

Honolulu, Hawaii

**FEB 14 2007**RE: S.B. No. 14  
S.D. 1

Honorable Colleen Hanabusa  
President of the Senate  
Twenty-Fourth State Legislature  
Regular Session of 2007  
State of Hawaii

Madam:

Your Committee on Education, to which was referred S.B.  
No. 14 entitled:

"A BILL FOR AN ACT RELATING TO THE UNIVERSITY OF HAWAII,"

begs leave to report as follows:

The purpose of this measure is to enact implementing legislation in compliance with the ratification of the Hawaii State Constitutional Amendment regarding the selection process for the Board of Regents of the University of Hawaii.

Specifically, this measure:

- (1) Establishes the Candidate Advisory Council to screen and propose candidates for appointment to the Board of Regents of the University of Hawaii;
- (2) Increases the membership of the Board of Regents from twelve to fifteen members, requiring a specified number of members to represent different geographic locations;
- (3) Prohibits Board of Regents members from serving more than two consecutive five-year terms;
- (4) Requires the Senate to consider the question of an incumbent member's confirmation for a second term at least one hundred twenty days prior to the conclusion of the member's first term; and



- (5) Allows a Board of Regents member to continue to serve until the member's successor has been appointed and confirmed by the Senate.

Testimony in support of this measure was submitted by the Hawaii Government Employees Association, the Faculty Retirees Association University of Hawaii, and one individual. Testimony in opposition of this measure was submitted by the University of Hawaii and the Association of Governing Boards of Universities and Colleges. Comments on this measure were submitted by the Office of Information Practices.

This measure reflects the Senate's efforts to address the concerns raised by Hawaii's voters, through their approval of a constitutional amendment regarding the composition of the Board of Regents of the University of Hawaii and other related provisions of the law. Through this measure, the Senate endeavors to ensure that the law reflects the spirit of the constitutional amendment that was approved by the people of Hawaii. The public has called for change, and we must see to it that the change is real, meaningful, and productive. The University of Hawaii plays a vital role in the State, the economy, and the larger community that includes Hawaii's Pacific neighbors. Its autonomy and effectiveness deserve every protection the Legislature can offer. These are issues that rise above partisanship, political agendas, and individual interests. They are issues that go to the very heart of the community and the promises the Legislature makes to future generations. Your Committee believes that it has fallen on the Legislature to heed the call of Hawaii's people, to recognize the vital role of the University of Hawaii, and to provide leadership in supporting its autonomy and continued success.

As a result, your Committee finds that during the November 7, 2006, election, the voters ratified an amendment to Article X, Section 6, of the Hawaii State Constitution, which requires the Governor to appoint members to the Board of Regents of the University of Hawaii from pools of qualified candidates presented by the Candidate Advisory Council. This measure establishes the Candidate Advisory Council for the Board of Regents of the University of Hawaii. Your Committee further finds that it was the people's desire that the Governor not be solely responsible for the appointment of members on the Board of Regents, thus, the Governor also should not be solely responsible for appointing a separate body that qualifies and presents candidates for appointment to the Board of Regents.



Your Committee determines that the Candidate Advisory Council should present two to four candidates for each seat on the Board of Regents within a specified number of days of a vacancy occurring. The Governor will then choose one nominee from those presented for possible membership on the Board of Regents, upon advise and consent of the Senate. Members for the Candidate Advisory Council will be appointed by the Governor, the Senate President, the Speaker of the House of Representatives, as well as various other organizations representing constituencies with interests relative to the public university system.

Your Committee believes that although members of the Candidate Advisory Council shall be appointed by these groups, this does not mean that the groups must, although they may, appoint members from their own constituencies. Instead, individuals may be appointed so long as they are individuals who are widely viewed as having placed the broad public interest ahead of special interests, having achieved a high level of prominence in their respective professions, and respected members of the community. Additionally, to allay concerns of executive council or board members of certain constituencies exerting undue influence over appointments, an individual who is or has served within the last five years on the executive council or board for the University of Hawaii Alumni Association or the All Campus Council of Faculty Senate Chairs of the University of Hawaii shall not be eligible for membership on the Candidate Advisory Council. The five-year moratorium will provide necessary distance, but also ensure that an individual is not too far removed from understanding the issues and qualifications necessary for council members. These requirements support the intent behind the composition of the Candidate Advisory Council to ensure that it is comprised of knowledgeable individuals representing diverse interests and concerned parties relative to the University of Hawaii System from throughout the State.

Testimony was provided seeking further detail on the qualifications necessary for candidates to be presented to the Governor for membership on the Board of Regents, which included the following:

- (1) A record of institution building;
- (2) Knowledge of the differences between a business model institution and a service institution;



- (3) Understanding that the principal work of a university is improving the quality of higher education through teaching, research, and public service;
- (4) Understanding of the connection between academic freedom and the constitutional guarantees of the Bill of Rights;
- (5) Commitment to the provisions of the State Constitution limiting their roles to policymaking and not micromanagement; and
- (6) Experience in raising money for endowments and other nonprofit purposes.

Your Committee believes that these are important criteria for qualification for the Board of Regents and believes that the Candidate Advisory Council should consider each criterion as well as any other relevant information in determining if an individual is qualified for service on the Board.

Your Committee also determines that, to ensure adequate representation of the diverse interests from throughout the State, membership on the Board of Regents should be increased and should include a specified number of individuals from each county.

Your Committee believes that expediency is required in implementing the law, as required by the constitutional amendment. Therefore, the Candidate Advisory Council should convene and attend to its duties as expeditiously as possible, including developing selection criteria and the application process for the Board of Regents seats and presenting candidates for existing and upcoming vacancies. Your Committee also believes that provisions should be made for reasonable deadlines for members of the Candidate Advisory Council to be appointed, for the Candidate Advisory Council to convene, and for the Candidate Advisory Council to make necessary presentations of candidates for open seats and seats for members whose terms have expired or will expire in the near future. Additionally, provisions should be instituted to require staggered terms for Board of Regents members and to allow for the presentation of candidates for multiple seats to be addressed in an efficient manner.

Your Committee determines that it is necessary to clarify that it was not the intent of the Legislature in proposing the



constitutional amendment that the existing Board of Regents be abolished, but instead that members continue to serve until the appropriate implementing legislation can be enacted. Therefore, current appointments that have or will soon expire will be extended until such time as the Candidate Advisory Council can convene and appointment and confirmation can be accomplished. Finally, due to the increase in membership on the Board of Regents, interim quorum requirements are necessary to allow the Board of Regents to continue to function until full membership is achieved.

Accordingly, your Committee has amended this measure by:

- (1) Including a purpose section that clarifies the intent of the Legislature that existing Board of Regents members serve their full terms of office and, upon expiration of their terms, be replaced by a member from a list of candidates presented by the Candidate Advisory Council;
- (2) Requiring the Candidate Advisory Council, within sixty days of first convening, to make its presentation of candidates for vacant seats;
- (3) Requiring the Candidate Advisory Council to submit a specified number of candidates for filling multiple seats on the Board of Regents;
- (4) Clarifying that appointments to the Candidate Advisory Council by the organizations listed in the measure shall be selected from the general public and may include members of their own constituencies, as long as the appointees satisfy the requirements for appointment provided in the measure; provided that individuals who are or have served as members of the executive councils or boards of the University of Hawaii Alumni Association and the All Campus Council of Faculty Senate Chairs of the University of Hawaii within a five-year period immediately preceding the establishment of or vacancy on the Candidate Advisory Council shall not be eligible for membership on the Candidate Advisory Council;
- (5) Providing that if a Candidate Advisory Council member has not been appointed within one hundred eighty days of the effective date of the measure, the sitting members shall make an interim appointment to fill the vacant




seat until the appropriate appointing authority makes an appointment;

- (6) Requiring the Candidate Advisory Council to convene its first meeting after thirty days of the appointment of the members or upon the appointment of a majority of its members if not all of the members have been appointed within thirty days of the effective date of the measure;
- (7) Clarifying that the Candidate Advisory Council meetings shall be exempt from the Sunshine Law, part I of Chapter 92, Hawaii Revised Statutes;
- (8) Clarifying that if the Senate is not in session within one hundred twenty days of the completion of a member's first term, the member may continue to serve until the Senate next convenes in regular session or in a special session during which the Senate is authorized to consider the Board of Regents member's reconfirmation for a second term;
- (9) Increasing the number of members on the Board of Regents representing the county of Oahu from five to seven; and
- (10) Specifying that seven members shall constitute a quorum of the Board of Regents until at least fourteen of the fifteen seats are filled, at which time a majority shall constitute a quorum.

As affirmed by the record of votes of the members of your Committee on Education that is attached to this report, your Committee is in accord with the intent and purpose of S.B. No. 14, as amended herein, and recommends that it pass Second Reading in the form attached hereto as S.B. No. 14, S.D. 1, and be placed on the calendar for Third Reading.

Respectfully submitted on  
behalf of the members of the  
Committee on Education,

  
NORMAN SAKAMOTO, Chair



The Senate  
Twenty-Fourth Legislature  
State of Hawaii

**Record of Votes**  
**Committee on Education**  
**EDU**

Bill / Resolution No.:* <i>SB 14</i>	Committee Referral: <i>EDU</i>	Date: <i>02/12/07</i>		
<input type="checkbox"/> The committee is reconsidering its previous decision on this measure. If so, then the previous decision was to: _____				
The Recommendation is: <div style="display: flex; justify-content: space-between; align-items: flex-start;"> <div style="text-align: center;"><input type="checkbox"/> Pass, unamended 2312</div> <div style="text-align: center;"><input checked="" type="checkbox"/> Pass, with amendments 2311</div> <div style="text-align: center;"><input type="checkbox"/> Hold 2310</div> <div style="text-align: center;"><input type="checkbox"/> Recommit 2313</div> </div>				
Members	Aye	Aye (WR)	Nay	Excused
SAKAMOTO, Norman (C)	X			
TOKUDA, Jill N. (VC)	X			
CHUN OAKLAND, Suzanne	X			
HEE, Clayton	X			
NISHIHARA, Clarence K.	X			
TANIGUCHI, Brian T.	X			
GABBARD, Mike		X		
<b>TOTAL</b>	<i>6</i>	<i>1</i>	<i>0</i>	<i>0</i>
Recommendation: <input checked="" type="checkbox"/> Adopted <input type="checkbox"/> Not Adopted				
Chair's or Designee's Signature: <i>[Signature]</i>				
<div style="display: flex; justify-content: space-between;"> <div style="text-align: center;">Distribution: Original File with Committee Report</div> <div style="text-align: center;">Yellow Clerk's Office</div> <div style="text-align: center;">Pink Drafting Agency</div> </div>				

\*Only one measure per Record of Votes