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TO THE HOUSE COMMITTEE ON CONSUMER PROTECTION & COMMERCE  
TWENTY-SEVENTH LEGISLATURE  
Regular Session of 2013

Monday, February 11, 2013  
3:30 p.m.

**TESTIMONY ON HOUSE BILL NO. 1200, H.D.1 – RELATING TO EDUCATION.**

TO THE HONORABLE ANGUS McKELVEY, CHAIR, AND MEMBERS OF THE  
COMMITTEE:

My name is Jo Ann Uchida Takeuchi, Deputy Director, testifying on behalf of the Department of Commerce and Consumer Affairs (“Department”). The Department opposes this bill in its current form, but understands that the bill is a work in progress and thanks Vice Chair Ichiyama for favorably considering some of the Department’s suggestions in the Higher Education Committee.

House Bill No. 1200, H.D.1, among other things, repeals the existing post-secondary education commission within the University of Hawaii, establishes a new state post-secondary commission with the Department, sets forth definitional terms, creates exemptions, establishes Commission and departmental authority, establishes a complaints and enforcement process, creates a subaccount in the compliance resolution fund, establishes rulemaking authority, and provides for general and special fund appropriations. The Department understands that the rationale for moving the program from the University of Hawaii to the Department is, among other things, to provide for consumer protection of students.

Most importantly, the bill provides for an effective date upon approval, with a July 1, 2013 effective dates for department implementation and for title protection for certain degrees, and delayed implementation for placing unaccredited degree granting institutions within the jurisdiction of the Commission.

The Department recognizes that the federal regulations that mandate affirmative state oversight of postsecondary schools became effective on July 1, 2011 and that Hawaii is the only state not in compliance and has been granted an extension until July 1, 2013 to provide oversight. At stake is what the Auditor estimates as federal funding for around 63,000 Title IV recipients and \$283,646,517.00 in disbursements in the form of student loans and other assistance. As such, although the Department continues to respectfully disagree that it is appropriate to relocate the Post-Secondary Education from the University of Hawaii, where it has been located since 1974, to the Department at this critical juncture, the Department recognizes the exigencies of the situation and has reviewed this bill and is offering this testimony with those exigencies in mind. These are the Departments comments, suggestions and positions with regard to this bill:

1. **Narrowly tailor the bill to address the immediate needs of the state.** To participate in Title IV programs, a school must qualify as an “institution of higher education.” 20 U.S.C. §1001 (2011). An “institution of higher education” is an educational institution in a state that “is legally authorized within such State to provide a program of education beyond secondary education.” 20 U.S.C. §1001(a)(2). Proprietary institutions of higher education and postsecondary vocational institutions qualify as institutions of higher education for purposes of federal student assistance programs. 20 U.S.C. §1002. The new regulations that became effective in 2011 provide that a school is legally authorized by a State only “if the State has a process to review and appropriately act on complaints concerning the institution including enforcing applicable State laws.” 34 C.F.R. §600.9(a)(1)(hereinafter “600.9”). The Departments urges the committee to narrow the focus of this bill to the key elements that must be met; i.e, provide for state

authorization and provide for a process to review and appropriately act on complaints.

- (a) To that end, **the Department strongly opposes the language in Sections 7 and 8 of the bill** that will transfer responsibilities related to higher education programs for veterans currently within the post secondary education commission. These functions do not relate to implementation of 600.9 and inappropriately expands the responsibilities of the department to areas outside its core mission. This language was rejected by the Senate when the companion measure was heard.
- (b) Because the purpose of this bill is to implement 600.9, the Department urges the committee to use the federal definitions that are already in existence rather than create new definitions as set forth in this bill. Consistency between the federal and state law help all stakeholders have a common understanding of relevant terms.
- (c) The **Department opposes making changes through this bill to the existing unaccredited degree granting institution law, Hawaii Revised Statutes, Chapter 446E**. This law currently places mandatory disclosure requirements on institutions that operate under Hawaii law and prohibits the granting of certain degrees such as M.D.s and J.D.s. This law, while mandating certain minimum disclosure requirements, has resulted in a proliferation of unaccredited schools in this state. If unaccredited schools are brought within the jurisdiction of the Commission, accredited schools that seek authorization through the Commission will bear the cost of either maintaining the existing unaccredited institutions law, or implementing more stringent requirements that will significantly increase the cost of enforcement. Unlike accredited schools, many unaccredited schools are difficult to locate and may not willingly pay fees. The cost of implementing the program solely for accredited agencies will already be high; the added cost of unaccredited degree granting institution enforcement will likely drive that cost significantly higher.

(d) The Department takes no position on whether the types of schools identified in the bill capture all of the institutions affected by 600.9.

2. **Consider a less costly and time-consuming form of oversight.** With what the Auditor describes as a licensee pool of 21 schools, the Department is concerned that the per school cost of providing for program self-sufficiency will be high. The Department urges the committee to consider alternate forms of regulation that will minimize costs, such as the creation of a department program instead of a Commission. Where a DCCA licensing program is established instead of a board or commission, the Director serves as the program's licensing authority.<sup>1</sup> One licensing program that is noteworthy and may provide an analogous model is the Real Estate Appraiser Program. This program, Chapter 466K, Hawaii Revised Statutes, was enacted to meet federal requirements for state oversight of real estate appraisers in the context of federal insured mortgage loans. The program has a relatively small population of licensees, and subject matter expertise is provided statutorily through an advisory committee. The department believes that if this bill sets up authorization with what some have described as a "check off the box" process, then a department program will obviate the costs associated with the appointment, creation and maintenance of a commission.

In the alternative, if this committee is inclined to provide for oversight through a Commission, the Department requests that the bill include language and a procedure for the appointment of interim commissioners until permanent commissioners can be appointed so that the Commission can be formed in time to meet the federal deadline.

Also, the Department does not support the language in the bill that would require the Department to make recommendations to Commission. The Commission, in its capacity as the program authority, is responsible for making determinations

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<sup>1</sup> Programs include Activity Desks, Cemeteries and Pre-need funeral authorities, Collection Agencies, Dispensing Opticians, Electrologists, Employment Agencies, Hearing Aid Dealers and Fitters, Marriage and Family Therapists, Mental Health Counselors, Mixed Martial Arts, Nursing Home Administrators, Occupational Therapists, Port Pilots, Real Estate Appraisers, Social Workers, Travel Agencies, Athlete Agents

regarding authorizations and discipline. The Department would provide administrative support to the Commission but Commission support staff should not be required to make recommendations as to outcome.

3. **Provide for an enforcement process consistent with Haw. Rev. Stat. 92-17.** Hawaii Revised Statutes §92-17 delineates the general requirements for licensing enforcement. In particular, the statute provides for disciplinary enforcement pursuant to Chapter 91. The Department requests that the bill conform to the requirements of this section. In particular, -16(e), (f) and (i) of the bill on pages 39 and 42.
4. **Provide for grounds for disciplinary action without reliance on deceptive trade practices.** The bill on pages 40 and 41 establishes certain conduct as deceptive trade practices and identifies those practices as the Commission's grounds for discipline. The department is concerned that identifying certain conduct as deceptive trade practices will inevitably trigger concerns about the applicability of §480-2 (unfair or deceptive acts or practices); and §480-12, 13 and 17. While the department notes that there are other licensing laws that provide for deceptive practice prohibitions within a licensing law (timeshare), it would be problematic from an enforcement perspective to condition all licensing violations on deceptive trade practices.
5. **Include an exemption for schools operating under §439-18 on page 9, line 16.** Cosmetology schools are in the same category as real estate schools and should be similarly excluded from the scope of this regulation.
6. **Concerns about making the commission the trustee** The bill provides on page 35 lines 14-17 for the Commission to serve as the trustee for all prepaid, unearned tuition and fees, student loans, Pell grants, and other student financial aid assistance if an authorized private college or university ceases operation. The Department is uncertain as to the intent of this section or what this section means. For example, will the commission be required to act in a manner similar to a bankruptcy trustee? How will these funds be transferred or held by the Commission? Given the

uncertainty of the significance of this section, the Department opposes the inclusion of this language.

7. **Oppose DCCA maintenance of records upon discontinuance.** The Department opposes being the repository of school records upon discontinuance as provided for in -11 of the bill. The department opposes being required to permanently retain student transcripts. The Department recommends that if this bill imposes a requirement of records retention, that it provide, as a condition of authorization, that all schools be required to maintain critical records in digital format with sufficient safeguards in place to adequately address security and database reliability. The Department supports the inclusion of an affirmative recordkeeping requirement if one does not already exists at the federal or accreditation level.
8. **Provide for boilerplate prohibited practices; authorize Commission and staff-initiated complaints.** The Department suggests that if enforcement authority is placed within DCCA, that the Commission be afforded the same boilerplate prohibited practices that other DCCA licensees abide by, including but not limited to grounds set forth in Haw. Rev. Stat. §436B-19. Also, the Department recommends that the Commission and the department be authorized to initiate complaints based on information received by the Commission rather than limit oversight to student complaints only.
9. **Work in progress.** The Department apologizes for the length and technical nature of this testimony but wants to ensure that the bill that must pass provides for a program that can be effectively administered by the department and meets the federal objectives of providing for student protection. The Department again thanks the Vice chair of the prior committee for her indulgence in evaluating the Department's suggestions and hopes that this committee will favorably consider the Department's recommendations. Again, the Department recognizes that this bill continues to be a work in progress and hopes to be included in future discussions related to bill revisions.

We thank this Committee for the opportunity to present testimony on this matter.



# UNIVERSITY OF HAWAII SYSTEM

## Legislative Testimony

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Testimony presented before the  
House Committee on Consumer Protection and Commerce  
February 11, 2013 at 3:30 pm

By Linda K. Johnsrud

Executive Vice President for Academic Affairs & Provost, University of Hawai'i System

### HB1200, HD1: RELATING TO EDUCATION

Chair McKelvey, Vice Chair Kawakami and members of the House Committee on Consumer Protection and Commerce:

The University of Hawai'i supports HB1200, HD1 that establishes the post-secondary education commission within the Department of Commerce and Consumer Affairs (DCCA) to authorize private post-secondary educational institutions to operate in the state, to maintain a listing of such private institutions, and to act on complaints concerning these institutions. HB1200, HD1 addresses the requirements of the U.S. Department of Education regulations under Title IV of the Higher Education Act of 1965, as amended. The University appreciates the thoroughness of HB1200, HD1 in creating the framework for authorization of private post-secondary institutions through accreditation status from a recognized national or regional body and demonstration of financial integrity. These provisions serve to protect authorized private institutions as well as the public by delineating the basis for authorization. Furthermore, it is the University's position that placing the authorization function outside the University of Hawai'i (UH) avoids the potential or the appearance of a conflict of interest, were the state's sole public university to authorize private providers to operate within the state.

The University would also like to provide these additional comments on HB1200, HD1:

The state's post-secondary education commission was established in 1972 to qualify the state to receive federal funds for student financial aid, and placed within the University of Hawai'i. Currently it has three functions: certification of higher education programs for veterans; distribution of federal financial aid; and support for the state's membership in the Western Interstate Commission on Higher Education (WICHE).

The University recommends that two of the functions - the federal financial aid and WICHE functions - remain at UH. In the case of federal financial aid distribution, current UH personnel are able to absorb the work within their position responsibilities related to financial aid. Continuing to perform this task at UH would provide, with existing resources, the needed expertise in financial aid and would benefit students by enabling the state to seamlessly deliver federal scholarships.

Similarly, WICHE support functions are absorbed by current UH staffing on a part-time basis. WICHE is a membership organization, and the University supports the state's membership and the WICHE commissioners. WICHE, a fifteen-state commission of

western states, helps Hawai'i's students through student exchange programs and supports institutions by student access and success, workforce development, data, and policy initiatives and technical support. Two examples of student exchange programs that assist the state are the Professional Student Exchange Program and the Western Regional Graduate Program. They allow Hawai'i students the opportunity to study in select WICHE states or institutions that offer critical professional programs or high-quality distinctive graduate programs that are not available in our state.

Again, we appreciate the thoughtfulness in HB1200, HD1 in addressing the U.S. Department of Education regulations, and thank you for the opportunity to testify.





Testimony Presented to the  
House Committee on Consumer Protection & Commerce

Monday, February 11, 2013 at 3:30 pm

by  
Chaminade University of Honolulu President  
Bro. Bernard J. Ploeger, SM, Ph.D.

**HB 1200, HD1  
Relating to Education**

Chairperson McKelvey and members of the Committee on Consumer Protection & Commerce:

Thank you for the opportunity to provide testimony in **strong support** of HB 1200 HD1 establishing the post-secondary education commission within the Dept. of Commerce and Consumer Affairs and repealing the sections establishing the commission within the University of Hawaii. The commission will have the power to authorize private post-secondary educational institutions in the state, will create a post-secondary education compliance resolution fund, and will make an appropriation to fund permanent positions in the DCCA.

It is imperative that action immediately be taken by the State of Hawaii to create such a commission. The purpose of this legislation is to bring Hawaii into compliance with Title IV changes issued by the U. S. Dept. of Education in October 2010. Without passage of this legislation, neither the state nor independent universities will be qualified to receive funding under the Higher Education Act of 1965.

Chaminade University of Honolulu supports this legislation to establish a post-secondary education commission within the DCCA because it already has the authority for consumer protection and is a neutral third-party in the educational community. In addition, we would strongly support authorization to enable Hawaii to enter into reciprocity agreements with other states. Reciprocity agreements enable distance education providers to offer postsecondary education programs in other states without having to seek authorization from each of those states, thus reduction paperwork and costs.

Thank you for allowing us to submit this testimony.

A handwritten signature in black ink that reads "Bro Bernard J Ploeger, SM, Ph.D." with a stylized flourish at the end.

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House Committee on Consumer Protection & Commerce

February 11, 2013; 3:30 p.m.

**H.B. 1200, HD 1**

**Relating to Education**

**Testimony in Support**

Chair McKelvey, Vice Chair Kawakami and Members of the Committee, my name is Geoffrey Bannister, and I am President of Hawai'i Pacific University (HPU). HPU is a private, non-profit university with three campus locations: the Hawaii Loa campus on the windward side of the island, the downtown campus in Honolulu, and Oceanic Institute, an affiliate research facility at Makapu'u Point. We currently have more than 4,200 undergraduate and 1,000 graduate students, plus an additional 2,300 students matriculating through HPU's Military Campus Programs. I am proud to say, we are one of the most culturally diverse universities in America with the state's largest nursing, MBA and military servicing programs.

HPU supports HB 1200, HD 1 which establishes the post-secondary education commission within the Department of Commerce and Consumer Affairs (DCCA), creates the framework for authorizing private post-secondary educational institutions in the state, and creates the post-secondary education authorization subaccount of the compliance resolution fund.

In 2010, the U.S. Department of Education set a July 2011 deadline for institutions to comply with the requirement that states authorize post-secondary institutions. However, it recognized that states might be unable to provide authorizations by that date, and thus provided a means for institutions to be granted an authorization extension to as late as July 1, 2013. In the absence of an entity and framework for authorizing post-secondary institutions, Hawaii will become ineligible to receive Title IV federal funds, or student aid.

We respectfully offer the following clarifying amendments:

Page 6, lines 9-11:

"Physical presence" means:

(1) Having a physical location in the State where students receive synchronous instruction; [~~and~~] or  
.....

**RATIONALE:**

Use of the word “or” would include more entities for registration purposes. As the bill currently reads, only institutions that are actually physically present in the state are required to register. Allowing the State to register out-of-state institutions would enable it to collect more registration fees.

Page 10, lines 6-9:

(b) The Commission shall consist of five members, of which three shall be representative of the general public and two shall be representative of [~~public and~~] private nonprofit and for-profit institutions of post-secondary education in the State.

**RATIONALE:**

The purpose of this bill is to create a framework through which private post-secondary institutions are authorized. Therefore, the private institutions would be better served by representation on the Commission, rather than through a representative from a public institution whose interests may be in conflict with those of the private institutions. If any public institutions are impacted, their interests would be represented by the public members on the Commission.

Thank you for the opportunity to testify.

Contact: Linda Chu Takayama, Attorney at Law

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February 11, 2013  
3:30 p.m.  
Conference Room 325

TESTIMONY TO  
THE HOUSE COMMITTEE ON CONSUMER PROTECTION AND COMMERCE

**RE: HB 1200 HD1 – Relating to Education**

Chair McKelvey, Vice Chair Kawakami and the members of the committee,

My name is Robert Witt and I am executive director of the Hawaii Association of Independent Schools (HAIS), which represents 99 private and independent schools in Hawaii and educates over 33,000 students statewide.

**HAIS supports HB1200 HD1** which establishes the post-secondary education commission within the Department of Commerce and Consumer Affairs and creates the framework for authorizing private post-secondary educational institutions in the State.

HAIS's membership encompasses all levels of education including post-secondary institutions. This measure would bring Hawaii in compliance with federal mandates in order to continue a private post-secondary student's access to Title IV funding. We understand that without this legislation many of Hawaii's students would be financially overburdened and likely unable to pursue their educational endeavors. Thus, we offer our support for this measure.

Thank you for the opportunity to testify.