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To: House Committee on Higher Education

From: Paul T. Tsukiyama, Director

Date: January 31, 2008, 3:00 p.m.
State Capitol, Conference Room 309

Re: Testimony on H.B. 3226
Relating to the University of Hawaii

Thank you for the opportunity to submit testimony on H.B. 3226. The Office of Information Practices (“OIP”) takes no position on the substance of this bill. However, OIP has concerns about the portion of the bill addressing confidentiality of information, which would contradict the UIPA’s mandate that specified information about government officers, including successful Regents candidates, be public. OIP offers amended language to address that concern and for clarity.

Section 4 of this bill, at page 13, line 10 to page 14, line 7, proposes to add section 304A-104.5(l) to provide blanket confidentiality to “all information” about regent candidates obtained, reviewed or considered by the regents candidate advisory council before and after the council’s decision making.

First, OIP believes that the proposed language has the unintended effect of contradicting the Uniform Information Practices Act (Modified), chapter 92F, HRS, as to the public’s right to know specified information about a **successful** candidate for government office or employment. This information would include resume-type information relevant to a government officer’s qualification for his or her position. (Other more personal information about a successful candidate, such as background

checks and financial information, is generally protected under the UIPA's privacy exception to disclosure, which allows an agency to withhold information where an individual's significant privacy interest outweighs the public interest in disclosure.)

Granted, the "privacy" exception does not afford absolute protection. However, it importantly allows OIP and/or the courts to require disclosure in those instances where an individual's significant privacy interest is outweighed by the public interest in disclosure. To maintain this ability to balance these interests to determine whether the public interest requires disclosure, and to prevent a conflict between the law proposed in this bill and the mandatory public disclosure required for specified government officer information under the UIPA, thus recommends that this committee amend the language of the proposed section as set forth below.

OIP's recommended language would also make the provision clearer by eliminating superfluous language regarding the UIPA and other laws and eliminating any ambiguity regarding the council's need to disclose information that is already of public record.

To accomplish the points raised above, OIP suggests that the proposed language of section 304A-104.5(l) be amended to read as follows:

(l) Information obtained, reviewed, or considered by the regents candidate advisory council concerning individual applicants that is not of public record shall be confidential; provided, however, that information concerning an applicant that is appointed by the governor shall be disclosed as provided by law. Confidential regents candidate advisory council information may include the names of applicants; applications submitted to the regents candidate advisory council; financial information; background checks; summaries, surveys or reports prepared for or on behalf of the regents candidate advisory council; results of any evaluations or assessments conducted by the regents candidate advisory council; the substance and details of applicant interviews or discussions with the regents candidate advisory council; and the substance and details of discussions and deliberations of the regents candidate advisory council and any of its committees.

OIP believes that this amendment will meet the bill's intended purpose of making information concerning individual applicants confidential, while eliminating language that is unnecessary, overly broad, or contrary to the UIPA's requirement that specified information concerning a successful candidate for the board of regents be public.

Thank you for the opportunity to testify.

University of Hawai'i
Regents Candidate Advisory Council

Roy Takeyama, Chair
Karl Fujii, Vice Chair
Dr. L. Thomas Ramsey, Secretary
Nelson Befitel, Member
Neil Bellinger, Member
James T. Koshiba, Member
Ginger Takeshita, Member

TESTIMONY TO THE
HOUSE COMMITTEE ON HIGHER EDUCATION
ON
H.B. 3226 RELATING TO THE UNIVERSITY OF HAWAII
By
Roy Y. Takeyama
Chairperson, Regents Candidate Advisory Council

Chairman Chang and Members of the House Committee on Higher Education

I am Neil Bellinger of the Regents Candidate Advisory Council, and am representing Chairperson Roy Takeyama who is out of state.

The Regents Candidate Advisory Council was created by Act 56, 2007 Session Laws of Hawaii, and provided for the appointment of seven individuals to the Council. We were tasked with establishing the criteria for qualifying, screening, and presenting to the governor a slate of qualified candidates for membership to the Board of Regents of the University of Hawaii.

We are strongly in support of this bill with one revision on page 1, line item 8, to add the word "written" before the phrase "notification from the governor."

An appropriation to support the operations of the Regents Candidate Advisory Council is necessary to fund an administrative position to conduct the day-to-day operations and to cover expenditures including the costs for publication of ads, background searches, travel, office supplies and office equipment, including a computer, printer, and typewriter which are currently on loan from the University of Hawaii. This year, the Council operated through the financial and administrative support provided by President McClain through the University of Hawaii budget.

The Council will build upon this past year's experiences to make improvements as necessary. We received approximately 140 nominations and of these nominations, 86 nominees submitted their applications. We have completed the interview process and are currently conducting background and reference checks. We hope to present the names of the candidates to the Governor by February 21st.

Thank you for the opportunity to testify.