



**TESTIMONY OF THE STATE ATTORNEY GENERAL
TWENTY-FIFTH LEGISLATURE, 2009**

ON THE FOLLOWING MEASURE:

S.B. NO. 1674, S.D. 2, RELATING TO THE UNIVERSITY OF HAWAII.

BEFORE THE:

HOUSE COMMITTEE ON HIGHER EDUCATION

DATE: Tuesday, March 17, 2009 **TIME:** 2:15 PM

LOCATION: State Capitol, Room 309

TESTIFIER(S): Mark J. Bennett, Attorney General,
or Brian Aburano, Deputy Attorney General

Chair Chang and Members of the Committees:

The Department of the Attorney General provides these comments regarding a legal problem in this bill.

This bill seeks to: (1) increase the revenue bonds authorized by Act 161, Session Laws of Hawai'i 2007, from \$100,000,000 to \$150,000,000; and (2) extend the lapse date of the appropriations from the revenue bonds to June 30, 2013, for the initial \$100,000,000 authorization, and to June 30, 2015, for the additional \$50,000,000 authorization.

As presently worded, the bill provides for the appropriations to lapse into the general fund. See section 7 at page 3, lines 17-18, and at page 4, line 3. Providing for appropriated proceeds from a revenue bond to lapse into the general fund will endanger the tax-exempt status of the bonds. The tax-exempt status of a revenue bond is predicated on the revenue bond proceeds being used for the specific purpose for which the revenue bond was authorized and issued. In this case, the purpose is the construction, renovation, or major repair of capital facilities by the University of Hawaii (UH), which purpose may not include working capital or operating expenses. Revenue bonds are not used to generate general funds for the State and it makes no sense to issue revenue

bonds for that purpose. The proper uses of excess funds generated by an issuance of revenue bonds are to either: (1) use the excess funds to prepay and redeem the revenue bonds; or (2) within certain parameters, use the excess funds to construct, maintain, or make major repairs to other UH capital facility projects.



UNIVERSITY OF HAWAII SYSTEM

Legislative Testimony

Testimony Presented Before the
House Committee on Higher Education
March 17, 2009 at 2:15pm

by

Howard Todo

Vice President for Budget & Finance/CFO, University of Hawai'i

SB1674 SD2 – RELATING TO THE UNIVERSITY OF HAWAII

Chair Chang, Vice Chair Nakashima and Members of the Committee:

Thank you for the opportunity to testify in support of this measure.

This bill is generally the same as HB 123 which your committee passed previously in this session. However, one significant difference, which unfortunately we did not identify until this measure had passed in the Senate, is that SB1674 HD2 includes additional wording that any unexpended and unencumbered balance at the lapse dates shall lapse **“into the general fund”**. This additional wording was not in HB123. Both the Attorney General's office and our bond counsel have objected to this wording as creating legal as well as tax issues. Accordingly we urge you to amend the bill to delete this wording. With this amendment, we urge you to pass this measure and consider increasing the additional authorization provided by this measure from \$50 million to \$150 million.

This bill amends Act 161, Session Laws of Hawaii 2007, to increase the authorization to issue revenue bonds to a total principal amount not to exceed \$150,000,000 for the purpose of financing the acquisition, construction, renovation and major repairs of facilities, and to extend the expiration date for the initial \$100,000,000 authority.

The University is in the process of issuing the \$100 million of revenue bonds granted under Act 161. We have been working with our bond underwriter, bond counsel, the State Department of Budget and Finance and the State Department of Attorney General on the issuance. The current financing schedule we have jointly agreed to and are following results in the issuance of the bonds at or around March 31. In accordance with this financing schedule, on February 25 we made presentations to three bond rating agencies, Standard & Poor's, Fitch and Moody's and we are optimistic that we will receive ratings from them that will allow us to proceed with the bond offering as scheduled. The extension of the expiration date for the initial \$100 million authority will allow sufficient time to encumber and expend those funds after the bonds are issued.

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The additional bond issuance authorization is necessary to enable the University to more quickly address its growing facility needs and major repair and maintenance requirements. The current projects that have been approved by the Board of Regents as university projects for which the revenue bond proceeds may be used total an estimated \$202 million in costs. Accordingly, the Board of Regents directed University administration to request additional authorization from the Legislature of \$150 million to allow the University to pursue opportunities and needs which may arise between legislative sessions. While we appreciate the additional \$50 million that SB1674 SD 2 as currently drafted would authorize the University to issue, we respectfully ask that you consider increasing that additional authority to \$150 million in order to cover the more than \$202 million of projects we have already identified as needing to be funded. In addition, that will allow us to address new opportunities that may arise between legislative sessions.

Also, the additional authority to issue bonds expires at the end of fiscal year 2009-2010. We would much prefer and request that this authority be granted for the biennium, ending in FY 2010-2011.

Let me take this opportunity to thank you for providing us the initial \$100 million of authority, which will allow us to address some critical needs of the University, while at the same time helping us to stimulate the economy by generating work which otherwise would have required waiting until after the Legislative session at least, to begin the bond issuance process. We now ask for your support in extending the expiration date of the initial authorization and providing us with additional authority.

Thank you for your support of the University of Hawaii.

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The Pacific Resource
PARTNERSHIP



Testimony of C. Mike Kido
External Affairs
The Pacific Resource Partnership

House Committee on Higher Education
Representative Jerry Chang, Chair
Representative Mark Nakashima, Vice Chair

House Committee on Education
Representative Roy Takumi, Chair
Representative Lyla Berg, Vice Chair

SB1674, SD2 – RELATING TO THE UNIVERSITY OF HAWAII
Tuesday, March 17, 2009
2:15 p.m.
Conference Room 309

Aloha Chair Chang, Vice Chair Nakashima, Chair Takumi, Vice Chair Berg, Members of the House Committee on Higher Education and House Committee on Education:

My name is C. Mike Kido, External Affairs of the Pacific Resource Partnership (PRP), a labor-management consortium representing over 240 signatory contractors and the Hawaii Carpenters Union.

PRP is in strong support of the purpose and intent of SB1674, SD2, authorizing the University of Hawaii board of regents to issue revenue bonds for the purpose of financing the costs of construction or costs of maintenance of university projects. We also support the amendment of ACT 161, Session of Laws of Hawaii 2007, to increase the bond issuance limit from \$100,000,000 to \$150,000,000 and extend the use of the proceeds from the previously authorized bond issuance.

The additional revenue bonds and extension requests would help expedite critical facility repairs/needs and would help stimulate our economy by bringing much needed jobs.

Thank you for the opportunity to share our views with you and we respectfully ask for your consideration on SB1674, SD2.