



GOV. MSG. NO. 1036

EXECUTIVE CHAMBERS
HONOLULU

LINDA LINGLE
GOVERNOR

July 10, 2007

The Honorable Colleen Hanabusa, President
and Members of the Senate
Twenty-Fourth State Legislature
State Capitol, Room 409
Honolulu, Hawaii 96813

Dear Madam President and Members of the Senate:

I am transmitting herewith SB46 SD1 HD1 CD1, without my approval, and with the statement of objections relating to the measure.

SB46 SD1 HD1 CD1

A BILL FOR AN ACT RELATING TO GOVERNMENT
OPERATIONS.

Sincerely,

A handwritten signature in black ink, appearing to read "Linda Lingle".

LINDA LINGLE

P R O C L A M A T I O N

WHEREAS, under Section 16 of Article III of the Constitution of the State of Hawaii, the Governor is required to give notice, by a proclamation, of the Governor's plan to return with the Governor's objections any bill presented to the Governor less than ten days before adjournment sine die or presented to the Governor after adjournment sine die of the Legislature; and

WHEREAS, Senate Bill No. 46, entitled "A Bill for an Act Relating to Government Operations," passed by the Legislature, was presented to the Governor within the aforementioned period; and

WHEREAS, Senate Bill No. 46 is unacceptable to the Governor of the State of Hawaii;

NOW, THEREFORE, I, LINDA LINGLE, Governor of the State of Hawaii, do hereby issue this proclamation, pursuant to the provisions of Section 16 of Article III of the Constitution of the State of Hawaii, giving notice of my plan to return Senate Bill No. 46 with my objections thereon to the Legislature as provided by said Section 16 of Article III of the Constitution.

DONE at the State Capitol, Honolulu,
State of Hawaii, this 25th
day of June, 2007.



LINDA LINGLE
Governor of Hawaii

EXECUTIVE CHAMBERS

HONOLULU

JULY 10, 2007

STATEMENT OF OBJECTIONS TO SENATE BILL NO. 46

Honorable Members
Twenty-Fourth Legislature
State of Hawaii

Pursuant to Section 16 of Article III of the Constitution of the State of Hawaii, I am returning herewith, without my approval, Senate Bill No. 46, entitled "A Bill for an Act Relating to Government Operations."

This bill amends sections 89C-4, 92-5, 304A-1001, and 304A-1004, Hawaii Revised Statutes, to provide that proposed compensation or changes in compensation for administrative positions excluded from chapter 89C, Hawaii Revised Statutes, in the University of Hawaii system shall be disclosed in open meetings for purposes of public comment. Section 92-5(a)(2) is amended to narrow the purposes for which closed meetings may be held by excluding compensation or changes in compensation for University of Hawaii administrative positions. Section 304A-1001 is amended to require the Board of Regents to publicly disclose compensation or changes in compensation for the University's administrative positions no later than six business days before any related open meeting is convened for public comment.

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This bill is objectionable for three reasons. First, disclosure would hinder the University's ability to negotiate terms, including salaries, of employment contracts favorable to the University and taxpayers. Allowing proposed compensation to be publicly disclosed, before a contract is negotiated or executed, could damage the University's bargaining stance. This frustrates a legitimate government purpose for which existing law provides protections.

Second, under the public records law (Uniform Information Practices Act Chapter 92F), the University of Hawaii is required to disclose actual salaries of exempt employees. In contrast, government employees have a privacy interest in proposed compensation and proposed pay, which is currently not considered public information and may be properly withheld from public disclosure. Further, the Uniform Information Practices Act is intended to protect an individual's privacy interest by allowing a board to discuss personnel matters in a closed meeting. Disclosure of proposed salaries of these University of Hawaii employees is not of sufficient public interest to sufficiently warrant the invasion of privacy of these public servants.

Third, transparency is already provided. The Sunshine Law, part I of chapter 92, Hawaii Revised Statutes, currently

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gives the public the opportunity to testify on matters listed on a board's agenda. While the exact salary the Board of Regents proposes to pay a specific employee is not included on the agenda, the Board is already required by the Sunshine Law to provide sufficient information to inform the public that it is considering a compensation matter for a prospective or current employee. Salary ranges are publicly disclosed and give the public an opportunity to know the parameters of the proposed personnel action.

For the foregoing reasons, I am returning Senate Bill No. 46 without my approval.

Respectfully,



LINDA LINGLE
Governor of Hawaii

A BILL FOR AN ACT

RELATING TO GOVERNMENT OPERATIONS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. The purpose of this Act is to foster meaningful
2 discourse regarding compensation of top-level managerial and
3 administrative positions at the University of Hawaii, a matter
4 of intense public interest and statewide concern.

5 SECTION 2. Section 89C-4, Hawaii Revised Statutes, is
6 amended to read as follows:

7 "§89C-4 Adjustments for excluded employees exempt from
8 civil service. Each appropriate authority shall determine the
9 adjustments that are relevant for their respective excluded
10 employees who are exempt from civil service in consideration of
11 the compensation and benefit packages provided for other
12 employees in comparable agencies. For administrative positions
13 in the University of Hawaii system filled by excluded employees,
14 proposed compensation or change in compensation shall be
15 disclosed in open meeting for purposes of public comment."

16 SECTION 3. Section 92-5, Hawaii Revised Statutes, is
17 amended by amending subsection (a) to read as follows:



1 " (a) A board may hold a meeting closed to the public
2 pursuant to section 92-4 for one or more of the following
3 purposes:

4 (1) To consider and evaluate personal information relating
5 to individuals applying for professional or vocational
6 licenses cited in section 26-9 or both;

7 (2) To consider the hire, evaluation, dismissal, or
8 discipline of an officer or employee or of charges
9 brought against the officer or employee, where
10 consideration of matters affecting privacy will be
11 involved; provided that proposed compensation or
12 change in compensation for administrative positions in
13 the University of Hawaii system filled by excluded
14 employees under chapter 89C shall be disclosed in open
15 meeting for purposes of public comment; provided that
16 if the individual concerned requests an open meeting,
17 an open meeting shall be held;

18 (3) To deliberate concerning the authority of persons
19 designated by the board to conduct labor negotiations
20 or to negotiate the acquisition of public property, or
21 during the conduct of such negotiations;



- 1 (4) To consult with the board's attorney on questions and
- 2 issues pertaining to the board's powers, duties,
- 3 privileges, immunities, and liabilities;
- 4 (5) To investigate proceedings regarding criminal
- 5 misconduct;
- 6 (6) To consider sensitive matters related to public safety
- 7 or security;
- 8 (7) To consider matters relating to the solicitation and
- 9 acceptance of private donations; and
- 10 (8) To deliberate or make a decision upon a matter that
- 11 requires the consideration of information that must be
- 12 kept confidential pursuant to a state or federal law,
- 13 or a court order."

14 SECTION 4. Section 304A-1001, Hawaii Revised Statutes, is
 15 amended to read as follows:

16 "[+] §304A-1001[+] Exempt personnel. Personnel of the
 17 university not subject to chapter 76 shall be under the
 18 direction of the president of the University of Hawaii. The
 19 board of regents shall appoint deans, directors, members of the
 20 faculty, and other employees as may be required to carry out the
 21 purposes of the institution, prescribe their salaries and terms
 22 of service when the salaries and terms of service are not



1 specifically fixed by legislative enactment, and make and
2 enforce rules governing sabbatical and professional improvement
3 leaves with or without pay, consistent with the practice of
4 similar institutions in the United States and notwithstanding
5 the laws of the State relating to leaves of absence of the
6 officers and employees of the State. Notwithstanding any other
7 law to the contrary, the board of regents, for administrative
8 positions in the University of Hawaii system filled by excluded
9 employees, shall publicly disclose, no later than six business
10 days, before any related open meeting convened for purposes of
11 public comment, compensation offered to newly hired employees
12 and changes in compensation offered to existing employees under
13 chapter 89C."

14 SECTION 5. Section 304A-1004, Hawaii Revised Statutes, is
15 amended to read as follows:

16 "[+]§304A-1004[+] Annual report, executive, managerial,
17 and faculty salaries[-]; proposed compensation. (a) The board
18 of regents shall submit an annual report to the legislature
19 containing the salaries paid to all executive, managerial, and
20 faculty members of the university, including that paid to the
21 president of the university, not fewer than twenty days prior to
22 the convening of each regular session.



1 (b) The board of regents shall disclose in open meeting,
2 for purposes of public comment, proposed compensation or change
3 in compensation for administrative positions in the University
4 of Hawaii system filled by excluded employees under chapter
5 89C. "

6 SECTION 6. Statutory material to be repealed is bracketed
7 and stricken. New statutory material is underscored.

8 SECTION 7. This Act shall take effect upon its approval.



