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# A BILL FOR AN ACT

RELATING TO THE UNIVERSITY OF HAWAII.

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:**

1           SECTION 1. The legislature finds that while the candidate  
2 advisory council for the board of regents of the University of  
3 Hawaii has nominated many outstanding appointees to the board,  
4 important concerns have been raised as to the selection process.  
5 Since the passage of Act 56, Session Laws of Hawaii 2007, to  
6 implement the amendments to article X, section 6 of the state  
7 constitution, a number of issues have arisen from the new method  
8 of regent selection that hampered the work of the regents  
9 candidate advisory council and led to questions regarding the  
10 final selection of appointees during the senate confirmation  
11 process.

12           The purpose of this Act is to reconstitute the form and  
13 processes of the candidate advisory council to increase the  
14 appointment of qualified individuals to serve as members of the  
15 board of regents and effectively lead the University of Hawaii.

16           SECTION 2. Chapter 304A, Hawaii Revised Statutes, is  
17 amended by adding a new section to be appropriately designated  
18 and to read as follows:



1           "§304A-    Candidate advisory council for the board of  
2 regents of the University of Hawaii.   (a) The candidate  
3 advisory council for the board of regents of the University of  
4 Hawaii shall recruit, rate, and present to the governor  
5 qualified candidates for nomination to a vacant seat on the  
6 board of regents. The candidate advisory council shall be  
7 temporarily placed in the office of the governor for  
8 administrative purposes.

- 9           (b) The candidate advisory council shall:
- 10           (1) Develop and implement a fair and independent procedure  
11           for rating candidates to serve on the board of  
12           regents;
  - 13           (2) Require candidates and members of their immediate  
14           family to disclose any existing or anticipated  
15           contracts or financial transactions with the  
16           University of Hawaii and family relationships with  
17           University of Hawaii employees;
  - 18           (3) Actively solicit and accept applications from  
19           potential candidates;
  - 20           (4) Rate candidates for the board of regents on their  
21           background, experience, and potential for discharging  
22           the responsibilities of a member of the board of



1 regents, based upon the qualifications imposed by the  
2 state constitution; and

3 (5) Present a list of at least three candidates to the  
4 governor for nomination and appointment for each  
5 vacant seat on the board of regents of the University  
6 of Hawaii.

7 (c) The candidate advisory council shall initiate the  
8 recruitment and rating of candidates for each vacancy on the  
9 board of regents within:

10 (1) Thirty days of a vacancy; or

11 (2) At least one hundred twenty days prior to the  
12 expiration of a regent's term.

13 (d) To provide continuity for the board of regents, the  
14 governor may recommend to the candidate advisory council the  
15 reappointment of a board of regents member, subject to senate  
16 confirmation.

17 (e) The candidate advisory council shall consist of seven  
18 members to be appointed without regard to section 26-34 as  
19 follows:

20 (1) One member shall be appointed by the president of the  
21 senate;



1       (2) One member shall be appointed by the speaker of the  
2           house of representatives; and

3       (3) Five members shall be appointed by the governor;  
4       provided that one member shall be a student of the university  
5       who has been enrolled as a full-time student for at least three  
6       consecutive semesters. The senate president, speaker of the  
7       house of representatives, and governor are encouraged to appoint  
8       university faculty and staff to the candidate advisory council.  
9       Appointees to the candidate advisory council shall have a  
10       general understanding of the purposes of higher education, the  
11       mission and strategic goals of the University of Hawaii system,  
12       and the role and responsibilities of the board of regents.  
13       Appointees shall be individuals who are widely viewed as having  
14       placed the broad public interest ahead of special interests, are  
15       respected by the community, and are highly qualified to recruit  
16       and rate candidates for the governor's consideration.

17       (f) Each member of the candidate advisory council shall  
18       serve for the duration of the term of the person by whom the  
19       member was appointed.

20       (g) The candidate advisory council shall operate in a  
21       wholly nonpartisan manner. No member of the candidate advisory  
22       council shall run for or hold any elected office of the State or



1 its political subdivisions. A member of the candidate advisory  
2 council shall resign from the candidate advisory council prior  
3 to filing nomination papers for an elected office of the State  
4 or its political subdivisions.

5 (h) The governor shall appoint the chairperson of the  
6 candidate advisory council. A majority of the members to which  
7 the candidate advisory council is entitled shall constitute a  
8 quorum to do business. The concurrence of a majority of all the  
9 members to which the candidate advisory council is entitled  
10 shall be necessary to make any action of the candidate advisory  
11 council valid.

12 (i) Members of the candidate advisory council shall serve  
13 without compensation but shall be reimbursed for expenses,  
14 including travel expenses, necessary for the performance of  
15 their duties."

16 SECTION 3. Section 304A-104, Hawaii Revised Statutes, is  
17 amended to read as follows:

18 "**§304A-104 Regents; appointment; tenure; qualifications;**  
19 **meetings.** (a) The affairs of the university shall be under the  
20 general management and control of the board of regents  
21 [~~eonsisting~~]. The board shall consist of fifteen members who  
22 shall be appointed [and] by the governor from lists of qualified



1 candidates presented to the governor by the candidate advisory  
2 council, pursuant to section 304A- , and shall be confirmed by  
3 the senate; provided that if the list of qualified candidates  
4 includes less than three candidates at any time during the  
5 nomination and confirmation process, the governor may request  
6 that the candidate advisory council reopen recruitment for  
7 qualified candidates. Members may be removed by the governor.  
8 Except as otherwise provided by law, state officers shall be  
9 eligible for appointment and membership.

10 The term of each member shall be five years, except as  
11 provided for the initial appointment in section 26-11; provided  
12 that the term of the student member shall be two years. Every  
13 member may serve beyond the expiration date of the member's term  
14 of appointment until the member's successor has been appointed  
15 by the governor and confirmed by the senate in accordance with  
16 article X, section 6 of the Hawaii constitution. Members shall  
17 serve no more than two consecutive five-year terms; provided  
18 that the members who are initially appointed to terms of two  
19 years or less pursuant to section 26-11(a) may be reappointed to  
20 two ensuing five-year terms. If a member is to be appointed to  
21 a second term of five years, the senate shall consider the  
22 question of whether to reconfirm the member at least one hundred



1 twenty days prior to the conclusion of a member's first five-  
2 year term; provided that if the senate is not in session within  
3 one hundred twenty days prior to the conclusion of the member's  
4 first five-year term, the member shall continue to serve until  
5 the senate convenes for the next regular session or the next  
6 special session for which the senate is authorized to consider  
7 the question of reconfirmation.

8 (b) In determining whether to confirm the governor's  
9 nominee to the board of regents, the senate shall consider the  
10 combination of abilities, breadth of experiences, and  
11 characteristics of the board of regents, as a whole, that will  
12 best serve the diverse interests and needs of the students of  
13 the university system and assist the university system in  
14 achieving its strategic goals and performance indicators. The  
15 senate shall consider whether the board reflects the diversity  
16 of the student population, the various counties of the State,  
17 and a broad representation of higher education-related  
18 stakeholders.

19 ~~(b)~~ (c) At a meeting preceding July 1 of each year, the  
20 board of regents shall elect a chairperson and up to two vice-  
21 chairpersons whose terms shall be from July 1 to June 30 of the  
22 next year or thereafter until their successors are elected. The



1 board shall appoint a secretary, who shall not be a member of  
2 the board. The president of the university shall act as  
3 executive officer of the board. A majority of the board of  
4 regents shall constitute a quorum to conduct business, and the  
5 concurrence of a majority of all the members to which the board  
6 of regents is entitled shall be necessary to make any action of  
7 the board of regents valid. The board shall meet at least ten  
8 times annually and, from time to time, may meet in each of the  
9 counties of Hawaii, Maui, and Kauai.

10 ~~[(e)]~~ (d) The governor shall notify the ~~[regents]~~  
11 candidate advisory council for the board of regents of the  
12 University of Hawaii in writing within ten days of receiving  
13 notification that a member of the board of regents is resigning,  
14 has died, or is being removed by the governor.

15 ~~[(d)]~~ (e) The members of the board of regents shall serve  
16 without pay but shall be entitled to their travel expenses  
17 within the State when attending meetings of the board or when  
18 actually engaged in business relating to the work of the board."

19 SECTION 4. Section 304A-104.5, Hawaii Revised Statutes, is  
20 repealed.

21 ~~["§304A-104.5 Regents candidate advisory council for the~~  
22 ~~board of regents of the University of Hawaii. (a) There is~~





1 ~~established the regents candidate advisory council for the board~~  
2 ~~of regents of the University of Hawaii to present to the~~  
3 ~~governor pools of qualified candidates from which the members of~~  
4 ~~the board of regents shall be nominated and, by and with the~~  
5 ~~consent of the senate, appointed by the governor. The regents~~  
6 ~~candidate advisory council shall establish the criteria for~~  
7 ~~qualifying, screening, and presenting to the governor candidates~~  
8 ~~for membership on the board of regents. The regents candidate~~  
9 ~~advisory council shall be attached to the University of Hawaii~~  
10 ~~for administrative purposes.~~

11 ~~(b) Except as provided in subsection (c), the regents~~  
12 ~~candidate advisory council shall present no fewer than two and~~  
13 ~~no more than four qualified candidates for each seat on the~~  
14 ~~board of regents to the governor within:~~

15 ~~(1) Sixty days of a vacancy that arises by resignation,~~  
16 ~~death, or removal by the governor; or~~

17 ~~(2) One hundred twenty days prior to the expiration of a~~  
18 ~~term.~~

19 ~~The regents candidate advisory council shall be deemed to have~~  
20 ~~fulfilled its obligation under this section upon presentation of~~  
21 ~~the names of the minimum number of candidates required to be~~  
22 ~~presented for each seat or seats on the board of regents.~~



1       ~~(c) When there are multiple seats vacant within the same~~  
2 ~~county or within the at large membership, the regents candidate~~  
3 ~~advisory council shall present candidates for seats on the board~~  
4 ~~of regents to the governor as follows:~~

5       ~~(1) For two seats from the same county or two at large~~  
6       ~~seats, no fewer than four and no more than six~~  
7       ~~candidates;~~

8       ~~(2) For three seats from the same county, no fewer than~~  
9       ~~five and no more than eight candidates; and~~

10       ~~(3) For more than three seats, the regents candidate~~  
11       ~~advisory council shall determine appropriate minimum~~  
12       ~~numbers of candidates, which shall provide for at~~  
13       ~~least three candidates for the final seat, and maximum~~  
14       ~~numbers of candidates.~~

15       ~~(d) In making its presentations, the regents candidate~~  
16 ~~advisory council shall:~~

17       ~~(1) Develop a statement that includes the selection~~  
18       ~~criteria to be applied and a description of the~~  
19       ~~responsibilities and duties of a member of the board~~  
20       ~~of regents and distribute this statement to potential~~  
21       ~~candidates;~~



- 1       ~~(2) Screen and qualify candidates for each position on the~~  
2       ~~board of regents based on their background,~~  
3       ~~experience, and potential for discharging the~~  
4       ~~responsibilities of a member of the board of regents,~~
- 5       ~~(3) Publicly advertise pending vacancies and actively~~  
6       ~~solicit and accept applications from potential~~  
7       ~~candidates;~~
- 8       ~~(4) Develop and implement a fair, independent, and~~  
9       ~~nonpartisan procedure for selecting candidates to~~  
10       ~~serve on the board of regents;~~
- 11       ~~(5) Ensure student involvement by establishing a student~~  
12       ~~advisory group composed of:~~
- 13       ~~(A) The senior student affairs officer of the~~  
14       ~~University of Hawaii system;~~
- 15       ~~(B) No fewer than three student representatives from~~  
16       ~~the University of Hawaii student caucus who shall~~  
17       ~~represent, to the maximum extent possible, the~~  
18       ~~interests of the various University of Hawaii~~  
19       ~~campuses on each island; and~~
- 20       ~~(C) No fewer than three student life advisers who~~  
21       ~~shall represent, to the maximum extent possible,~~



1           ~~the interests of the various University of Hawaii~~  
2           ~~campuses on each island,~~  
3           ~~who shall work with and assist the regents candidate~~  
4           ~~advisory council to recruit and evaluate candidates~~  
5           ~~for the student member of the board of regents and~~  
6           ~~make recommendations to the regents candidate advisory~~  
7           ~~council based on the qualifications of the candidates~~  
8           ~~applying for the position; and~~

9           ~~(6) Require each candidate to disclose any existing or~~  
10           ~~anticipated contracts with the University of Hawaii or~~  
11           ~~any existing or anticipated financial transactions~~  
12           ~~with the University of Hawaii.~~

13           ~~Upon submission of the names of candidates to the governor, the~~  
14           ~~regents candidate advisory council shall make available the~~  
15           ~~names of candidates to the public through the University of~~  
16           ~~Hawaii.~~

17           ~~(e) For each board seat to be filled, the governor shall~~  
18           ~~select one nominee from among the candidates submitted by the~~  
19           ~~regents candidate advisory council.~~

20           ~~(f) The regents candidate advisory council shall consist~~  
21           ~~of seven members to be appointed without regard to section 26-34~~  
22           ~~as follows:~~



- 1       ~~(1) One member shall be appointed by the president of the~~  
2           ~~senate;~~
- 3       ~~(2) One member shall be appointed by the speaker of the~~  
4           ~~house of representatives;~~
- 5       ~~(3) One member shall be appointed by the governor;~~
- 6       ~~(4) One member shall be appointed by one of the co chairs~~  
7           ~~of the All Campus Council of Faculty Senate Chairs of~~  
8           ~~the University of Hawaii. A person may not be~~  
9           ~~appointed as a member of the regents candidate~~  
10          ~~advisory council under this paragraph, if within the~~  
11          ~~five years immediately preceding that appointment, the~~  
12          ~~person served on the All Campus Council of Faculty~~  
13          ~~Senate Chairs of the University of Hawaii;~~
- 14       ~~(5) One member shall be appointed by the chairperson of~~  
15           ~~the Executive Council of the University of Hawaii~~  
16           ~~Student Caucus. A person may not be appointed as a~~  
17           ~~member of the regents candidate advisory council under~~  
18           ~~this paragraph, if within one year immediately~~  
19           ~~preceding that appointment, the person served on the~~  
20           ~~Executive Council of the University of Hawaii Student~~  
21           ~~Caucus;~~



1       ~~(6) One member shall be appointed by the chairperson of~~  
2           ~~the Association of Emeritus Regents; and~~  
3       ~~(7) One member shall be appointed by the president of the~~  
4           ~~University of Hawaii Alumni Association;~~  
5 ~~provided that members appointed under paragraphs (4) to (7)~~  
6 ~~shall be selected from the general public and may include~~  
7 ~~members of the constituencies represented; provided further that~~  
8 ~~each appointee satisfies the requirements for appointment~~  
9 ~~provided in this subsection.~~

10       ~~The regents candidate advisory council shall be selected in~~  
11 ~~a wholly nonpartisan manner. Appointees to the regents~~  
12 ~~candidate advisory council shall have a general understanding of~~  
13 ~~the purposes of higher education, the mission of the University~~  
14 ~~of Hawaii system, and the responsibilities of the board of~~  
15 ~~regents. Appointees shall be individuals who are widely viewed~~  
16 ~~as having placed the broad public interest ahead of special~~  
17 ~~interests, having achieved a high level of prominence in their~~  
18 ~~respective professions, and being respected members of the~~  
19 ~~community.~~

20       ~~(g) Members of the regents candidate advisory council~~  
21 ~~shall serve four year terms.~~



1       ~~(h) If a vacancy occurs, a successor shall be appointed in~~  
2 ~~the same manner and subject to the same qualifications as the~~  
3 ~~person's predecessor. The person appointed to fill a vacancy~~  
4 ~~shall serve for the remainder of the term of the person's~~  
5 ~~predecessor.~~

6       ~~(i) The regents candidate advisory council shall operate~~  
7 ~~in a wholly nonpartisan manner. No individual, while a member~~  
8 ~~of the regents candidate advisory council, shall run for or hold~~  
9 ~~any elected office under the United States or the State or any~~  
10 ~~of its political subdivisions.~~

11       ~~(j) The members of the regents candidate advisory council~~  
12 ~~shall choose a chairperson from among themselves. A majority of~~  
13 ~~all the members to which the regents candidate advisory council~~  
14 ~~is entitled shall constitute a quorum to conduct business. The~~  
15 ~~concurrence of a majority of all the members to which the~~  
16 ~~regents candidate advisory council is entitled shall be~~  
17 ~~necessary to make any action of the regents candidate advisory~~  
18 ~~council valid. The regents candidate advisory council shall~~  
19 ~~meet annually and at other times as necessary. The regents~~  
20 ~~candidate advisory council shall be exempt from part I of~~  
21 ~~chapter 92.~~



1       ~~(k) Members of the regents candidate advisory council~~  
2 ~~shall serve without compensation but shall be reimbursed for~~  
3 ~~expenses, including travel, board, and lodging expenses,~~  
4 ~~necessary for the performance of their duties.~~

5       ~~(l) Notwithstanding chapter 92F or any other law to the~~  
6 ~~contrary, all information required by the regents candidate~~  
7 ~~advisory council shall be confidential, including without~~  
8 ~~limitation, all council information obtained, reviewed, or~~  
9 ~~considered before and after council decisionmaking.~~

10 ~~Confidential regents candidate advisory council information~~  
11 ~~shall include documents, data, or other information that are not~~  
12 ~~of public record, including without limitation, personal~~  
13 ~~financial information; the names of applicants; applications and~~  
14 ~~the personal, financial, and other information contained therein~~  
15 ~~submitted by the applicants to the regents candidate advisory~~  
16 ~~council; interviews; schedules; reports; studies; background~~  
17 ~~checks; credit reports; surveys and reports prepared for or on~~  
18 ~~the regents candidate advisory council's behalf; the results of~~  
19 ~~any evaluations or assessments conducted by the regents~~  
20 ~~candidate advisory council; the substance and details of any~~  
21 ~~discussions with regents candidate advisory council members; and~~  
22 ~~the substance and details of discussions and deliberations of~~





1 ~~the regents candidate advisory council and any of its committees~~  
2 ~~during meetings." ]~~

3 SECTION 5. The members of the candidate advisory council  
4 for the board of regents of the University of Hawaii who are  
5 serving on the effective date of this Act shall serve until the  
6 council is reconstituted by the appointment of the seven members  
7 to the council pursuant to this Act, at which time the members  
8 of the regents candidate advisory council who are serving on the  
9 effective date of this Act shall be discharged from office and  
10 the members appointed by the president of the senate, speaker of  
11 the house of representatives, and governor pursuant to this Act  
12 shall begin their service. The president of the senate, speaker  
13 of the house of representatives, and governor shall appoint the  
14 requisite number of members to the council no later than  
15 days after the effective date of this Act.

16 SECTION 6. Statutory material to be repealed is bracketed  
17 and stricken. New statutory material is underscored.

18 SECTION 7. This Act shall take effect on July 1, 2050.



**Report Title:**

University of Hawaii Board of Regents; Candidate Advisory  
Council

**Description:**

Amends the form and function of the candidate advisory council  
for the board of regents of the University of Hawaii. Repeals  
section 304A-104.5, HRS. Effective 7/1/50. (SD3)

*The summary description of legislation appearing on this page is for informational purposes only and is  
not legislation or evidence of legislative intent.*





EXECUTIVE CHAMBERS  
HONOLULU

NEIL ABERCROMBIE  
GOVERNOR

Thursday, March 14, 2013, 2:00 PM  
State Capitol Room 309

Testimony of  
Policy Office of the Governor, State of Hawaii

To the House Committee on Higher Education  
Representative Isaac Choy, Chair, Higher Education Committee  
Representative Linda Ichiyama, Vice Chair, Higher Education Committee

SB 563\_SD3 - Relating to the Research University of Hawaii

Chair Choy, Vice Chair Ichiyama, and Committee Members:

Thank you for the opportunity to provide testimony in support of Senate Bill 563, Senate Draft 3 (SB563\_SD3). 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 3 also makes the duration of RCAC members' terms 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\_SD3 provides additional flexibility by allowing the Governor to appoint five of seven members of the RCAC, including a student, in addition to the members appointed by the Speaker of the House and Senate President. Members would serve for the duration of the term of the person who appointed them.

SB563\_SD3 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\_SD3, 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\_SD3 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\_SD3 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."

The UH and state are best served by a process that increases the Governor's flexibility to appoint Regents. SB583\_SD3 provides this opportunity by changing the composition of the RCAC.

Thank you for your consideration.



EXECUTIVE CHAMBERS

HONOLULU

NEIL ABERCROMBIE  
GOVERNOR



University of Hawai'i  
**Regents Candidate Advisory Council**

Karl Fujii, Chair  
L. Thomas Ramsey, Secretary  
Andres Albano, Member  
Joseph Blanco, Member  
Nelson Befitel, Member  
Sommerset Wong, Member

THE HONORABLE REPRESENTATIVE ISAAC W. CHOY, CHAIR  
House Committee on Higher Education  
Hawaii State Legislature  
Regular Session of 2013  
State of Hawaii

March 13, 2013

LEGISLATIVE TESTIMONY IN OPPOSITION TO  
S. B. 563, S.D. 3  
RELATING TO THE UNIVERSITY OF HAWAII

Hearing Date:  
Thursday, March 14, 2013, 2:00 p.m., Conference Room 309

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

Chair Choy, Vice-Chair Ichiyama, and members of the House Committee on Higher Education

The officers of the Regents Candidate Advisory Council (RCAC) of the University of Hawaii submit testimony in opposition to S. B. 563, S.D.3.

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 304A-104.5, HRS.

We call to the committee's attention language that was contained in the Senate Higher Education 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 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.

#### Temporarily Placing the RCAC in the Office of the Governor for Administrative Purposes

Currently, the RCAC is administratively attached to the University of Hawaii. The bill proposes to temporarily place the Council in the Office of the Governor for administrative purposes. Such action clearly usurps the intent of the constitutional amendment of an independent screening body assisting in the nominating process. Such action greatly diminishes and degrades the Council's sole focus of screening regent candidates by commingling its screening process with screening processes of other state boards and commissions.

The proposed action also conflicts with the February 16, 1996 State Attorney General Opinion (96-01), attached hereto, which states “any agency that is not temporary and for special purposes cannot be validly placed within the Office of the Governor.” It would be difficult to reasonably justify how relocating the RCAC to the Executive Chambers would strengthen the functions of the Council, much less demonstrate how the Council’s activity is temporary in nature as its function is mandated by the State Constitution.

#### Election of Board of Regents Leadership

One of the important focuses of the hearings conducted by the Senate Special Committee on Accountability was board governance and the importance of board leadership. In 2010, there was an amendment to HRS Section 304A-104 to elect the officers of the BOR at a meeting prior to July 1<sup>st</sup> of each year.

We believe one way to improve leadership is to amend HRS 304A-104(b) and restore the past practice of new regent board members participating in the selection of the board chair and vice-chair. Amending this section of the law back in 2010 resulted in allowing outgoing regents to select the chair of the board for the following year and truncate newly-appointed regents from participating in the selection of the board chair. The board chair determines regent committee assignments, committee chairs, and all items placed on the board’s agenda.

#### Coterminous Appointments

We propose Chapter 304A be modified to allow for the appointment of the Governor, Speaker of the House, and President of the Senate to the Council to run coterminous with the office terms of each respective appointing authority. Doing so will insure that each of their appointees serve at the pleasure of the appointing authority. We also believe that this change will further strengthen and enhance the Council’s ability to recruit regent candidates and improve the Council’s interaction with many of the university stakeholders.

#### Summary

In closing, we respectfully urge the Committee not to amend the current form and function of the Regents Candidate Advisory Council nor attempt to temporarily place the Council under the Office of the Governor for administrative purposes.

We do strongly urge amending Chapter 304A to allow for coterminous appointments of certain members of the Council and to restore the practice of allowing incoming regents, not outgoing regents, to select their board leadership.

Karl Fujii, Chair  
L. Thomas Ramsey, Secretary  
Regents Candidate Advisory Council  
University of Hawaii  
Ph.: 808.692.1218; Email: [borapp@hawaii.edu](mailto:borapp@hawaii.edu)

Attachments



February 16, 1996

The Honorable Benjamin J. Cayetano  
Governor of Hawaii  
State Capitol  
Honolulu, Hawaii 96813

Dear Governor Cayetano:

Re: Organizational Placement of Executive Branch Agencies

By memorandums dated February 2 and 11, 1996, a member of your staff requested a copy of written legal advice that your staff member incorrectly believed to have been already issued regarding the constitutional validity of the placement of state executive branch agencies placed within the Office of the Governor. Although we had orally advised you of our concern about the constitutional validity of the placement of those agencies, we have not previously issued an opinion that explains our concerns. Consequently, this opinion serves to confirm our previous oral advice and to provide further explanation in support of our advice.

We believe that the first paragraph of section 6 of article V of the Constitution of the State of Hawaii requires that state executive branch agencies be placed within the principal departments of the executive branch of state government, unless they are commissions or agencies that are both temporary and for special purposes. The Office of the Governor is not a principal department of the executive branch of state government. Therefore, any agency that is not temporary and for special purposes cannot be validly placed within the Office of the Governor.

The first paragraph of section 6 of article V of the State Constitution provides as follows:

All executive and administrative offices, departments and instrumentalities of the state government and their respective powers and duties shall be allocated by law among and within not more than twenty principal departments in such a manner as to group the same according to common purposes and related functions. Temporary commissions or agencies for special purposes may be established by law and need not be allocated within a principal department. ([top](#))

The requirement of allocation by law among and within not more than twenty principal departments was originally proposed in Committee Proposal No. 22 of the Committee on Executive Powers and Functions of the Constitutional Convention of Hawaii of 1950. As originally proposed, the allocation requirement was in the first paragraph of section 10 of Committee Proposal No. 22, which read as follows:

SECTION 10. [Executive and Administrative Offices and Departments.] All executive and administrative offices, departments and instrumentalities of the State government and their respective functions, powers and duties shall be allocated by law among and within not more than 20 principal departments, in such manner as to group the same according to major purposes so far as practicable. Temporary commissions for special purposes may, however, be established by law and such commissions need not be allocated within a principal department. ([top](#))

1 Proceedings of the Constitutional Convention of Hawaii 1950, at 221 (1960).

In Standing Committee Report No. 67, the Committee on Executive Powers and Functions stated in part as follows:

Section 10 deals with executive and administrative offices and departments.

At the outset it should be declared that said Section 10 incorporates paragraphs 1, 2 and 4, Section IV, Article V of the New Jersey Constitution, with some modifications.

The number of principal departments in the executive branch shall be limited to not more than 20 and the Legislature shall be required to allocate the existing departments, boards and other agencies among and within the 20 or less principal departments. ([top](#))

1 Proceedings of the Constitutional Convention of Hawaii 1950, at 217 (1960).

During the Committee of the Whole debates held on June 20, 1950, Delegates Randolph Crossley of Kapaa, Kauai, and W. Harold Loper and Harold S. Roberts of Honolulu, Oahu, discussed the purposes of the allocation of agencies within a limited number of departments:

CROSSLEY: I'd like to continue, if I could, uninterrupted. I was trying to point out that when you look at states like New Jersey, that is limited and does operate under 20, and some of these other states, that the whole purpose of trying to get a fewer number of boards is just to prevent what the previous speaker is talking about, and that is that every man who is going to be in charge of some division of government will have an entire independent setup of his own. If you limit the number, it will be found that those functions of government that are well related can be brought together and put under a single department without losing any of the efficiency. As a matter of fact, every single study that has been made on this subject, every revision of a state constitution, has brought about a limiting of the number for the sole purpose of bringing together these departments and trying in that manner to cut the cost of government and to bring about a more efficient government in so doing. ([top](#))

. . . .

LOPER: I wish to speak in support of the committee report and the position taken by the delegate from Kauai and add just this additional argument, which I don't believe has been brought out. Part of the reason for limiting the number to 20 is based upon a principle of organization, good administrative organization whether military, business or governmental, and that is that there is a limit to the spread of supervisory authority and responsibility, and by limiting it -- as a matter of fact 20 is too many to be supervised by any one executive -- but by limiting it, it's an invitation when some new function of government comes along, to find one of the existing departments to assign it to instead of setting up another commission or department. ([top](#))

. . . .

ROBERTS: I'd like to speak in support of the proposal. The section, to me, is a very valuable one. It goes to the very heart of proper executive function and integration of operations so that the governor, the chief executive, has a limited number of departments that he, personally, can keep in touch with and can follow the functions and operations of those departments. The section does not spell out how the existing departments are to be allocated, that is left for the legislature. The legislature then can re-allocate and place the departments where they think they properly belong. This proposal merely provides an adequate method of administration with a limited number of departments so that the executive can keep personally in touch with their operation and see to it that the executive functions are effectively carried out in the State. I think the purpose is good and I think we ought to support the proposal. ([top](#))

2 Proceedings of the Constitutional Convention of Hawaii 1950, at 318-19 (1961).

In accordance with the first paragraph of section 6 of article V of the State Constitution, section 26-4, Hawaii Revised Statutes, provides that, "[u]nder the supervision of the governor, all executive and administrative offices, departments, and instrumentalities of the state government

and their respective functions, powers, and duties shall be allocated among and within the following principal departments that are hereby established," and lists the eighteen state executive branch agencies established as principal departments of the state executive branch. The offices of the Governor and of the Lieutenant Governor are constitutional offices established by sections 1 and 2 of article V of the State Constitution and are not principal departments of the state executive branch listed in section 26-4. ([top](#))

The second sentence of the first paragraph of section 6 of article V of the State Constitution does provide for an exception to the requirement of allocation by law within a principal department. The second sentence states, "Temporary commissions or agencies for special purposes may be established by law and need not be allocated within a principal department." We initially did have some uncertainty whether this sentence referred to "commissions or agencies" that are both "temporary" and "for special purposes" or whether this sentence referred to "temporary commissions" and "agencies for special purposes." Hawaii's provision was based on the New Jersey Constitution, which states in paragraph 1 of section IV of article V, "Temporary commissions for special purposes may, however, be established by law and such commissions need not be allocated within a principal department." The requirements of "temporary" and "for special purposes" both applied to the commissions referred to. However, there still remained the question of whether the Hawaii Constitution's wording was deliberately changed to make the requirement of "temporary" status applicable only to "commissions" and the requirement of "for special purposes" applicable only to "agencies." We believe that the wording was not substantively changed. ([top](#))

Committee Proposal No. 22, Relating to the Executive, originally contained the same wording as the New Jersey Constitution, "Temporary commissions for special purposes may, however, be established by law and such commissions need not be allocated within a principal department." 1 Proceedings of the Constitutional Convention of Hawaii 1950, at 221 (1960). The Committee of the Whole of the Constitutional Convention of Hawaii of 1950 reported on the pertinent provision in Committee Proposal No. 22, R.D. 1, stating, "Section 10, 1st paragraph, is recommended for adoption without amendment." Comm. of the Whole Rep. No. 17, 1 Proceedings of the Constitutional Convention of Hawaii 1950, at 325 (1960). Committee Proposal No. 22 passed second reading and was referred to the Committee on Style. The Committee on Style "examined each proposal agreed upon in the Committee of the Whole, studied the language of the proposal and arranged it as an article, or part of an article, within the format of the constitution, but without changing the substance or meaning of the article approved by the convention at second reading." 1 Proceedings of the Constitutional Convention of Hawaii 1950, Preface at ix (1960) (emphasis added). ([top](#))

In Standing Committee Report No. 119, the Committee on Style reported on the provision originally designated as "section 10" in pertinent part as follows:

Section 6. (See Section 10 of original draft). The letter "s" in the word "state" (second line of paragraph 1) is not capitalized in the redraft, the word "state" in this instance being used as an adjective. The words "or agencies" have been inserted between the words "commissions" and "for" in lines 7-8, to conform to what your committee believes to have been the intent of the Convention.

The word "however," together with the commas setting it apart, have been deleted in line 8.

The words "such commissions" have been deleted before the word "need" in line 9, as unnecessary in view of the reconstruction of the sentence.

1 Proceedings of the Constitutional Convention of Hawaii 1950, at 273 (1960) (emphasis added). As amended by the Committee on Style, the second sentence of the first paragraph read, "Temporary commissions or agencies for special purposes may be established by law and need not be allocated within a principal department." 1 Proceedings of the Constitutional Convention of

Hawaii 1950, at 274 (1960). The sentence remains unchanged in the current constitution. ([top](#))

The report of the Committee on Style was presented to the convention on July 11, 1950, and was adopted without any reported discussion. 1 Proceedings of the Constitutional Convention of Hawaii 1950, at 120 (1960). With a further amendment on the floor (to add another sentence regarding interim appointments), Committee Proposal No. 22, Relating to the Executive, passed third reading on July 14, 1950. 1 Proceedings of the Constitutional Convention of Hawaii 1950, at 126 (1960).

Consequently, since the words "or agencies" were inserted by the Committee on Style, which was to make changes without changing the substance or meaning, we believe that the "commissions or agencies" referred to in the second sentence of the first paragraph of section 6 of article V of the State Constitution must meet both of the stated requirements and must be both "temporary" and "for special purposes." ([top](#))

In conclusion, we believe that "offices" or other agencies created by law and not placed within a principal department of the state executive branch, "in such a manner as to group the same according to common purposes and related functions," are subject to attack as being invalidly placed in violation of the first sentence of the first paragraph of section 6 of article V of the State Constitution. However, if the "offices" or other agencies are temporary and for special purposes, they may be established by law and need not be allocated within a principal department pursuant to the second sentence of the first paragraph of section 6 of article V of the State Constitution. ([top](#))

Very truly yours,

Maurice S. Kato  
Deputy Attorney General

APPROVED:

Margery S. Bronster  
Attorney General

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103LEGI01

## Suggested proposed changes to 304A-104 (b)

SECTION 1. Section 304A-104, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) At its first meeting after June 30, ~~[a meeting preceding July 1 of each year],~~ the board of regents shall elect a chairperson and vice-chairperson, who shall serve until adjournment of its first meeting after ~~[up to two vice-chairpersons whose terms shall be from July 1 to]~~ June 30 of the next year or thereafter until their successors are appointed.~~[elected.]~~ The board shall appoint a secretary, who shall not be a member of the board. The president of the university shall act as executive officer of the board. A majority of the board of regents shall constitute a quorum to conduct business, and the concurrence of a majority of all the members to which the board of regents is entitled shall be necessary to make any action of the board of regents valid. The board shall meet at least ten times annually and, from time to time, may meet in each of the counties of Hawaii, Maui, and Kauai."

# **ASSOCIATION OF EMERITUS REGENTS**

## **University of Hawai'i**

Testimony Submitted by the  
Officers of the Association of Emeritus Regents of the University of Hawaii  
to the  
House Committee on Higher Education

March 14, 2013  
2:00 p.m., CR 309

### **SB 563, SD 3 – RELATING TO THE UNIVERSITY OF HAWAII**

LEGISLATIVE TESTIMONY SUPPORTING THE INTENT OF SENATE BILL 563, SD3, AND  
RECOMMENDING SOME PROPOSED TECHNICAL AMENDMENTS.

Chair Choy, Vice Chair Ichiyama and Members of the House Committee on Higher Education:

The Officers of the Association of Emeritus Regents of the University of Hawaii support the spirit and intent of SB 563, SD3, empowering the Governor, the Speaker of the House and the Senate President to appoint members of the Regent Candidate Advisory Council (RCAC), and recommend some proposed amendments to SB 563, SD3.

We are of the opinion that by having the Governor appoint the majority of the RCAC members, the Governor will thereby become more responsible and accountable to the citizenry as to how effective the Board of Regents perform in meeting the difficult challenges that public higher education system faces throughout the Nation.

We hereby propose the following amendments to SB 563, SD3:

SECTION 2, Page 4, line 1 through line 3, be amended to read as follows:

- “(2) One member shall be appointed by the speaker of the house of representatives; and  
(3) One member shall be the emeritus chair of the Association of Emeritus Regents; and  
(4) [Five] Four members shall be appointed by the governor;”

COMMENT: We believe that this person will be invaluable because he or she will have vast knowledge and experience regarding university governance, procedures and policies.

SECTION 3, page 6, line 7, be amended to read:

“qualified candidates. Members may be removed by the governor for cause.”

We also highly recommend that language for Section 304A-104(c), Hawaii Revised Statutes, as provided in SB 563, SD3, SECTION 3, page 7, line 19, through page 8, line 9, be deleted and be replaced with the former statute for the most part, to read as follows:

~~[(b)]~~ (c) At its first meeting after June 30, the board of regents shall elect a chairperson and vice-chairperson, who shall serve until adjournment of its first meeting after June 30 of the next year or thereafter until their successors are appointed. The board shall appoint a secretary, who shall not be a member of the board. The president of the university shall act as executive officer of the board. A majority of the board of regents shall constitute a quorum to conduct business, and the concurrence of a majority of all the members to which the board of regents is entitled shall be necessary to make any action of the board of regents valid. The board shall meet at least ten times annually and, from time to time, may meet in each of the counties of Hawaii, Maui, and Kauai."

COMMENTS: The former statute approved by the 2007 Legislature provided that officers of the BOR be elected after June 30 of each year. There was no provision for establishing two vice-chairpersons. It was left up to the Regents as set forth in their by-laws. It also makes practical sense for the new, incoming Regents to select the officers. It is illogical for the outgoing Regents whose term expires on June 30 of each year to select the officers for the ensuing year when they are no longer a Regent.

In closing, we respectfully request that the Committee consider these suggested amendments as being in the best interest of the University of Hawaii.

Thank you for the opportunity to testify on this measure.

Respectfully submitted,  
Stanley Mukai, Chairman  
Duane Kurisu, Vice Chairman  
Roy Takeyama, Secretary  
Trent Kakuda, Treasurer