



UNIVERSITY OF HAWAII SYSTEM

Legislative Testimony

Testimony Presented Before the
Senate Committee on Higher Education
Thursday, February 9, 2017 at 2:00 p.m.

By
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University of Hawai'i System

SB 1040 – RELATING TO THE UNIVERSITY OF HAWAII

Chair Kahele, Vice Chair Kidani and members of the committee:

The University of Hawai'i ("University") appreciates the intent of SB 1040, which requires the University to develop an academic and facilities master plan for all campuses in accordance with criteria prescribed in the bill. As further set forth below, however, the Board of Regents for the University of Hawai'i ("Board") has already identified this as a strategic priority. Efforts are well underway to develop a comprehensive strategy that identifies overarching principles to guide the administration in developing a framework and, ultimately, a master plan that sets forth an integrated academic and facilities blueprint. Accordingly, we believe the objectives of this bill are already being satisfied without legislative mandate.

In September 2015, the Board passed a Resolution for the administration to develop an integrated high-level systemwide academic and facilities master plan that creates a strategic vision to align and leverage each campus' unique mission and resources while reducing unnecessary duplication. Additionally, it seeks to increase collaboration and sharing of academic offerings to make more effective and efficient use of fiscal, human, and physical plant resources, modern distance learning technologies, and land assets while advancing the higher education goals of the state.

In response to the resolution, there have been many visioning and strategic planning sessions with leadership from the Board, the System and the campuses. These efforts require a matrixed approach that addresses governance, programmatic, fiscal, and facility-related issues. Working principles to guide a master plan are expected to be finalized by the end of the year. However, this marks just the initial step towards a longer-term blueprint.

Once the working principles for an integrated academic and facilities master plan are identified, then representation from all campuses must be solicited to build upon this framework. Typically, such a comprehensive and detailed exercise takes time and resources to gather basic data and information from which decision-points are made.

At this time, the administration has been doing this work primarily with internal human and financial resources.

Additionally, it is difficult to manage space without accurate and complete data and metrics. To that end, the UH Mānoa campus has embarked on an initiative to develop a strategic space utilization plan that establishes a baseline analysis of current facility use and generates metrics for assessing space needs in accordance with current priorities and future program growth. Synchronized with ongoing efforts to update its facility condition indices, deferred maintenance and patterns of energy use, this initiative will advance campus planning in alignment with the academic mission and other campus-wide initiatives. If proven successful, this model will be deployed to other campuses and off-site facilities.

As set forth above, the University has already launched several initiatives toward developing an integrated academic and facilities strategic plan. These efforts are expected to be complete in a year; after which time, a plan is expected to be developed with input and feedback from various stakeholders ranging from students, faculty and staff to business leaders and government officials. While the University agrees with the intent of SB 1040, its vast charge has great impact on campus operations and resources. As such, we believe the objectives of this bill are better satisfied through an organic process internal to the University and not mandated externally through legislation.

Thank you for the opportunity to testify on this measure.



HAWAI‘I EDUCATIONAL POLICY CENTER TESTIMONY

February 9, 2017
Senate Committee on Higher Education
2:00 pm Conference Room 224

RE: SB 1040 RELATING TO THE UNIVERSITY OF HAWAII

HEPC POSITION: OPPOSED

Chair Kahele, Members of the Committee. SB 1040 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 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

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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 1049 does not merely ask the Board to do some planning. It 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 1040 and other similar infringements on the UH’s constitutional autonomy to resolutions petitioning the Board of Regents to consider your requests.

Thank you for the opportunity to provide this testimony.

From: mailinglist@capitol.hawaii.gov
Sent: Tuesday, February 7, 2017 6:57 PM
To: HRE Testimony
Cc: mendezj@hawaii.edu
Subject: *Submitted testimony for SB1040 on Feb 9, 2017 14:00PM*

SB1040

Submitted on: 2/7/2017

Testimony for HRE on Feb 9, 2017 14:00PM in Conference Room 414

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

Comments:

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