Notice of Meeting

UNIVERSITY OF HAWAI’I

BOARD OF REGENTS COMMITTEE ON PERSONNEL AFFAIRS
Members: Regent Ernie Wilson (Chair), Regent David Iha (Vice-Chair),
and Regents McEnerney, Moore, Putnam, and Yuen

Date: Thursday, February 9, 2017
Time: 12:30 p.m.
Place: University of Hawai‘i at Mānoa
Information Technology Building
1st Floor Conference Room 105A/B
2520 Correa Road
Honolulu, Hawai‘i 96822

AGENDA

I. Call Meeting to Order

II. Approval of Minutes of the November 2, 2016 Meeting

III. Public Comment Period for Agenda Items: All written testimony on agenda
items received after posting of this agenda and up to 24 hours in advance of the
meeting will be distributed to the board. Late testimony on agenda items will be
distributed to the board within 24 hours of receipt. Registration for oral
testimony on agenda items will be provided at the meeting location 15 minutes
prior to the meeting and closed once the meeting begins. Written testimony may
be submitted via US mail, email at bor@hawaii.edu, or facsimile at 956-5156.
Oral testimony is limited to three (3) minutes.

IV. Agenda Items

A. Recommend Approval:
   1. Board of Regents Policy, RP 9.205 Political Activity
   2. New board policy on conflicts of interest and employment
   3. Addition of governance under the purview of the Board of Regents
      Committee on Personnel Affairs

V. Adjournment

Accommodation required by law for Persons with Disabilities requires at least (5) five days
prior notice to the board office at 956-8213 or bor@hawaii.edu.
MEMORANDUM

TO: Jan Sullivan
Chairperson, Board of Regents

VIA: David Lassner
President

FROM: Kalbert Young
Vice President for Budget and Finance/Chief Financial Officer
Cynthia Quinn, Board Secretary


SPECIFIC ACTION REQUESTED:

It is respectfully requested that the University of Hawai‘i ("UH") Board of Regents ("Board") approve (1) proposed revisions to Regents Policy, RP 9.205 – Political Activity (Attachment 1), and (2) a new Policy RP 2.206 – Regents as Employees (Attachment 2).

RECOMMENDED EFFECTIVE DATE:

The recommended effective date is upon the Board’s approval.

ADDITIONAL COST:

There are no out of pocket costs associated with this request.

PURPOSE:

The current Regent Policy 9.205 (RP 9.205) pertains to political activities of employees. RP 9.205 was last revised in 1982, but has been in effect since (before) 1966. The proposed revisions to RP 9.205 update the Policy in those areas where the Administration believes the Regents could consider amendments while still holding true to the original intent of the policy — namely, to avoid conflicts of interest and to explicitly
express Regents' expectation that University employees were, first and foremost, responsible to their public duties as University employees.

The proposed new policy RP 9.206 affirms the benefit of having employees as Regents on the board. It also holds Employee Regents to the duties and obligations of their employment, duties and obligations that non-employee Regents do not hold, so that Employee Regents and their supervisors are not placed in the untenable position of deciding on a day-to-day basis whether Regent duties are more important than employment duties. Recognizing the potential conflicts of interest inherent in serving as a Regent and employee, board leadership and the Employee Regents themselves have expressed a desire to proactively manage those conflicts through a board-approved policy.

BACKGROUND:

1. **Proposed Revisions to RP 9.205 – Political Activity**

Following preliminary discussion at the board level and by the 2016 Legislature regarding the current version of RP 9.205, last revised in 1982, at the September 8, 2016 meeting of the Personnel Affairs Committee, the Committee was presented with the full rationale and background for the proposed revisions to RP 9.205, and discussed same. See Attachment 3. After discussion regarding proposed revisions to RP 9.205, the Committee concurred that Administration could move forward with union consultation.

Proposed revisions to RP 9.205 were submitted to the University of Hawaii Professional Assembly (UHPA), the Hawaii Government Employees Association (HGEA), and the United Public Workers (UPW) for consultation. HGEA and UHPA requested and were granted repeated extensions of time to submit their comments.

UHPA commented that the revisions were better than the original policy. See Attachment 4. HGEA submitted questions and requests for clarification, the University provided responses, and HGEA acknowledged that it had no further questions. See Attachment 5. UPW commented verbally in January 2017, and the University provided its response in writing to the verbal comments. See Attachment 6. UPW has not responded further in writing.

Following consultation, the Administration has determined that no further revisions are required. The version of RP 9.205 proposed for adoption by the Board is the same version presented to the Personnel Affairs Committee in September 2016 (Attachment 1).
In summary, the proposed revisions to RP 9.205 are as follows:

- Defines “public elective office” to exclude certain offices like neighborhood boards which conduct business outside the standard hours of university employment.
- Identifies and defines the group or type of employees that would not be affected by the policy.
- Defines the types of political activities covered by the policy.
- Makes explicit that Regent sentiment is for employees to avoid incompatibility and conflicts of interest that would prevent them from effectively fulfilling their University duties.
- Establishes compliance protocols for covered political activity.


At the Board of Regents meeting on July 21, 2016, at the suggestion of the immediate past Chair, the Board (Regents Higa and Tagorda recused) initially weighed the need for a new board policy on conflicts of interest and employment, and determined the advisability of taking proactive measures to address the potential conflicts of interest inherent in having employees serving as Regents. The Board discussed a (prior) version of proposed RP 9.206, and recommended additional work be done on the draft policy.

On September 8, 2016, the Committee was presented with the full rationale and background for a revised version of the new policy RP 9.206, and discussed same. See Attachment 7. The Committee concurred that Administration could move forward with union consultation regarding the same version of RP 9.206 presently being submitted to the Committee for adoption (Attachment 2).

UHPA provided comments that the proposed policy was unnecessary (see Attachment 8), but pointed to no specific language changes or suggested revisions, and UHPA’s Executive Director and University General Counsel have conferred on multiple occasions and will continue to confer on a go-forward basis should any actual concerns manifest. HGEA submitted questions and requests for clarification, the University provided responses, and HGEA acknowledged that it had no further questions. See Attachment 5. UPW commented verbally in January 2017, and the University provided its response in writing to the verbal comments. See Attachment 6. UPW has not responded further in writing, and no current board member is a member of UPW.

Following consultation, the Administration has determined that no further revisions are required. The version of RP 9.206 proposed for adoption by the Board is the same version presented to the Personnel Affairs Committee in September 2016.
In summary, the proposed new policy RP 9.206:

1. Sets forth the need for compliance with statutory mandates applicable to all Regents and employees of the University;
2. Restates the process to manage conflicts set forth in board bylaws, including circumstances unique to a Regent Employee wherein the board must consider any matter which also directly impacts an Employee Regent's personal financial interest; and when the Board must consider any matter affecting bargaining units 1, 2, 3, 4, 7, 8, 9, and/or 10, as matters regarding one collective bargaining unit are likely to affect and/or impact all bargaining units; and
3. Provides clarity around appropriate use of University time and resources in serving on the board, expressly authorizing Employee Regents to conduct board business during regular work hours for up to the equivalent of sixteen (16) hours in any given 2-week pay period, and sets forth the expectation that the Employee Regent will use available vacation hours for any additional time required for Board service that week, unless otherwise prohibited by a collective bargaining agreement.
4. Encourages the Employee Regent to use best efforts to preserve the confidentiality of confidential board communications, and keep work email and communications separate from Regent email and communications.
5. Requires the Employee Regent to address employment issues within his or her employing unit, not with the board or its staff.

**ACTION RECOMMENDED:**

It is recommended that the Board approve (1) proposed revisions to Regents Policy, RP 9.205 – Political Activity, and (2) a new Policy RP 2.206 – Regents as Employees.

Attachments 1-8
PROPOSED

RP 9.205 Political Activity
I. Purpose

This Regents Policy affirms the right of University employees to participate in political activities so long as such political activities do not interfere or are not incompatible with the discharge of the duties and responsibilities owed by the employee to the University of Hawaii.

II. Definitions

"University Employees" for purposes of this policy only is defined as employees receiving a recurring salary, stipend or hourly wage as monetary compensation for work performed in a regular, ongoing appointment of one week or more, subject to the following exclusions:

1. Non-compensated employees;
2. Students who may be employed as student employees and/or graduate assistants; and
3. Individuals who are provided an honorarium to provide a single non-recurring service, and who do not qualify for employment benefits.

"Public Elective Office" will include all offices of the State of Hawaii or any of its counties or any of its agencies to which election is held on a Statewide or district basis, or at the federal level which election is held on statewide or national level. For the purpose of this policy, "Public Elective Office" shall not include unpaid, part-time State or county elective offices that operate outside normal business hours, such as elected neighborhood boards, or which occur outside the standard hours of the University Employee.

"Political Activities" is defined as campaigning for and/or being elected to a Public Elective office, endorsing, supporting or opposing a candidate for Public Elective Office, advocating regarding a voter referendum issue, or participating in partisan activities that should be done on personal time and outside of the workplace.

III. Board of Regents Policy

A. Pursuant to Chapter 84, Hawaii Revised Statutes, the University and state employees must not use public resources including funds, equipment, and time to engage in Political Activities.

B. The holding of Public Elective Office is generally incompatible with serving as a University Employee. Issues include conflicts of commitment between multiple employers as well as conflicts of interest. For these reasons, a University Employee who is elected to Public Elective Office will resign or be separated from University employment immediately upon being sworn into office. Similarly, individuals who hold Public Elective Office will not be hired as a University Employee.
C. The board believes that it is the right of University employees as individual citizens to engage in political activities so long as these activities do not interfere with the University’s mission and the performance of University duties and responsibilities, or violate established rules of the University or State law.

1. It is expected that all University employees will use appropriate discretion and judgment in the exercise of the political rights which such employees share in common with other citizens; that employees will be careful always to recognize and emphasize that their utterances and actions in political matters are theirs as individuals acting in their personal capacity and employees must clearly state and explain that they are not stating a University position or acting as representatives of the University; that employees will always recognize that their first obligation is to the University as their employer; and that employees will accord the University administration the courtesy of prior notice of any political commitment which is likely to bring them into prominence or perceived conflict of interest. Should a University employee choose to endorse a candidate or engage in similar Political Activity, that employee may not allow use of his/her work title or position, work resources or University affiliation in any way.

2. Before officially announcing as a candidate for or accepting any Public Elective Office, a University Employee must notify his/her official supervisor and administrator, and the Vice President for Administration promptly in writing and in no event later than the filing of nomination papers or the announcement of candidacy for such office.

3. As a candidate for Public Elective Office, the University Employee shall:

   a. Be subject to general University policies and State laws governing conflicts of interest and appearances and activities of political candidates on University property which includes campus or off-campus locations that are deemed leased or owned by the University. Candidates must ensure that no real or perceived campaign activities or statements are made on any University property, in University meetings or classes, in or on University documents, or through any UH communication media including University phone, campus mail and electronic mail systems.

   b. Scrupulously receive prior approval, sign out in advance for vacation or unpaid leave, and ensure approval by his/her official supervisor, to account for any time spent on Political Activities during the employee’s normal working hours.
c. Ensure that he/she does not give the appearance or state that the University Employee's views, positions, utterances and/or actions are representative of the University or any University administrator or employee.

D. Any University employee shall notify his/her supervisor and Vice President for Administration of his/her appointment to a federal, State, or county board or commission.
PROPOSED

RP 2.206 Policy on Board of Regents as Employees
Title
Policy on Regents as Employees

Header
Regents Policy Chapter 2, Administration
Regents Policy RP 2.206, Policy on Board of Regents as Employees
Effective Date: , 2016
Review Date: 2018

I. Purpose
To set forth policy on Regents who are also employees of the University of Hawaii ("Employee Regents") to minimize misunderstandings and perceived or actual conflicts of interest that may arise when a Regent is also an employee of the University. It is the policy of the Board of Regents to manage those conflicts in a manner that allows employees of the University to serve on the Board of Regents, while ensuring that the employee’s service on the Board of Regents does not interfere with the employee’s performance of his duties and responsibilities as employee. Employee Regents shall at all times, as both employee and as Regent, conduct themselves in a manner that preserves the integrity of the University of Hawaii, its Regents and its employees.

II. Definitions
No policy specific or unique definitions apply.

III. Board of Regents Policy
A. As employees of the University and as Regents of the University, Employee Regents are subject to and shall abide by (1) Section 78-4(b) of the Hawaii Revised Statutes ("Haw. Rev. Stat.") permitting service on State boards and commissions where service does not interfere with the duties and responsibilities of their employment, and (2) the State code of ethics set forth in Haw. Rev. Stat. Chapter 84, including but not limited to the requirements re confidential information, fair treatment, conflicts of interest, and disclosures. In assuming the duties of employee and Regent, the Employee Regent understands that the dual role is assumed voluntarily by Employee Regents, and that it is the Employee Regent’s responsibility to comply with the provisions of State law.
B. Employee Regents are also required to abide by the provisions of Article X regarding “Conflicts of Interest” in the Bylaws of the Board of Regents of the University of Hawaii, as amended (“Bylaws”).

1. Members of the Board are expected to place the welfare of the University above personal interests, the interests of family members or others who may be personally involved in affairs affecting the University. All decisions of the Board shall be made solely on the basis of a desire to promote the best interests of the University and the public good [Article X, Section B. re “Fiduciary Responsibility”].

2. In the event the Board must consider any matter which also directly impacts an Employee Regent’s personal financial interest or bargaining units 1, 2, 3, 4, 7, 8, 9, and/or 10, or which creates a clear appearance of conflict of interest with his/her employment, the Employee Regent shall either (a) fully disclose the precise nature of the interest or involvement in writing to the Secretary who, together with the University General Counsel, shall be responsible for resolving questions about addressing the conflict, and if unsuccessful, for bringing the questions to the full Board to be resolved by majority vote at a Board meeting in compliance with Haw. Rev. Stat. Chapter 92 [Article X, Sections C. and D. re “Disclosures” and “Determination of Conflicts”, respectively]; or (b) declare the conflict of interest and recuse himself/herself from consideration of the matter before the Board [Article X, Section C. re “Disclosures”].

3. Any Board action favorable to an Employee Regent obtained in violation of this provision is voidable on behalf of the Board, and the Board may pursue all legal and equitable remedies and/or sanctions through the University’s legal counsel [Article X, Section E. re “Sanctions and Remedies”].

C. Employee Regents are required as employees to comply with all policies and procedures applicable to all employees of the University, and not allow service on the Board to interfere with the duties and responsibilities of employment with the University.

1. Employee Regents are expected to adhere to applicable policies and procedures regarding outside employment and appointments, including but not limited to RP 9.207.

2. When an Employee Regent is required by Board service to be away from work during regular work hours, the Employee Regent must obtain prior supervisory approval for absences. When an Employee Regent is required by Board service to be away from work during regular work hours for more than the equivalent of two (2) days or sixteen (16) hours in any given pay period, in accordance with Haw. Rev. Stat. Section 78-4(c), it is expected that the Employee Regent will use available vacation hours for any additional time required for Board service during that pay period, unless otherwise specifically prohibited by applicable collective bargaining agreement. Best efforts should be made to document time spent on Board of Regent duties during regular work hours. No time spent on Board of Regent business shall be considered as time worked for purposes of overtime calculation.
3. Board of Regent duties should be performed to the extent possible, in a secure environment not accessible to the public or other employees. Email and/or other communication for work should be kept separate and apart from email and/or other communication for Board business, and Employee Regents should make clear in their communications in which capacity they are communicating, i.e., as Regent, or as employee.

4. Travel expenses relating to Board of Regent business shall be processed by the Office of the Board of Regents, in accordance with its travel reimbursement policies and procedures; collectively bargained benefits shall not apply to travel for Board of Regent business.

5. Any employment issues arising from the Employee Regent’s employment shall be addressed with and by the human resources personnel in the Employee Regent’s employing unit. Any issues arising from service on the Board of Regent shall be addressed with and through the Office of the Board of Regents.

IV. Delegation of Authority

There is no policy specific delegation of authority.

V. Contact Information

Office of the Board of Regents, 956-8213, bor@hawaii.edu

VI. References

A. http://www.hawaii.edu/offices/bor/

VII. Exhibits and Appendices

No Exhibits and Appendices found

Approved

Approved as to Form: ____________________________  , 2016 
Cynthia Quinn  
Executive Administrator and Secretary of the Board of Regents

Topics
Board of Regents; conflicts of interest
TO: Randy Moore, Chair  
UH Board of Regents

VIA: David Lassner  
President

FROM: Kalbert K. Young  
Vice President for Budget and Finance/Chief Financial Officer

SUBJECT: Discussion Item: Proposed Revision to Regents Policy,  
RP 9.205 – Political Activity

Attached is a proposed revised Regent Policy on Political Activity. This item is on the Board of Regents agenda for its meeting scheduled on July 21, 2016.

Background
The current Regent Policy 9.205 (RP 9.205) pertains to political activities of employees. RP 9.205 was last revised in 1982, but has been in effect since (before) 1966. Earlier this year, the Board of Regents discussed the possibility of revisions to the policy as part of our general legislative review. During the course of that discussion, Administration thought it advisable to delay any policy revisions pending the decision of the Legislature regarding related legislation.

Context
During the 2016 Legislature, a measure (House Bill 1556) was introduced that sought to restrict the University from establishing policies or practices that prevented or restricted the hiring of elected officials. The University of Hawai‘i opposed the measure citing the Regents’ desire that the University and employees avoid opportunities for conflicts of interest and incompatibility of responsibilities. House Bill 1556 failed to pass the 2016 Legislature.

However, in the course of the legislative session, constituents, representatives from UHPA and HGEA, and sitting legislators were able to express what they saw as issues with RP 9.205. As part of our post-mortem review of legislation that would have affected UH, the Administration has considered some of the identified issues. The proposed revisions to RP 9.205 reflect those areas where the Administration believes the Regents could consider amendments while still holding true to the original intent of the policy — namely, to avoid conflicts of interest and to explicitly express Regents’
expectation that University employees were, first and foremost, responsible to their public duties as University employees.

Proposal Discussion
The proposed policy makes revisions to accommodate the following areas:

- Defines “public elective office” to exclude certain offices like neighborhood boards which conduct business outside the standard hours of university employment.
- Identifies and defines the group or type of employees that would not be affected by the policy.
- Defines the types of political activities covered by the policy.
- Makes explicit that Regent sentiment is for employees to avoid incompatibility and conflicts of interest that would prevent them from effectively fulfilling their University duties.
- Establishes compliance protocols for covered political activity.

Next Steps
This proposed revision to RP 9.205 is on the Board of Regents agenda for its meeting on July 21, 2016. The Vice President for Budget and Finance will be leading the discussion of this proposed policy revision. There is no decision-making for the Board of Regents on this agenda item. Based on member sentiments expressed during the discussion, Administration could revise the policy draft to accommodate suggestions and bring the matter back to the Board at a future date for decision making.

In the future if this policy revision does move forward for decision making, Administration would intend to consult with affected government employee unions since the policy could affect work policies and may change existing operational practices.

This matter is hereby submitted for consideration by the Board of Regents.

Attachment 1: Current Regent Policy 9.205 – Political Activity
Attachment 2: Proposed (Revised) Regent Policy 9.205
Attachment 3: Redline version of Proposed (Revised) Regent Policy 9.205

c: University General Counsel
   Vice President for Administration
Viewing Policy RP 9.205

Title
Political Activity

Header
Regents Policy Chapter 9, Personnel
Regents Policy RP 9.205, Political Activity (See also the appropriate collective bargaining agreement)
Effective Date: Feb. 19, 1982
Review Date: August 2019

I. Purpose
To set forth policy regarding political activity.

II. Definitions
No policy specific or unique definitions apply.

III. Board of Regents Policy

A. The board believes that it is the right of employees as citizens to engage in politics so long as these activities do not interfere with their university duties or violate established rules of the university. Furthermore, the board has expressed the belief that political activities by employees, in accordance with the following statement, should result in no embarrassment to the university.

1. It is expected that university employees will use appropriate discretion in the exercise of the political rights which they share in common with other citizens; that they will be careful always to emphasize that their utterances and actions in political matters are theirs as individuals and in no manner represent the university; that they will always recognize that their first obligation is to the university; that they will accord the university administration the courtesy of prior notice of any political commitment which is likely to bring them into prominence.

2. Because of a conflict in interest and/or an appearance of impropriety in campaigning for and holding a public elective office and being employed at the university, the board has established the following policy in regard to campaigning for and holding such an office.
3. All employees under the jurisdiction of the board seeking a public elective office shall, without exception:

   a. Request, or in absence of such request, to be placed on a leave of absence without pay in accordance with university policy upon actively seeking political office, but in no event later than the filing of nomination papers or the announcement of candidacy for such office;

   b. Be subject to the general university policies governing appearances and activities of political candidates on campus;

   c. Insure that they do not give the appearance that their views, utterances and/or actions are representative of the university; and

   d. Be separated from university service through either resignation, or termination upon assumption of the elective office.

IV. Delegation of Authority

There is no policy specific delegation of authority.

V. Contact Information

Office of the Vice President for Administration, 956-6405, jgouveia@hawaii.edu

VI. References

   A. http://www.hawaii.edu/offices/boar/

VII. Exhibits and Appendices

No Exhibits and Appendices found

Approved

approved as to Form: October 31, 2014
Cynthia Quinn Date
Executive Administrator and Secretary of the Board of Regents

Topics

No Topics found.
I. Purpose

This Regents Policy affirms the right of University employees to participate in political activities so long as such political activities do not interfere or are not incompatible with the discharge of the duties and responsibilities owed by the employee to the University of Hawaii.

II. Definitions

"University Employees" for purposes of this policy only is defined as employees receiving a recurring salary, stipend or hourly wage as monetary compensation for work performed in a regular, ongoing appointment of one week or more, subject to the following exclusions:

1. Non-compensated employees;
2. Students who may be employed as student employees and/or graduate assistants; and
3. Individuals who are provided an honorarium to provide a single non-recurring service, and who do not qualify for employment benefits.

"Public Elective Office" will include all offices of the State of Hawaii or any of its counties or any of its agencies to which election is held on a Statewide or district basis, or at the federal level which election is held on statewide or national level. For the purpose of this policy, "Public Elective Office" shall not include unpaid, part-time State or county elective offices that operate outside normal business hours, such as elected neighborhood boards, or which occur outside the standard hours of the University Employee.

"Political Activities" is defined as campaigning for and/or being elected to a Public Elective office, endorsing, supporting or opposing a candidate for Public Elective Office, advocating regarding a voter referendum issue, or participating in partisan activities that should be done on personal time and outside of the workplace.

III. Board of Regents Policy

A. Pursuant to Chapter 84, Hawai‘i Revised Statutes, the University and state employees must not use public resources including funds, equipment, and time to engage in Political Activities.

B. The holding of Public Elective Office is generally incompatible with serving as a University Employee. Issues include conflicts of commitment between multiple employers as well as conflicts of interest. For these reasons, a University Employee who is elected to Public Elective Office will resign or be separated from University employment immediately upon being sworn into office. Similarly, individuals who hold Public Elective Office will not be hired as a University Employee.
C. The board believes that it is the right of University employees as individual citizens to engage in political activities so long as these activities do not interfere with the University’s mission and the performance of University duties and responsibilities, or violate established rules of the University or State law.

1. It is expected that all University employees will use appropriate discretion and judgment in the exercise of the political rights which such employees share in common with other citizens; that employees will be careful always to recognize and emphasize that their utterances and actions in political matters are theirs as individuals acting in their personal capacity and employees must clearly state and explain that they are not stating a University position or acting as representatives of the University; that employees will always recognize that their first obligation is to the University as their employer; and that employees will accord the University administration the courtesy of prior notice of any political commitment which is likely to bring them into prominence or perceived conflict of interest. Should a University employee choose to endorse a candidate or engage in similar Political Activity, that employee may not allow use of his/her work title or position, work resources or University affiliation in any way.

2. Before officially announcing as a candidate for or accepting any Public Elective Office, a University Employee must notify his/her official supervisor and administrator, and the Vice President for Administration promptly in writing and in no event later than the filing of nomination papers or the announcement of candidacy for such office.

3. As a candidate for Public Elective Office, the University Employee shall:

   a. Be subject to general University policies and State laws governing conflicts of interest and appearances and activities of political candidates on University property which includes campus or off-campus locations that are deemed leased or owned by the University. Candidates must ensure that no real or perceived campaign activities or statements are made on any University property, in University meetings or classes, in or on University documents, or through any UH communication media including University phone, campus mail and electronic mail systems.

   b. Scrupulously receive prior approval, sign out in advance for vacation or unpaid leave, and ensure approval by his/her official supervisor, to account for any time spent on Political Activities during the employee’s normal working hours.
c. Ensure that he/she does not give the appearance or state that the University Employee's views, positions, utterances and/or actions are representative of the University or any University administrator or employee.

D. Any University employee shall notify his/her supervisor and Vice President for Administration of his/her appointment to a federal, State, or county board or commission.
I. Purpose

To set forth policy regarding political activity:

This Regents Policy affirms the right of University employees to participate in political activities so long as such political activities do not interfere or are not incompatible with the discharge of the duties and responsibilities owed by the employee to the University of Hawaii.

II. Definitions

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"University Employees" for purposes of this policy only is defined as employees receiving a recurring salary, stipend or hourly wage as monetary compensation for work performed in a regular, ongoing appointment of one week or more, subject to the following exclusions:

(1) Non-compensated employees;
(2) Students who may be employed as student employees and/or graduate assistants; and
(3) Individuals who are provided an honorarium to provide a single non-recurring service, and who do not qualify for employment benefits.

"Public Elective Office" will include all offices of the State of Hawaii or any of its counties or any of its agencies to which election is held on a Statewide or district basis, or at the federal level where election is held on statewide or national level. For the purpose of this policy, “Public Elective Office” shall not include unpaid, part-time State or county elective offices that operate outside normal business hours, such as elected neighborhood boards, or which occur outside the standard hours of the University Employee.

"Political Activities" is defined as campaigning for and/or being elected to a Public Elective office, endorsing, supporting or opposing a candidate for Public Elective Office, advocating regarding a voter referendum issue, or participating in partisan activities that should be done on personal time and outside of the workplace.

III. Board of Regents Policy

A. Pursuant to Chapter 84, Hawaii Revised Statutes, the University and state employees must not use public resources including funds, equipment, and time to engage in Political Activities.

B. The holding of Public Elective Office is generally incompatible with
serving as a University Employee. Issues include conflicts of commitment between multiple employers as well as conflicts of interest. For these reasons, a University Employee who is elected to Public Elective Office will resign or be separated from University employment immediately upon being sworn into office. Similarly, individuals who hold Public Elective Office will not be hired as a University Employee.

C. The board believes that it is the right of University employees as individual citizens to engage in political activities so long as these activities do not interfere with the University's mission and the performance of University duties and responsibilities, or violate established rules of the university. Furthermore, the board has expressed the belief that political activities by employees, in accordance with the following statement, should result in no embarrassment to the University or State law.

1. It is expected that all University employees will use appropriate discretion and judgment in the exercise of the political rights which they share in common with other citizens; that they will be careful always to recognize and emphasize that their utterances and actions in political matters are theirs as individuals and in no manner represent the University; that they acting in their personal capacity and employees must clearly state and explain that they are not stating a University position or acting as representatives of the University; that employees will always recognize that their first obligation is to the University; that they University as their employer; and that employees will accord the University administration the courtesy of prior notice of any political commitment which is likely to bring them into prominence.

2. Because of a or perceived conflict in interest and/or an appearance of impropriety in campaigning for and holding a public elective office and being employed at the university, the board has established the following policy of interest. Should a University employee choose to endorse a candidate or engage in regard to campaigning for and holding such an office.

3. All employees under the jurisdiction of the board seeking a public elective office shall, without exception:

a. Request, or similar Political Activity, that employee may not allow use of his/her work title or position, work resources or University affiliation in absence of such request, to be placed on a leave of absence without pay in accordance with university policy upon actively seeking political office, but any way.
2. Before officially announcing as a candidate for or accepting any Public Elective Office, a University Employee must notify his/her official supervisor and administrator, and the Vice President for Administration promptly in writing and in no event later than the filing of nomination papers or the announcement of candidacy for such office.

3. As a candidate for Public Elective Office, the University Employee shall:

a. Be subject to the general University policies and State laws governing conflicts of interest and appearances and activities of political candidates on University property which includes campus;

b. Insure or off-campus locations that they do are deemed leased or owned by the University. Candidates must ensure that no real or perceived campaign activities or statements are made on any University property, in University meetings or classes, in or on University documents, or through any UH communication media including University phone, campus mail and electronic mail systems.

c. Scrupulously receive prior approval, sign out in advance for vacation or unpaid leave, and ensure approval by his/her official supervisor, to account for any time spent on Political Activities during the employee’s normal working hours.

d. Be separated from university service through either resignation, or termination upon assumption of the elective office.

D. Any University employee shall notify his/her supervisor and Vice President for Administration of his/her appointment to a federal, State, or county board or commission.

IV. Delegation of Authority

There is no policy specific delegation of authority.
V. Contact Information

Office of the Vice President for Administration, 956-6405, jgouveia@hawaii.edu

VI. References

A. http://www.hawaii.edu/offices/bor/

Approved:

approved as to Form:

__________________________________________

Cynthia Quinn — Date

Executive Administrator and Secretary of the Board of Regents
October 19, 2016

Ms. Jan Sullivan
Chair, Board of Regents
2444 Dole Street
Honolulu, HI 96822

Subject: University of Hawai'i Board of Regents Policy
Response RP 9.205 Political Activity - Revised

Overview: In general, the proposed revisions to BOR RP 9.205 make the rules concerning employee engagement in political activity clearer, and therefore better, than the original Policy. The most important change in the revised Policy is that an employee may continue to work while campaigning for elective office, provided that she scrupulously tracks time spent on political activities. The original Policy required the employee to take leave without pay from all University employment after making a public announcement for office or upon filing for office, which in the past, created a financial hardship on the Faculty Member and disruption in the classroom.

The major changes to the original Policy are discussed below.

1. The Faculty Member may continue to work while campaigning.

The original Policy required the employee to “[r]equest, or in absence of such request, to be placed on leave of absence without pay in accordance with university policy upon actively seeking political office, but in no event later than the filing of nomination papers or the announcement of candidacy for such office.” Original RP 9.205 at III.A.3.a (bold emphasis added).

The required LWOP was a major problem for faculty member Andrea Tupola. During the 2014 election cycle, Tupola was a tenure-track faculty member teaching choral music at Leeward Community College. Before the filing deadline in June 2014, she had publicly announced her candidacy for State House of Representatives and had begun campaigning.
Sometime soon after the filing deadline, the LCC Administration became aware that she was a candidate for political office. Tupola was teaching during that summer session. The Administration contacted Tupola and informed her of the Policy that required her to take leave from the University. Tupola was unaware of the Policy and had not provided the Administration of notice for her political activity. The failure to provide notice to the Administration of her political activity was not intentional and no discipline was issued to Tupola. But, Tupola opposed the Administration’s action to immediately remove her from her course. Tupola wanted to continue to teach through the general election. A grievance was filed and discovery commenced revealing consistent application of the Policy. The Administration found a teaching replacement in mid-summer session. While Tupola was prohibited from working while campaigning for office, the Administration acknowledged that she continue her employment with LCC in the tenure track position if she lost in the general election. Overall, the Administration acted in compliance with the original Policy and treated Tupola fairly under the circumstances.

The original Policy was enforced in similar situations during that election cycle. Tupola wasn’t the only University employee who was a candidate for House of Representatives in 2014. Jarrett Keohokalole was employed by the Richardson School of Law during this time and he took an unpaid leave pursuant to the Policy. Tupola asked Keohokalole to support her grievance to allow continued employment while campaigning, but he refused to do so.

The revised Policy fixes the main Tupola complaint and disruption to the course because it does not require the employee to take unpaid leave from the University while the employee is campaigning for office. The new Policy provides that the employee must: "[s]crupulously receive prior approval, sign out in advance for vacation, or unpaid leave, and ensure approval by his/her official supervisor, to account for any time spent on Political Activities during the employee's normal working hours." Revised RP 9.205 at III.C.3.b. Placing the responsibility on the employee to track their non-work political activity is a reasonable accommodation that benefits the employee, the Administration, and the students.

**Conclusion:** This is a major improvement for Faculty Members who want to remain employed while campaigning for office. It allows the Faculty Member to continue to work while campaigning, it eases the burden of finding a teaching replacement on short notice, and allows continuity for the students in the course.
2. The Faculty Member is terminated from the University upon being “sworn into office.”

This is a small point, but it needs further clarification. The original Policy required that the employee, “[b]e separated from university service through either resignation, or termination upon assumption of the elective office.” Original RP 9.205 at III.A.3.d (bold emphasis added). However, the meaning of “assumption” of the office was not clear.

The revised Policy clarifies that separation occurs when the employee is “sworn into office.” Revised Policy RP 9.205 at III.B. In one sense it’s better because it identifies a specific event but, the change doesn’t clarify whether a Faculty Member elected in early November is able to complete their teaching and departmental responsibilities through the end of the fall semester prior to being “sworn into office.”

Conclusion: In the typical case where a Faculty Member is elected to office in November, does the “sworn” date allow the Faculty to finish the fall semester? Further clarifying the separation date would be a positive fix to the Policy. Or going back to the word “assumption” would provide flexibility on the termination date and allow completion of a Faculty Member’s responsibilities.

3. A Faculty Member’s University employment while holding an elective office is ‘incompatible” with her employment duties.

The common-law doctrine of “incompatibility” prevents a University employee from holding an elective office. While incompatibility is determined on the specific facts involved, it may occur where an employee who is subordinate to her employer, assumes a position where the employee has control over the employer. In other words, holding a legislative office places the Faculty Member in a superior position to her Dean, Chancellor, President and the Regents.

This common-law doctrine was used to affirm the original Policy requiring termination upon assuming elective office. The point was made in several Attorney General Opinions and was upheld in a State Circuit Court case. The clearest statement on “incompatibility” was described in a 1970 AG Opinion.

A challenge was brought to the original BOR Policy that required resignation of a University employee upon election to the State Legislature. In Alcon v. Cleveland, et al.,
Civil No. 30128, State of Hawaii, Circuit Court of the First Circuit, dated May 25, 1970, the court noted, "[t]he job of a legislator conflicts with that of a teacher at the University in that the two jobs are physically exclusive in terms of simultaneous performance, in that they are conflicting in terms of quality performance, and that the legislative office is superior to that of the Regents in the chain of command structure of state government." Attorney General Opinion No. 70-29, Honorable Tadao Beppu, dated December 14, 1970. Consequently, the Policy was upheld.

As early as 1966, the common-law doctrine of incompatibility was specifically identified as a possible reason to prevent a University professor from holding an elected State Legislative position. But the necessary facts were not presented to render a definite conclusion. Attorney General Opinion No. 66-20, Dr. Kenneth Lau, dated June 9, 1966. More specific facts were applied in a 1992 AG Opinion.

**Conclusion:** It is apparent that placing a Faculty Member on indefinite leave or allowing work in the legislative off-season (such as summer or fall semesters) does not change the "incompatibility" of the two positions. Termination of state employment is the rule, because holding an elective office still has the potential appearance of feathering a nest for return to state employment or other impropriety. Thus, the separation of employment from the University is a necessary part of a Faculty Member's assumption of an elected position.

4. **The revised definitions are clearer.**

The definitions of University Employees, Public Elective Office, and Political Activities better define the application of the Revised Policy than the original Policy.

**Conclusion:** This is an improvement over the original Policy. I have no further comment to these changes.

Kristeen Hanselman

Executive Director
University of Hawaii
Professional Assembly
November 15, 2016

Ms. Dana Funai  
Human Resource Specialist  
Office of Human Resources  
University of Hawai‘i System  
2440 Campus Road  
Honolulu, HI 96822-2246

Re: University of Hawai‘i Board of Regents Policies RP 9.205 and RP 2.206

Dear Ms. Funai,

This is in response to your letter dated September 20, 2016 regarding proposed revisions to RP 9.205 Political Activity and new policy RP 2.206 Policy on Regents as Employees. We have distributed the proposal and solicited comments. From the responses that we have received, we have comments and concerns.

In the proposed RP 9.205, it is stated that “The holding of Public Elective Office is generally incompatible with serving as a University Employee. Issues include conflicts of commitment between multiple employers as well as conflicts of interest. For these reasons, a University Employee who is elected to Public Elective Office will resign or be separated from University employment immediately upon being sworn into office”. What other options or consideration have been made other than resigning such as leave without pay status? Please explain.

Also, in policy RP 2.206, paragraph B, section 2, it states “In the event the Board must consider any matter which also directly impacts an Employee Regent’s personal financial interest of bargaining units 1,2,3,4,7,8,9, and/or 10, or which creates a clear appearance of conflict of interest with his/her employment”. This statement seems to be inclusive of all of the bargaining units at the university. Please explain the rationale for including all of the bargaining units within the university instead of limiting the conflict of interest notification to issues associated with the Employee Regent’s bargaining unit.

Thank you once again for the additional time and the opportunity to provide input. We look forward to your written response.

Sincerely,

Chad Ngai  
Union Agent
November 23, 2016

Mr. Chad Ngai  
Unit Agent  
Hawaii Government Employees Association  
888 Millilani Street, Suite 601  
Honolulu, Hawaii 96813  

SUBJECT: University of Hawaii Board of Regents Policies RP 9.205 and RP 2.206  

Dear Mr. Ngai,

The University of Hawaii (University) is in receipt of your letter dated November 15, 2016 regarding proposed revisions to RP 9.205 Political Activity and proposed new RP 2.206 Policy on Board of Regents as Employees. Pursuant to Article 1, Recognition, of the Unit 2, 3, 4, 8, and 9 Agreements and §89-9(c), HRS, the University provides the following written response:

1. HGEA comment: RP 9.205 Political Activity states in part “The holding of Public Elective Office is generally incompatible with serving as a University Employee. Issues include conflicts of commitment between multiple employers as well as conflicts of interest. For these reasons, a University Employee who is elected to Public Elective Office will resign or be separated from University employment immediately upon being sworn into office”. What other options or consideration have been made other than resigning such as leave without pay status? Please explain.

UH Response: The requirement that a University employee resign or be separated from University employment upon being sworn into public office seeks to avoid compromising the integrity of the University or raising questions of the conflicts of interests of the individual in elected office. This policy requirement has been challenged, and has been affirmed. In Alcon vs. Harlan Cleveland, et al., the Circuit Court of the First Circuit, State of Hawaii, issued a decision in 1970 upholding the Regents policy requiring a faculty member to resign upon being elected to the state legislature. Additionally, the Department of the Attorney General (ATG) affirmed in 1992 and 1994 the incompatibility of certain employees at the UH holding legislative office. Based on the foregoing, the University has maintained its policy that University Employees resign or be separated from University employment upon being elected to Public Elective Office. Attached for reference is an October 31, 1994 memorandum from the ATG to the Secretary of the UH Board of Regents, attaching two prior AG opinions and the Alcon decision.
2. HGEA comment: RP 2.206, paragraph B, section 2 states "In the event the Board must consider any matter which also directly impacts an Employee Regent’s personal financial interest or bargaining units 1, 2, 3, 4, 7, 8, 9, and/or 10, or which creates a clear appearance of conflict of interest with his/her employment". This statement seems to be inclusive of all of the bargaining units at the university. Please explain the rationale for including all of the bargaining units within the university instead of limiting the conflict of interest notification to issues associated with the Employee Regent’s bargaining unit.

UH Response: The Board of Regents provides general management and control of employee affairs, and has identified inherent conflicts of interest in serving as both a Regent and an employee. Such potential conflicts are especially evident when the Employee Regents are considering new or revised terms and conditions affecting their own employment with the University. For example, as the terms and conditions set forth in one bargaining unit may affect all or other bargaining units, and as such terms and conditions are regularly discussed in relation to other bargaining units, the Board believes Employee Regents must proactively identify and address conflicts of interest whenever the Board considers matters involving any and all bargaining units 1, 2, 3, 4, 7, 8, 9, and/or 10. The foregoing policy statement serves to preserve the integrity of the Board and the University as well as its decisions, and aligns with responsibilities stated in the Bylaws of the BOR, specifically Article X. Conflicts of Interest. The two Employee Regents have expressed their support of this policy.

We look forward to receiving any additional response to the proposed changes to RP 9.205 Political Activity and proposed new RP 2.206 Policy on Board of Regents as Employees, and respectfully request any further comments or questions the HGEA may have in regards to these proposals by December 9, 2016.

Thank you for your time and attention.

Sincerely,

Dana Funai
Human Resources Specialist

Enclosures
January 12, 2017

Ms. Dana Funai  
Human Resource Specialist  
Office of Human Resources  
University of Hawaiʻi System  
2440 Campus Road  
Honolulu, HI  96822-2246

Re: University of Hawaii Board of Regents Policies RP 9.205 and RP 2.206

Dear Ms. Funai,

This in response to your letter dated November 23, 2016 regarding proposed revisions to RP 9.205 Political Activity and new policy RP 2.206 Policy on Regents as Employees.

We have reviewed the responses to our concerns and solicited comments. Based on our responses received, we do not have any questions at this time. However, should any unforeseen issues arise during the implementation of this policy, it is our expectation that the University will be willing to meet and discuss any concerns.

Thank you once again for the opportunity and additional time to provide input.

Sincerely,

Chad Ngai  
Union Agent
January 27, 2017

Laurie Santiago  
O’ahu Division Director  
United Public Workers, AFSCME Local 646  
1426 North School Street  
Honolulu, Hawai‘i 96817

RE: University of Hawai‘i Board of Regents Policies RP 9.205 Political Activity and RP 2.206 Policy on Regents as Employees

Dear Ms. Santiago,

Pursuant to Section 1. Recognition of the Unit 1 and 10 Agreements and §89-9(c), HRS, the University of Hawai‘i (University) provides the United Public Workers (UPW) with the following information regarding proposed changes to RP 9.205 Political Activity (RP 9.205) and proposed new policy RP 2.206 Policy on Regents as Employees (RP 2.206). The below information is in response to the questions and concerns I perceive were conveyed by you to me during a phone conversation on January 11 and 25, 2017.

I acknowledge that on January 25, 2017, at your request, we tentatively agreed to convene a “formal” meeting (i.e. February 6 or 7, 2017) to further discuss the proposals. I also acknowledge that based on the same conversation, this response does not align with the UPW’s desire to conduct a “formal” meeting in lieu of a written response to concerns expressed by the UPW in an “informal” setting. However, upon further reflection the University believes that providing the below written response to concerns and questions conveyed on January 11 and 25, 2017 will be mutually beneficial to both parties in facilitating further discussion over the proposals.

1. UPW Comment: RP 9.205 infringes on an employee’s contractual and statutory right to engage in political activities (e.g. expressing opposition to legislation initiated by UH, being featured in commercial where individual states employment with UH)

   UH Response: First and foremost, the University of Hawai‘i (University) recognizes and acknowledges constitutional, contractual and statutory rights of employees to participate and engage in political activities, as evident in the purpose statement of RP 9.205 which states in part, “This Regents Policy affirms the right of University employees to participate in political activities...”. While affirming and respecting the rights of employees to engage in political activities as individual citizens, the University must also affirm and support a fundamental responsibility to promote high standards of ethical conduct in state government. In light of this responsibility, RP 9.205 seeks to prevent and avoid conflicts of interest or commitment that may result from an employee’s participation in political activities that interfere with the University’s

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1 For purposes of any discussion of RP 9.205 in this letter, “employees” references those employees included in the definition provided in RP 9.205.
mission and/or the performance of University duties and responsibilities, or violate established rules of the University or State law.

RP 9.205 is not a prohibition on the rights of University employees to engage in political activities, e.g., campaigning, endorsing candidates for Public Elective Office, participating in partisan activities, as individual citizens on personal time and outside of the workplace. Nor does RP 9.205 infringe on contractual rights, such as serving as an appointed and registered Union lobbyist before the State Legislature. While RP 9.205 C. broadly states that political activities “should not interfere with the University’s mission and the performance of University duties and responsibilities, or violate established rules of the University or State law”, the following policy statement further explains:

“It is expected that all University employees will use appropriate discretion and judgment in the exercise of the political rights which such employees share in common with other citizens: that employees will be careful always to recognize and emphasize that their utterances and actions in political matters are theirs as individuals acting in their personal capacity and employees must clearly state and explain that they are not stating a University position or acting as representatives of the University...Should a University employee choose to endorse a candidate or engage in similar Political Activity, that employee may not allow use of his/her work title or position, work resources or University affiliation in any way.”

2. UPW Comment: III. B. of RP 9.205, requires resignation prior to assumption of public service; this violates Unit 1 and 10 CBA, specifically Section 38 Leaves of Absence Without Pay which states in part "A regular Employee may be granted a leave of absence without pay to render service at the State Legislature. The leave without pay shall be for the duration of not more than twelve (12) months." The CBA does not define "service" which may include serving in Public Elective Office. Policy cannot supersede CBA.

UH Response: The requirement that a University employee resign or be separated from University employment upon being sworn into public elective office seeks to avoid compromising the integrity of the University or raising questions of the conflicts of interests of the individual in elected office. This policy requirement has been challenged, and has been affirmed. In Alcon vs. Harlan Cleveland, et al., the Circuit Court of the First Circuit, State of Hawai‘i, issued a decision in 1970 upholding the Regents policy requiring a faculty member to resign upon being elected to the state legislature. Additionally, the Department of the Attorney General (ATG) affirmed in 1992 and 1994 the incompatibility of certain employees at the University holding legislative office. Based on the foregoing, the University has maintained its policy that University employees resign or be separated from University employment upon being elected to Public Elective Office. Attached for reference is an October 31, 1994 memorandum from the ATG to the Secretary of the UH Board of Regents, attaching two prior AG opinions and the Alcon decision.
3. **UPW Comment: RP 9.205, III C: Who or what entity determines whether or not political activities are interfering with the University's mission, goals?**

UH Response: RP 9.205, III. C. states in part:

> "The board believes that it is the right of University employees as individual citizens to engage in political activities so long as these activities do not interfere with the University’s mission and the performance of University duties and responsibilities, or violate established rules of the University or State law."

As necessary, University administrators may determine whether or not violations of RP 9.205 have occurred. As applicable, action(s) taken by the University in response to alleged violation(s) of RP 9.205 will be taken in accordance with the appropriate collective bargaining agreement.

4. **UPW Comment: RP 9.205, III. C.2. What is the basis for requiring that the Employee notify his/her official supervisor before officially announcing candidacy or accepting any Public Elective Office?**

UH Response: RP 9.205, III.C.2. states in part:

> "Before officially announcing as a candidate for or accepting any Public Elective Office, a University Employee must notify his/her official supervisor and administrator, and the Vice President for Administration promptly in writing and in no event later than the filing of nomination papers or the announcement of candidacy for such office."

As mentioned previously, RP 9.205 prudently seeks in part to prevent and avoid conflicts of interest and incompatibility of responsibilities that may result from instances where employees seek and/or are elected to Public Elective Office. Requiring that an employee notify his/her official supervisor before officially announcing candidacy or accepting any Public Elective Office seeks to mitigate exposure to potential conflicts of interest. Additionally, the notification is viewed as a reasonably expected workplace courtesy.

5. **UPW Comment: RP 9.205, III. C.3.b. Use of the word "scrupulously", what is the intent? How would this be characterized?**


> "As a candidate for Public Elective Office, the University Employee shall: b. Scrupulously receive prior approval, sign out in advance for vacation or unpaid leave, and ensure approval by his/her official supervisor, to account for any time spent on Political Activities during the employee’s normal working hours."

In this context, use of the word “scrupulously” serves to underscore the employee’s, i.e., candidate for Public Elective Office, responsibility to ensure that vacation or unpaid leave is properly
authorized by his/her office supervisor in advance of any time spent on Political Activities during the employee’s normal working hours.

6. UPW Comment: RP 9.205, III. C. 3. c. How can an employee be expected to "ensure" that he/she does not give the appearance that the Employee’s views, positions, utterances and/or actions are representative of the University? Employee cannot control the perceptions of others. How would such a requirement be imposed?

UH Response: RP 9.205, III.C.3.c. states in part:

“As a candidate for Public Elective Office, the University Employee shall...Ensure that he/she does not give the appearance or state that the University Employee’s views, positions, utterances and/or actions are representative of the University or any University administrator or employee.”

The University recognizes that employees cannot assert complete control over the perceptions of others; the intent of the foregoing policy statement is to further convey the University’s expectation as stated in RP 9.205 III. C. 1. that “…employees will be careful always to recognize and emphasize that their utterances and actions in political matters are theirs as individuals acting in their personal capacity and…must clearly state and explain that they are not stating a University position or acting as representatives of the University…”

7. UPW Comment: RP 9.205, III. D. Why must an employee notify supervisor and VP Administration of appointment to federal, State or county board or commission?

UH Response: Please see response to Item #4.

8. UPW Comment: Do any existing University policies prohibit employee engagement in political activities? Were such policies consulted upon?

UH Response: The University has not promulgated any policies prohibiting an employee’s engagement in political activities as individual citizens. As previously mentioned, RP 9.205 Political Activity affirms and the constitutional, contractual and statutory rights of University employees to participate in political activities while seeking to avoid and prevent conflicts of interest or incompatibility that would prevent employees from effectively fulfilling their University duties.

9. UPW Comment: Are there any state laws or policies prohibiting appearances of candidates or others on campus who are engaging in lawful political activities?

UH Response: The University is unaware of any state law which prohibits appearances of candidates or others on campus who are engaging in lawful, political activities.

• The UH Executive Policy 10.206 Free Expression on University Campuses states in part “The University of Hawai‘i is committed to the free and open exchange of ideas and affirms the
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rights of members of the university community to engage in speech and other expressive activity guaranteed by the First Amendment to the U.S. Constitution and by Article I, Section 4 of the Constitution of the State of Hawai‘i. These activities may be conducted at such times and places and in such a manner to assure the orderly conduct and least interference with the University responsibilities as a public institution for higher education and scholarly inquiry”.

- In addition, pursuant to Chapter 84, Hawai‘i Revised Statues, the University and state employees must not use public resources including funds, equipment and time to engage in political activities.

10. UPW Comment: Even though the language incorporated within RP 9.205 implies that the Employee has a right to express his or her views, the UPW believes the policy language is restrictive, does not properly communicate or protect rights, and is contrary to the statutory and contractual rights of an employee to engage in political activities. Political activity is an integral part of being a member of the Union. UPW opposes any potential limitations on an employee’s rights to political action. If indeed the subject policy does not restrict rights of Employees, how will the University ensure proper communication of these rights, especially as the policy appears to imply otherwise.

UH Response: As stated above, RP 9.205 is not a prohibition on the rights of University employees to engage in political activities (e.g. campaigning, endorsing candidates for Public Elective Office, participating in partisan activities) as individual citizens on personal time. While RP 9.205 C. broadly states that political activities “should not interfere with the University’s mission and the performance of University duties and responsibilities, or violate established rules of the University or State law”, the following policy statement further explains:

“It is expected that all University employees will use appropriate discretion and judgment in the exercise of the political rights which such employees share in common with other citizens; that employees will be careful always to recognize and emphasize that their utterances and actions in political matters are theirs as individuals acting in their personal capacity and employees must clearly state and explain that they are not stating a University position or acting as representatives of the University...Should a University employee choose to endorse a candidate or engage in similar Political Activity, that employee may not allow use of his/her work title or position, work resources or University affiliation in any way.”

Additionally, it may be important to note that RP 9.205 Political Activity has been in existence since 1966 and was last revised in 1982. While assertions have been made that the policy is too restrictive on those seeking or assuming Public Elective Office, the University is currently unaware of any instances by which implementation and/or application of the policy infringed on an Employee’s right to engage in political activities as individual citizens. Furthermore, the proposed changes to RP 9.205 effectively allow increased latitude for employees who become candidates for Public Elective Office as they would no longer be required to take a leave of absence while running for office (as is currently required by RP 9.205).
11. UPW Comment: RP 9.205 III. C. 3. c. language is not clear on which parts of the policy are applicable to all vs. candidates for Public Elective Office. Additionally, as stated in above item #2, the requirement that Employees terminate once sworn into Public Elective Office is contrary to the Unit 1 and 10 CBA.

UH Response: RP 9.205 III. C. 3.c. states in part:

“As a candidate for Public Elective Office, the University Employee shall...Ensure that he/she does not give the appearance or state that the University Employee’s views, positions, utterances and/or actions are representative of the University of any University administrator or employee.”

The foregoing section is specifically applicable to candidates seeking Public Elective Office. However, similar principles are applicable to all employees. RP 9.205 III. C. 1 states in part:

“It is expected that all University employees will use appropriate discretion and judgment in the exercise of the political rights which such employees share in common with other citizens; that employees will be careful always to recognize and emphasize that their utterances and actions in political matters are theirs as individuals acting in their personal capacity and employees must clearly state and explain that they are not stating a University position or acting as representatives of the University...Should a University employee choose to endorse a candidate or engage in similar Political Activity, that employee may not allow use of his/her work title or position, work resources or University affiliation in any way.”

12. UPW Comment: Did HB 1556 seek to prevent UH from requiring resignation of employees if elected to political office, contrary to RP 9.205?

UH Response: As stated in House Standing Committee Report No. 37-16, the purpose of H.B. No. 1556 was to “prohibit the University of Hawai‘i from adopting or maintaining a policy that precludes a person from working at the University in a non-executive or non-managerial position solely because that person is a legislator or other official elected to a non-statewide public office within the State.”

As stated in Senate Standing Committee Report No. 3573, the purpose and intent of H.B. No. 1556, H.D. 1, S.D. 1 was to

(1) Amend chapter 88, Hawai‘i Revised Statutes, to clarify that people who are employed at the University of Hawai‘i and are also elective officers are prohibited from earning any additional benefits as a result of holding the second position; and
(2) Authorize the University of Hawai‘i to employ people who are candidates for, or are elected to, a non-statewide or non-countrywide public office as casual employees in a non-executive or non-managerial position at the University.
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13. UPW Comment: Does any documentation regarding previous consultation over RP 9.205 exist?

UH Response: RP 9.205 has been in effect since at least 1966 and was last revised in 1982. The University is currently unable to locate any documentation pertaining to previous consultation with the UPW regarding RP 9.205.


UH Response: Please refer to Attachment 1. Additionally, links to requested chapters and sections of Hawai‘i Revised Statutes are noted below:

- Chapter 92: [http://www.capitol.hawaii.gov/hrscurrent/Vol02_Ch0046-0115/HRS0092/](http://www.capitol.hawaii.gov/hrscurrent/Vol02_Ch0046-0115/HRS0092/)
- Chapter 78-4(b): [http://www.capitol.hawaii.gov/hrscurrent/Vol02_Ch0046-0115/HRS0078/HRS_0078-0004.htm](http://www.capitol.hawaii.gov/hrscurrent/Vol02_Ch0046-0115/HRS0078/HRS_0078-0004.htm)

15. UPW Comment: RP 2.206, provide further clarification on the intent of this policy and impact on employees.

UH Response: Given the recent appointment of two employees to the Board of Regents (BOR), proposed RP 2.206 Policy on Board of Regents as Employees, was drafted to proactively address and manage potential and/or perceived conflicts of interest in a manner that allows University employees to serve on the BOR while ensuring that this service does not interfere with the employee’s performance of his or her duties and responsibilities as a University employee.

16. UPW Comment: RP 2.206 III B. 2: provide further explanation regarding rationale for potential conflicts when discussing matters affecting all bargaining units (i.e. 1, 2, 3, 4, 7, 8, 9) vs. individual as a BU member.

UH Response: The Board has identified conflicts of interest inherent to individuals serving as both a Regent and an employee: potential conflicts are especially evident when Employee Regents are considering matters affecting their own employment with the University. Additionally, because matters regarding one collective bargaining unit may affect all bargaining units, and because the matters affecting one bargaining unit are regularly discussed simultaneously and/or in relation to other bargaining units, the Board believes Employee Regents must prudently and proactively identify and address conflicts of interest whenever the Board considers matters involving any and all bargaining units (i.e. 1, 2, 3, 4, 7, 8, 9, and/or 10). The foregoing policy statement serves to preserve the integrity of the Board and the University, and aligns with responsibilities stated in the Bylaws of the BOR, specifically Article X. Conflicts of Interest. It may also be worthwhile to note that both Employee Regents have expressed their support of this proposed policy.
Ms. Laurie Santiago  
January 27, 2017  
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As mentioned, the subject proposals were originally sent to the UPW, HGEA, and UHPA in September, 2016. Consultation with the HGEA and UHPA over the proposals has since been consummated. We followed up with the UPW on several occasions via phone calls (e.g. on or about October 19, 2016, November 7, 15, 22, 2016) and email/written correspondence (e.g. October 19, 2016, November 15, 22, 2016, December 23, 2016). Given that the proposals were originally sent to the UPW for consultation in September, 2016, we respectfully request response and further comments and/or questions from the UPW by February 2, 2017. If we do not receive additional comments by this date, we will assume that the UPW does not have further concerns or comments regarding the subject proposals and will proceed with implementation of revisions to RP 9.205 and new RP 2.206.

Again, thank you for your time and attention.

Sincerely,

Dana Funai  
Human Resources Specialist

Attachments
MEMORANDUM

TO: Jan N. Sullivan, Chair
    Board of Regents

FROM: Cynthia Quinn, Board Secretary

SUBJECT: Draft new board policy on conflicts of interest and employment, Chapter 2, Administration, Regents Policy RP 2.206, Policy on Board of Regents as Employees

SPECIFIC ACTION REQUESTED:

None; draft policy on conflicts of interest and employment is for discussion only. Union consultation will need to be done prior to any approval of a draft policy.

PURPOSE:

The affairs and employees of the University are under the general management and control of the Board of Regents. Given the recent appointment of two employees to the Board of Regents, this policy was drafted to address proactively inherent conflicts of interest, to preserve the integrity of the Board and the University. There has been no prior need for this policy because no employees have been appointed to the Board of Regents until now. It is important to note that the two existing employee Regents ("Employee Regents") fully support and have been engaged in this effort.

While the benefit from having such employee perspective on the board is recognized, this policy identifies conflicts of interest that may arise where a regent is serving a dual role as employer and employee. Adoption of the draft policy would (1) affirm the board's support for its Employee Regents serving in both roles, and (2) proactively address potential conflicts of interest such that an Employee Regent’s volunteer service on the Board of Regents does not interfere with performance of his or her duties and responsibilities as an employee.

BACKGROUND:

At the August 18, 2016 board meeting, the board referred to the Personnel Committee for further consideration a new draft board policy addressing potential conflicts of interests for University of Hawaii employees serving on the Board of Regents. This is believed to be the first time employees have been appointed to the
Board of Regents, and the board asked the Personnel Committee to further discuss the draft policy.

Regents are already subject to the State ethics code set forth in Chapter 84 of the Hawaii Revised Statutes ("Haw. Rev. Stat."), including but not limited to those pertaining to confidential information, fair treatment, conflicts of interest, and disclosures. Regents are also subject to the provisions of Article X regarding "Conflicts of Interest" in the Bylaws of the Board of Regents of the University of Hawaii, as amended, that mandates members of the Board to place the welfare of the University above personal interests, the interests of family members or others who may be personally involved in affairs affecting the University. Further, it mandates that all decisions of the Board shall be made solely on the basis of a desire to promote the best interests of the University and the public good.

University employees, including Employee Regents, are likewise subject to the State ethics code, as well as Board of Regents Policies, Executive Policies, Administrative Procedures, and Haw. Rev. Stat. Section 78-4(b) which permits appointment of State employees on State boards and commissions, unless service on the board or commission would be "inconsistent or incompatible with or would tend to interfere with the duties and responsibilities of the other office, employment, or position held by the employee." Haw. Rev. Stat. Section 78-4(c) states that if the employee must be away from the employee’s regular work because of service as a member on a board or commission, the employee shall not, as a result of the absence, suffer any loss of the employee’s "regular salary or wages"; the time spent in service as a board or commission member outside of the employee’s regular work hours shall not be considered as time worked.

Recognizing the potential conflicts of interest inherent in serving as a Regent and employee, board leadership and the Employee Regents themselves have expressed a desire to proactively manage those conflicts through a board-approved policy.

DRAFT POLICY SUMMARY:

The draft policy affirms the benefit of having employees as Regents on the board. It also holds Employee Regents to the duties and obligations of their employment, duties and obligations that non-employee Regents do not hold, so that Employee Regents and their supervisors are not placed in the untenable position of deciding on a day-to-day basis whether Regent duties are more important than employment duties. The text of the draft policy is provided in Appendix A.

In summary:

1. Section III.A. of the draft policy sets forth the need for compliance with statutory mandates applicable to all Regents and employees of the University;
2. Section III.B. restates the process to manage conflicts set forth in board bylaws, including circumstances unique to a Regent Employee wherein the board must consider any matter which also directly impacts an Employee Regent’s personal financial interest; and when the Board must consider any matter affecting bargaining units 1, 2, 3, 4, 7, 8, 9, and/or 10, as matters regarding one collective bargaining unit are likely to affect and/or impact all bargaining units; and

3. Section III.C. provides clarity around appropriate use of University time and resources in serving on the board, expressly authorizing Employee Regents to conduct board business during regular work hours for up to the equivalent of sixteen (16) hours in any given 2-week pay period, and sets forth the expectation that the Employee Regent will use available vacation hours for any additional time required for Board service that week, unless otherwise prohibited by a collective bargaining agreement. In addition, the draft policy encourages the Employee Regent to use best efforts to preserve the confidentiality of confidential board communications, and keep work email and communications separate from Regent email and communications. Finally, the draft policy requires the Employee Regent to address employment issues within his or her employing unit, not with the board or its staff.
Title

Policy on Regents as Employees

Header

Regents Policy Chapter 2, Administration
Regents Policy RP 2.206, Policy on Board of Regents as Employees
Effective Date: ___________, 2016
Review Date: ___________ 2018

I. Purpose

To set forth policy on Regents who are also employed as employees by the University of Hawaii (“Employee Regents”). While the Board of Regents will benefit from having such perspective, the potential for conflicts of interest is clear. It is the policy of the Board of Regents to manage those conflicts in a manner that allows employees of the University to serve on the Board of Regents, while ensuring that the employee’s service on the Board of Regents does not interfere with the employee’s performance of his duties and responsibilities as employee. Employee Regents shall at all times, as both employee and as Regent, conduct themselves in a manner that preserves the integrity of the University of Hawaii, its Regents and its employees.

II. Definitions

No policy specific or unique definitions apply.

III. Board of Regents Policy

A. As employees of the University and as Regents of the University, Employee Regents are subject to and shall abide by (1) Section 78-4(b) of the Hawaii Revised Statutes (“Haw. Rev. Stat.”) permitting service on State boards and commissions where service does not interfere with the duties and responsibilities of their employment, and (2) the State code of ethics set forth in Haw. Rev. Stat. Chapter 84, including but not limited to the requirements re confidential information, fair treatment, conflicts of interest, and disclosures. In assuming the duties of employee and Regent, the Employee Regent understands that the dual role is assumed voluntarily by Employee Regents, and that it is the Employee Regent’s responsibility to comply with the provisions of State law.
B. Employee Regents are also required to abide by the provisions of Article X regarding “Conflicts of Interest” in the Bylaws of the Board of Regents of the University of Hawaii, as amended (“Bylaws”).

1. Members of the Board are expected to place the welfare of the University above personal interests, the interests of family members or others who may be personally involved in affairs affecting the University. All decisions of the Board shall be made solely on the basis of a desire to promote the best interests of the University and the public good [Article X, Section B. re “Fiduciary Responsibility”].

2. In the event the Board must consider any matter which also directly impacts an Employee Regent’s personal financial interest or bargaining units 1, 2, 3, 4, 7, 8, 9, and/or 10, or which creates a clear appearance of conflict of interest with his/her employment, the Employee Regent shall either (a) fully disclose the precise nature of the interest or involvement in writing to the Secretary who, together with the University General Counsel, shall be responsible for resolving questions about addressing the conflict, and if unsuccessful, for bringing the questions to the full Board to be resolved by majority vote at a Board meeting in compliance with Haw. Rev. Stat. Chapter 92 [Article X, Sections C. and D. re “Disclosures” and “Determination of Conflicts”, respectively]; or (b) declare the conflict of interest and recuse himself/herself from consideration of the matter before the Board [Article X, Section C. re “Disclosures”].

3. Any Board action favorable to an Employee Regent obtained in violation of this provision is voidable on behalf of the Board, and the Board may pursue all legal and equitable remedies and/or sanctions through the University’s legal counsel [Article X, Section E. re “Sanctions and Remedies”].

C. Employee Regents are required as employees to comply with all policies and procedures applicable to all employees of the University, and not allow service on the Board to interfere with the duties and responsibilities of employment with the University.

1. Employee Regents are expected to adhere to applicable policies and procedures regarding outside employment and appointments, including but not limited to RP 9.207.

2. When an Employee Regent is required by Board service to be away from work during regular work hours, the Employee Regent must obtain prior supervisory approval for absences. When an Employee Regent is required by Board service to be away from work during regular work hours for more than the equivalent of two (2) days or sixteen (16) hours in any given pay period, in accordance with Haw. Rev. Stat. Section 78-4(c), it is expected that the Employee Regent will use available vacation hours for any additional time required for Board service during that pay period, unless otherwise specifically prohibited by applicable collective bargaining agreement. Best efforts should be made to document time spent on Board of Regent duties during regular work hours. No time spent on Board of Regent business shall be considered as time worked for purposes of overtime calculation.
3. Board of Regent duties should be performed to the extent possible, in a secure environment not accessible to the public or other employees. Email and/or other communication for work should be kept separate and apart from email and/or other communication for Board business, and Employee Regents should make clear in their communications in which capacity they are communicating, i.e., as Regent, or as employee.

4. Travel expenses relating to Board of Regent business shall be processed by the Office of the Board of Regents, in accordance with its travel reimbursement policies and procedures; collectively bargained benefits shall not apply to travel for Board of Regent business.

5. Any employment issues arising from the Employee Regent’s employment shall be addressed with and by the human resources personnel in the Employee Regent’s employing unit. Any issues arising from service on the Board of Regent shall be addressed with and through the Office of the Board of Regents.

IV. Delegation of Authority

There is no policy specific delegation of authority.

V. Contact Information

Office of the Board of Regents, 956-8213, bor@hawaii.edu

VI. References

A. http://www.hawaii.edu/offices/bor/

VII. Exhibits and Appendices

No Exhibits and Appendices found

Approved

Approved as to Form: ____________________________ Date: ________________, 2016
Cynthia Quinn
Executive Administrator and Secretary of the Board of Regents

Topics
Board of Regents; conflicts of interest
October 5, 2016

Ms. Jan Sullivan
Chair, Board of Regents
2444 Dole Street
Honolulu, HI 96822

Subject: University of Hawai‘i Board of Regents Policy
Response RP 2.206, Policy on Board of Regents as Employees

On April 15, 2016 the Senate confirmed the Governor's recommendation of a University of Hawai‘i faculty member, Michelle Tagorda and a University of Hawai‘i student as members of the Board of Regents. In September the Board of Regents submitted what they determined to be a "proactive" Board of Regents Policy (RP) RP2.206 Policy on Board of Regents as Employees. The intent of this proposed policy is to "address and manage potential and/or perceived conflicts of interest." That is just one concern, they have also indicated a secondary concern, "ensuring that this service does not interfere with the employee's performance of his or her duties and responsibilities as a University employee."

In reviewing the testimony presented at the Legislature or to the Governor regarding appointments to the Board of Regents, testimony has not been provided in the past or present with concern for any Regents employment nor their workload interfering with their service to the University. Conflict of Interest has been addressed for all Regents in Hawai‘i Revised Statute §84-14 Conflict of Interests. The University of Hawai‘i has previously addressed both "service" and "duties and responsibilities" in the current contract agreement.

Therefore the proposed policy by the Board of Regents is placing restrictions and extracting a cost for service that other Regents are not required to undergo. As a Governor appointee, the issue of conflict of interest was determined prior to the appointment through the open, transparent legislative process. This proposed policy is unnecessary and an undue burden on the Regent Student and Regent Employee.

The University of Hawaii Professional Assembly recommends the Board of Regents disapprove Proposed RP 2.206 Board of Regents as Employees

Proposed Policy Review and Analysis:

I. Purpose
The purpose section speaks specifically to the "duties and responsibilities as employees" which is clear in the contract agreement entered into with the exclusive representative of Bargaining Unit 07. Article IV, Faculty Professional Responsibilities and Workload, Section B (1) (3) address the areas of duties, responsibilities, workload and service.

III. Board of Regents Policy

A. Hawai'i Revised Statute Section §78-4(b) and Chapter 84. Employee Regents Responsibility to comply. This section does not take into consideration the Contractual agreement entered into by the University, State and certified exclusive representative as noted below.

Article IV, Section B Faculty Professional Responsibilities and Workload (2015-2017 Agreement)

The primary professional responsibilities of Faculty Members are teaching, research, specialized educational services, and community service.

Faculty workload is not limited to instruction is not limited to instruction. It may include disciplinary research, scholarly activities, or creative endeavors; service to the academic community, the government...

Whether you consider the appointment by the Governor service to the government, community service or service to the academic community it is "service" and therefore falls under the category of Professional Responsibilities and Workload.

B. Article X Board of Regents Bylaws, Conflict of Interest

1. This section is a restatement of Article X (C)
   (It is already in effect - remove)

2. The issue of "Conflict of Interest" as stated in Article X (D) does not take into account the "specialized" knowledge the Regent Employee brings to the table. The option presented is to recuse, to leave the room and not participate in the discussion nor the vote. The option this policy should put forth is "Abstain," to participate in the discussion but NOT participate in the vote.

The purpose and intent of having a Regent Employee is the specialized knowledge they contribute to the discussion. They are the frontline, boots on the ground member of the Board of Regents. They bring to the Board direct information on how processes take
place in an effective manner or not. The information they can provide is vital to the decision making process for the Regents who can vote.

C. Service on the Board should not interfere with the duties and responsibilities of Employment with the University.
   1. See response to Section A

   2. Hawai‘i Revised Statute §78-4(c) states that, “When any employee must be away from the employee’s regular work because of service as a member on a board or commission, the employee shall not, as a result of the absence, suffer any loss of the employee’s regular salary or wages.”

   The RP states, “it is expected that the Employee Regent will use available vacation” after expending 16 hours during a two week time period. This language is not in keeping with the intent and purpose of HRS §78-4(c), it is actually putting a financial hardship on the Employee Regent that is not required by any other Regent who has been appointed by the Governor.

Based on the introductory remarks and subsequent policy analysis it is our recommendation that this policy is unnecessary on its face. The Board of Regents should not now in all good conscience, impose conditions that were already known and seek to undermine the participation of legitimate voices. There is already a mechanism in place to ensure Regents are not voting on actions that benefit themselves. The policy is an unnecessary impediment which targets public employees and seeks to discourage their legitimate participation in public service.

The University of Hawaii Professional Assembly reiterates its recommendation that the Board of Regents disapprove Proposed RP 2.206 Board of Regents as Employees

Kristeen Hanselman
Executive Director
University of Hawaii
Professional Assembly
MEMORANDUM

TO: Board of Regents

FROM: Ernest Wilson, Jr.
Chair, Committee on Personnel

SUBJECT: Request for Approval of Amendments to the Bylaws of the Board of Regents; Committee on Personnel

SPECIFIC ACTION REQUESTED:

It is requested that the Board amend the Bylaws of the Board of Regents to update the roles and responsibilities of the Committee on Personnel to include in its title and tasks matters that relate to board governance. It is proposed to amend Article II.D.2.d Committee on Personnel to include additional language underscored as follows:

d. Committee on Personnel and Board Governance

(1) Review and consider policies and practices relating to University personnel.
(2) Oversee the board’s bylaws, regulations and policies and the fulfillment of the board’s statutory responsibilities, including structure, content, and frequency of committee and board meetings.
(3) Ensure board statutes, bylaws, policies, and rules are being reviewed and updated on a routine and regular basis.
(4) Ensure board education and board member development is provided for board members.
(5) Oversee board effectiveness such as developing a set of desireable key characteristics for an effective board member; participating in new member orientation; and conducting board performance evaluations and assessments.
(6) Oversee performance evaluations of direct report to the board including but not limited to the president and board secretary.
(7) Consider matters pertaining to collective bargaining.

RECOMMEND EFFECTIVE DATE:

Upon approval.
BACKGROUND:

In September 2016, The Board of Regents’ Committee on Personnel discussed amending the Bylaws to authorize the committee to oversee board governance matters, to oversee board culture, organization, assessment, and education as a best practice for governing boards.

RECOMMENDATION:

It is recommended that the Board amend its Bylaws of the Board of Regents as proposed.

Attachment

c: Cynthia Quinn, Executive Administrator and Secretary of the Board
d. Committee on Personnel and Board Governance

(1) Review and consider policies and practices relating to University personnel.

(2) Oversee the board’s bylaws, regulations and policies and the fulfillment of the board’s statutory responsibilities, including structure, content, and frequency of committee and board meetings.

(3) Ensure board statutes, bylaws, policies, and rules are being reviewed and updated on a routine and regular basis.

(4) Ensure board education and board member development is provided for board members.

(5) Oversee board effectiveness such as developing a set of desirable key characteristics for an effective board member; participating in new member orientation; and conducting board performance evaluations and assessments.

(6) Oversee performance evaluations of direct report to the board including but not limited to the president and board secretary.

(7) Consider matters pertaining to collective bargaining.
CONSEQUENTIAL BOARD GOVERNANCE
in Public Higher Education Systems

Association of Governing Boards
of Universities and Colleges
ABOUT AGB

Since 1921, the Association of Governing Boards of Universities and Colleges (AGB) has had one mission: to strengthen and protect this country’s unique form of institutional governance through its research, services, and advocacy. Serving more than 1,300 member boards, 1,900 institutions, and 38,000 individuals, AGB is the only national organization providing university and college presidents, board chairs, trustees, and board professionals of both public and private institutions and systems and institutionally related foundations with resources that enhance their effectiveness.
FOREWORD

In November 2014, AGB’s National Commission on College and University Board Governance issued its report, *Consequential Boards: Adding Value Where it Matters Most*. The Commission, chaired by former Tennessee Governor Philip Bredesen, noted that a majority of postsecondary students in the United States attend a college or university that is part of a public system structure. As a result, and given the complexities of a governing body that bears responsibility for a structure of multiple institutions, the Commission urged further exploration of these boards—their structure, engagement, and oversight.

In August 2015, AGB assembled a Task Force on System Board Governance to further study the question of how to ensure effective board governance across the nation’s approximately 55 public higher education systems. Kevin Reilly, president emeritus of the University of Wisconsin System, chaired the task force, which, in collaboration with the leadership and board of the National Association of System Heads (NASH) and its chair, Nancy Zimpher, chancellor of the State University of New York, produced a set of specific recommendations, included herein and geared toward system governing boards, system chief executives, and policy leaders. Each of these groups shares responsibility for ensuring that governance of public higher education systems works well.

AGB is grateful to Kevin Reilly and the members of the task force (listed in the back of this document), whose input, experience, and wisdom resulted in a clear set of important and applicable recommendations.
American higher education is under immense public pressure. As a central component of the sector, public higher education systems enroll more than half of all postsecondary students in the United States—upwards of 10 million students each year. These systems are essential drivers of state and national economies and of our democracy. The vastness of their reach also means they hold enormous responsibility. Governing boards, state officials, and system chief executives (“system heads”) are each responsible for upholding public trust and advancing the performance of the system; it is difficult to overstate the importance of that work. High-performing public systems alone will not achieve society’s hopes for American higher education, but the sector cannot make necessary strides without them. Getting governance right in these complex settings is imperative.

The majority of American public post-secondary institutions are part of public college and university systems, or as some prefer to call them, public multi-campus systems. Most of these systems were created by state governments in the 1950s, 60s, and 70s in order to achieve economies of scope and scale and to focus the strengths of distinct campuses toward a shared public agenda. Today, systems are on the front lines of efforts to raise college completion rates nationwide, especially given systems’ robust public access missions and the increased frequency with which students transfer, or “swirl,” among multiple campuses.

The differences among systems are significant, if not self-evident. Many systems are the result of mergers of pre-existing institutions or small systems that were mandated by the legislature. These systems are commonly called “consolidated” systems. “Segmental” systems govern institutions that have similar missions and purposes, most commonly regional comprehensive universities or former teacher-training institutions. Community college systems are segmental in that they oversee only traditional two-year colleges. Other systems evolved from a single institution, usually the state’s flagship university. Systems also differ in the types and number of institutions they oversee, as well as in the size of student enrollments. The Task Force on System Board Governance encouraged AGB to focus attention on the several similarities and commonalities among systems—a system being defined as multiple, separately accredited institutions overseen by a single governing board. Nevertheless, it is important to recognize that systems are by no means created equal in state laws and constitutions.

The governing boards of public college and university systems have responsibilities similar to—but also, in many ways, significantly different from—those of governing boards of single institutions. Foremost, a system board must balance the demands of several institutions’ interests while presenting a unified voice to policymakers, the media, and the public. It should also represent the collective interests of all citizens of the state or community, and the interests of all system institutions equitably. Working with and through the system head, the board must lead and monitor multiple institutions while simultaneously advancing the system as a whole with its plans and agendas for improvement or sustained excellence.

Public college and university system boards and their individual members are subject to some of the same barriers to effective governance that boards of single campuses encounter, such as unclear or conflicting expectations, inadequate orientation to responsibilities, and a lack of opportunities for continuing education and improvement. System boards also face impediments unique to system governance. A hurdle for systems and system governance to overcome is the fact that they are commonly misunderstood by and off the radar of the general public. Systems are not an organizational concept that resonates with average citizens, or even with most students and faculty. Systems have no campus, students, or alumni; they conduct no research and have no athletic teams.

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1 See “The Leadership Dynamic in Public College and University Systems,” (2009), a joint paper of the Association of Governing Boards of Universities and Colleges (AGB), National Association of System Heads (NASH), and American Association of State Colleges and Universities (AASCU).
Through the impediments and misunderstandings—and despite occasionally successful political efforts to restructure or eliminate them—multi-campus systems have remained a viable and desirable means by which to oversee public higher education for generations. They now number some 55 that oversee mostly four-year public institutions, and some 30 that oversee two-year institutions. Systems exist in various forms in all but a handful of states. They enjoy support because they provide a coherent entity for public colleges and universities to efficiently address public needs while minimizing, if not eliminating, unhealthy and costly competition among member institutions. Systems can create conditions that allow institutions of different sizes and missions to thrive and succeed. They have been successful, by and large, at doing what they were created to do.

But to be more successful and viable for the foreseeable future, a growing number of scholars and practitioners, as well as the AGB Task Force, see the necessity for significant change in the focus and direction of systems—a belief that systems must evolve and adapt to new realities and new demands. A 2013 publication by the State University of New York, “Higher Education Systems 3.0: Harnessing Systemness, Delivering Performance,” explores several aspects of this change in focus and direction—primarily the promotion and coordination of more efficient and productive institutions that benefit states, communities, and the nation.

The consensus is that many public multi-campus systems must be more effective than they currently are to meet the challenges and demands of today and the future. In order to do so, multi-campus systems must be unified, cohesive, integrated, intentional, modern, and entrepreneurial. To lead necessary change, many system governing boards must exhibit new behaviors and skill sets, perform at higher levels, and be more engaged on a wide array of issues. Many system governing boards need greater authority—or to use the authority that they currently possess—to craft the necessary policies, allocate scarce resources, provide incentives, ensure accountability, and reward behaviors that are essential if colleges and universities are to better serve their states, communities, and the nation.
The greatest challenge facing multi-campus systems differs little from that facing public higher education generally: the delivery of quality education despite uncertain or declining resources and state disinvestment (a challenge that, for many, is compounded by declining enrollments). Similar to individual campuses, systems function in an environment of heightened public concern over price, debt, and employment opportunities for college graduates. In earlier decades, policymakers commonly provided sufficient resources and investments to systems as a matter of course. Today, system leaders must find ways to lead effectively in a climate of greater criticism, skepticism, and at times even hostility than ever before, but unlike their single-campus peers, they must do so on behalf of not one but multiple campuses. Regardless of the environment, it is imperative for college and university systems to realize their full potential for change and impact.

Colleges and universities are being called upon to address numerous challenges facing the nation. As identified by the National Commission on College and University Board Governance and others, they include:

- Changing demographics, large educational achievement gaps between differing economic and ethnic groups, and inefficient student transfer (“swirl”);
- Decline in certificate and degree-attainment rates among the general population compared to other developed countries; and
- Concerns among the American public about whether the nation has the ingenuity, entrepreneurship, and innovative skills necessary to drive a modern economy or address critical social and environmental problems.

Many educators and policymakers believe that systems can play a significant role in addressing these challenges because of their ability to pool capacity and leverage change across multiple institutions. Take, for example, the college participation and completion gap for low-income students, a key area in which systems must perform better. It is critically important that system leaders are successful in seeing gains in participation and in degree and certificate completion for these students; nationally, increased degree attainment creates a more educated citizenry and bolsters the economy.

AGB’s National Commission on College and University Board Governance recommended that “Boards must improve value in their institutions and lead a restoration of public trust in higher education itself.” This admonishment should resonate most especially with public college and university system governing boards because these institutions predominate in the American higher education system.

The successes or shortcomings of public college and university systems reverberate through all of higher education and society. If there is a need to improve value and restore public trust in higher education’s quality and affordability or its ability to fulfill its social and economic purposes, then public systems have a responsibility to make a significant contribution. Multi-campus systems were created for several reasons, but above all, to ensure a positive future for their respective states and to improve the quality of life for their citizens. For American higher education to thrive and for the nation to prosper, systems—and therefore system governance—must become far more effective. By their sheer size and reach, individually and collectively, systems are too big to fail.

For public college and university systems to be more unified, cohesive, intentional, modern, and entrepreneurial, they will need leadership from their governing boards.

High-performing boards are fully engaged on the issues of consequence, non-partisan, and free from ideology; act in cooperation with, yet distinct from, government and appointing authorities; and are focused on the challenges facing their states, communities, and the nation.
System chief executives, state elected officials, and governing boards themselves share responsibility for developing the high-performing boards that public higher education systems need. The recommendations and best practices within this document are tailored in recognition of the unique and important contributions of each group to that endeavor. Overarching aims for all parties should include improving governing board focus, capacity, and independence.

**Focus.** The main business of the system board is to uphold the integrity of the enterprise. That is, it must oversee strategies of scope and scale that effectively leverage the entire system to meet the needs of diverse citizens. Some of the board’s most essential work includes balancing educational quality assurance with increased degree-completion rates.

**Capacity.** In order to perform well, boards require highly cultivated human capital and thoughtful approaches to their work. Board-member appointing authorities must spend time learning and thinking about their boards’ needs. Officials who appoint board members often have extraordinarily large candidate pools to choose from, so there should be every opportunity to appoint the most capable, engaged, and committed members who will approach the task with the appropriate gravity and enthusiasm; there is no excuse for appointing members who are disruptive or will not take their positions seriously. Board education, meeting constructs, and the level of discussion should reflect the system’s highest aspirations. How the board is deployed outside of meetings should demonstrate the board and system head’s collective sense of the board as a highly capable asset.

**Independence.** In order to operate at a level of excellence, a system board must act as a single, independent body. It must listen attentively but remain free from external influences and political intrusion. It must recognize that its responsibility is to the broad public, not to any one elected official or small group of them. While the board should certainly support its system head, it should also, in private, be her or his most constructive critic, with the abiding goal of helping that person be as successful as possible in the position. Maintaining an independent stance is a continuous challenge for even the most capable and focused boards, and state leaders and system heads must do all they can to support boards’ fundamental independence. Boards must also acknowledge the reality that policymakers are often more willing to extend greater discretion to boards whose systems and institutions show progress in meeting the particular challenges of their state and region.

**IN CLOSING**

Public higher education systems hold immense promise as engines of state and national prosperity. As the following recommendations suggest, much can and must be done to ensure public system governing boards are prepared to lead well in the face of a skeptical and demanding public. The challenges facing higher education are matched only by the tools at our disposal to meet them.
RECOMMENDATIONS FOR SYSTEM GOVERNING BOARDS

Fiduciary responsibilities of the system
1. Ensure the system’s pursuit of a strategic or public agenda derived from the system’s essential public purpose. The agenda, whether developed by the system governing board or a properly charged state coordinating board, should include a set of specific deliverables for the social, educational, and economic future of the state and its communities. To help carry out this duty, boards should have broad knowledge about campus-level programs, research capacities, faculty strengths, and strategic issues.

2. Make it the board’s business to understand the scope and limits of the governing board’s authority and responsibilities. Boards must ask whether their bylaws and policies accurately reflect the authority that the board legally possesses, and whether they are using that authority effectively. In all but a few states, system governing boards are codified in state law as independent fiduciary bodies. Where they are not, boards should nonetheless uphold the highest fiduciary ethics of care, loyalty, and obedience on behalf of the institution and the public.

3. Demonstrate commitment to improved board performance. System governing boards should implement confidential board member and board chair assessments, which constitute fulfillment of regional accrediting standards. Additionally, board members should be asked annually to review and sign a statement of board member expectations.

Shared governance
4. Ensure that system-wide organizations of faculty, staff, and students are used effectively. These organizations may have prescribed or limited policymaking authority, but board bylaws should treat these standing advisory committees as vehicles for adequate communication channels among the system governing board, the system head, the faculty, staff, and students to help move the system in needed directions.

Leadership
5. Hire system leaders who will lead inclusively and employ tools of influence and incentive. People of many backgrounds other than higher education—for example, business, military, public office—may prove capable of effective and lasting leadership of public systems.

6. Protect the governing board’s integrity and that of the system head as nonpartisan authorities separate from the state’s political infrastructure. Boards should conduct elections, searches, and hiring processes in demonstrably nonpartisan ways, and clarify expectations for the board chair and system head to conduct their work in a nonpartisan manner. Boards should focus on the long-term success of the system, not partisan expediency.

Containing costs while adding value
7. Unless justified by documented need (for example, population growth, workforce development, success with related programs, etc.), approach changes to an institution’s academic mission with caution. Identifying problems of academic redundancy within the system and making hard decisions about the scope of each institution’s contributions to the public good require deliberative attention by the governing board.

8. Work with the system head to increase the number of credentials the system awards by a specific number, by a specific date. This goal should align with national and state needs.

Advocacy
9. When appropriate, be a willing advocate for the system, particularly for the resources necessary to achieve the system’s long-term strategic or public agenda. Many board members have useful contacts with members of the legislature, local government, and the governor’s office. These are too often underutilized. Advocacy efforts must be coordinated by the system head and board leadership on behalf of all system institutions.

10. Work with state leaders to ensure the governing board holds the authority necessary to do its job. The work of the board includes: setting tuition policy; developing, allocating, and administering annual operating budgets; carrying over surpluses into succeeding fiscal years; managing capital financing and debt; entering into public-private partnerships; approving group purchasing and services; hiring, evaluating, and terminating system and campus chief executives; and censuring or removing board members for cause. Boards without such authority face disadvantages in ensuring the fiscal stability of their systems and in raising the performance of their systems.
RECOMMENDATIONS FOR SYSTEM HEADS

Fiduciary responsibilities for the system
1. Develop a plan to get maximum value added from the system’s governing body. Begin with a meaningful orientation to board responsibilities, and continue with robust board education on topics of strategic importance to the system and its campuses. The system head should encourage the board to ask questions and debate issues to the fullest extent, respectfully challenging the system head to provide the highest level of executive leadership possible. Importantly, the system head should ensure the governing board is central to the crafting of a strategic or public agenda.

Leveraging campus heads
2. Work with the system governing board to recruit, hire, charge, and develop talented campus heads. A campus head must not only be adept at serving as chief executive of a single institution, she or he also needs to assert leadership within the system on system issues and on her or his institution’s responsibility for pursuit of the system’s strategic agenda.

3. Oversee the work of campus heads and ensure they interact with the governing board as a part of the system’s administrative team. System heads have central responsibility for developing administrative talent and ensuring the system builds leadership from within. They should also ensure this talent contributes to board effectiveness by establishing meaningful roles for campus heads and system senior staff vis-à-vis the board.

Advocacy
4. Proclaim the value of the system as an irreplaceable asset to the state, and develop and execute a sound system advocacy strategy. Be fully open with elected leaders regarding what the state should expect of the system and its institutions, and welcome elected leaders who expect more of the system. Seek alliances with them to move the system forward.

5. Be an advocate, with appointing authorities, for the governing board that is needed in order to fulfill the expectations of the state and its citizens. Make recommendations to appointing authorities that focus on board appointees with complementary skillsets, board structures (for example, board size, length of service, board meeting regulations), and board authority (for example, tuition authority, budget authority, authority to censure or remove board members for cause). Reiterate that board member expectations should be communicated to prospective board members early in the vetting process.

6. Develop system governing board members as valuable assets in the state capital and in public forums. Collaborate with the system governing board on development of a comprehensive system advocacy strategy, and direct the execution of that plan, including the coordination of board member deployment and messaging.
1. **Ensure** system governing boards hold financial control commensurate with high expectations for system leadership.

   - In many cases, greater fiscal authority and flexibility should be vested in the system governing board in areas such as: tuition-setting authority, tuition retention, group purchasing, carrying over budget surpluses, tax-exempt debt issuance, and the ability to enter into public-private partnerships. If enhanced authority and flexibility are granted to governing boards, then clear expectations for accountability in order to demonstrate and document the positive benefits to students and citizens of the state should be attached.

2. **Exercise** great care in shaping governing boards, with the primary goal of enabling effective decision making.

   - Develop a set of clearly written qualifications and criteria for system board member selection. As many states have done, consider creating a non-partisan screening committee to help determine appointments.

   - Promptly appoint and confirm people of stature who are capable of discussing difficult topics in open meetings and maintaining focus amid potential pressure from internal and external stakeholders.

   - Some system governing boards are currently too small to accomplish the necessary work and should consider increasing in size to roughly 12-20 members. A change in the number of system governing board members can only be accomplished by a change in state law. State officials should come together across party lines to ensure system governing boards have the capacity to do the job.

3. **Prepare** system governing board members to provide informed and diligent public service.

   - Appointing authorities should explicitly entrust individuals selected for system governing boards with the responsibility to make decisions that are in the best interests of the system and the citizens of the state. Prospective board members should be fully informed of expectations early in the vetting process, and appointing authorities should ensure the board retains discretion in the selection of board leadership. Elected officials and members of their staffs should not be concurrently eligible for board service.

   - All state officials should reinforce the expectation that individual system governing board members will: represent all of the system’s institutions equally, be accountable to all of the state’s citizens (and not any subset or special interest), and be held accountable by one another for performance and behavior. Legal requirements for regional representation on the board encourage provincialism and should be reconsidered.

   - In states where system governing-board member orientation and ongoing education are not currently a requirement of service, state officials should codify these best practices.
# AGB-NASH System Board Governance Task Force

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