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**TESTIMONY
OF
SARAH ALLEN, ADMINISTRATOR
STATE PROCUREMENT OFFICE**

**TO THE SENATE COMMITTEE
ON
WAYS AND MEANS**

April 4, 2017, 9:35 AM

**House Bill 424 HD1 SD1
RELATING TO THE UNIVERSITY OF HAWAII**

Chair Tokuda, Vice-Chair Dela Cruz, and members of the committee, thank you for the opportunity to submit testimony on HB 424 HD1 SD1. The State Procurement Office (SPO) supports SECTIONS 2 and 3 of the bill amending sections 103D-203 and 304A-2672, Hawaii Revised Statutes (HRS) to reinstate the President of the University of Hawaii (UH) as the Chief Procurement Officer (CPO) for contracts for construction and construction-related professional services furnished by licensees under chapter 464.

Act 87, SLH 2013 (HB 114) "Relating to Higher Education" was signed into law on May 31, 2013. By enacting Act 87, the Legislature amended HRS §103D-203 and §304A-2672 by repealing the authority of the President of the UH to serve as the CPO for construction contracts and professional services, furnished by licensees under chapter 464 (i.e. Engineers, Architects, Surveyors, and Landscape Architects), related to construction contracts and assigned those responsibilities to the Administrator of the SPO.

To implement the requirements of this Act, the SPO issued UH Procurement Delegation No. 2013-01 delegating procurement authority to the UH President as well as a Memorandum of Agreement (MOA) delineating SPO's oversight responsibilities and UH's responsibilities and procedures. The SPO also imposed a high-level oversight role in order to evaluate the UH's construction procurement practices by collecting and reviewing data related to the UH's construction procurements for FYs 14 and 15, in order to provide fact-based report to the Legislature by January 2016.

The SPO's report documented the extensive oversight, reviews, cooperation and coordination between the SPO and the UH on procurements for construction and construction-related professional services. As documented in the report, between July 1, 2013 to June 30, 2015, the SPO reviewed 102 University solicitations for construction out of 373 construction procurements

conducted by UH during that time. The reviews included solicitations for competitive sealed bids, professional services, and small purchases. The SPO also provided oversight of post-award procurement activities by conducting eleven (11) construction site visits and three (3) desktop reviews of on-going projects.

Based on the SPO's review of 102 UH construction procurements, UH's Administrative Procedures, and 14 post-award site visits, the SPO found that the UH is conducting construction procurements in a compliant, efficient, and transparent manner. As such, based on the SPO's findings and recommendations, the SPO supports reinstating the UH President's full authority to act as the Chief Procurement Officer for all the UH's procurements, including the procurement of construction and construction-related professional services.

Thank you.



UNIVERSITY OF HAWAII SYSTEM

Legislative Testimony

Testimony Presented Before the
Senate Committee on Ways and Means
April 4, 2017 at 9:35 a.m.

By
Jan Gouveia, Vice President for Administration
and
Kalbert K. Young, Vice President for Budget and Finance/CFO
University of Hawai'i System

HB 424 HD1 SD1 – RELATING TO THE UNIVERSITY OF HAWAII

Chair Tokuda, Vice Chair Dela Cruz, and members of the committee:

Thank you for the opportunity to submit testimony on this measure. The University of Hawai'i strongly supports of Part I and opposes Part II of HB 424 HD1 SD1. Part I amends sections 103D-203 and 304A-2672, Hawai'i Revised Statutes (HRS), to reinstate the President of the University of Hawai'i as the chief procurement officer for contracts for construction and construction-related professional services. Part II adds to the University of Hawai'i Board of Regents (BOR) two ex officio nonvoting members who are faculty at the university; prohibits the BOR from increasing tuition fees until an unspecified date; and requires the university to report to the legislature regarding tuition increases and the university's repair and maintenance costs.

PART I

Historically, the President of the University of Hawai'i has been afforded the duties, powers and authority of a chief procurement officer – similar to the Administrative Director of the Courts for the Judiciary, President of the Senate, Speaker of the House of Representatives, Chairperson of the Board of the Office of Hawaiian Affairs, Superintendent of the Department of Education, CEO of Hawai'i Health Systems Corporation, the Administrator of the State Procurement Office, the respective finance directors of the counties, the respective chairpersons of the councils of the counties, the managers and chief engineers of the respective county boards of department water supply, and director of the semi-autonomous public transit agency.

In 2013, Act 87, SLH 2013 (HB 114), was signed into law that, among other things, amended HRS §§103D-203 and 304A-2672 to:

- Require the Administrator of the State Procurement Office (SPO), rather than the University of Hawai'i President, to serve as the Chief Procurement Officer for construction-related procurements;
- Require all procurements for professional services furnished by licensees under chapter 464 (i.e. Engineers, Architects, Surveyors, and Landscape Architects) for construction projects to be “coordinated” with the Department of Accounting and General Services (DAGS); and
- Require SPO to submit a report to the legislature, no later than twenty days prior to the convening of the regular session of 2016, of the Administrator's findings and recommendations, including any proposed legislation, relating to the transparency,

efficiency, and compliance of the University of Hawai'i's procurement of construction contracts and construction-related consultant services pursuant to chapter 103D, HRS.

The chief procurement officer plays an integral role in the day-to-day transactions of all procurements under chapter 103D, HRS – which is an already complicated and time-consuming effort. It became further complicated and time consuming when this role was transferred to the Administrator for SPO, along with the additional requirement of coordinating with DAGS. Fortunately, the Administrator for SPO and the Public Works Director for DAGS handled the situation with professionalism and sensitivity to their impact on UH's CIP program, and all parties agreed to some basic parameters and a process for all construction-related procurements.

In accordance with the Act, the SPO Administrator submitted a report to the 2016 Legislature entitled, "State Procurement Office Findings and Recommendations Relating to the University of Hawai'i's Procurement of Construction Contracts and Construction-Related Consultant Services Pursuant to Chapter 103D Hawai'i Revised Statutes as Required by Act 87, SLH 2013, 'Relating to Higher Education.'"

The report documents the extensive oversight, reviews, cooperation and coordination between the University and the SPO on procurements for construction and construction-related professional services. As documented in the report, between July 1, 2013 to June 30, 2015, the SPO reviewed 102 University solicitations for construction out of 373 construction procurements conducted by UH during that time. The reviews included solicitations for competitive sealed bids, professional services, and small purchases. The SPO also provided oversight of post-award procurement activities by conducting eleven (11) construction site visits and three (3) desktop reviews of on-going projects.

The conclusion to the report stated:

"Based on SPO's review of 102 UH construction solicitations, UH's Administrative Procedures, and fourteen (14) post-award Site Visits, SPO finds that UH is conducting construction procurements in a compliant, efficient, and transparent manner."

The SPO report set forth minimal recommendations for improvement and, in fact, lauded some University-specific procedures as "best-practices." While the University has implemented the SPO recommendations, it has continued to improve the efficiency, transparency and compliance of its capital program since the Report:

1. To ensure strict compliance with the Hawai'i Public Procurement Code, the University has extensively revised policies and procedures related to the procurement of construction and professional services to align with Section 103D HRS and its related Hawai'i Administrative Rules.
2. To ensure the prudent and transparent expenditure of public funds, the University established a core staff of procurement professionals, dedicated solely to the procurement of construction and construction-related professional services.
3. The University has adopted the Hawai'i Electronic Procurement System (HePS) which provides real-time and immediate access to by all interested contractors, consultants

and vendors to construction solicitations, bidder submittals, and public notice of awards on a single, online platform.

4. To ensure the prudent and transparent management of public funds, the University has acquired a collaborative, cloud-based construction project management system called e-Builder®. The goal is to provide visibility into the status of our construction projects so all stakeholders have access to real-time information and ensure projects are delivered on-time and on-budget. As a web-based solution, it captures project data and utilizes electronic workflow to track business processes and generate reports that support a capital program at both the micro and macro level.

The University has tremendous regard for the Administrator and the entire State Procurement Office team. We appreciate the long-standing relationship based on respect and professional courtesy. However, under the current structure imposed by Act 87 in 2013, the University has been operating under a bifurcated procurement system. There is one set of procedures, templates, forms and approval work flows specific to goods and services, for which the University President serves as the chief procurement officer; and another set of processes for construction and construction-related professional services that utilize the SPO forms, templates, and procedures, for which the SPO Administrator serves as the chief procurement officer for the University. This dual authority structure also causes confusion for UH personnel with procurement requirements, support staff processing procurement and related documents, and, more importantly, the vendor and contracting community who bid on University projects.

With the finding by SPO set forth in its Report to the Legislature that “UH is conducting construction procurements in a compliant, efficient, and transparent manner,” and the additional improvements that the University has made specifically to the management and solicitation of its construction projects, the University believes full chief procurement officer authority should be restored to the President of the University. This is particularly important at a time when the University is expected to aggressively address its deferred maintenance backlog. With the additional safeguards and imposition of industry best practices, we believe the University has demonstrated that it can and will continue to conduct its construction procurements in a compliant, efficient, and transparent manner.

PART II

Section 6 and 9 of HB 424 HD1 SD1 adds two ex officio nonvoting UH faculty members to the BOR. The statute currently provides for a voting student regent and does not preclude a faculty member or additional students from applying and being selected to serve as a regent. The university does not support this part of the measure because it is contrary to the principles of good governance. Both the Board of Regents and the Administration have implemented increased opportunities for stakeholder input.

The University would like to also acknowledge the concerns expressed by the Association of Governing Boards of Universities and Colleges (AGB) regarding Part II of this bill. AGB finds the inclusion of faculty as members of the Board of Regents and the legislative capping of tuition increases to be problematic. AGB has expressed that “adding faculty representation can be contradictory to the values and best practices of citizen trusteeship” and “adding a legislative cap on tuition and fees would prevent the board of regents from fulfilling its fiduciary duty and authority to oversee and adjust university finances in a changing economy.”

Section 7 and 8 of this bill would prohibit the Board of Regents from approving any tuition increase for an unspecified time and require the University to submit a report regarding whether the tuition increases effective for the 2018-2021 academic years are assisting in addressing the university's R&M backlog.

Eliminating any tuition increases at the University is not a realistic means to fund a government operation. Tuition rate increases already go through a rigorous public notification and communication process, which are subject to the open meeting requirements of Chapter 92, Hawai'i Revised Statutes. Executive Policy 6.202 requires at least one such meeting be held on Hawai'i, Maui, Kaua'i, and O'ahu islands. These meetings, and the general public scrutiny regarding UH's tuition rates, already ensures a large amount of public input will be provided to the Board of Regents as it deliberates any tuition rate increases.

Regent Policy 6.202 states that:

"The ultimate intent of this policy is that every qualified Hawai'i citizen shall have an opportunity to pursue postsecondary education within the university system. Since tuition and mandatory fees are critical to access, they shall not be so uniformly high that they prevent qualified citizens from attending a campus of the university. As a general principle, the board subscribes to a tuition policy that seeks to keep costs to resident students at the lowest practical level while maintaining a financial aid program that responds to the needs of students who cannot meet the costs of attendance."

Tuition at the University of Hawai'i is significantly higher than a decade ago. The tuition rate increases during this period coincided with reductions in state general fund appropriations to the University. With general fund declines during the last recessionary (economic) cycle from 2009 and increasing costs, tuition revenues have been essential to maintaining operations. General fund appropriations are still lower today than in FY2009 levels (\$32 million, or 7% lower in FY2017) even though the University is serving more students than in 2009 and the most significant costs have risen, particularly as collective bargaining contracts have been re-negotiated.

Although tuition rates have increased, UH continues to be an affordable option compared to other public universities. In its "2016 College Affordability Diagnosis," the University of Pennsylvania Graduate School of Education found that Hawai'i ranked third overall as the most affordable state when considering the percentage of family income required for residents to finance the full cost of a public higher education. The Community Colleges were found to be the most affordable two-year public higher education institutions in the nation; Mānoa was ranked 5th among states in providing affordable access to a public research university education; and Hawai'i ranked 7th in affordable access to a public four-year non-doctoral institution education through its Hilo and West O'ahu campuses.

With the stabilization of General Fund appropriations by the legislature since the recession and support for collective bargaining increases, university has moderated our approach to tuition rates. Moving forward, the tuition schedule approved by the Board of Regents has NO INCREASES for Academic Year (AY) 2017-18 and the increases approved for AY2018-19 and AY2019-20 are a maximum of 2.0% based on the physical condition of the academic unit. The very modest increases in these latter two years will be fully dedicated to maintenance and modernization of university facilities in order to address the lack of state appropriations to

address the modernization and deferred maintenance needs across the UH System. None of the revenue associated with the approved tuition increases may be used for other operating expenses.

This plan to dedicate increased tuition revenues to campus facilities results from the lack of capital improvement program (CIP) appropriations to the University during a period in which the facilities have been aging. The approved future tuition increases could easily be rolled back if the State is able to fully fund needed campus modernization and maintenance; the University has already demonstrated its willingness to reduce approved tuition increases when the State was able to increase public support to cover costs that had been programmed into those previously approved tuition increases.

The UH Administration and the Board of Regents are very conscious of the impact of tuition increases on affordability. Both the Administration and Regents are focused on rebuilding UH's affordability and preserving accessibility, but funding to operate a world class university system must be achieved.

In summary, the University feels that there is a process in place which ensures that a considerable amount of public scrutiny and input is involved in the approval of any tuition increases. Likewise, improved communications between the Board of Regents and stakeholders provides additional opportunities for interaction and discussion with a greater audience.

As the state's sole public higher education system, the University remains steadfast in its commitment to providing access and quality education to Hawai'i's citizens. This commitment, as reflected in the University's Strategic Directions, remains the top priority of the University administration. The University has made every effort to maintain institutional aid and launch targeted student support initiatives that will get students to go to college, stay in college, and graduate on time.

Thank you for your time and consideration.



HAWAII GOVERNMENT EMPLOYEES ASSOCIATION
AFSCME Local 152, AFL-CIO

RANDY PERREIRA, Executive Director • Tel: 808.543 0011 • Fax: 808.528 0922

The Twenty-Ninth Legislature, State of Hawaii
The Senate
Committee on Ways and Means

Testimony by
Hawaii Government Employees Association

April 4, 2017

H.B. 424, H.D. 1, S.D. 1 - RELATING TO
THE UNIVERSITY OF HAWAII

The Hawaii Government Employees Association, AFSCME Local 152, AFL-CIO opposes a specific portion of H.B. 424, H.D. 1, S.D. 1 which adds two ex-officio non-voting members to the Board of Regents.

While we support the concept of shared governance and can appreciate the desire to increase communication between the Board of Regents and University employees, we respectfully do not believe that fundamentally changing the governance structure by adding two additional faculty as ex-officio members to the Board of Regents is the best approach. Being a faculty member, or any University employee for that matter, does not preclude one from applying for and becoming a Regent. In fact, there currently are two University of Hawaii employees who serve as Regents and bring their experiences – inclusive of employment status – to the table when making policy decisions.

We fully agree that the Board of Regents should represent diverse backgrounds and that there should be increased communication between the Board and its employees, however we do not believe this measure accomplishes that goal. Thank you for the opportunity to raise strong concerns over H.B. 424, H.D. 1, S.D. 1.

Respectfully submitted,

Randy Perreira
Executive Director

To: Senate Committee on Ways and Means
Honorable Senator Jill Tokuda, Chair
Honorable Senator Donovan Dela Cruz, Vice Chair



Date: Tuesday, April 4, 2017
Time: 9:35 AM
Place: Conference Room 211

Re: COMMENTS IN OPPOSITION TO HB424 HD1 SD1 – RELATING TO THE ADDITION OF FACULTY BOR MEMBERS AND THE PROHIBITION OF TUITION INCREASES AT THE UNIVERSITY OF HAWAII

Aloha Honorable Chair Tokuda, Honorable Vice Chair Dela Cruz, and Members of the Committee on Ways and Means:

As the University of Hawai'i Student Caucus (UHSC), representing approximately 49,000 students across the 10 campuses of the University of Hawai'i System, we would like to comment in **opposition** to HB 424 HD1 SD1, specifically as it relates to the addition of two faculty ex-officio nonvoting members to the UH Board of Regents and the prohibition of tuition increases by the Board of Regents.

In 2015 UH Student Caucus attempted to add a student seat and faculty seats to the UH Board of Regents but it did not pass due to the opinion that the union would strongly influence the Faculty Regents therefore creating a conflict of interest. In addition UH Student Caucus strongly believes that there needs to be more student representation on the UH Board of Regents in order to ensure equal and fair representation. No one on the Board, in Administration or amongst the Faculty would have their job if there were no students and therefore deserve an equal opportunity for representation and to voice their concerns and opinions.

Similar to our comments on SB 1161 as it related to the prohibition of tuition increases at the University of Hawaii, the UHSC is in **opposition** to this same addendum being added to HB 424 HD1 SD1. While the UHSC recognizes and appreciates the attempt to address increasing tuition costs and the Legislature's concerns over affordable access to continuing education, the UH Student Caucus has concerns about the source of funding for the University should tuition increases be prohibited for the next ten years. With college enrollment down across the nation and the ever-increasing cost of living, especially in Hawai'i, we think that incremental tuition increases should be expected and could even be considered as necessary to maintain the infrastructure and health of the college campuses throughout the system. With a tuition freeze as proposed by this bill, our concern is that there would be no mechanism in place to address potential shortfalls in funding for programs and services for students across the system. We alternatively support realistic and reasonable increases with a process that is transparent and open to student input and feedback at multiple points throughout the tuition-building discussions.

In addition, we feel that in accordance with the Constitution of the State of Hawai'i and the established Board of Regents Bylaws and Policies, the Board of Regents should retain their jurisdiction over the operation of the University, including overseeing tuition and fees.

Thank you for the opportunity to comment and for your consideration of our concerns.

Sincerely,
Kelli Acopan
Vice-Chair, UHSC

HAWAII STATE LEGISLATURE
MARCH 29, 2017
Hawaii State Legislature
Hawaii State Capitol
415 South Beretania Street
Honolulu, HI 96813

House Bill 424 SD1– Relating to the University of Hawaii
Letter of Concern

Richard D. Legon

President, Association of Governing Boards of Universities and Colleges

On behalf of the Association of Governing Boards of Universities and Colleges (AGB), I respectfully submit this letter in opposition to the current iteration of House Bill 424 SD1 (HB 424 SD1), which as amended would establish two ex-officio, non-voting faculty positions on the University of Hawaii Board of Regents, as well as establish a cap on tuition until an unspecified date. AGB recognizes House Bill 424 HD1, which passed the Hawaii House of Representatives, and opposes HB 424 SD1.

Established in 1921, AGB's mission is to educate the governing bodies of some 2000 institutions. We work with institution and state system leadership and their board members, providing education and counsel to over 40,000 leaders across higher education. AGB has helped to shape best practices in institution and board governance with a primary focus on institution mission achievement. AGB's board of directors, most of whom serve as college and university board members, is committed to advancing policies that strengthen and improve governance and leadership.

Unfortunately, HB 424 SD1 as amended is problematic for two reasons. First, adding faculty representation can be contradictory to the values and best practices of citizen trusteeship. Second, adding a legislative cap on tuition and fees would prevent the board of regents from fulfilling its fiduciary duty and authority to oversee and adjust university finances in a changing economy.

AGB recognizes that the Hawaii legislature wishes to strengthen input from faculty and students by including two faculty representatives on the board. However, adding faculty representation to accomplish that goal would significantly undermine effective governance. As a best practice, governing boards should not have designated voting or non-voting slots for faculty. Citizen trusteeship should be comprised of citizens who are independent in their individual and collective judgment. They should serve the people of the state, not segments of the state or special interests. Their primary duty is to hold the university system's assets in trust for current and future generations.

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As indicated in AGB's 2010 [Statement on Board Responsibility for Institutional Governance](#):

It is AGB's view that faculty, staff, and students ordinarily should not serve as voting members of their own institution's governing board because such involvement runs counter to the principle of independence of judgment required of board members. Particularly in the case of faculty or staff members, board membership can place them in conflict with their employment status. Even when constituent groups are represented on the board, the board should be mindful that the presence of one or more students, faculty, or staff as members of the board or its committees or institutional task forces neither constitutes nor substitutes for communication and consultation with these constituent groups.

Furthermore, faculty board membership is outside the mainstream of standard board composition. According to AGB's benchmark survey report, [Policies, Practices, and Composition of Governing and Foundation Boards 2016](#), 79.5 percent of public board respondents indicated that they do *not* have faculty board membership. Of respondents that do have faculty board membership, only a handful are public systems.

An alternative to formal faculty board membership would be a designated faculty representative to the board. The representative could provide regular updates to the board on faculty issues and concerns. It is also common practice for faculty to serve on board committees, both standing and ad hoc, if board bylaws permit such representation.

I also wish to respond to the tuition capping measure that has been added to HB 424 SD1. If enacted, the amended bill would indefinitely prohibit the University of Hawaii Board of Regents from increasing tuition charges, resulting in a tuition freeze that could ultimately harm the strength of the University and its ability to serve the students of the state. The cap, coupled with no legislative commitment regarding state funding, makes the proposal even more challenging. The cap restricts the authority of the board of regents to make important decisions regarding the long-term financial sustainability of the system. It also erodes the board's autonomy and the management flexibility of the system's executive leadership and could cripple the University's ability to fulfill its public purpose. These positions are directly addressed in AGB's 2012 [Statement on External Influences on Universities and Colleges](#):

Both private and public institutions need a high degree of independence and autonomy from direct government control or any self-serving or political agenda. Because of higher education's unique mission to transmit and advance knowledge, colleges and universities function at their best when teaching and scholarship are unencumbered by unnecessary restrictions, preordained outcomes, or undue expectations or influences—whether from government officials, donors, or any other individuals or groups. The integrity of research findings and advancement of knowledge require free and independent inquiry. When necessary, boards must be willing to take a strong stand in defense of institutional autonomy and independence, providing a buffer between the college or university and inappropriate outside intrusion or criticism.

Discussions surrounding college affordability are important and I commend the legislature for its attention to the financial realities of a postsecondary education for students and families in Hawaii. However, in order to serve those students and their families, governing boards must have the authority and responsibility (as fiduciaries) to ensure the viability and success of their

Letter of Concern
March 29, 2017
Page 3

institutions. In AGB's 2016 report, [Consequential Board Governance in Public Higher Education Systems](#), state policy makers are specifically encouraged to "ensure system governing boards hold financial control commensurate with high expectations for system leadership." This control includes the power to set tuition for students, and provides the foundation for university systems like the University of Hawaii to pursue their missions efficiently, responsibly, and thoughtfully.

AGB recommends that the Hawaii State Legislature consider reverting House Bill 424 SD1 to its revised version, House Bill 424 HD1.

In my opinion, based on over 30 years of studying higher education boards and consistent with this association's principles of governance independence, I see no sound reason to enact HB 424 SD1. Doing so could cause unforeseen harm to the University of Hawaii System, a great resource for the people of Hawaii.

I am available to answer any questions related to this letter. Please do not hesitate to contact me at rlegon@agb.org or 703-505-6916.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Richard D. Legon", followed by a horizontal line extending to the right.

Richard D. Legon
President, AGB



The Committee on Ways and Means
Tuesday, April 4, 2017
9:35 am, Room 211

RE: HB 424, HD1, SD1, RELATING TO THE UNIVERSITY OF HAWAII

Attention: Chair Jill Tokuda, Vice Chair Donovan Dela Cruz and
Members of the Committee

The University of Hawaii Professional Assembly (UHPA) urge the Committee to **support HB 424, HD1, SD1, Part I** that reinstates the authority and responsibility for all procurement contracts under chapter 103D, Hawaii revised Statutes, to the University President.

The ability of the University to expedite construction needs for repair and maintenance as well as new construction is essential to enhancing instruction and research as well influencing recruitment and retention. The University President should have both the authority and the accountability for procurement.

Part II, Section 5 & 6 speaks to the importance of faculty having direct and viable input into the University. Our concern relates to the continuing belief that employees must have special policies directed at their participation on the Board of Regents. Potential Board of Regents are vetted and confirmed by the Senate. This new language when coupled with current Board of Regent Policies would not achieve the desired results.

UHPA urges the committee to **support HB 424, HD1, SD1 Part I while deleting Section 5 (1) & 6 (1) underlined language and (2).**

Respectfully Submitted,

Kristeen Hanselman
Executive Director