



UNIVERSITY OF HAWAII SYSTEM

Legislative Testimony

Testimony Presented Before the
House Committee on Judiciary
February 23, 2017 at 2:00 p.m.

by

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HB 426 HD1 – RELATING TO UNIVERSITY OF HAWAII RULEMAKING

Chair Nishimoto, Vice Chair San Buenaventura and members of the House Committee on Judiciary:

Thank you for this opportunity to testify in support of this measure.

This bill seeks to streamline the processes by which the University regulates the internal structure, management, and operation of its campuses. Under sections of current law, the University is required to adopt rules pursuant to HRS Chapter 91 for selected University programs or operations, such as managing its equipment and inventory, administering the higher education loan programs, or assessing campus parking fees. In addition to following the HRS Chapter 91 public rulemaking procedures, the University is a state agency headed by a governing Board of Regents, which is required to comply with the Sunshine Law procedures of HRS Chapter 92. These Sunshine Law procedures mirror similar opportunities for public comment and public decision to issue administrative rules under Chapter 91, and all University Board policies are discussed and adopted at Chapter 92 open meetings. Specifically, the Sunshine Law outlines the requirements for advance notice of an agenda of the items to be discussed, conducting a public meeting, and the opportunity to testify and comment on matters listed on the agenda prior to the board's decision making. This bill would eliminate the duplicative Chapter 91 process and retain the Sunshine Law "open meeting" process for certain University programs and operations listed in this measure.

We believe this measure strikes a proper balance between the need for transparency and accountability, on the one hand, with the need for "business process" efficiency on the other hand. This bill reflects a balance that is appropriate to the University and appropriate to the specific University programs and operations enumerated in the bill, particularly in light of Article X, Section 6 of the Hawai'i Constitution affording the Board of Regents the "power to formulate policy, and to exercise control over the university" and the "exclusive jurisdiction over the internal structure, management, and operation of the university."

Please note that this measure does not effect a wholesale elimination of the Chapter 91 process for all matters under the University's jurisdiction. In fact, the University is in the process of reviewing and updating Hawai'i Administrative Rules, Title 20 governing the University of Hawai'i. This bill targets those University operations or educational programs that have a primary impact within campus boundaries.



House Judiciary Committee
Chair Scott Nishimoto, Vice Chair Joy San Buenaventura

02/23/2017 at 2:00 PM in Room 325
HB426 HD1 – Relating to University of Hawaii Rulemaking

TESTIMONY — OPPOSE
Corie Tanida, Executive Director, Common Cause Hawaii

Dear Chair Nishimoto, Vice Chair San Buenaventura, and members of the committee:

Common Cause Hawaii opposes HB426 HD1 which would substitute rulemaking requirements under HRS chapter 91 and instead allow the University of Hawaii (“UH” or “University”) to adopt polices under open meetings or “sunshine laws” HRS chapter 92.

We question the need for this proposal. While there are some similarities between rulemaking procedures (chapter 91) and opening meetings (chapter 92) requirements, these are not interchangeable. By making this substitution, this bill would shorten the timeline of the rulemaking process and reduce the public’s opportunity to participate. Thus we ask if this is truly in the public’s interest.

We ask you to **defer HB426 HD1**.

Thank you for the opportunity to offer testimony **opposing HB426 HD1**.



HB426 HD1
RELATING TO UNIVERSITY OF HAWAI'I RULEMAKING
House Committee on Judiciary

February 23, 2017

2:00 p.m.

Room 325

The Office of Hawaiian Affairs (OHA) offers the following **COMMENTS** on HB426 HD1, which expressly exempts a variety of University of Hawai'i (UH) policy decisions from the public notice, hearing, and input requirements of Hawai'i Revised Statutes chapter 91.

OHA appreciates that policies regarding UH campus operations and other strictly internal matters may be most appropriately made without the 30 days public notice, hearing, and input requirements of chapter 91. **However, a broad reading of the language in this measure may also exempt the establishment of policies that impact the rights and interests of the public, including Native Hawaiians, from the chapter 91 rulemaking process.** For example, policies "controlling and regulating" UH lands may involve the restriction or regulation of Native Hawaiian traditional and customary practices associated with those lands, as well as the interests and activities of the general public; this bill would allow decisions on such policies to be made in a regular Board of Regents meeting, with only six days' notice, and without a prior opportunity to review the details of policy proposals. Such policies would be more rightfully established via chapter 91 rulemaking, which affords a much more meaningful public notice period and a formally structured public review, hearing, and testimony process. Notably, the meaningful identification and consideration of place-based traditional and customary practices would likely require much more time for review and research than the six days afforded under this measure; the fact that much of the lands owned or occupied by UH are "ceded" and public land trust lands heightens the need for appropriate public scrutiny and input, regarding policies that may affect associated Native Hawaiian rights and interests.

Similarly, changes to in-state residency criteria, which qualify students for in-state tuition as well as access to the state higher education loan fund, may significantly impact the interests of both the general public, as well as OHA's beneficiaries; any such changes would also be exempted from the chapter 91 rulemaking process, under this measure. Accordingly, this bill may significantly limit opportunities for the public to provide input on the benefits and drawbacks of proposed changes to in-state residency determinations for our public higher education system.

Mahalo for the opportunity to testify on this measure.



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HOUSE COMMITTEE ON JUDICIARY

Thursday, February 23, 2017, 2 PM, Conference Room 325
HB 426, HD 1 RELATING TO UNIVERSITY OF HAWAII RULEMAKING
TESTIMONY

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

Chair Nishimoto and Committee Members:

The League of Women Voters of Hawaii opposes HB 426, HD 1 which would authorize the University of Hawaii (UH) to replace certain UH rules with “policies” adopted at public meetings.

HB 426, HD 1 is unnecessary to exempt the Board of Regents from Chapter 91 when the Board adopts “regulations” which concern only internal UH management. Under Section 91-1(4), Hawaii Revised Statutes, “rule”

*means each agency statement of general or particular applicability and future effect that implements, interprets, or prescribes law or policy, or describes the organization, procedure, or practice requirements of any agency. **The term does not include regulations concerning only the internal management of an agency and not affecting private rights of or procedures available to the public.** [emphasis added]*

On the other hand, student rights are substantially affected by UH tuition, fees, scholarships, and loans and UH procedures for adjudicating disputes. We believe it would be inappropriate for HB 426, HD 1 to authorize the Board of Regent to set policies which affect private rights instead of adopting rules under Chapter 91.

There are compelling reasons to avoid frequent arbitrary changes to UH fees and procedures. And there is no compelling reason why adoption and amendment of UH fees and procedures should be subject to different requirements than other public agencies.

Rules assure predictability and transparency. The public can use the internet to see all agency rules. Rules cannot be amended without ample public notice, and ample opportunity for public comment. Unlike rules, the public cannot use the internet to see all agency “policies”. And unlike rules, any “policy” set at a public meeting can be changed with only 6 days of public notice at another public meeting.

Thank you for the opportunity to submit testimony.

From: mailinglist@capitol.hawaii.gov
Sent: Tuesday, February 21, 2017 2:41 PM
To: JUDtestimony
Cc: mendezj@hawaii.edu
Subject: *Submitted testimony for HB426 on Feb 23, 2017 14:00PM*

HB426

Submitted on: 2/21/2017

Testimony for JUD on Feb 23, 2017 14:00PM in Conference Room 325

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

Comments:

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