

# OFFICE OF INFORMATION PRACTICES

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To: House Committee on Lower & Higher Education

From: Cheryl Kakazu Park, Director

Date: March 12, 2019, 2:00 p.m.  
State Capitol, Conference Room 309

Re: Testimony on S.B. No. 919, S.D. 2  
Relating to the University of Hawaii Board of Regents

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Thank you for the opportunity to submit testimony on this bill, which would change the composition and term length of the Board of Regents of the University of Hawaii and would exempt the Regents from the Sunshine Law, part I of chapter 92, HRS, for any discussions involving a member of the Legislature. **The Office of Information Practices (OIP) is concerned about the broad Sunshine Law exemption proposed by the S.D. 2 version of this bill.**

On page 7, at lines 12-16, a proposed new subsection 304A-104(f), HRS, would override any “rule or law . . . prohibit[ing] discussions between members of the state legislature and one or more members of the board.” Since the Sunshine Law is the law that most notably might otherwise prohibit discussions among Board of Regents members, **this provision would in effect provide an exemption to the Sunshine Law for any number of members, up to the full Board of Regents, to discuss any issue before it without limitation, so long as a legislator was also part of the discussion.**

In section 92-2.5, HRS, the Sunshine Law itself sets out some specified circumstances in which members of a board can discuss board business outside a

meeting (aka “permitted interactions”), but most of those are limited to less than a quorum of a board’s members. The only permitted interaction comparable in breadth to this is subsection 92-2.5(f), which allows any number of board members to discuss any issue with the Governor, although even that is limited by the exclusion of matters over which the board is exercising its adjudicatory function, and it applies only to discussions with the Governor specifically, not the Governor’s senior staff or cabinet members. In other words, the provision in the S.D. 2 would create for the Board of Regents a form of permitted interaction far broader than those otherwise provided for Sunshine Law boards, **opening up a significant loophole for Board of Regents members to privately discuss and reach an understanding regarding matters that would otherwise have to be worked out in a public meeting.**

To keep the rules applicable to the Board of Regents consistent with those applicable to other Sunshine Law boards, **OIP would recommend that this proposed subsection (f) be deleted.** However, if this Committee believes the Sunshine Law’s current permitted interactions are inadequate for this Committee’s ability to oversee the University of Hawaii generally and the Board of Regents specifically, **OIP would be happy to work with this Committee on a narrower provision that could meet this Committee’s intent without creating such a significant loophole in the Sunshine Law as applied to the Board of Regents.**

Thank you for the opportunity to testify.



**LATE**

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HOUSE COMMITTEE ON LOWER & HIGHER EDUCATION  
Tuesday, March 12, 2019, 2 PM, Conference Room 309  
Senate Bill 919, SD 2, Relating to the University of Hawaii Board of Regents

### **COMMENTS**

Douglas Meller, Legislative Committee, League of Women Voters of Hawaii

Chair Woodson and Committee Members:

The League of Women Voters of Hawaii takes no position on the composition or the term length of the UH Board of Regents. The League also notes that Hawaii's Sunshine Law already authorizes legislators to informally meet with less than a quorum of any state board. However, we believe Sunshine Law requirements should apply to meetings attended by a quorum of any state board regardless of whether legislators are present. And we oppose SB 919, SD 2, Section 3 proposed §304A-104(f) because paragraph (f) would authorize a quorum or even all members of the Board of Regents to disregard Sunshine Law requirements for meetings attended by a legislator.

Thank you for the opportunity to submit testimony.

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March 11, 2019

The Honorable Justin H. Woodson, chair  
and members of the Committee on Lower and Higher Education  
House of Representatives  
State Capitol  
Honolulu, Hawaii

Dear Representatives:

Subject: SB 919, SD 2 (relating to the University of Hawaii Board of Regents)

There is an old adage “if it ain’t broke, don’t fix it.” I believe this applies to the matter of this bill.

The bill proposes changes to the size, composition, and term of appointment of the members of the Board of Regents, but it does not state a rationale for any of the proposed changes.

Senate Standing Committee Report no. 941 dated March 1, 2019, the Senate’s most correspondence on this bill, states that the bill “will better enable the Board of Regents to fulfill its constitutional mandate to formulate policy and exercise control of the University.” But there is no explanation as to how this bill will achieve these objectives.

In the absence of a reason to make these changes, I encourage you to hold this bill in your committee.

Mahalo for your consideration.

Sincerely yours,

*Randolph G. Moore*