

UNIVERSITY *of* HAWAI'I®



BOARD OF REGENTS REFERENCE GUIDE

July 1, 2014

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I. GOVERNANCE

A. The Board of Regents (BOR)

Board membership, terms of appointment, and officers. Governance of the university is vested in a Board of Regents. Prior to the passage of Act 56 in 2007, the board consisted of 12 regents serving 4-year terms. Pursuant to Act 56, the board consists of 15 members, and each regent serves a 5-year term, except the student member, whose term is two years, and except for those regents whose initial terms were staggered to allow a transition under Act 56. Regents may not serve more than two consecutive 5-year terms. The board must include regents representing each of the four state counties, and three “at large” members, including a student regent.

As vacancies on the board occur, a Regents Candidate Advisory Council, established by Act 56 in 2007, submits names of potential regents to the governor. The governor selects nominees from the lists supplied by the Regents Candidate Advisory Council and submits the regent nominees to the State Senate for its consent and confirmation of the appointment.

Typically, appointments are effective July 1 and expire on June 30. The governor has the authority to appoint regents on an interim basis to fill unexpected vacancies that occur when the Legislature is not in session. These interim appointments expire unless the appointment is confirmed by the senate at the next legislative session.

The board operates under the leadership of a chair and one or more vice chairs elected to a 1-year term by the membership, usually at the July meeting. The board chair appoints committee chairs as described below.

Board members are not employees of the university and serve on a voluntary basis. Travel expenses for board meetings and other board-related business are covered by the university.

The regents must comply with the State Code of Ethics, and with the board’s own policies and practices regarding conflicts of interest. See Article X of the Bylaws of the Board of Regents.

Constitutional Authority and Autonomy. Article X, Section 5 of the Constitution of the State of Hawai‘i, establishes the University of Hawai‘i “as the state university and constituted a body corporate.” Article X, Section 6 of the Constitution of the State of Hawai‘i, grants the Board of Regents the power to formulate policy and exercise control over the university. By a constitutional amendment ratified in November 2000, the board obtained greater autonomy, and its exclusive jurisdiction over the internal structure, management, and operation of the university was recognized. The legislature, however, reserved the right to enact laws of statewide concern.

Hawai'i Revised Statutes (HRS). The following statutory provisions apply specifically to the university:

- Chapter 26, section 11 (relating to the size, membership, and powers of the BOR)
- Chapter 304A (this is a lengthy chapter devoted entirely to the university which results from a 2006 recodification of various chapters that had previously covered university matters, including Chapter 304; Chapter 305 (establishing the community colleges and their purpose, State Board for Career and Technical Education, and the State Postsecondary Education Commission; Chapter 306 (financing, construction, maintenance, etc., of university projects such as housing, parking, dining, athletic, and other units); Chapter 307 (laws dealing with RCUH); Chapter 308 (laws dealing with university parking).

The university is also subject to various laws that apply to other state agencies including, for example, laws governing the issuance of public rules and the conduct of contested cases, “sunshine” and “open records” requirements and the state ethics code (referenced below).

Board bylaws and policies. In carrying out its governance responsibility, the board authorizes, amends, and publishes policies that provide the governance framework for the administration of the university. These policies are codified in a volume titled “Board of Regents Bylaws and Policies.” In addition to policies establishing the relationship between the BOR and the university administration, other board policies are grouped as follows:

- Administration
- Organization
- Planning
- Academic affairs
- Tuition, scholarships, and fees
- Student affairs
- Business and finance
- Personnel
- Land and physical facilities
- Research
- Other

The Board Policies (often denoted as “BORP”) are implemented and further defined through various Systemwide Executive Policies (“EPs”), and Systemwide Administrative Procedures (“APs”). From time to time, the board promulgates public rules, pursuant to a formal procedure set forth in Chapter 91 of the Hawai'i Revised Statutes.

Board duties and responsibilities. The Board of Regents as a whole is responsible for

the internal governance and management of the university. Implementation of BOR policies is the responsibility of the president and the executive and managerial team. Specific BOR responsibilities as specified in University of Hawai'i board bylaws and policies include:

- Establishing the general mission and goals of the system and approving any changes to them
- Adopting academic and facilities planning documents for the system and the campuses
- Appointing and evaluating the president
- Establishing the administrative structure and approving major executive appointments
- Approving all major contractual obligations of the university
- Approving new academic and other programs and major organizational changes
- Reviewing all fiscal audits of university operations
- Approving the university budget, long-range financial plans, and budget requests for state funding

Board committees.

The BOR bylaws provide for standing committees. The chair of the board appoints regents to serve as the chair and vice chair of each committee, and may participate on each committee as an ex-officio member. The administration assigns senior members of the university administration as liaison officers to each BOR standing committee.

Standing Committees are:

- Academic Affairs Committee
- Budget and Finance Committee
- Community Colleges Committee
- Independent Audit Committee
- Intercollegiate Athletics Committee
- Personnel Committee
- Planning and Facilities Committee

As needed, the board appoints special task groups and/or ad hoc committees of its membership to handle issues or matters that fall outside the scope of the standing committees.

Responsibilities of individual regents. The following guidelines directing the responsibility of individual regents are prescribed by the Association of Governing Boards of Universities and Colleges (AGB) in its publication, *Trustee Responsibilities: A Guide for Governing Boards of Public Institutions*. The following excerpt is found on pages 17–18:

Only the governing board has legal standing; individual trustees and regents possess

no authority or special prerogatives. Boards find it useful to adopt formal statements of responsibility to clarify some basic expectations their members should have for one another.

Trustees are judged by their peers and others largely on their willingness to be team players and knowing when to lead and when to follow. Trustees are held to high standards of conduct. Here are some guidelines:

- Serve the institution or system as a whole. Individual trustees have a responsibility to support the majority action, even when they disagree.
- Seek opportunities to inform the public about the institution.
- Prepare for and attend meetings.
- Learn about the institution or system and ask good questions.
- Avoid conflicts of interest, real or perceived, because of affiliations or the temptation to request personal favors for oneself, family, or friends. Individual trustees must protect the integrity of the board and institution at all times through disclosure and by deciding whether their trusteeship may be of lesser or greater value than an opportunity to gain financially.
- Avoid the appearance of using their trusteeship for personal or political gain.
- Guard against being the subject of an 'ambush interview' especially during times of controversy. Speaking for the board or institution ordinarily is reserved for the chief executive or board chair.
- Abstain from making judgments based on information from disgruntled faculty, staff, or state officials.

Mutual expectations of board members and presidents. The AGB publication, *Trustee Responsibilities* (pp. 18–19), provides the following guidelines for board members and presidents:

Trustees ask their chief executives to do the following:

- Provide data and information that is comprehensive, accurate, and useful;
- Respect the board's fiduciary and other responsibilities to hold the institution or system accountable to the general public;
- Be an academic leader, adept politician, and effective fund-raiser by consulting as much as practical and appropriate with constituents;
- Accept with patience, grace, and style differences of opinion and the occasional disagreements with the board's posture on important issues;
- Avoid surprises—trustees want and need to be the first to know;
- Use the board's time efficiently, especially in meetings; and
- Work closely with the board chair to educate and lead the board.

The chief executive asks board members to do the following:

- Think and act on behalf of the best interests of the institution or system, first and foremost;
- Be open and forthright, fair and evenhanded;
- Respect the important principle that the chief executive works only for the board as a whole;
- Avoid surprises, especially by avoiding public utterances;
- Avoid using open meetings or press interviews to gain personal media attention;
- Aspire to be board chair, but don't push too hard;
- Maintain confidentiality;
- Set an example in personal philanthropy; and
- Have a sense of humor.

Board meetings. The BOR must meet at least ten times each year, and generally schedules a meeting each month (except for June and December). The meeting location rotates among the various campuses. These meetings are typically scheduled on the third or fourth Thursday of the month. Special board meetings are occasionally scheduled. At the beginning of the academic year (July), the board office provides regents with the schedule of board meetings for the coming year.

At least one week prior to a board meeting, materials are emailed to the regents for their consideration and posted on the protected webpage Information Resources Center created specifically for the regents. The materials can be uploaded onto the iPad to bring to the upcoming board meeting. They include:

- Meeting notices
- The board agenda
- Minutes of previous meeting(s) that will be considered for approval
- Action items being presented to the board
- Informational items
- Other meeting information

“Sunshine” and “Open Records” requirements. State law requires that the business of government be conducted openly—in the sunshine, except for narrowly defined exceptions. Formal Board of Regents meetings are subject to the Sunshine Law (Hawai'i Revised Statutes, chapter 92) and the meetings, for the most part, are conducted in public view. This means that members of the public can observe the regents' deliberations and discussions and can testify on any agenda item. Television cameras can record events, and statements made by regents may appear in print.

The Sunshine Law also has certain procedural requirements. For example, the law requires that a notice of board meetings must be published six days before the meeting, the board may not discuss matters that were not “noticed,” and minutes of board meetings must be taken. Board meeting agendas and minutes are publicly available at the BOR website www.hawaii.edu/offices/bor/.

Under the Sunshine Law, when more than two regents meet and discuss university business, that encounter is considered a “meeting” for purposes of triggering all sunshine procedural requirements, unless that “interaction” between or among the regents falls within a specific exception. The practical advice is that regents should not discuss university business or commit to decisions except at a properly noticed meeting.

The Sunshine Law allows the regents to meet and discuss university matters in an “executive session” closed to the public. These executive sessions most often involve discussions of personnel matters (such as tenure, hiring, dismissal, etc.) affecting privacy rights of individuals. Executive sessions are also held where the board needs to consult with its attorneys regarding lawsuits, settlements, legal negotiations, or on matters requiring legal advice and counsel. A companion law to the Sunshine Law is commonly referred to as the “Open Records” Law (Hawai‘i Revised Statutes, chapter 92F). This state law (which has as its federal counterpart the Freedom of Information Act) requires that government records must be made available for inspection and copying upon request. Again, there are some narrow exceptions whereby the university may keep certain kinds of information confidential.

Legal advice and counsel. In 1998, the legislature authorized the Board of Regents to appoint and hire attorneys or contract with private attorneys to provide legal services for the university (HRS, chapter 304-4.3). Prior to this authorization, the university was advised by the state’s Department of the Attorney General. Currently, the Office of the Vice President for Legal Affairs, headed by the university general counsel, reports directly to the board and to the president. Attorneys from that office attend all board meetings and advise the board and its staff on legal matters. On a day-to-day basis, attorneys in the general counsel’s office provide legal advice and representation to all units in the university system. Outside attorneys are retained by contract when particular expertise is required (such as public bond financing or intellectual property rights) or when additional resources are required (such as extensive litigation).

Ethics Code. The *Hawai‘i State Ethics Code* applies to members of the board. The state’s *Ethics Guide for Elected Officials, Employees, Members of Boards and Commissions* summarizes the provisions of the State Ethics Code (Hawai‘i Revised Statutes, chapter 84). It includes sections relating to gifts, confidential information, fair treatment, conflicts of interest, prohibited acquisition, assistance before state and county agencies, and public contracts. It provides guidance on how to file a disclosure, how to request an advisory opinion, and other useful information.

- a. *Gift Disclosure Statements* must be filed with the Hawai‘i State Ethics Commission by June 30 of each year by regents who receive gifts from the university in excess of \$200. As noted above,
- b. complimentary athletic tickets are gifts for the purpose of this requirement. Gifts

from other sources and gifts to family members may also require disclosure. Failure to file this form constitutes a violation of state law. Copies of forms and instructions are available from the board office and are also available on the ethics commission site at www.hawaii.gov/ethics/.

- c. Regents must file *Financial Interests Disclosure Forms* with the Hawai'i State Ethics Commission. Initial forms must be filed within 30 days of being appointed to the board and annually thereafter between January 1 and May 31. Failure to file this form constitutes a violation of the State Ethics Code. Copies of forms and instructions are available from the board office and are also available on the ethics commission website at www.hawaii.gov/ethics/.

B. Collective Bargaining

University of Hawai'i Professional Assembly (UHPA). The University of Hawai'i Professional Assembly has been the exclusive bargaining representative for all faculty within the University of Hawai'i system since November 1, 1974. The University of Hawai'i faculty, including instructional faculty, lecturers, researchers, specialists, librarians, and extension agents, belong to bargaining unit 07 as provided for in Section 89-6(a) of Chapter 89, Hawai'i Revised Statutes. They are represented by UHPA during negotiations and in the processing of grievances. Union membership in UHPA is voluntary and requires application. Regular dues otherwise known as statutory dues are assessed to both members and nonmembers through payroll deduction as provided for in Section 89-4 of Chapter 89, Hawai'i Revised Statutes. As of December 31, 2012, UHPA provides representation for 3,661 faculty members systemwide.

UHPA is governed by a board of directors consisting of 24 elected leaders from the various UH campuses. Board members may serve a maximum of two 3-year terms. The board meets once a month. An executive committee, elected from the membership of the board, carries on UHPA business between regular board meetings. The board of directors is responsible for selecting an executive director who is an ex-officio member of the board and oversees the staff and programs of UHPA.

As the exclusive representative of the faculty, one of the most important functions of UHPA is the negotiation of their collective bargaining agreement. Preparation for negotiations involves all members of the bargaining unit, but the collective bargaining committee and the negotiating team are most actively involved. The final negotiated settlement is subject to ratification vote by the UHPA membership. Under Section 89-11 of Chapter 89, HRS, bargaining unit 07 retains the right to strike.

Hawai'i Government Employees Association (HGEA). The Hawai'i Government Employees Association was founded in 1934 and is the largest local government employees union in Hawai'i, with more than 42,000 active and associate members

statewide. HGEA is a member of the American Federation of State, County, and Municipal Employees (AFSCME), the largest affiliate of the AFL-CIO.

HGEA represents a total of seven bargaining units in all jurisdictions. They represent 3,140 university employees in the following five bargaining units:

- Unit 2, supervisory employees in blue-collar positions (Certification 10/20/71)
- Unit 3, nonsupervisory employees in white-collar positions (Certification 4/3/72)
- Unit 4, supervisory employees in white-collar positions (Certification 5/3/72)
- Unit 8, UH administrative, professional, and technical employees (commonly referred to as APTs) (Certification 1/26/73)
- Unit 9, registered professional nurses (Certification 7/10/79)

HGEA has offices in Honolulu, Hilo, Wailuku, and Līhu'e and is headed by an executive director. The highest policy-making body is the General Assembly, which meets every two years and consists of HGEA members elected as delegates from all islands and representing all of the union's bargaining units.

The board of directors is responsible for policy decisions and consists of active members who are elected representatives of all bargaining units and all islands, plus a representative of the retirees unit.

Each bargaining unit is organized as a representational form of government. Unit issues, programs, and activities are acted on by unit boards of directors, island divisions representing bargaining units on each island, and agency councils made up of bargaining unit stewards within a state or county department. Bargaining units 2, 3, 4, and 8 are subject to arbitration.

During the 1968 constitutional convention, the HGEA led the fight to change the Hawai'i State Constitution to give collective bargaining rights to public employees. In 1970, the state legislature passed the Hawai'i Public Employment Collective Bargaining Law.

United Public Workers (UPW). The United Public Workers is Hawai'i's second largest employee union and represents more than 13,000 state, county, and private sector employees. As of December 2012, 480 university employees were covered by UPW's two bargaining units. Unit 1 includes nonsupervisory employees in blue collar positions, while unit 10 consists of institutional, health, and correctional workers. UPW is also a member of the American Federation of State, County, and Municipal Employees (AFSCME), the largest affiliate of the AFL-CIO.

UPW has offices in Honolulu, Hilo, Wailuku, and Līhu'e and is headed by a State Director. The highest policy-making body is the UPW Convention, which meets every three years and consists of UPW members elected as delegates from all islands and representing all of the union's bargaining units and private sector units.

The board of directors is responsible for policy decisions and consists of active members who are elected representatives of all bargaining units and all islands, plus representatives of their private sector bargaining units.

Each bargaining unit is organized as a representational form of government. Unit issues, programs, and activities are acted on by unit boards of directors and island divisions representing bargaining units on each island. Bargaining unit 1 retains the right to strike; bargaining unit 10 is subject to interest arbitration.

C. The Student Role in Governance

The purpose of UH student governments is to ensure and regularize the advice and participation by student organizations in matters relating to student life. By policy, campus heads are encouraged to be open to student recommendations and advice.

Board policy (www.hawaii.edu/offices/bor/policy/borpch7.pdf) establishes that student governments exist on each UH campus; they represent student concerns and manage student fees for the benefit of students. Some campuses separate and assign to a different organization oversight of student activities. At other campuses this function is part of the student government organization. At UH Mānoa, graduate students have their own student government organization.

The Board of Regents also charters a University of Hawai'i Student Caucus (UHSC) (previously referenced on p. 17). This is a systemwide association with representation from campus student governments. Its purpose is to advocate collectively for the interests of students throughout the university system. The caucus is responsible for representing students to the central administration and meets regularly to share information and resources among campuses. The caucus is also active in lobbying the state legislature on issues of particular concern to students.

Students also serve on various systemwide, campus, and college committees; campus administrators occasionally consult with student governance organizations about issues of particular concern to students; and the governor appoints one student as a voting member of the Board of Regents.

D. Office of the Board of Regents

The BOR is supported by a staff that consists of two professional staff members (the executive administrator and secretary to the board, and the executive assistant), a fiscal officer, administrative assistant and records management officer, and a secretary. The Office implements all operations of the Board, and provides assistance and coordinates travel and meetings for all Regents and Emeritus Regents for board related business. All communications between the BOR and

Administration is coordinated through the Secretary of the Board, under the direction of the Chairperson and/or Vice-Chairpersons. System administrative staff also provide support to the BOR, as necessary and determined by the Chairperson and/or Vice-Chairpersons. The Board's budget is a general fund sub-account within the System Programs Account, and is also supplemented by protocol funds provided at the discretion of the President. Also under this sub-account is The Office of Internal Audit that is administratively attached to the Office of the Board of Regents.