UNIVERSITY OF HAWAI'I SYSTEM
Legislative Testimony

Testimony Presented Before the
Senate Committee on Higher Education and the Arts
February 5, 2015 at 2:00 p.m.
by
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SB 369 – RELATING TO THE UNIVERSITY OF HAWAII RULEMAKING

Chair Taniguchi, Vice Chair Inouye, and Members of the Committee:

Thank you for the opportunity to present testimony in support of SB 369 – Relating to the University of Hawaii Rulemaking.

This bill seeks to streamline the processes by which the University regulates the internal structure, management, and operation of its campuses. Under current law, the University is required to adopt rules pursuant to HRS Chapter 91 for selected University programs or operations, such as managing its equipment and inventory, administering named scholarships or the higher education loan programs, or establishing campus parking fees. In addition to following the HRS Chapter 91 public rulemaking procedures, because the University is headed by a governing Board of Regents, the University complies with the Sunshine Law requirements of HRS Chapter 92. These Sunshine Law requirements similarly include publishing an agenda of the items to be discussed, conducting a public meeting, and providing the opportunity to testify and comment on matters listed on the agenda prior to the Board's decision making. This bill would eliminate the duplicative Chapter 91 process and retain the Sunshine Law "open meeting" process for certain University programs and operations listed in the bill.

We believe this measure strikes a proper balance between the need for transparency and accountability, on the one hand, with the need for "business process" efficiency on the other hand. This bill reflects a balance that is appropriate to the University and appropriate to the specific University programs and operations enumerated in the bill. The centerpiece of the Chapter 91 public rulemaking is a public hearing to inform the public of a proposed rule or a change to an existing rule, and to solicit comments and opinions from the public prior to adoption of the rule by a state agency. The adoption or amendment or repeal of any public rule by a state agency must be approved by the Governor. The Chapter 91 process, as supplemented by Governor's directive, also requires approval by the Governor before the public hearing is conducted.

For several executive branch agencies that are charged with implementing the typical "regulatory" type statutes, such as the Department of Taxation, or the Department of Health, or the Department of Labor and Industrial Relations, adopting public rules through the

Chapter 91 process is appropriate because of the widespread impact such rules have on the public, and because these particular agencies are not headed by a governing board subject to the Sunshine Law.

The University is a state agency headed by a Board of Regents that is subject to the Sunshine Law, HRS Chapter 92. Key features of the Sunshine law parallel the Chapter 91 public rulemaking process: advanced notice of the matter to be decided, the opportunity to submit oral or written testimony, the conduct of a public hearing. At its discretion, the Board or Regents may require an additional public discussion of the matter at the Board committee level before a full board discussion, and the Board may defer matters for subsequent public hearings. There is ample opportunity for the public to provide input on proposed matters.

Please note that this measure does not effect a wholesale elimination of the Chapter 91 process for all matters under the University's jurisdiction. This bill targets those University operations or educational programs that have a primary impact within campus boundaries.

We respectfully seek your support for this measure.