



UNIVERSITY OF HAWAII SYSTEM

Legislative Testimony

Testimony Presented Before the
House Committee on Higher Education
January 30, 2007
by
David McClain
President, University of Hawai'i

HB 135 - Relating to the University of Hawai'i
HB 1431- Relating to the Board of Regents of the University of Hawai'i

Chair Chang, Vice Chair Bertram and Members of the Committee:

Aloha! Thank you for the opportunity to testify this afternoon on HB 135, which is enabling legislation for the recently approved constitutional amendment providing for the use of a candidate advisory council to screen and recommend to the Governor qualified candidates to serve on the University of Hawai'i Board of Regents. HB 135 also increases the size of the Board of Regents to 15 from the current number of 12, increases the term of a member from 4 to 5 years, and specifies that 10 of the proposed 15 satisfy certain geographic requirements. HB 135 is essentially the same enabling legislation that was passed in 2005 (along with the legislation placing a constitutional amendment on the ballot). That enabling legislation was vetoed by Governor Lingle.

In the course of this testimony, I will refer to HB 1431 (SB 1517), which addresses the same topic as HB 135. HB 1431 is essentially identical to another Senate Bill, SB 617, introduced by Senator Sakamoto.

HB 135 and HB 1431 have a number of features in common, but they differ in some important respects. One such respect is the constituency-based membership of the candidate advisory council under HB 135, which is not present in HB 1431.

As you will perhaps recall from testimony and correspondence delivered during the Legislature's 2005 deliberations concerning the then-proposed constitutional amendment, Richard T. Ingram, then the president of the Association of Governing Boards, wrote to me on this matter. AGB is the only national organization focused on governance and citizen trusteeship at institutions of higher education in our country. It has 1200 institutional members, and serves 35,000 board members, presidents and senior executives.

The AGB in general favors the concept of a public advisory committee to assist the Governor in the nomination of regents.

However, in Mr. Ingram's correspondence, quoted in a letter from then-Board of Regents chair Patricia Lee to then-Senate President Bunda and House Speaker Calvin Say (copy attached to this testimony), Mr. Ingram states:

“Governing boards should not have any ‘designated slots’, because such a practice contradicts what public, citizen trusteeship is supposed to be: outstanding citizens who are independent in their individual and collective judgment who are there to serve the people of Hawai‘i - not segments of the society, not special interests of any kind. Their primary duty is to hold the university’s assets in trust for the current and future generations. It follows, therefore, that (a screening) committee should not be composed of special interest representatives.”

Mr. Richard Legon, the current President of AGB, has submitted testimony to your companion committee in the Senate, the Education Committee, that reiterates and reinforces this counsel, and makes several other comments about the two proposed pieces of legislation, and urges that the Committee approve SB 617 (i.e., HB 1431).

Mr. Legon states, “We believe that Governors should have the authority and privilege of appointing public university trustees and regents. But we also believe that independent screening bodies to assist with the nominating process to identify outstanding citizens are an essential best practice. Several states have had success establishing advisory or nominating committees through executive order or legislation. The best of these advisory committees are guided by detailed, written qualifications for prospective members that are tailored to each board. We also believe that such independent screening committees operate best when enacted and sustained with bi-partisan support and that their membership not consist of “representatives” of certain constituent groups.

Mr. Legon goes on to say, “We further believe that governing boards should not have designated slots because public, citizen trusteeship should be comprised of outstanding citizens who are independent in their individual and collective judgment. They should be there to serve the people of the state, not segments of the state or special interests. It follows that an advisory council or screening committee should not be composed of a collection of special interest representatives, notwithstanding the necessity of these representatives’ voices and actions in other important affairs of the university. To avoid such situations, AGB recommends that the Governor select the members of the candidate advisory council or committee who are not tied to constituent groups or special interests, and without regard to political party affiliation.

AGB does have serious reservations about Senate Bill 14 (i.e., HB 135), the alternative bill under consideration by the committee. Our reservations center around the constituent-based nature of the proposed advisory council that appears in the bill. In addition to those voiced above, such a constituent-based council may make it difficult for the council to recruit and screen regent candidates who possess the broad vision and qualities to lead Hawaii higher education in the challenges ahead.”

Both Mr. Ingram and Legon’s observations are consistent with the perspective that a candidate advisory committee should not be a representative body, as is a legislature. Rather, it should be composed of members who have the best interests of the university as a whole in mind; and who are beholden to no special interest. Use of a constituent-based committee will soon result in a constituent-driven Board of Regents, as has happened in the state of Minnesota. Such a “Noah’s Ark” style candidate advisory committee actually injects more politics into the Regent selection process, not less.

Thus, in comparing the two alternative bills, HN 1431 is closer to best practice as described by the AGB.

I am attaching to this testimony a letter received recently from Dr. Barbara Beno, president of the Western Association of Schools and Colleges Accrediting Commission for Community and Junior Colleges, which oversees the accreditation process for the seven community colleges in our 10-campus UH system. Echoing her statements in an earlier letter sent last October, Dr. Beno expresses reservations about the content of SB 14 (i.e., HB 135), in particular that “a constituency-based advisory body could contribute to the politicization of governance at the University of Hawai‘i,” and notes that SB 617 (i.e., HB 1431) “addresses the Commission’s concerns” on this matter. Dr. Beno also expresses the Commission’s preference for the language of SB 617 (HB 1431) concerning the basis for screening qualified candidates based on “the qualifications imposed by the state constitution on their background, experience, and potential for discharging the responsibilities of a member of the board.”

Ralph Wolff, the president and executive director of the Western Association of Schools and Colleges Accreditation Committee for Senior Colleges and Universities, has also written on this issue. WASC Senior oversees the accreditation of UH Mānoa, UH Hilo and UH West O‘ahu. In a letter dated October 8, 2006, attached to this testimony, Mr. Wolff observes “the matter of how UH Regents are selected has not been an issue or concern raised by our accrediting teams or the Senior College Commission itself.” Mr., Wolff also clarifies and “corrects any misimpressions that may arise from statements or inferences” regarding WASC Senior that may be drawn from the commentary authored by Mr. Frank Boas in a July 2, 2006 op-ed piece in the Honolulu Advertiser entitled, “Voters can rid UH Board of Regents of Politics.”

The conclusion is inescapable. HB 135 means more politics in the Regents selection process, not less as Mr. Boas would have it. HB 1431, in contrast, prescribes a candidate advisory council whose appointees “shall be individuals who are widely viewed as having placed the broad public interest ahead of special interests, have achieved a high level of prominence in their professions, and are respected by the community.” As in Virginia and Massachusetts, such a council is appointed by the governor, the person whom it is intended to serve. The Legislature’s role continues to be to advise and consent on individuals put forward by the Governor.

In this centennial year of the University of Hawai‘i, it would be a cruel irony for the Legislature to take a step away from best practice governance. Such a step would also undermine the University’s efforts to raise additional funds to complement the financial support received by the Legislature. I urge the Committee to reject HB 135, and to hear testimony on and support HB 1431.

Thank you for your attention.

Attachments

1. Letter from UH Board of Regents Chair Patricia Lee to the Honorable Robert Bunda and the Honorable Calvin Say, April 25, 2005.
2. Letter from WASC ACCJC President Barbara Beno to UH President David McClain, January 24, 2007.
3. Letter from WASC Senior Commission President and Executive Director Ralph Wolff to UH Board of Regents Chair Kitty Lagareta, October 8, 2006.



COPY

University of Hawai'i Board of Regents

April 25, 2005

Chairperson

Dr. Patricia Y. Lee

The Honorable Robert Bunda
Senate President
State Capitol, Room 003
Honolulu, Hawai'i 96813

Vice Chairperson

Ms. Kitty Lagareta

The Honorable Calvin K.Y. Say
House Speaker
State Capitol, Room 431
Honolulu, Hawai'i 96813

Dear President Bunda and Speaker Say:

Members

Mr. Andres Albano Jr.

Dr. Byron W. Bender

Dr. Ramón S. de la Peña

Mr. James J. C. Haynes II

Mr. John K. Kai

Mr. Trent K. Kakuda

Mr. Alvin A. Tanaka

Ms. Jane B. Tatibouet

Mr. Myron A. Yamasato

I am writing in reference to SB 1257 SD2 HD2 B Relating to the University of Hawai'i. This measure establishes the candidate advisory council to screen and propose candidates for appointment to the Board of Regents (BOR) of the University of Hawai'i. It also changes BOR membership by decreasing the number of members from twelve to eleven and requires a certain number of BOR members to represent specific geographic areas. The bill also clarifies that every BOR member may serve beyond the expiration date of the member's term until the member's successor has been appointed, has qualified, and has been confirmed by the senate.

I understand that this bill has been scheduled for a conference meeting this Tuesday, April 26, 2005 at 9:00 am. This measure was discussed in great length at our Board of Regents' meeting at Windward Community College. It is the consensus of the members of the Board that we ask that this bill be amended by:

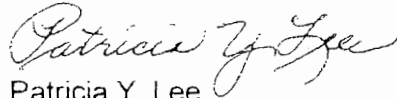
- Increasing the size of the Board of Regents to 13 rather than reducing it to 11. Richard T. Ingram, President of the Association of Governing Boards (AGB) suggests that a larger Board would enable that Board to have a division of labor, through a committee system to make its significant responsibility more manageable. It would also enable the Board to meet statutory requirements for quorum. We favor the present statutory language requiring geographic representation without specific numbers for each island. The candidate advisory committee can address the changing demographics which may affect future geographic distribution.
- Eliminate the "designated slots", allowing as appropriate, the appointment of members by the Governor, Senate President and House Speaker. The AGB cautions against screening bodies that are composed of special interest representatives. On this matter, Richard T. Ingram, President of AGB, stated in recent correspondence with Interim President McClain: "Governing boards should not have any 'designated slots', because such a practice contradicts what public, citizen trusteeship is supposed to be: outstanding citizens who are independent in their individual and collective judgment who are there to serve the people of Hawai'i – not segments of the society, not special interests of any kind. Their primary duty is to hold the university's assets in trust for the current and future generations. It follows, therefore, that [a screening] committee should not be composed of a collection of special interest representatives".

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- Allow for the reappointment of a Regent to a second 5-year term rather than a ten-year appointment with a mid-term review. The average term for Regents at public universities is 5.3 years.

Thank you for your thoughtful consideration and action in this matter.

Sincerely,



Patricia Y. Lee
Chairperson

- c: Chair Clayton Hee, Senate Higher Education Committee
Chair Colleen Hanabusa, Senate Judiciary and Hawaiian Affairs Committee
Chair Tommy Waters, House Higher Education Committee
Vice Chair Blake Oshiro, House Judiciary Committee
Representative Scott Nishimoto
Members, Board of Regents

Attachment 2

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**ACCREDITING
COMMISSION
for COMMUNITY and
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January 24, 2007

Dr. David McClain
President
University of Hawaii
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PRESIDENT'S OFFICE

Dear President McClain:

I'm writing to provide you with perspectives of the Accrediting Commission for Community and Junior Colleges/Western Association of Schools and Colleges (ACCJC/WASC) on SB 617, which is being introduced to the Hawai'i legislature. SB 617 proposes to create an advisory council to the governor that will identify pools of candidates for positions on the Board of Regents of the University of Hawai'i.

On October 2, 2006, I wrote Ms. Kitty Lagareta, President of the Board of Regents, about the Commission's concerns with HB 135, which was introduced last fall. I understand HB 135 is identical to a bill introduced in the Senate, SB 14. The Commission's concerns about the language of HB 135 pertain, then, to SB 14. However, the provisions of SB 617 are significantly different from those proposed in the earlier bills.

The Commission's Eligibility Requirement 3 states, "The institution has a functioning governing board responsible for the quality, integrity, and financial stability of the institution and for ensuring that the institution's mission is being carried out. This board is ultimately responsible for ensuring that the financial resources of the institution are used to provide a sound educational program.The governing board is an independent policy-making body capable of reflecting constituent and public interest in board activities and decisions."

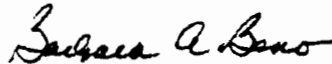
SB 617 proposes to have an advisory council appointed by the governor and composed of individuals who have "general understanding of the purposes of higher education, the mission of the University of Hawai'i system, and the responsibilities of the board of regents." This language is helpful in specifying the qualifications of the advisory board members. Furthermore, under this bill, the advisory board members would not be selected in order to represent constituency groups, but to represent the "broad public interest." SB 617 addresses the Commission's concerns about nature of the advisory body, as were raised in my October 2, 2006 letter commenting on SB 14. Specifically, SB 617 satisfactorily addresses the Commission's concerns that a constituency based advisory body could contribute the politicization of the governance of the University of Hawai'i.

Dr. David McClain
University of Hawaii
January 24, 2007
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SB 617 proposes to require the advisory board to screen qualified candidates for the Board of Regents based on "the qualifications imposed by the state constitution on their background, experience, and potential for discharging the responsibilities of a member of the board." This language is preferable, from the Commission's point of view, to the language of SB 14, which seemed to indicate that the advisory board would be empowered to develop selection criteria to be applied and implied that the selection committee would have great discretion in defining those criteria, perhaps even differently at different points in time.

Finally, I would refer you once again to the last paragraph in my letter of October 2, 2006, which suggests that in developing criteria or information for prospective board members, the University of Hawai'i should make use of existing statements of best practice contained in accreditation standards and the documents of higher education associations. This would help candidates for the board of regents better understand their roles.

Sincerely,



Barbara A. Beno, Ph.D.
President

BAB/tl

WESTERN ASSOCIATION OF SCHOOLS & COLLEGES
ACCREDITING COMMISSION FOR SENIOR COLLEGES & UNIVERSITIES



October 8, 2006

Kitty Lagareta
Chair, Board of Regents
The University of Hawaii System
2444 Dole Street
Honolulu HI, 96822

Dear Ms. Lagareta:

I have only recently learned of a commentary published July 2, 2006 in The Honolulu *Advertiser* entitled "Voters can rid UH Board of Regents of politics," written by Frank Boas, who I do not know. I am writing to respond to statements made in this commentary about actions and views of the Accrediting Commission for Senior Colleges and Universities of WASC regarding the Board of Regents. In addressing a proposed Constitutional amendment regarding the selection of members of the Board of Regents, references were made to past actions of the Senior College Commission. I wish to respond to these references in order to clarify the actions of the Commission. I do not wish to interfere in the decision of Hawaii voters on this proposed amendment. Nonetheless, it is important for me to correct any misimpressions that may arise from statements or inferences that might be drawn from the commentary regarding the Senior College Commission.

As you know, over the past several years, the Senior College Commission of WASC has conducted reviews of the Office of the President and of the Manoa campus (as well as the campuses at Hilo and West Oahu). In the course of these reviews, our teams have commented on issues relating to the functioning of the University of Hawaii Board of Regents, and these issues have been followed up in subsequent reviews. Concerns were expressed about the Board and the senior administration avoiding publication on their operations and functioning. Thus, while it is true that issues of governance have been a concern to the Commission, I wish to clarify the basis of these concerns.

First, the matter of how UH Regents are selected has not been an issue or concern raised by our accrediting teams or the Senior College Commission itself. Nor has the Commission or its teams commented on or expressed concern about the qualifications of members of the Board of Regents. Under our Standards, and in our reviews, we have focused on the functioning of the Board.

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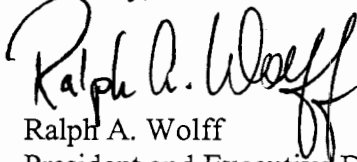
Several years ago concerns were expressed about Board functioning in several areas: the handling of administrative appointments, management of the Board's agenda, and the need to improve relations with the University administration. With respect to each of these issues, we have found that the Board has responded fully, and is now operating effectively.

In addition, several years ago a team did comment on issues relating to how the Board of Regents handled conflict of interest issues. On this issue as well, the Board has acted to review and further clarify existing procedures for handling conflicts of interests, and we have been satisfied with the actions taken by the Board. As a result, this issue is no longer of concern to the Commission.

We have been pleased by the responsiveness of the Board to each of these issues, and recognize that most of these matters arose in a period of considerable turmoil within the University. We have also been pleased with the improved quality of communication with the Commission by both the Board and the University administration and look forward to its continuation.

I hope these responses are clarifying. Please do not hesitate to contact me if you have any questions.

Sincerely,



Ralph A. Wolff
President and Executive Director

RW/rl

Cc: David McClain