



To: Senate Committee on Higher Education
Honorable Representative Kaiali'i Kahele, Chair
Honorable Representative Michelle Kidani, Vice Chair

Date: Tuesday, February 14, 2017
Time: 1:15 PM
Place: Conference Room 414

Re: IN OPPOSITION TO SB 1161 – RELATING TO THE PROHIBITION OF TUITION INCREASES AT THE UNIVERSITY OF HAWAII

Aloha Honorable Chair Kahele, Honorable Vice Chair Kidani, and Members of the Committee on Higher Education:

As the Associated Students of the University of Hawai'i at Windward Community College (ASUH-WCC), representing the 2,400 students enrolled on our campus, we submit testimony in opposition of SB 1161 as it is currently written.

While we recognize and appreciate the attempt to address increasing tuition costs and the Legislature's concerns over affordable access to continuing education, we have 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 support the infrastructure and health of the college campuses throughout the system. With a tuition freeze as purposed by this bill, we do not feel that there is a mechanism in place to address potential shortfalls in funding for programs and services for students across the system.

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 testimony. Once again, the Associated Students of the University of Hawai'i at Windward Community College opposes SB 1161 as it is currently written.

Sincerely,
Kelli Acopan
President, ASUH-WCC



HAWAI‘I EDUCATIONAL POLICY CENTER TESTIMONY

February 14, 2017
Senate Committee on Higher Education
2:00 pm Conference Room 224

RE: SB 1161 RELATING TO THE UNIVERSITY OF HAWAII

HEPC POSITION: OPPOSED

Chair Kahele, Members of the Committee. SB 1161 clearly infringes on the authority of the BOR to balance appropriations with the complexity of revenues from tuition. UH budgets have been cut by as much as 26%, causing a ripple effect of shifting costs to students. This is not because UH wants to become less affordable. It is because when the legislature cuts funding operational costs must come from somewhere. SB 1161 has serious conflicts with the letter and spirit of Hawai‘i State Constitution, Article X.

UNIVERSITY OF HAWAII **Section 5.** The University of Hawaii is hereby established as the state university and constituted a body corporate. It shall have title to all the real and personal property now or hereafter set aside or conveyed to it, which shall be held in public trust for its purposes, to be administered and disposed of as provided by law. [Ren and am Const Con 1978 and election Nov 7, 1978]

BOARD OF REGENTS; POWERS **Section 6.** There shall be a board of regents of the University of Hawaii, the members of which shall be nominated and, by and with the advice and consent of the senate, appointed by the governor from pools of qualified candidates presented to the governor by the candidate advisory council for the board of regents of the University of Hawaii, as provided by law. At least part of the membership of the board shall represent geographic subdivisions of the State. **The board shall have the power to formulate policy, and to exercise control over the university through its executive officer, the president of the university, who shall be appointed by the board. The board shall also have exclusive jurisdiction over the internal structure, management, and operation of the university.** This section shall not limit the power of the legislature to enact laws of statewide concern. The legislature shall have the exclusive jurisdiction to identify laws of statewide concern. [Am HB 253 (1964) and election Nov 3, 1964; ren and am Const Con 1978 and election Nov 7, 1978; am SB 539 (2000) and election Nov 7, 2000; am SB 1256 (2005) and election Nov 7, 2006]

Previous legislatures have sought to implement these provisions with language that clearly identifies the university as having significantly greater autonomy than most other departments. For example:

[§304A-102] Purposes of the university. The purposes of the university are to give thorough instruction and conduct research in, and disseminate knowledge of, agriculture, mechanic arts, mathematical, physical, natural, economic, political, and social sciences, languages, literature, history, philosophy, and such other branches of advanced learning as the board of regents from time to time may prescribe and to give such military instruction as the board of regents may prescribe and that the federal government requires. The standard of instruction shall be equal to that given and required in similar universities on the mainland United States. Upon the successful completion of prescribed courses, the board of regents may confer a corresponding degree upon every student who becomes entitled thereto. [L 2006, c 75, pt of §2]

[§304A-103] University to be public corporation; general powers. The University of Hawaii is established as the state university and is constituted as a body corporate. The university, under the direction of the board of regents, shall have the following general powers:

- (1) To adopt, amend, and repeal bylaws governing the conduct of its business and the performance of the powers and duties granted to or imposed upon it by law;
- (2) To acquire in any lawful manner any property, real, personal, or mixed, tangible or intangible, or any interest therein; to hold, maintain, use, and operate that property; and to sell, lease, or otherwise dispose of that property at such time, in such manner, and to the extent deemed necessary or appropriate to carry out its purposes;
- (3) To enter into and perform contracts, leases, cooperative agreements, or other transactions as may be necessary in the conduct of its business and on terms it may deem appropriate, with any agency or instrumentality of the United States, with any state, territory, or possession, or with any political subdivision thereof, or with any person, firm, association, or corporation;
- (4) To determine the character of and the necessity for its obligations and expenditures and the manner in which they shall be incurred, allowed, and paid, subject to provisions of law specifically applicable to the university;
- (5) To execute, in accordance with its bylaws, all instruments necessary or appropriate in the exercise of any of its powers; and
- (6) To take such actions as may be necessary or appropriate to carry out the powers conferred upon it by law. [L 2006, c 75, pt of §2]

§304A-105 Powers of regents; official name. (a) The board of regents shall have management and control of the general affairs, and exclusive jurisdiction over the internal structure, management, and operation of the university. The board may:

- (1) Appoint a treasurer and other officers as it deems necessary;
- (2) Authorize any officer, elected or appointed by it, to approve and sign on its behalf any voucher or other document that the board may approve and sign;
- (3) Delegate to the president or the president's designee the authority to render the final decision in contested case proceedings subject to chapter 91, as it deems appropriate;
- (4) Purchase or otherwise acquire lands, buildings, appliances, and other property for the purposes of the university; and
- (5) Expend any sums of money as, from time to time, may be placed at the disposal of the university from whatever source; provided that notwithstanding any other law to the contrary, all documents regarding expenditures and changes thereto, made by the board shall be disclosed in open meetings for the purpose of public comment; provided further that all expenditure requests, proposals, and any other budgetary documents used by the board at an open meeting shall be made available to the public at least six calendar days before the meeting.

All lands, buildings, appliances, and other property so purchased or acquired shall be and remain the property of the university to be used in perpetuity for the benefit of the university. The board, in accordance with this section and other law, shall manage the inventory, equipment, surplus property, and expenditures of the university and, subject to chapter 91, may adopt rules, further controlling and regulating the same.

(b) The board of regents shall develop internal policies and procedures for the procurement of goods, services, and construction, consistent with the powers of the board set forth in section 304A-2672, and the goals of public accountability and public procurement practices, subject to chapter 103D.

(c) The board of regents may enter into concession agreements without regard to chapter 102.

(d) The official name of the board shall be the board of regents, University of Hawaii. The board shall adopt and use a common seal by which all official acts shall be authenticated. [L 2006, c 75, pt of §2; am L Sp 2008, c 6, §3; am L 2010, c 82, §§3, 8; am L 2013, c 87, §3]

Many proposed bills relating to the UH appear to reflect several assumptions. The first is that legislative committees have the knowledge, experience, time and context to take over certain aspects of managing a major university. A similar assumption or view is that the Board of

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Regents is no longer the constitutional policy maker for the UH. They assume that “laws of statewide concern” should mean “anything the legislature wants to do.” I have heard this articulated by an increasingly dispirited BOR and UH administrators. There are bills freezing tuition. There are bills dictating actions that are clearly within the meaning of internal management. In past sessions, without a single public hearing, attempts have been made to transfer entire colleges and programs from four-year research institutions to four-year undergraduate institutions. A direct result, had these measures been implemented, would have been to remove 750 graduate students and their programs. That well meaning legislative committees thought they had a good idea does not automatically translate into overruling the appropriate powers and duties of constitutionally created Board of Regents.

An alternative view. Respectfully, provisions of the Constitution are not there to be dismissed or ignored. Language that grants the legislature a safety valve in terms of emergencies, such as “laws of statewide concern,” do not grant the legislature the power to over rule other sections.

Those of us who served in the 1978 Constitutional Convention did not regard provisions of the constitution as meaningless. We, and I believe the voters, took all constitutional language seriously. HEPC asks all stakeholders: Are we really taking the constitution seriously?

Language such as “as provided by law” or “statewide concern” are intended to require state laws to interpret and implement constitutional requirements.

To my knowledge, the legislature has never attempted to define “statewide concern.” Certainly it does not mean that the Board of Regents is no longer the policy maker or in charge of internal management. And the legislature has not sought to justify any intrusion on BOR powers with a rationale why a particular measure, such as HB 64 meets this test.

HEPC is not suggesting that the legislature has no authority. Certainly power over appropriations is significant. Certainly justifications for additional funding should be provided. However, it is one thing to have a balanced view, and another to essentially blackmail the Board of Regents and the UH into giving up its policy making role. The BOR is not merely a lobbying group.

SB 1161 does not merely ask the Board to do address affordability. The BOR is responsible for tuition setting, particularly in the context of adequate appropriations from the legislature. SB 1161 is the kind of top down imposition that is often criticized in the Department of Education. Perhaps a more balanced view of the balance of powers would convert SB 1161 and other similar infringements on the UH’s constitutional autonomy to resolutions petitioning the Board of Regents to consider your requests.

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From: mailinglist@capitol.hawaii.gov
Sent: Tuesday, February 7, 2017 6:55 PM
To: HRE Testimony
Cc: mendezj@hawaii.edu
Subject: *Submitted testimony for SB1161 on Feb 14, 2017 13:15PM*

SB1161

Submitted on: 2/7/2017

Testimony for HRE on Feb 14, 2017 13:15PM in Conference Room 414

Submitted By	Organization	Testifier Position	Present at Hearing
Javier Mendez-Alvarez	Individual	Support	No

Comments:

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From: mailinglist@capitol.hawaii.gov
Sent: Friday, February 10, 2017 12:12 PM
To: HRE Testimony
Cc: dylanarm@hawaii.edu
Subject: *Submitted testimony for SB1161 on Feb 14, 2017 13:15PM*

SB1161

Submitted on: 2/10/2017

Testimony for HRE on Feb 14, 2017 13:15PM in Conference Room 414

Submitted By	Organization	Testifier Position	Present at Hearing
Dylan P. Armstrong	Individual	Support	No

Comments:

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To: HRE Testimony
Cc: micahalameda@gmail.com
Subject: *Submitted testimony for SB1161 on Feb 14, 2017 13:15PM*

SB1161

Submitted on: 2/9/2017

Testimony for HRE on Feb 14, 2017 13:15PM in Conference Room 414

Submitted By	Organization	Testifier Position	Present at Hearing
Micah Alameda	Individual	Support	No

Comments:

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