



The House Committee on Higher Education  
January 31, 2020  
2:00 pm, Conference Room 309

**RE: HB 1885, Proposing an Amendment to Article III Section 8 of the Constitution of the State of Hawai'i**

Attention: Chair Justin Woodson, Vice Chairs Mark Hashem, Sean Quinlan and  
Members of the Committee

The University of Hawaii Professional Assembly (UHPA) appreciates the opportunity to provide the following comments:

Article III, Conditions of Service, of the UHPA-BOR 2017-2021 Agreement ("CBA") provides specific requirements regarding outside employment, to ensure the "Faculty Member's creditable performance of the primary obligation to the University" is always the first and foremost consideration in determining said outside employment. The contract language is compatible with the Board of Regents' Policy regarding the opportunity to serve as a legislator.

As you are well aware, the legislative session is time intensive. Depending on committee assignments, the work could begin as early as the November prior to the January session start date and extending to somewhere around the first week of May. The time requirements are not compatible with the language of the CBA. Furthermore, the intensity of the legislative session as well as the duration juxtaposed against the level of faculty requirements whether student interaction, research or both are not conducive with a legislative schedule that coincides with a Spring semester; January to May.

Respectfully Submitted,

Debi Hartmann  
Associate Executive Director  
University of Hawaii  
Professional Assembly



# UNIVERSITY OF HAWAII SYSTEM

## Legislative Testimony

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Testimony Presented Before the  
House Committee on Lower and Higher Education  
January 31, 2020 at 2:00 p.m.

by

Carrie Okinaga, Vice President for Legal Affairs/University General Counsel  
Kalbert K. Young, Vice President for Budget and Finance/Chief Financial Officer  
Donald O. Straney, Vice President for Academic Planning and Policy  
University of Hawai'i System

HB 1885 – PROPOSING AN AMENDMENT TO ARTICLE III, SECTION 8 OF THE  
CONSTITUTION OF THE STATE OF HAWAII.

Chair Woodson, Vice Chairs Hashem and Quinlan, and members of the Committee:

Thank you for the opportunity to provide testimony on this measure. Article III, section 8 of the Hawai'i Constitution presently generally prohibits members of the legislature from also being employed in another State position. HB 1885 seeks to amend Article III, section 8, to clarify that that constitutional prohibition should not be construed to prohibit members of the legislature from being employed as faculty at the University of Hawai'i (UH), "solely because of the member's membership in the legislature," unless legislative work schedules and time demands related to legislative duties unreasonably conflict with those of the faculty position. It is not clear why the bill identifies the University as the only State entity at which legislators may be able to work (assuming the sole reason not to hire them is their status as legislators, and their legislative job duties do not unreasonably conflict with their faculty job duties).

The intent of HB 1885 is understandable. It could be beneficial for UH to have employees who are also elected officials so that they could have a more direct support of UH perspectives on matters concerning the University.

However, in addition to the constitutional provision, University policy has long observed the costs of such dual employment in compromising the integrity of the University and raising questions about irreconcilable conflicts of interest, given that the Legislature guards the purse strings of the entire State government. As just two examples of this longstanding University policy, Regent Policy 9.205 generally prohibits UH employees from also holding public elective office. And Regent Policy 9.207 restricts outside employment for faculty and states that a University employee working for a legislator on a temporary assignment must do so on approved leave without pay from the University. As currently drafted this measure would require wholesale revision of the Board of Regents' longstanding University policy, and deviation from the current UH philosophy of conflicts in interest by its public employees.

Longstanding University policy is one issue. Such proposed constitutional amendment would not cure or address potential issues with or violations of other longstanding provisions of State law and policy, e.g., Hawai'i Revised Statutes (HRS) Sections 84-13 and 84-14 (Ethics Code provisions) and Sections 88-42.5 and 42-6 (Pension and Retirement Systems provisions). In addition, we note that those legislators working as faculty for UH would be included as members of the faculty union pursuant to HRS Section 89-6(a)(7), notwithstanding HRS Section 89-6(f) which prohibits any elected officials from being included in any bargaining unit.

Thank you for your time and consideration of this matter.



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## HAWAI‘I STATE ETHICS COMMISSION

State of Hawai‘i · Bishop Square, 1001 Bishop Street, ASB Tower 970 · Honolulu, Hawai‘i 96813

Committee: Committee on Lower and Higher Education  
Bill Number: H.B. 1885  
Hearing Date/Time: January 31, 2020, 2:00 p.m.  
Re: Testimony of the Hawai‘i State Ethics Commission with **COMMENTS**  
on H.B. 1885, Proposing an Amendment to Article III, Section 8 of the  
Constitution of the State of Hawaii

Dear Chair Woodson, Vice Chair Hashem, Vice Chair Quinlan, and Committee Members:

The Hawai‘i State Ethics Commission (“Commission”) has not had an opportunity to discuss H.B. 1885, such that it does not take a position on the proposed constitutional amendment at this time. However, the undersigned submits the following comments for the Committee’s consideration.

Allowing legislators to hold a paid position with a State entity – while also holding a paid position with the Legislature – may create an appearance of a conflict of interest, inasmuch as legislators have oversight of (and budgetary control over) the entire State government.<sup>1</sup> State departments may feel pressured to hire legislators, fearing that they may face resistance at the Legislature if they fail to do so. Similarly, departments may be reluctant to terminate or discipline legislator-employees for fear of retaliation against the department at the Legislature.

Regardless of whether these fears would be realized, the perception of a conflict (or the perception that a legislator is abusing her/his position) may undermine the public’s faith in State government; as set forth in article XIV of the Hawai‘i Constitution, “The people of Hawaii believe that public officers and employees must exhibit the highest standards of ethical conduct and that these standards come from the personal integrity of each individual in government.”

Thank you for your continuing support of the Commission’s work and for considering this testimony on H.B. 1885.

Very truly yours,

Daniel Gluck  
Executive Director and General Counsel

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<sup>1</sup> To be clear, the Ethics Code does not categorically prohibit legislators from receiving other state funds for performing services beyond those of a legislator, such as with the Legislator in Residence program. See also [Advisory Opinion No. 2019-03](#) (concluding that a legislator may represent a private client in submitting an offer to purchase state property from a state agency). Nevertheless, the Commission typically evaluates these situations on a case-by-case basis to ensure strict compliance with the Ethics Code.



**TESTIMONY OF  
THE DEPARTMENT OF THE ATTORNEY GENERAL  
THIRTIETH LEGISLATURE, 2020**

**LATE**

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**ON THE FOLLOWING MEASURE:**

H.B. NO. 1885, PROPOSING AN AMENDMENT TO ARTICLE III, SECTION 8 OF THE CONSTITUTION OF THE STATE OF HAWAII.

**BEFORE THE:**

HOUSE COMMITTEE ON LOWER AND HIGHER EDUCATION

**DATE:** Friday, January 31, 2020

**TIME:** 2:00 p.m.

**LOCATION:** State Capitol, Room 309

**TESTIFIER(S):** Clare E. Connors, Attorney General, or  
Lori N. Tanigawa, Deputy Attorney General

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Chair Woodson and Members of the Committee:

The Department of the Attorney General provides the following comments.

This bill amends article III, section 8 of the Hawai'i Constitution to state that the section shall not be construed to prohibit a legislator from being employed in a faculty member position at the University of Hawaii solely because of the legislator's membership in the Legislature; provided that the Legislature may enact legislation to ensure that no legislator's legislative work schedule and time demands related to the legislator's legislative duties unreasonably conflict with those of the faculty position.

Article III, section 8 of the Hawai'i Constitution provides:

No member of the legislature shall hold any other public office under the State, nor shall the member, during the term for which the member is elected or appointed, be elected or appointed to any public office or employment which shall have been created, or the emoluments whereof shall have been increased, by legislative act during such term. The term 'public offices,' for the purposes of this section, shall not include notaries public, reserve police officers or officers of emergency organizations for civilian defense or disaster relief. The legislature may prescribe further disqualifications.

Haw. Const. art. III, § 8.

The term "public office" generally means those positions that exercise some aspect of the State's sovereign authority. Our office previously concluded that University of Hawaii professors do not serve in "public offices" for purposes of article III,

section 8 of the Hawai'i Constitution. Atty. Gen. Op. No. 66-20 (June 9, 1966). We therefore do not believe that article III, section 8 of the Hawai'i Constitution prohibits a legislator from being employed as a faculty member at the University of Hawaii as that is not a public office.

The prohibition against legislators undertaking dual employment as a University of Hawaii faculty member arises from the fact that legislators will consider and potentially pass legislation which results in their direct pecuniary gain or advantage. "Emoluments" is defined as "[a]ny advantage, profit, or gain received as a result of one's employment or one's holding of office." *Black's Law Dictionary* (10th ed. 2014); see also *Bulgo v. Enomoto*, 50 Haw. 61, 64, 430 P.2d 327, 330 (1967) (recognizing that an emolument implies actual pecuniary gain rather than some imponderable and contingent benefit). It is therefore the actual pecuniary gain or advantage that triggers the emoluments clause, not a legislator's membership in the Legislature or any conflict in a legislator's work schedule and time demands. This bill does not address the emoluments issues because at some point in time, an affected legislator will trigger the prohibition.

Further, while we note that the wording of the proposed constitutional amendment in this bill authorizes the Legislature to "enact legislation to ensure that no member's legislative work schedule and time demands related to the member's legislative duties unreasonably conflict with those of the faculty position," we are concerned that this provision may not adequately address the common law doctrine of incompatible offices, which prohibits an individual from holding two jobs in public employment if one office is subordinate to the other or the functions of the offices are inherently inconsistent and repugnant to each other. *In re Water Use Permit Applications*, 94 Hawai'i 97, 120, 9 P.3d 409, 432 (2000) (citation omitted). A conflict in the work schedule and time demands of holding two jobs in public employment is admittedly one such circumstance that may trigger the doctrine of incompatible offices. But there may be other circumstances, such as conflicts of interest that arise in the discharge of duties of both jobs that precludes dual employment.

For the reasons discussed herein, we respectfully ask that this bill be deferred.

