reflecting the results of the financial operations of the Foundation and embodying all important financial and statistical data pertinent to its operation.

(b) Subject to the approval of the Board, the Executive Director may employ an assistant director and such clerical and other staff as shall be necessary for the proper administration of the Foundation. Subject to the approval of the Board, the Executive Director may also engage legal, accounting or other professional services to assist in the affairs of the Foundation.

(c) The Executive Director, assistant director and full-time clerical and other staff are employees of the government, under the direction of the Board, not career service employees. Their paychecks are to be issued by the government, and the Board will promptly reimburse the government for all such direct expenses.

(d) Subject to Board approval, the Chairperson will appoint the research and development administrator of the college to serve as the liaison between the college and the Foundation. The research and development administrator will have the primary responsibility of establishing regional, national and international linkages, securing funding sources and grants or contracts and will report directly to the Board Chairperson. This person will not be a member of the Board but will serve as the educational grants consultant to the Board. This position is a college administrative position but will be located in the Foundation office and serve as part of the Foundation administrative team.

History: 1987. PL 20-22 § 2.

16.2107 Investment of funds.

(a) The Board has full power and authority to direct the investment and reinvestment of the fund of the Foundation without distinction between principal and income, in property (defined in (b) below) it considers advisable. The Board may invest and reinvest the fund in property in which a prudent man familiar with those matters and using care, skill, prudence, and diligence would invest in the conduct of an enterprise of like character and with like aims, insuring that the investments of the fund are diversified so as to minimize the risk of large losses unless to do so would clearly not be prudent. The power to manage investments includes, but is not limited to, the power to hold, purchase, sell, convey, assign, transfer, dispose of, lease, subdivide, or partition any assets held or proceeds thereof, to execute or cause to be executed relevant documents: to enter into protective agreements, execute proxies, and grant consent, and to do all other things necessary or appropriate to its position as an owner or creditor.

(b) "Property" means and includes real, personal, and mixed property of any and every kind and nature, including but not limited to, bonds, preferred or common stocks, mortgages, interests in any kind of investment trust or common trust fund, notes, leases, oil or gas royalties, or other evidence of rights, interests or obligations, secured or unsecured, and whether or not they are of a wasting asset nature.

(c) All proceeds and income from investments, of whatever nature, must be credited to the account of the Foundation. Transactions in marketable securities are carried out at prevailing market prices.

(d) Investments may be held in bearer form, or may be registered either in the name of

the Fund or the nominee of the custodian.

(e) Due bills may be accepted from brokers against payment for securities purchased, pending delivery within a reasonable period of time of certificates representing the investments.

(f) Investments may not be made if, after the investment, the Foundation would own:

(1) any combination of obligations of any one political subdivision, corporation or other single issuing entity in excess of five percent of Foundation assets at cost. This paragraph does not apply to general obligations of the United States or the Dominion of Canada, or of the government; or

(2) obligations of the Dominion of Canada, together with its political subdivisions and corporations organized under its law or the law of its provinces in excess of 10 percent of Foundation assets at cost; or

(3) obligations or other investments issued or guaranteed by the government in excess of 10 percent of Foundation assets at cost; provided, however, that this limitation does not apply to the obligations or other investments that are unconditionally guaranteed as to principal and interest by, or supported by lease assignment from, another entity whose principal business is outside of American Samoa.

(g) The Board may engage one or more financial institutions as custodians to assume responsibility for the physical possession of Foundation investment assets or evidences of investment assets. The custodian submits reports, accounting, and other information in a form and at such time as requested by the Board. All costs incurred for custodial services are paid by the Foundation. The custodian holds all investment assets for the account of the Foundation and acts only upon instructions of the Board. Custodians may not be engaged unless they:

(1) have been continuously engaged in rendering trust investment services for a period of 10 or more years;

(2) are organized under the laws of the United States, a State, or a Territory; and

(3) are custodians for not less than 20 corporate, municipal or governmental trust funds with total assets of not less than \$30,000,000.

(h) In order to secure expert advice and counsel, the Board may engage an investment agent or a firm or corporation which is an investment counselor as qualified by this subsection. The custodian may be engaged as the investment agent. All costs incurred in this connection are paid by the Foundation. Firms or corporations may not be eligible for employment as investment agent which acts as principal for its own account or as broker for a client other than the Foundation in connection with the sale of any security to or the purchase of any security from the Foundation. Investment agents may not be engaged unless:

(1) the principal business of the firm or corporation selected by the Board consists of rendering investment supervisory services: i.e., the giving of continuing advice concerning investment of funds on the basis of the individual needs of each client; and

(2) the principal control of the firm or corporation rests with individuals who are actively engaged in the business; and

(3) the person, firm, or corporation is registered as an investment advisor under the United States law;

(4) the contract between the board and the investment agent is of no specific duration and is voidable at any time by either party; and