

LATE

TESTIMONY STRONGLY SUPPORTING S.B. 2263
PRESENTED TO THE SENATE COMMITTEE ON EDUCATION
BY BEVERLY ANN DEEPE KEEVER, PH.D.
FEB. 1, 2008, 1:30 P.M., CAPITOL ROOM 225

As a journalism professor at the University of Hawaii, expressing my own professional opinion, I strongly support passage of this bill for two reasons.

First, this bill provides for the first time for the public six-day notice and the opportunity to comment on the compensation being offered to or paid to top University of Hawaii executives. Up to 1985, the salary of the UH president was set by statute, but then the Legislature delegated this decision-making authority to the Board of Regents.

Since then, top UH executives covered by S.B. 2263 are more numerous than ever before and they are being paid more than ever before. Hawaii taxpayers and students now paying the highest tuition rate increase in the UH's 100-year-old history deserve the right to know and to comment on the amount of monies promised to top administrators before the Board of Regents makes its final decision.

This bill is also forward-looking. In just a year, the Board of Regents will be searching for a new UH president. David McClain was appointed president in March 2006 on a three-year contract.

Hawaii's Sunshine Law does provide that a board may hold a closed-door meeting to consider the hiring of an official "where consideration of matters affecting privacy will be involved." However, erroneously from my perspective, the Board of Regents has stretched the privacy rationale for a closed-door meeting to cover the amount of public funds being promised to compensate prospective hires and current executives.

SECURITY CAUSES DISTRUST AND NEGATIVE PUBLICITY

Secrecy surrounding the Board of Regents' decision-making creates suspicion, undermines public trust and historically has provided much negative publicity and embarrassment to the university and the state.

In 1984 the Regents tried to circumvent the statutory compensation limit by promising a candidate for UH president by committing some funds from the UH Foundation, a sleight-of-hand that the Ethics Commission vetoed. The result: a well-publicized fiasco in which the appointed candidate, Cecil Mackey, withdrew 35 days before he was to take office, despite hurried telephone entreaties from then Gov. Ariyoshi and legislative leaders. Secrecy costs a lot.

In February 2001, the Board began another secretive and even more controversial process of selecting a new UH president, promising behind closed doors historic-high compensation to Evan Dobbelle. The results were more adverse publicity, a lawsuit, a lot of acrimony and finally national and local headlines when the Board fired Dobbelle "for cause"—which was never revealed. In turn, he threatened to sue UH. Eventually both parties agreed to closed-door mediation that resulted in a lucrative settlement for Dobbelle. Secrecy again costs a lot.

In the committee report accompanying this bill, you may want to make explicit that the compensation being referred to includes the "golden parachute" package of benefits being provided—now behind closed doors—to top executives as they exit UH.

BOARD OF REGENTS PLAYS HIDE-AND-SEEK WITH DOCUMENTS

The second reason this bill is important is because it makes possible informed public participation. The Board of Regents has violated the spirit of Hawaii's Sunshine Law by abusing the deliberative process privilege to withhold from the public documents and reports it has placed on its agenda for an open government meeting.

For example, last August, the Board of Regents gave proper notice and held a government meeting on UH budget documents—but then kept much of the information secret by refusing to disclose the documents.

The result: the faculty union threatened to sue. The Manoa Faculty Senate passed a resolution urging the regents to adhere to the spirit and the letter of Hawaii's open-meetings and open-records laws. Negative news of the absurdity of concealing documents in a public meeting led to a biting editorial; please note the pages that follow. Secrecy costs a lot.

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UH regents conceal budget papers

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University of Hawaii regents held what would normally be a routine informational briefing yesterday, except that much of the information was kept secret.

Under a new policy, which regents said they would re-examine next month, members of the public who wanted to see budget documents were told to fill out a written form and that the documents would be made available up to 10 days after the board approves the budget request to the Legislature.

J.N. Musto, executive director of the University of Hawaii Professional Assembly, strongly objected.

"We're not talking about national secrets here," Musto told the board. He questioned how the public could let regents know what they think about the budget proposal if they cannot see the details of what is in it.

The faculty union might sue the university or seek a change in the law if the policy is upheld, Musto said.

Darolyn Lendio, the university general counsel, cited the "deliberative process privilege" in withholding the budget documents, which included UH President David McClain's recommendations to the regents and the budget priorities for each campus.

Citing an Office of Information Practices manual, Lendio said the privilege allows an agency to "withhold recommendations, draft documents, proposals, suggestions and other opinion materials that comprise part of the process by which the agency formulates its decisions and policies."

Withholding the information encourages "the uninhibited exchange of ideas, recommendations and opinions," she said.

Construction funds sought

The University of Hawaii is proposing \$359 million in construction spending and \$30 million in additional operating money in the supplemental budget year, UH President David McClain told regents yesterday.

The proposed UH budget request is scheduled to be discussed and approved by the regents next month and submitted to the governor and the Legislature.

McClain verbally covered some of the budget highlights yesterday, saying that about \$99 million from the construction or capital improvement project budget would go toward repair and maintenance of, and health and safety improvements for, aging UH buildings.

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OUR OPINION

Regents violated open-records law by concealing documents

THE ISSUE

The University of Hawaii Board of Regents concealed budget documents while commenting on them in an open meeting.

UNIVERSITY of Hawaii regents turned an informational briefing last week into a riddle, alluding to documents that the public could not see. A UH attorney cited a "frustration exception" to the state open-records law, but the concealment left the public in the dark for no good reason. The policy should be discarded.

UH President David McClain told the regents to "look at tab E" to see "the current campus priorities." The public, including faculty, was provided no "tab E" in addition to other documents given to the regents.

When asked about the secrecy, UH attorney Darolyn Lendio cited a part of the open-records law designed "to avoid frustration of a legitimate function." The exception allows a state agency to withhold from the public "recommendations, draft documents, proposals, suggestions and other opinion matters that comprise part of the process by which the agency formulates its decisions and policies.

"It protects the quality of agency decisions by encouraging the uninhibited exchange of ideas, recommendations and opinions within an agency," the law states.

The frustration exception includes such sensitive material as law-enforcement records, some government purchasing procurements, identification of land under consideration for public acquisition, proprietary information and confidential business data such as trade secrets. A category called "deliberative process privilege" can be easily abused.

At a budget meeting of the UH regents last year, administrators assembled a PowerPoint presentation, projecting information onto a screen to be viewed by the public. At a similar session last week, no such public presentation was made. Even budget documents available online were concealed at the meeting.

Lorna Aritani, a staff attorney for the Office of Information Practices, said the exception to the open-

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