



UNIVERSITY OF HAWAI'I SYSTEM

Legislative Testimony

Testimony Presented Before the
Senate Committee on Higher Education
February 2, 2010 at 1:15 p.m.

by

Howard Todo

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

SB 2387 - RELATING TO THE UNIVERSITY OF HAWAI'I

Chair Tokuda, Vice Chair Sakamoto and Members of the Committee:

Thank you for this opportunity to provide testimony in support of SB 2387 to allow the University of Hawai'i Board of Regents to establish fees for campus parking at an open meeting subject to the requirements of chapter 92, Hawai'i Revised Statutes (HRS) (the Sunshine Law), and exempt from the public notice, public hearing, and gubernatorial approval requirements of the chapter 91 rulemaking process.

This bill will enable the Board of Regents to establish University parking fees using the same process as currently applies to most other fees and charges imposed by the University, including tuition. Granting this authority to the Board of Regents will enable the University to more efficiently establish parking fees at appropriate levels to cover the costs of parking facilities and operations.

Currently, the Board of Regents has authority under section 304A-2006, HRS, to establish and amend fees or charges that generate receipts for deposit into University of Hawai'i special and revolving funds at a public meeting subject to the Sunshine Law and exempt from chapter 91. The Board of Regents also has authority under section 304A-403, HRS, to set resident tuition fees at an open public meeting subject to the Sunshine Law and exempt from the formal rulemaking process, provided that the open meeting is held during or prior to the semester preceding the semester to which the fees apply and that a copy of the schedule of fees is filed in the office of the Lieutenant Governor prior to taking effect.

Despite its broad authority to set other fees at an open meeting under chapter 92 and exempt from chapter 91, the Board of Regents is currently required by section 304A-2601, HRS, to set campus parking fees through formal rulemaking under chapter 91. This process is unnecessarily cumbersome and time-consuming, as it requires at least two meetings of the Board of Regents, at least one public hearing, and at least two submissions to the Governor's office before a parking fee amendment can take effect. Specifically, the Board of Regents currently must complete at least the following steps to amend campus parking fees:

- Authorize the holding of a public hearing on proposed regulations, by action of the Board at a public meeting under the Sunshine Law;
- Submit the proposed regulations and supporting information to the Governor and obtain the Governor's approval for the holding of a public hearing;
- Hold a public hearing, on at least 30 days' notice, and receive public testimony on the proposed rule;
- Approve final regulations at another public meeting of the Board of Regents following the public hearing; and
- Submit the final regulations to the Governor with supporting information and obtain the Governor's approval.

Additional meetings and/or hearings may be required if the proposed rule is significantly modified during the review process. This process takes several months to complete, at best.

The Board of Regents' existing authority to set other University fees and charges at a public meeting under the Sunshine Law, and exempt from chapter 91, has been exercised responsibly and reasonably. The public has a full opportunity to testify on proposed changes in fees and charges, in writing or orally or both, and the Board considers all such testimony before acting. Thus, allowing the setting of parking fees at a chapter 92 public meeting, and exempt from chapter 91 rulemaking, will not meaningfully reduce the public's opportunity to participate in the process or affect the quality of the Board of Regents' decisionmaking. It will simply make the process more efficient and less time-consuming.

Thank you for the opportunity to testify in strong support of SB 2387.



LATE

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**Senate HRE Committee
Tuesday 2/2/10 at 1:15PM in Room 225
SB 2387**

TESTIMONY

Nikki Love, Executive Director, Common Cause Hawaii

Chair Tokuda, Vice Chair Sakamoto, and Committee Members:

I am testifying in **opposition to SB 2387**.

This bill changes the current procedure by the University of Hawaii Board of Regents in setting parking fees. The process would be exempted from HRS Chapter 91 rulemaking procedures and instead would allow the board to set fees in a regular public meeting subject to the sunshine law, HRS Chapter 92.

We oppose this change because it would diminish opportunity for public input in the fee-setting process. The rulemaking procedure set forth in Chapter 91 allows more time for the public to become familiar with the proposals, prepare and submit their comments, and participate in a formal public hearing. With the proposed exemption, the public would have only six days notice to make their voices heard at a public meeting.

Although the board sets tuition at a public meeting as an internal matter, the matter of parking is one that affects the wider population. The UH campuses are hubs of activity for the community as a whole, and changes to parking fees affect many members of the public who rely upon access to the facilities for learning, recreation, and civic life.

Furthermore, we ask legislators to keep in mind the bigger implications of any proposed exemption. Bills like this one have the effect of eroding important laws that were designed to ensure fairness, due process, and public input.

Mahalo for the opportunity to submit testimony.

Senator Jill N. Tokuda, Chair
Senator Norman Sakamoto, Vice-Chair
Committee on Higher Education

Senate of the State of Hawai'i

Lance D. Collins, Esq.

Tuesday, February 2, 2010
Oppose SB No. 2387, Relating to the University of Hawaii

My name is Lance D. Collins. I am an attorney in private practice on the island of Maui and testify on my own behalf.

As a public interest attorney and litigator, any exemption to Hawaii's open government laws, the Hawai'i Administrative Procedure Act (HAPA), the Hawai'i Sunshine Law, and the Uniform Information Practices Act, should be met with careful scrutiny to determine if the competing public policy advanced for the exemption outweighs the strong public policy in favor of the public's right to know.

The bill as currently drafted simply restates that the Board of Regents is subject to the Hawai'i Sunshine Law but exempts the Board from HAPA.

The University's public policy for seeking this exemption is:

This bill will enable the Board of Regents to establish University parking fees using the same process as currently applies to most other fees and charges imposed by the University, including tuition. Granting this authority to the Board of Regents will enable the University to more efficiently establish parking fees at appropriate levels to cover the costs of parking facilities and operations.

HAPA currently provides an exemption for all "regulations concerning only the internal management of an agency." This has been historically read to include most matters that affect students, faculty and staff, but not the general public. These rules have been adopted solely as Board policy or as Executive policy and not as formal administrative rules.

The matter of parking and traffic, however, is not something that only affects the internal management of the agency, but, like the use of University owned facilities by the general public, involves the general public.

While the objectives of HAPA and the Hawai'i Sunshine Law overlap, they

fulfill different objectives of open government. Adopted in 1961, HAPA was created “to provide a uniform administrative procedure for all state and county boards, commissions, departments or offices which would encompass the procedure of rule making and adjudication of contested cases.” Hse. Stand. Comm. Rep. No. 8, in 1961 House Journal, at 653. Adopted in 1975, the Hawai'i Sunshine Law was created for the purpose of “Opening up the governmental processes to public scrutiny and participation [as] the only viable and reasonable method of protecting the public's interest” Haw. Rev. Stat. 92-1

In other words, administrative rules have the force and effect of law and HAPA requires that adoption of such rules be done in a uniform manner as a matter of fairness and due process. The Hawai'i Sunshine Law requires that decision-making of boards and commissions be done in an open and transparent manner. It specifically does not deal with the procedures for adopting rules that have the force and effect of law.

Because the setting of parking fees and procedures would have the force and effect of law, they should be subject to the requirements of HAPA. Rules that have the force and effect of law should be subject to a minimum level of uniform procedures and should be subject to publication and codification requirements so that the public is on notice of what the law is so that they can conform to such laws.

Despite the University's claim that this process is cumbersome, the Department of Land and Natural Resources, which administers significantly more land and much more complex interactions with the public than just parking have been able to successfully use formal rule-making without incident over the last 50 years.

Please hold this bill for further study and inquiry by the University of Hawai'i.

Thank you for this opportunity to provide testimony on this measure.

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Dear Chairperson Tokuda, Vice-chairperson Sakamoto, and members of the Committee on Higher Education Senators Baker, Kokubun, Takamine, Taniguchi and Slom,

My name is Megan Chock, and I am a senior at the University of Hawaii at Manoa. I am also a member of the University of Hawaii Student Caucus (UHSC) and the Associated Students of the University of Hawaii (ASUH). As a student and a student representative, I would like to ask you to consider the implications that Senate Bill 2387 might have for students of the University of Hawaii System.

At our meeting on Saturday, January 23, 2010, UHSC passed Resolution 09-002, which is in opposition to HB2051, the companion bill to SB2387. As the two bills are essentially the same, the reasons for opposing HB2051 are directly transferable to SB2387. The primary reason of concern was that student representatives felt that by eliminating the requirements of chapter 91, students would not have enough opportunity to voice their opinions about future parking fees. At the University of Hawaii at Manoa in particular, the availability and affordability of parking has always been an issue; commuter students often arrive on campus hours before their first class (some of my friends come as early as 5:30 a.m.) and sleep in their cars to ensure they have a parking space in the parking structure. In addition, parking is a significant expense; those who cannot get a parking pass must pay \$5 a day or find limited on-street parking, which is often located a good distance from campus. At the Caucus meeting, other representatives from UH Hilo said that affordability is not an issue, but rather the over-issuance of parking passes; an excess of parking passes are issued, preventing students who have purchased passes from finding parking. The Caucus felt that many of these problems could persist in the future if students did not have the ability to share them at public hearings.

Although the Caucus as a whole decided that the continuance of the statutes of chapter 91 was the best way to ensure public hearings in which students' voices could be heard, the prevailing opinion was that the bigger issue would be preserving the opportunity for students to share their opinions. We understand that the process of approval under chapter 91 is often very protracted. If the issue is to circumvent some of the yellow tape surrounding the process so that changes can be implemented in a more timely manner, then please keep in mind the wishes of the students: to have the opportunity to provide testimony and opinions before future changes to parking fees are made. If the Board of Regents is to be exempted from chapter 91, please preserve the requirement to have a period or meeting in which student testimony will be considered before the establishment of such fees.

Thank you for your time in reading this testimony. If you have any questions, please feel free to contact me at mmpchock@hawaii.edu. I appreciate your efforts this legislative session and thank you for listening to me.

Yours truly,
Megan Chock



UNIVERSITY OF HAWAI'I STUDENT CAUCUS (UHSC)
University of Hawai'i System
Resolution No. 09-002

IN OPPOSITION TO HOUSE BILL NO. 2051, WHICH WOULD ALLOW THE BOARD OF REGENTS TO ASSESS PARKING FEES WITHOUT PUBLIC NOTICE, PUBLIC HEARING AND GUBERNATORIAL APPROVAL

BE IT ENACTED BY THE STUDENT CAUCUS:

WHEREAS, the University of Hawai'i Student Caucus is the representative organization of the approximately 58,000 students enrolled at the University of Hawai'i system as chartered by the Board of Regents of the University of Hawai'i; and,

WHEREAS, according to our purpose to serve as a collective voice for all University of Hawai'i students, we are established to advocate for the interests and needs of students throughout the University of Hawai'i System; and,

WHEREAS, the University of Hawai'i Student Caucus (UHSC) shall provide a cohesive and unified voice before the Board of Regents, the University Administration, the Hawai'i State Legislature, and other policy making bodies; and,

WHEREAS, House Bill No. 2051 of the 2010 legislative session proposes exempting the Board of Regents from the public notice, public hearing, and gubernatorial approval requirements of chapter 91 when assessing parking fees on roadways and parking areas under the jurisdiction of the university, and instead would only require an open public meeting before the establishment of such fees as in chapter 92; and,

WHEREAS, many of the students in the University of Hawai'i system commute to school, and thus heavily rely on the availability of affordable parking spaces on or near campus; and,

WHEREAS, under chapter 91, students have been able to voice their opinions about proposed amendments to parking fees to the Board of Regents prior to the establishment of the fees, helping to keep parking affordable for students and fostering open communication between students at the BOR; and,

WHEREAS, with the proposed changes of HB2051, students' voices may not be heard in adequate time to prevent the establishment of parking fees that students cannot afford; and, therefore,

BE IT RESOLVED, that the Student Caucus opposes the passage of HB2051 in its current form, which exempts the Board of Regents from public notice and public hearings before the assessment of parking fees under chapter 91; and,

BE IT FURTHER RESOLVED, that the Student Caucus believes it is important for students to have the ability to voice their opinions about university fee assessments to the Board of Regents under the guidelines of chapter 91 before the establishment of new fees; and,

NOW, THEREFORE, BE IT FINALLY RESOLVED, that copies of this resolution shall be sent to:
House Bill No. 2051 introducers Jerry Chang, Cindy Evans, Faye Hanohano, Ken Ito, Mark Nakashima, Joseph Souki, Mark Takai, Clift Tsuiji, Joe Bertram, Denny Coffman, Joey Manahan, Angus McKelvey, Blake Oshiro, and Roy Takumi; Governor Linda Lingle; State Senate President Colleen Hanabusa, Speaker of the House Calvin K.Y. Say, Chair of the State Senate Higher Education Committee Jill Tokuda, Chair of State Senate Economic Development and Technology Committee Carol Fukunaga, Chair of State House Finance Committee Marcus R. Oshiro, The Board of Regents of the University of Hawai'i; University of Hawai'i President M.R.C. Greenwood; University of Hawai'i at Mānoa Chancellor Virginia Hinshaw; Vice Chancellor for Students Francisco Hernandez; Vice Chancellor for Academic Affairs Reed Dasenbrock, The Graduate Student Organization at the University of Hawai'i at Mānoa; The Honolulu Advertiser; The Honolulu Star-Bulletin; KITV; Hawaii News Now; KHON; The Honolulu Weekly; and the Ka Leo O Hawai'i.

Megan M.P. Chock
ASUH (Mānoa) Senator-at-Large
UHSC Chairperson of Budget and Facilities