UNIVERSITY OF HAWAI'I SYSTEM
Legislative Testimony

Testimony Presented Before the
Senate Committee on Education
February 7, 2007
by
Sam Callejo, Vice President for Administration
University of Hawai'i System

SB 684- Relating to Uniform Information Practices

Chair Sakamoto, Vice Chair Tokuda and Members of the Committee:

The University of Hawai'i opposes SB 684 and finds that this bill, as written, is unconstitutional, violates Chapter 92F of existing law and is vague, ambiguous and overbroad in its application.

Article X, Section 6 of the State Constitution provides, in part, as follows:

> "There shall be a board of regents of the University of Hawai'i, the members of which shall be nominated and, by and with the advice and consent of the senate, appointed by the governor. . . . The board shall have the power to formulate policy, and to exercise control over the university through its executive officer, the president of the university, who shall be appointed by the board. **The board shall also have exclusive jurisdiction over the internal structure, management, and operation of the university. This section shall not limit the power of the legislature to enact laws of statewide concern. The legislature shall have the exclusive jurisdiction to identify laws of statewide concern."** [Emphasis added.]

Heretofore, the proposed salaries of new hires have been deemed internal management and operations of the University. Such matters are within the exclusive jurisdiction of the Board of Regents.

With respect to the administrative positions within the University of Hawai'i System Office, the Board has delegated to the President the authority to approve hiring decisions for many of the administrative positions within the System Office with the exception of a few direct reports to the Board of Regents**. Again, the Board of Regents has the constitutional authority to exercise control over the University through its executive officer, the President.**

Many administrative positions at the University of Hawai'i system are under the direct authority of the President. Hiring decisions with respect to such employees, including the proposed compensation, are not noticed on an agenda and there is no legal requirement for "public comment" with respect to such employees. Thus, this

measure, if passed, would treat University of Hawai‘i system administrative employees uniquely by allowing the public to comment on the proposed salary before the President takes action.

The proposed language in the bill also is contrary to HRS § 92-5. The Sunshine Law provides at HRS § 92-3 that all meetings be open to the public and all persons shall be permitted to attend any meeting unless otherwise provided in the Constitution or as closed pursuant to HRS § 92-5. HRS § 92-3 continues by providing, in part, that "The boards shall afford all interested persons an opportunity to submit data, views, or arguments, in writing, on any agenda item. The boards shall also afford all interested persons an opportunity to present oral testimony on any agenda item."

Exceptions from the requirement of an open meeting are provided in HRS § 92-5. HRS § 92-5(2) provides that a Board may hold a meeting closed to the public "To consider the hire, evaluation, dismissal, or discipline of an officer or employee or of charges brought against the officer or employee, where consideration of matters affecting privacy will be involved; provided that if the individual concerned requests an open meeting, an open meeting shall be held; . . ." Thus, the Board of Regents holds meetings in Executive Session to discuss personnel matters, including the hiring of administrators, which are protected by existing law.

Thus, to require the Board of Regents to disclose proposed compensation before the hiring decision is made and before the employee has accepted the position, which occurs after the Board consents to the terms negotiated by the University and the prospective employee, violates the existing law as outlined in HRS § 92-5(2).

If this measure passes, all administrative positions at the University of Hawai‘i system would require public notice and public comment before the hiring and the contract can be finalized. Such a requirement is unprecedented and would have a detrimental impact on the University's ability to negotiate and finalize employment contracts.

HRS § 92F-13(3) also exempts the proposed compensation information sought by this measure as disclosure would clearly frustrate a legitimate government function. The information mandated for disclosure by this measure is predecisional in nature and used in the deliberation by the Board of Regents prior to a decision on whether it will approve authority to extend an offer to the employee. Even after the Board of Regents approves the terms of an offer to an employee, the terms of the contract are still being negotiated. The extension of an offer to an employee does not necessarily mean that the employee will accept the terms of the offer extended by the Board of Regents.

Moreover, the disclosure of the proposed compensation would severely hamper the University's ability to negotiate terms (including salary) of the employment contract which would be favorable to the University. Allowing the proposed compensation to be disclosed for public comment prior to a contract being negotiated and executed, would allow the employee the upper hand in negotiating his/her contract and would clearly damage the University's bargaining position in the negotiations of the employment

contract. This is absolutely a frustration of a legitimate government purpose for which the existing law expressly provides protection.

The measure is also vague, ambiguous and overly broad in its application to employees. With respect to the disclosure of "change in compensation," presumably the bill refers to employees who are currently on payroll. Changes in compensation (both increases and decreases) occur for various reasons. The most obvious is the annual (or less frequent) increases that most State employees receive. However, changes in compensation can occur as a result of professional and personal leaves without pay; employees who are placed on workers' compensation leave for injuries resulting from industrial accidents; increases to compensation which may result from an arbitration or civil action. This bill makes no distinction among the various bases upon which changes in compensation might occur.

Finally, no other executive department is subject to these requirements. The Constitution provides that the Legislature has the exclusive jurisdiction to identify laws of statewide concern. However, if this is truly a law of statewide concern, then all employees similarly situated statewide should be subject to the same process.

To summarize, under the State Constitution the Board of Regents has the exclusive jurisdiction of the internal structure, management and of the University of Hawai‘i. To carve out a portion of what were previously considered internal management and operation matters and declare them as laws of statewide concern, when the law is only applicable to the University and has no statewide application, is not consistent with the spirit of the constitutional amendment that provided the University with constitutional autonomy.

The University of Hawai‘i respectfully requests that SB 684 be held.