



UNIVERSITY OF HAWAII SYSTEM

Legislative Testimony

Testimony Presented Before the
Senate Committee on Ways and Means
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by

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SB 2387 - RELATING TO THE UNIVERSITY OF HAWAII

Chair Kim, Vice Chair Tsutsui 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.

Dear members of the Senate Ways and Means Committee,

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

Senator Donna Mercado Kim, Chair
Senator Shan S. Tsutsui, Vice Chair

Committee on Higher Education

Senate of the State of Hawai'i

Lance D. Collins, Esq.

Tuesday, February 16, 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 Hawai'i'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 publication and other 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.