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To: Senate Committee on Higher Education

From: Carlotta Amerino, Director

Date: February 4, 2025, 3:15 p.m.
State Capitol, Conference Room 229

Re: Testimony on S.B. No. 741
Relating to the University of Hawaii

Thank you for the opportunity to submit testimony on this bill, which would create a new External Audit Committee within the University of Hawaii. The Office of Information Practices (OIP) takes no position on the substance of this bill, but offers **comments** regarding the proposed committee's partial exemption from part I of chapter 92, the Sunshine Law.

Proposed subsection 304A-__(c), HRS, at bill page 2 lines 4-12, exempts the new committee "from chapter 91 and chapter 92 to the extent that the audit committee is engaging in discussions that should remain confidential in accordance with nationally recognized best practices for external and independent audit committees, or in proceedings arising from an investigation by the external audit committee relating to potentially actionable civil or criminal conduct, regardless of whether the investigation is pending or outstanding." OIP is concerned that the first part of this exemption, for discussions "that should remain confidential in accordance with nationally recognized best practices," is subjective and requires clarification as to what situations and discussions would be covered by it. At a minimum, some reference is needed to what specific sources comprise the

“nationally recognized best practices” that this bill would set as the standard for when the committee is exempted from the Sunshine Law.

This bill also does not specify whether this Sunshine Law exemption is intended to be an authorized purpose for which the committee can hold an executive session, or something else. As written, the bill could be read to mean that committee members could talk about committee business together outside a meeting in any numbers or in any situation, without going through the formality of holding a meeting and going into executive session, so long as they believed that “nationally recognized best practices” called for confidentiality for the topics discussed.

Finally, OIP notes as a technical matter that the Sunshine Law is only part I of chapter 92, HRS, and the remainder of chapter 92 includes topics such as a default quorum requirement for boards and the authorization to charge copy fees for government records, none of which are apparently relevant to this committee’s wish for confidentiality.

OIP therefore respectfully recommends that this Committee amend this bill to (1) either specify the topics of discussion that the committee can keep confidential (OIP does not know what those topics are and thus cannot suggest language), or reference in the Committee report a specific set of standards that are an example of the nationally recognized best practices referred to in the bill; and (2) change bill page 2 lines 4 to 6 to read “The external audit committee may hold an executive session as provided in sections 92-4 and 92-5 to discuss matters . . .”

Thank you for considering OIP’s testimony.



Senate Committee on Higher Education
Honorable Donna Mercado Kim, Chair
Honorable Michelle N. Kidani, Vice Chair

**RE: Testimony in opposition to S.B. 741, Relating to the University of
Hawaii**

Hearing: February 4, 2025 at 3:15 p.m.

Dear Chair and Members of the Committee:

My name is Ben Creps. I am a staff attorney at the Public First Law Center, a nonprofit organization that promotes government transparency. Thank you for the opportunity to respectfully submit testimony in **opposition** to S.B. 741.

We specifically oppose the Sunshine Law exemption provided at page 2, lines 4 – 12, as the language is convoluted and the exemption it creates is unclear. Any exemptions to chapter 92 of the Hawai'i Revised Statutes should be clearly articulated and narrowly defined.

Thank you again for the opportunity to testify in opposition to S.B. 741.



SB-741

Submitted on: 2/4/2025 11:13:47 AM

Testimony for HRE on 2/4/2025 3:15:00 PM

LATE

Submitted By	Organization	Testifier Position	Testify
Gabe Lee	Individual	Comments	Written Testimony Only

Comments:

Testimony by: Gabe Lee, as an individual**S.B. No. 741 – RELATING TO THE UNIVERSITY OF HAWAII**

Chair Mercado Kim, Vice Chair Kidani, and members of the Committee:

I am providing this testimony in my individual capacity, and not on behalf of the Board of Regents. The Board has not yet deliberated positions on any legislative matters, but has already scheduled an agenda to review and discuss a number of bills - including this particular bill at a special Board of Regents meeting this Thursday at 10:30 a.m.

As such, I would like to offer the following comments on S.B. 741. The Board of Regents already has a statutorily created and functioning Independent Audit Committee (H.R.S. §304A-321), that is exempt from chapter 91 and part I of chapter 92 to the extent that the independent audit committee is engaging in discussions with internal or external auditors on matters that should remain confidential in accordance with nationally recognized best practices for independent audit committees, or in proceedings arising from an investigation by the independent audit committee relating to potentially actionable civil or criminal conduct, regardless of whether the investigation is pending or outstanding.

The Board of Regents also has an Office of Internal Audit that is structurally an office separate from the administration of the University of Hawai‘i. Additionally, at the discretion of the chair of the independent audit committee, discussions under this subsection may be held in the absence of the president of the University of Hawai‘i or the chief financial officer of the university.

I support the bill’s general objective of ensuring accountability and transparency of operations relating to the University of Hawai‘i – and, even the Board of Regents. However, the creation of a separate entity to audit the portions of the university that is already charged with governance oversight appears to be duplicative. Lastly, I would like to point out that the Legislature already has the authority to direct the Legislative Auditor to conduct an audit of the University of Hawai‘i System as well as the Board of Regents. This capability may already be the prudent approach to address whatever objectives the concept in S.B. 741 would also seek to create.

Thank you for the opportunity to testify in providing supportive comments on the intent of S.B. No. 741.

