

University of Hawai'i
Regents Candidate Advisory Council

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THE HONORABLE SENATOR DAVID Y. IGE, CHAIR
Senate Committee on Ways and Means
Hawaii State Legislature
Regular Session of 2013
State of Hawaii

February 21, 2013

LEGISLATIVE TESTIMONY IN OPPOSITION TO
S. B. 563, S.D. 1
RELATING TO THE UNIVERSITY OF HAWAII

Hearing Date:
Friday February 22, 2013, 9:00 a.m., Conference Room 211

Submitted by:
OFFICERS OF THE REGENTS CANDIDATE ADVISORY COUNCIL
UNIVERSITY OF HAWAII

Chair Ige, Vice-Chair Kidani, and members of the Senate Committee on Ways and Means:

The officers of the Regent Candidate Advisory Council of the University of Hawaii submit testimony in opposition to S. B. 563, S.D.1.

This proposed legislation calls for an amendment to the form and function of the candidate advisory council for the board of regents of the University of Hawaii and repeals section 304-104.5, HRS.

We call to the committee's attention language that was contained in this committee's Standing Committee Report #317, dated February 14, 2007 which specifically stated that the creation of the RCAC was:

"the Senate's efforts to address the concerns raised by Hawaii's voters, through their approval of a constitutional amendment regarding the composition of the Board of Regents of the University of Hawaii and other related provisions of the law. Through this measure, the Senate endeavors to ensure that the law reflects the spirit of the constitutional amendment that was approved by the people of Hawaii. The public has called for change, and we must see to it that the change is real, meaningful, and productive."

The proposed legislation goes against the clear mandate Hawaii's voters overwhelmingly approved in 2006 and is an abrupt and total change to the position this committee and the 2007 Legislature took when it passed legislation to create the RCAC. The Legislature also went through the extraordinary effort to override Governor's Lingle's veto and her objections that

the RCAC should be under the administrative control of the Governor's office. The Legislature fully concurred with the Senate Higher Education Committee's that the Governor should not be solely responsible for appointing a separate body that qualifies and presents candidates for appointment to the Board of Regents.

The Association of Governing Boards of Universities and Colleges (AGB), the only national association that serves the interests and needs of academic governing boards on issues related to higher education governance and leadership, strongly believes that an essential best practice is to engage independent screening bodies to assist with the nominating process to identify outstanding citizens to serve as regents.

Further, the Western Association of Schools and Colleges (WASC) and the Accrediting Commission for Community and Junior Colleges (ACCJC) have gone on record to say their focus on accreditation is how the Board is functioning. The issue of how UH Regents are selected, or the qualifications of members of the Board of Regents was never raised as an issue in any UH campus accreditation.

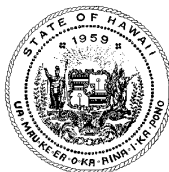
In addition to the RCAC screening process, the governor remains the appointing authority for the Board of Regents. The Senate also continues to provide the important role of advise and consent on the Governor's nominee.

The RCAC selection process involves seeking out university regent candidates who are broadly representative of the public interest and public good, bring diverse skill sets and points or views to the board, and have the commitment and qualifications to serve. The Council's selection process is comprehensive, transparent, well balanced, and solely and exclusively merit-based. The compilation of candidate regents lists occurs only after the RCAC completes its comprehensive review and selection process. It is significant that for the first time in the UH's 100 year existence, the RCAC process encourages all UH stakeholders to participate in the selection process by submitting BOR candidates for consideration.

It is important to distinguish between the selection of regent candidates and how the Board of Regents governs. How the Board of Regents governs is solely an internal leadership issue between the Board and the President. Rather than single out the regent selection process, we suggest what is more constructive and needed is for the committee to question the current board members on their practices governing the University.

In closing, we strongly urge the Committee to table this bill.

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LATE

EXECUTIVE CHAMBERS
HONOLULU

NEIL ABERCROMBIE
GOVERNOR

Thursday, February 21, 2013, 9:00 AM
State Capitol Room 211

Testimony of
Policy Office of the Governor, State of Hawaii

To the Senate Committee on Ways and Means
Senator David Ige, Chair, Ways and Means Committee
Senator Michelle Kidani, Vice Chair, Ways and Means Committee

SB 563_SD1 - Relating to the University of Hawaii

Chair Ige, Vice Chair Kidani, and members of the Committee:

Thank you for the opportunity to provide testimony in support of Senate Bill 563, Senate Draft 1 (SB563_SD1). The bill amends section 304A-104.5 of Hawaii Revised Statute to amend the form and function of the University of Hawaii (UH) Regents Candidate Advisory Council (RCAC). Senate Draft 1 also makes the duration of RCAC members' terms to be concurrent with the term of the members' appointing authority; the effect is to ensure that each RCAC member has been appointed by the current leader of the stakeholder group that they represent.

The Governor supports increased flexibility in being able to appoint Regents. SB563_SD1 provides additional flexibility by allowing the Governor to appoint members of the RCAC. Members would serve for the duration of the Governor's term. The current draft also provides for seven voting members including a student member selected by the Governor.

SB563_SD1 addresses challenges of the current RCAC process which relies on a constituency-based RCAC to recruit, screen and nominate Regents. This process limits the Governor's ability to recruit and select Regents. The reconstituted RCAC, proposed in SB563_SD1, would provide the Governor with a list of at least three candidates for each vacancy on the Board of Regents, compared with a minimum of two under section 304A-104.5 of HRS. Additionally, the SB563_SD1 does not have a limitation on the number of candidates presented to the Governor, whereas the current law restricts nominations to a maximum of four candidates.

Since a 2006 constitutional amendment established a council in process of appointing

Regents, the RCAC, UH, Governor's Office, and Legislature have struggled to implement that current iteration of the RCAC. The composition and obligations of the council were established in statute in 2007 and subsequently amended in 2008, 2010 and 2011 to address concerns. Since the RCAC process was established, the Senate has denied advice and consent for Regents appointees in 3 of 5 legislative sessions with the Senate Education Committee not recommending advice and consent for appointees as recently as 2011.

The current RCAC process discourages candidates from applying for the Board of Regents. The process involves three levels of screening: RCAC to identify qualified candidates to present to the Governor, Governor to make appointments, and Senate to confirm appointees. Many appointees and potential candidates reported reluctance to apply or seek reappointment because of the burden of the process that requires significant commitment of time and exposure.

In making appointments for boards and commissions, the Governor considers the individual qualities—personal and professional—of the candidates, as well as how the candidates would balance the board in terms of their experience, skill sets or perspectives. The Board of Regents' balance among the members is important to fulfill the Board's charge to govern and steward public higher education. Governor Abercrombie believes that flexibility need to balance many characteristics of the candidates to reflect the diversity of Hawaii and the functional needs of the Board of Regents.

Considering only a limited "short list" of candidates currently provided by the RCAC makes it extremely challenging for a Governor to balance the Board on the many dimensions of importance to the University and our state. Since 2009, the RCAC has provided 2.5 names, on average, for each vacancy. For eight different appointments, the RCAC only provided two names for consideration.

Furthermore, SB563_SD1 reflects best practice, as recommended by the Association of Governing Boards (AGB). In 2007 testimony regarding the initial composition of the RCAC, UH reported the AGB President's recommendation: "Independent screening committees to assist with the nominating process to identify outstanding citizens are an essential best practice... (and) operate best when enacted and sustained with bipartisan support and that their membership not consist of 'representatives' of certain constituent groups... AGB recommends that the Governor select the members of the candidate advisory council or committee who are not tied to constituent groups or special interests, and without regard to political party affiliation."

Finally, as noted in the committee report, attaching the RCAC to the Governor's Office may only be temporary. In consultation with the Attorney General's Office, we are recommending that the reconstituted RCAC, as proposed in SB563_SD1, be attached to the Office of the Governor until December 31, 2014 since the 2014 election is the first opportunity for voters to consider a constitutional amendment related to the RCAC, as proposed by Senate Bill 453.

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The UH and state are best served by a process that increases the Governor's flexibility to appoint Regents. SB583_SD1 provides this opportunity by changing the composition of the RCAC to be seven members selected by the Governor and the most recent past Chair of the Board of Regents.

Thank you for your consideration.