



UNIVERSITY OF HAWAII

BOARD OF REGENTS

Testimony presented before the
House Committee on Higher Education
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by
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Chair, Board of Regents

HB1833 – RELATING TO THE UNIVERSITY OF HAWAII

Chair Choy, Vice Chair Ichiyama, and members of the House Committee on Higher Education:

The Board of Regents comments that while we recognize and support the intent of this bill to address the concerns about unnecessary expenditures for outside counsel, we believe that the best approach to achieve prudent spending is through careful management of the Office of General Counsel by the President, the Vice President for Legal Affairs and General Counsel, and the Board of Regents.

The bill's stated purpose is to:

- (1) Charge the board of regents with direct oversight of the university general counsel;
- (2) Limit the exemption from the prohibition against state departments contracting with attorneys that is currently provided to the University of Hawaii so that it applies only to the board of regents of the University of Hawaii; and
- (3) Require the auditor to review the contracts for legal services entered into by the University of Hawaii to examine their provisions, scope, justification, and underlying policies, and report to the legislature regarding the auditor's findings.

The Office of General Counsel serves 10 campuses, with over 60,000 students, over 2,000 faculty, and more than 9,000 employees. It is the primary duty of the University President to carry out the operations of the University. To do so, the University President must be able to access and utilize General Counsel in the daily conduct of business. General Counsel needs to be available to the President to draft and review legal documents and provide legal input and advice on operational matters on a daily basis. The President also must have the ability to supplant legal services with outside counsel in matters of specialized legal expertise. Many of these issues do not even rise to the level of a policy-making board. Thus, it is impractical to require this volunteer board to directly manage the UH System's legal services, and have sole authority to hire outside counsel.

The Board has made prudent spending a priority and took action at its October Board meeting to return the day to day oversight of the OGC to the President, who is to ensure that the OGC adequately represents the University under the direction of the BOR.

The Board further acted in recognition that understandably there may be occasions when it becomes necessary to avoid a conflict, perception of conflict, or to obtain specialized legal expertise. At such times, the Board may exercise its discretion in securing the services of independent legal counsel. Accordingly, at its November board meeting, the Board amended its policy to clarify that in such event the selection of counsel will be conducted through the Office of the Board of Regents.

Finally, the University currently undergoes periodic audits both internally and externally by the Legislative Auditor and other accrediting bodies. Thus, the necessity of review of contracts for legal services is already adequately addressed.

We note that in late Spring 2013, the reporting lines for the OGC was reviewed by University of Hawai'i Advisory Task Group on Operational and Financial Controls Improvement ("ATG") in connection with its charge from the BOR to conduct an independent review of University operating policies and practices. The ATG issued its Report on Board of Regents Policies and Practices on System Level Administration Operating Policies and Practices on July 15, 2013, and August 14, 2013, respectively. In both reports, the ATG recommended that OGC should report to the President instead of the BOR while still being available to provide advice and support to the BOR as needed.

The ATG explained that "The statutes ...place all operational responsibility with the BOR and the BOR then delegates authority to the President to carry out the operations of the University." The ATG further supported its recommendation by citing the State Senate Special Committee Report No. 2, dated November 19, 2012, in which the Senate Report explained that

"[w]hile the BOR needs access to the General Counsel, it does not need to have General Counsel reporting directly to it. The University's General Counsel should be available to the BOR to provide advice on legal matters. However the University President needs to be able to access and utilize General Counsel in the daily conduct of business. General Counsel needs to be available to draft and review legal documents and provide legal input and advice on operational matters on a daily basis."

Thank you for the opportunity to testify on this measure.