



GOV. MSG. NO. 884

EXECUTIVE CHAMBERS  
HONOLULU

LINDA LINGLE  
GOVERNOR

July 8, 2008

The Honorable Colleen Hanabusa, President  
and Members of the Senate  
Twenty-Fourth State Legislature  
State Capitol, Room 409  
Honolulu, Hawaii 96813

Dear Madam President and Members of the Senate:

I am transmitting herewith SB2668 SD2 HD1 CD1, without my approval, and with the statement of objections relating to the measure.

SB2668 SD2 HD1 CD1

A BILL FOR AN ACT RELATING TO THE  
UNIVERSITY OF HAWAII.

Sincerely,

A handwritten signature in black ink, appearing to read "Linda Lingle".

LINDA LINGLE

EXECUTIVE CHAMBERS

HONOLULU

July 8, 2008

STATEMENT OF OBJECTIONS TO SENATE BILL NO. 2668

Honorable Members  
Twenty-Fourth Legislature  
State of Hawaii

Pursuant to Section 16 of Article III of the Constitution of the State of Hawaii, I am returning herewith, without my approval, Senate Bill No. 2668, entitled "A Bill for an Act Relating to the University of Hawaii."

The purported purpose of this bill is to clarify the procedure to be used to fill vacancies on the Board of Regents for the University of Hawaii. Among other changes, this bill will add a provision that allows the Regents Candidate Advisory Council to submit to the Governor only the minimum number of names of candidates for each vacancy on the Board.

This bill is objectionable because the provision allowing only the minimum number of names for each vacancy is ambiguous and could significantly curtail the ability of a governor to choose nominees. Pursuant to section 304A-104.5(b), Hawaii Revised Statutes, the minimum number of names for each of two vacancies is two and for three or more vacancies is at least three for the final seat. If only the minimum number of names is submitted to the Governor and all but one of the nominees withdraw or are rejected, the statute could be interpreted to require the Council to submit the name of at least one more candidate for the Governor to consider, so that the Governor has more than one nominee to consider.

On the other hand, this provision can be interpreted to mean that if all but one of the nominees are rejected or

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SENATE BILL NO. 2668  
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withdraw, the Council is not required to submit another nominee and the Governor will have only the remaining nominee to consider. Consequently, the Governor's constitutionally conferred authority to make executive appointments will effectively be reduced to no choice at all.

Additionally, this bill provides a blanket exemption for the Council from Chapter 92F, the State "Sunshine Law," further cloaking in secrecy the manner in which names are chosen to fill the important Board of Regent positions. This lack of transparency and accountability runs contrary to good government.

For the foregoing reason, I am returning Senate Bill No. 2668 without my approval.

Respectfully,



LINDA LINGLE  
Governor of Hawaii

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## A BILL FOR AN ACT

RELATING TO THE UNIVERSITY OF HAWAII.

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:**

1           SECTION 1. The purpose of this Act is to amend the law  
2 relating to the candidate advisory council for the board of  
3 regents of the University of Hawaii in conformity with the  
4 amendment to article X, section 6 of the Hawaii Constitution,  
5 ratified by the voters on November 7, 2006. Specifically, this  
6 Act:

7           (1) Requires at least 12 members of the board of regents  
8 to reside in the geographic areas that they represent;

9           (2) Requires the governor to notify the candidate advisory  
10 council of vacancies on the board of regents in a  
11 timely manner;

12           (3) Requires the candidate advisory council to submit to  
13 the governor names of candidates for a seat on the  
14 board of regents within 60 days following a vacancy;

15           (4) Clarifies the requirement for the candidate advisory  
16 council's submission of names of board of regents  
17 candidates to the governor; and



1 (5) Makes confidential all information required by the  
2 candidate advisory council regarding board of regents  
3 candidates.

4 SECTION 2. Section 26-11, Hawaii Revised Statutes, is  
5 amended by amending subsection (a) to read as follows:

6 "(a) The University of Hawaii shall be headed by an  
7 executive board to be known as the board of regents.

8 The board shall consist of fifteen members. At least one  
9 member shall be a University of Hawaii student at the time of  
10 the initial appointment. This member may be reappointed for one  
11 additional term even though the member may no longer be a  
12 student at the time of reappointment. The governor shall reduce  
13 the terms of those initially appointed to each seat on the board  
14 of regents to provide, as far as practicable, for the expiration  
15 of three terms each year; provided that the term of the student  
16 member shall not be reduced.

17 At least twelve members, except for the student member,  
18 shall represent and reside in the specified geographic areas as  
19 follows:

- 20 (1) Two members from the county of Hawaii;
- 21 (2) Two members from the county of Maui;
- 22 (3) One member from the county of Kauai; and



1 (4) Seven members from the city and county of Honolulu.

2 The board shall have the power, in accordance with the  
3 Hawaii Constitution [~~of the State~~] and with law, to formulate  
4 policy and to exercise control over the university through its  
5 executive officer, the president of the university. The board  
6 shall have exclusive jurisdiction over the internal organization  
7 and management of the university."

8 SECTION 3. Section 304A-104, Hawaii Revised Statutes, is  
9 amended to read as follows:

10 **"§304A-104 Regents; appointment; tenure; qualifications;**  
11 **meetings.** (a) The affairs of the university shall be under the  
12 general management and control of the board of regents  
13 consisting of fifteen members who shall be appointed and may be  
14 removed by the governor. Except as otherwise provided by law,  
15 state officers shall be eligible for appointment and membership.  
16 The term of each member shall be five years, except as provided  
17 for the initial appointment in section 26-11; provided that the  
18 term of the student member shall be two years. Every member may  
19 serve beyond the expiration date of the member's term of  
20 appointment until the member's successor has been appointed by  
21 the governor and confirmed by the senate in accordance with  
22 article X, section 6 of the [~~state constitution~~] Hawaii



1 Constitution. Members shall serve no more than two consecutive  
2 five-year terms; provided that the members who are initially  
3 appointed to terms of two years or less pursuant to section  
4 26-11(a) may be reappointed to two ensuing five-year terms. If  
5 a member is to be appointed to a second term of five years, the  
6 senate shall consider the question of whether to reconfirm the  
7 member at least one hundred twenty days prior to the conclusion  
8 of a member's first five-year term; provided that if the senate  
9 is not in session within one hundred twenty days prior to the  
10 conclusion of the member's first five-year term, the member  
11 shall continue to serve until the senate convenes for the next  
12 regular session or the next special session for which the senate  
13 is authorized to consider the question of reconfirmation.

14 (b) At its first meeting after June 30, the board of  
15 regents shall elect a chairperson and vice-chairperson, who  
16 shall serve until adjournment of its first meeting after June 30  
17 of the next year or thereafter until their successors are  
18 appointed. The board shall appoint a secretary, who shall not  
19 be a member of the board. The president of the university shall  
20 act as executive officer of the board. From May 1, 2007 and  
21 until such time that the board of regents has at least fourteen  
22 members, seven members of the board of regents shall constitute



1 a quorum to conduct business, and the concurrence of at least  
2 seven members of the board of regents shall be necessary to make  
3 any action of the board of regents valid; provided that upon  
4 filling at least fourteen of the fifteen board of regents seats  
5 required under subsection (a), a majority of the board of  
6 regents shall constitute a quorum to conduct business, and the  
7 concurrence of a majority of all the members to which the board  
8 of regents is entitled shall be necessary to make any action of  
9 the board of regents valid. The board shall meet at least ten  
10 times annually and, from time to time, may meet in each of the  
11 counties of Hawaii, Maui, and Kauai.

12 (c) The governor shall notify the regents candidate  
13 advisory council in writing within ten days of receiving  
14 notification that a member of the board of regents is resigning,  
15 has died, or is being removed by the governor.

16 [~~e~~] (d) The members of the board of regents shall serve  
17 without pay but shall be entitled to their travel expenses  
18 within the [~~State~~] state when attending meetings of the board or  
19 when actually engaged in business relating to the work of the  
20 board."

21 SECTION 4. Section 304A-104.5, Hawaii Revised Statutes, is  
22 amended to read as follows:





1           "~~§304A-104.5~~ Candidate Regents candidate advisory  
2 council for the board of regents of the University of Hawaii.

3       (a) There is established the regents candidate advisory council  
4 for the board of regents of the University of Hawaii to present  
5 to the governor pools of qualified candidates from which the  
6 members of the board of regents shall be nominated and, by and  
7 with the consent of the senate, appointed by the governor. The  
8 regents candidate advisory council shall establish the criteria  
9 for qualifying, screening, and presenting to the governor  
10 candidates for membership on the board of regents. The regents  
11 candidate advisory council shall be attached to the University  
12 of Hawaii for administrative purposes.

13       (b) Except as provided in subsection (c), within sixty  
14 days of convening its first meeting, the regents candidate  
15 advisory council shall present no fewer than two and no more  
16 than four qualified candidates to the governor for each vacant  
17 seat on the board of regents that has arisen due to resignation,  
18 death, or removal by the governor; provided that for all  
19 subsequent presentations to the governor, the regents candidate  
20 advisory council shall present no fewer than two and no more  
21 than four candidates for each seat on the board of regents to  
22 the governor within:



1 (1) [~~Thirty~~] Sixty days of a vacancy that arises by  
2 resignation, death, or removal by the governor; or

3 (2) One hundred twenty days prior to the expiration of a  
4 term.

5 The regents candidate advisory council shall be deemed to have  
6 fulfilled its obligation under this section upon presentation of  
7 the names of the minimum number of candidates required to be  
8 presented for each seat or seats on the board of regents.

9 (c) When there are multiple seats vacant within the same  
10 county or within the at-large membership, the regents candidate  
11 advisory council shall present candidates for seats on the board  
12 of regents to the governor as follows:

13 (1) For two seats from the same county or two at-large  
14 seats, no fewer than four and no more than six  
15 candidates;

16 (2) For three seats from the same county, no fewer than  
17 five and no more than eight candidates; and

18 (3) For more than three seats, the regents candidate  
19 advisory council shall determine appropriate minimum  
20 numbers of candidates, which shall provide for at  
21 least three candidates for the final seat, and maximum  
22 numbers of candidates.



1 (d) In making its presentations, the regents candidate  
2 advisory council shall:

3 (1) Develop a statement that includes the selection  
4 criteria to be applied and a description of the  
5 responsibilities and duties of a member of the board  
6 of regents and distribute this statement to potential  
7 candidates;

8 (2) Screen and qualify candidates for each position on the  
9 board of regents based on their background,  
10 experience, and potential for discharging the  
11 responsibilities of a member of the board of regents;

12 (3) Publicly advertise pending vacancies and actively  
13 solicit and accept applications from potential  
14 candidates;

15 (4) Develop and implement a fair, independent, and  
16 nonpartisan procedure for selecting candidates to  
17 serve on the board of regents; and

18 (5) Require each candidate to disclose any existing or  
19 anticipated contracts with the University of Hawaii or  
20 any existing or anticipated financial transactions  
21 with the University of Hawaii.



1 Upon submission of the names of candidates to the governor,  
2 [~~presentations of~~] the regents candidate advisory council shall  
3 [~~be made~~] make available the names of candidates to the public  
4 [~~by~~] through the University of Hawaii.

5 (e) For each board seat to be filled, the governor shall  
6 select one nominee from among the candidates submitted by the  
7 regents candidate advisory [~~council's presentations~~] council.

8 (f) The regents candidate advisory council shall consist  
9 of seven members to be appointed without regard to section 26-34  
10 as follows:

11 (1) One member shall be appointed by the president of the  
12 senate;

13 (2) One member shall be appointed by the speaker of the  
14 house of representatives;

15 (3) One member shall be appointed by the governor;

16 (4) One member shall be appointed by one of the co-chairs  
17 of the All Campus Council of Faculty Senate Chairs of  
18 the University of Hawaii;

19 (5) One member shall be appointed by the chairperson of  
20 the Executive Council of the University of Hawaii  
21 Student Caucus;



1 (6) One member shall be appointed by the chairperson of  
2 the Association of Emeritus Regents; and

3 (7) One member shall be appointed by the president of the  
4 University of Hawaii Alumni Association;

5 provided that members appointed under paragraphs (4) to (7)  
6 shall be selected from the general public and may include  
7 members of the constituencies represented; provided further that  
8 each appointee satisfies the requirements for appointment  
9 provided in this subsection, except that individuals who are or  
10 have served as members of the executive councils or boards for  
11 the organizations under paragraphs (4) [~~and~~] or (5) within the  
12 last five years immediately preceding the establishment or a  
13 vacancy on the regents candidate advisory council for which the  
14 persons may be qualified to fill shall not be eligible to serve  
15 as members of the regents candidate advisory council.

16 The regents candidate advisory council shall be selected in  
17 a wholly nonpartisan manner. If any member has not been  
18 appointed within one hundred eighty days of [~~the~~] May 1, 2007,  
19 the sitting members on the regents candidate advisory council  
20 shall make an interim appointment to fill the vacant seat. The  
21 interim appointee shall satisfy the requirements for appointment  
22 provided in this subsection and shall serve until the time when



1 the appropriate appointing authority makes an appointment for  
2 the vacant seat as provided in this subsection. Appointees to  
3 the regents candidate advisory council shall have a general  
4 understanding of the purposes of higher education, the mission  
5 of the University of Hawaii system, and the responsibilities of  
6 the board of regents. Appointees shall be individuals who are  
7 widely viewed as having placed the broad public interest ahead  
8 of special interests, having achieved a high level of prominence  
9 in their respective professions, and being respected members of  
10 the community.

11 (g) Members of the regents candidate advisory council  
12 shall serve four-year terms; provided that the three members  
13 initially appointed by the governor, the president of the  
14 senate, and the speaker of the house of representatives shall  
15 serve for terms of two years; provided further that terms for  
16 appointments of the initial members of the regents candidate  
17 advisory council shall be deemed to begin on July 1, 2007,  
18 regardless of the actual date of appointment.

19 (h) If a vacancy occurs, a successor shall be appointed in  
20 the same manner and subject to the same qualifications as the  
21 person's predecessor. The person appointed to fill a vacancy



1 shall serve for the remainder of the term of the person's  
2 predecessor.

3 (i) The regents candidate advisory council shall operate  
4 in a wholly nonpartisan manner. No individual, while a member  
5 of the regents candidate advisory council, shall run for or hold  
6 any elected office under the United States or the State or any  
7 of its political subdivisions.

8 (j) The regents candidate advisory council shall convene  
9 its first meeting on or after thirty-one days from May 1, 2007;  
10 provided that, if thirty days after May 1, 2007, all the members  
11 to which the regents candidate advisory council is entitled have  
12 not yet been appointed, the regents candidate advisory council  
13 shall convene its first meeting upon the appointment of a  
14 majority of its members. The members of the regents candidate  
15 advisory council shall choose a chairperson from among  
16 themselves. A majority of all the members to which the regents  
17 candidate advisory council is entitled shall constitute a quorum  
18 to conduct business. The concurrence of a majority of all the  
19 members to which the regents candidate advisory council is  
20 entitled shall be necessary to make any action of the regents  
21 candidate advisory council valid. The regents candidate  
22 advisory council shall meet annually and at other times as



1 necessary. The regents candidate advisory council shall be  
2 exempt from part I of chapter 92.

3 (k) Members of the regents candidate advisory council  
4 shall serve without compensation but shall be reimbursed for  
5 expenses, including travel, board, and lodging expenses,  
6 necessary for the performance of their duties.

7 (1) Notwithstanding chapter 92F or any other law to the  
8 contrary, all information required by the regents candidate  
9 advisory council shall be confidential, including without  
10 limitation, all council information obtained, reviewed, or  
11 considered before and after council decisionmaking.  
12 Confidential regents candidate advisory council information  
13 shall include documents, data, or other information that are not  
14 of public record, including without limitation, personal  
15 financial information; the names of applicants; applications and  
16 the personal, financial, and other information contained therein  
17 submitted by the applicants to the regents candidate advisory  
18 council; interviews; schedules; reports; studies; background  
19 checks; credit reports; surveys and reports prepared for or on  
20 the regents candidate advisory council's behalf; the results of  
21 any evaluations or assessments conducted by the regents  
22 candidate advisory council; the substance and details of any





1 discussions with regents candidate advisory council members; and  
2 the substance and details of discussions and deliberations of  
3 the regents candidate advisory council and any of its committees  
4 during meetings."

5 SECTION 5. Statutory material to be repealed is bracketed  
6 and stricken. New statutory material is underscored.

7 SECTION 6. This Act shall take effect upon its approval.

