



# UNIVERSITY OF HAWAII SYSTEM

## Legislative Testimony

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Testimony Presented Before the  
House Committees on Higher Education  
and Labor and Public Employment  
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by

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Chairs Chang and Sonson, Vice Chairs Bertram and Nakasone and Members of the  
Committees

The University of Hawai'i opposes SB 46 SD1 and finds that this bill, as written, may be unconstitutional, is inconsistent with 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.]

While the constitution reserves to the legislature “the exclusive jurisdiction to identify laws of statewide concern” and Section 1 of SB 46 SD 1 states that the subject bill is “a matter of intense public interest and statewide concern,” it is equally clear that this bill applies to compensation paid to “top-level managerial and administrative positions at the University of Hawai'i” only, which is a subject that was deemed internal management and operations of the University and, therefore, within the exclusive jurisdiction of the Board of Regents.

**The Board of Regents has the constitutional authority to exercise control over the University through its executive officer, the President.** Consistent with

this constitutional authorization, with respect to the administrative positions within the University of Hawai'i System Office (UH System Office), the Board has delegated to the President the authority to approve hiring decisions for many of the administrative positions impacted by this bill.

Of the administrative positions at the UH System Office that the President has authority to act upon, the President is not subject to the sunshine law and there is no legal requirement that such a decision must be made in an "open meeting." Such a requirement is unprecedented and would have a detrimental impact on the University's ability to negotiate and finalize employment contracts. If this measure passes, UH System Office administrative employees and prospective employees are singled out for disparate treatment despite the fact that other state agencies have excluded administrative employees but whose proposed compensation and changes in compensation are not subject to the same process. If this is truly a law of statewide concern, then all employees similarly situated statewide should be subject to the same process.

HRS § 92F-13(3) clearly exempts from public disclosure 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 since 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.

In addition, with respect to hiring decisions made by the President, many applicants request confidentiality until an offer has been accepted. The imposition of the public comment requirement before the hiring is finalized may cause applicants to withdraw or not submit their application for fear of affecting their current employment. This would have a detrimental impact on the pool of applicants.

The measure is also vague, ambiguous and overly broad in its application. 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 decision or civil action. This bill makes no distinction among the various basis upon which changes in compensation might occur and clearly public comment with respect to changes in compensation due to circumstances beyond the University's control should not be subject to public comment.

SB 46 SD 1 seeks to enact this requirement by amending § 89C-4 (adjustments for excluded employees exempt from civil service); § 92-5(2) (sunshine law exception to open meetings requirement); § 304A-1001 (exempt personnel of the university); § 304A-1004 (annual report of executive, managerial and faculty salaries), without respect to the subject matter relatedness of the changes proposed to the sections being amended. This "shotgun" approach is not only impractical but is seemingly legally repugnant in the following way. Section 92-5(2) specifically permits a board to conduct business closed to the public when hiring decisions are being made, unless the person affected requests an open meeting. The proposed change creates an exception for hiring decisions being contemplated by the Board of Regents and the President by requiring that proposed compensation and changes in compensation to be made public for comment prior to approval. The two concepts are inconsistent and at odds with one another. Section 304A-1001 requires an annual disclosure to the legislature salaries of exempt University personnel. SB 46 SD 1 amends this section by requiring the disclosure of proposed compensation and changes in compensation for excluded administrative employees of the University system to be disclosed. Since hiring decisions are made throughout the year, this requirement that proposed compensation and changes in compensation be made public in § 304A-1001, which requires annual reporting of salaries to the legislature, is curious at best. Amending § 89C-4 seems equally inappropriate as this section deals with salary adjustments to current employees excluded from collective bargaining and does not apply to new hires. Effectuating the changes proposed by this bill by amending § 304A-1004 appears to be somewhat consistent with the subject of that section.

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 46 SD1 be held.