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# A BILL FOR AN ACT

RELATING TO THE UNIVERSITY OF HAWAII.

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

1       SECTION 1. The legislature finds that individual  
2 legislators and other elected officials of the State and its  
3 counties have a wide range of experience in the public and  
4 private sectors that often brings specialized knowledge and  
5 insight to policy-making. Elected officials often have  
6 continued to maintain other employment during their terms in  
7 elected office or while pursuing candidacy for an office, as  
8 duties and time constraints allow, and have provided valuable  
9 service in each of those respective capacities.

10       The purpose of this Act is to prohibit the University of  
11 Hawaii from adopting or maintaining any policy that precludes a  
12 legislator or other official elected to a non-statewide public  
13 office of the State or its political subdivisions, or candidate  
14 for any of those offices, from working at the University of  
15 Hawaii in a non-executive or non-managerial level, so long as  
16 the duties and schedule of the candidate or elected official do



1 not conflict with those of that person's position at the  
2 university.

3 The legislature declares that this issue is a matter of  
4 statewide concern.

5 SECTION 2. Chapter 304A, Hawaii Revised Statutes, is  
6 amended by adding a new section to part III to be appropriately  
7 designated and to read as follows:

8 "§304A- Employment of political candidates and officials  
9 elected to non-statewide public office. (a) The university  
10 shall not adopt or maintain any policy that prohibits a  
11 candidate for, or person elected to, a non-statewide public  
12 office of the State or any of its political subdivisions from  
13 being employed in a non-executive or non-managerial position at  
14 the university solely because of the person's candidacy for, or  
15 election to, that public office; provided that this section  
16 shall not apply if the person's work schedule and time demands  
17 related to the candidacy or duties of elective office  
18 unreasonably conflict with those of the university position.

19 (b) As used in this section, "candidate" means a person  
20 who has filed applicable nomination papers with the chief



1 election officer or county clerk for an elective public office  
2 of the State or any of its political subdivisions."

3 SECTION 3. New statutory material is underscored.

4 SECTION 4. This Act shall take effect on July 1, 2091.



**Report Title:**

University of Hawaii; Employment; Elected Officials

**Description:**

Prohibits UH from prohibiting a person from certain employment at UH solely because that person is a candidate for, or person elected to, a non-statewide public office. (HB1556 HD1)

*The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.*





# UNIVERSITY OF HAWAI'I SYSTEM

## Legislative Testimony

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Testimony Presented Before the  
House Committee on Higher Education  
Tuesday, February 9, 2016 at 2:00 p.m., Room 309

By  
Carrie Okinaga, Vice President for Legal Affairs/General Counsel  
and  
Kalbert K. Young, Vice President for Budget and Finance/Chief Financial Officer  
University of Hawai'i System

### HB 1556 HD1 – RELATING TO THE UNIVERSITY OF HAWAII

Chair Choy, Vice Chair Ichiyama, and Members of the House Committee on Higher Education:

Thank you for the opportunity to provide testimony on this measure. HB 1556, HD1, prohibits the University of Hawai'i (UH) from prohibiting a person from certain employment at UH solely because that person is a candidate for, or person elected to, a non-statewide public office.

The University of Hawai'i Board of Regents Policy 9.205 restricts employees of the University of Hawai'i from political campaigning for themselves and employment as elected officials while also being a University of Hawai'i employee. The intent of the policy is to reduce any appearance of conflict in interests and the public perception of conflicts of interest. Being a legislator, county council member, etc., are inherently political positions and the University has previously been criticized in its hiring practices.

Board of Regents Policy 9.205 underscores the importance of exercising political rights, but balances that individual's interest along with that of other University employees. Campaigning or serving in elected offices takes dedication and is acknowledged as time consuming. Similarly, employees of the University of Hawai'i need to recognize their public responsibilities to: (1) perform their duties; and (2) be careful not to attribute their own personal political opinions to the University. In keeping with that balance, the policy requires that an employee request leave of absence without pay while campaigning for political office, but resign from university service when elective office is assumed. Furthermore, the policy and its requirements are cited and incorporated by reference in the current contract between the University of Hawai'i Professional Assembly and the University of Hawai'i (Article III Section G).

The policy has been challenged, and has been affirmed. In Alcon vs. Harlan Cleveland, et al., the Circuit Court of the First Circuit, State of Hawai'i, issued a decision in 1970 upholding the Regents policy requiring a faculty member to resign upon being elected to

the State legislature. And the Department of the Attorney General (ATG) affirmed in 1992 and 1994 the incompatibility of certain employees at the UH holding legislative office.

UH defers to the State Attorney General's Office on whether the Hawai'i Constitution would allow legislators to be employed at both the legislature and UH as a regular employee. Employment for legislators with other state departments is already restricted, and carving out university employment would clearly be an exception. The University of Hawai'i has the right and duty to establish policies and guidelines that ensure the integrity and appropriate operations of the University.

The intent of HB 1556, HD1, 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, it is for this very reason that Regent Policy 9.205 seeks to avoid compromising the integrity of the University or raising questions to the conflict in interests of the individual in elected office. As currently drafted this measure would require wholesale revision by the Board of Regents longstanding University policy, possible amendment to the State Constitution, and deviation to the current UH philosophy of conflicts in interest by its public employees.

Thank you for your time and consideration on this matter.



# HAWAI'I EDUCATIONAL POLICY CENTER

## Testimony

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House Committee on Higher Education  
February 9, 2016 2 pm Room 309

### HB 1556 HD 1, RELATING TO THE UNIVERSITY OF HAWAII

HEPC supports the intent of this bill, primarily because it reverses a Regents Policy of many years that constrains UH employees from exercising their full rights of citizenship.

Specifically, the policy in question is **RP 9.205 Title** Political Activity, which can be found today on the following web page:

<https://www.hawaii.edu/policy/?action=viewPolicy&policySection=Rp&policyChapter=9&policyNumber=205>

The policy in question, which was created decades ago, is an affront to citizens of a democratic society in several aspects.

1. The University believes it has the right to impose a requirement that the exercise of civic rights not result in any embarrassment to the University. This overreach of censorship is inappropriate, especially in the context of an institution devoted to open discussion of ideas.
2. The University believes that running for public office is inherently a conflict of interest and creates the appearance of impropriety. Imagine that, running for neighborhood board, running for OHA, or the legislature is, on its face, an unseemly and improper activity!
3. The University believes it can appropriately control the activities of employees after work hours, even when it does not interfere with normal hours of work connected with fulfilling the demands of their job. Anyone, according to this policy, who campaigns after work for an office must take a leave of absence, whether they win or lose.

In the past, I have personally lost income when running for the State House, even when I lost!!! Each time, as an employee of the University, I was required to take a leave of absence without pay. I imagine this prevented great embarrassment and the taint of impropriety to the University.

On a number of occasions I have raised this issue to the University and found no interest in changing this discriminatory policy. IN fact, apparently this policy was recodified in 2014.

The following is the policy exactly as it appears on the UH web site.

#### **Viewing Policy RP 9.205 Title** Political Activity

Regents Policy Chapter 9, Personnel

Regents Policy [RP 9.205](#), Political Activity (See also the appropriate collective bargaining agreement)

Effective Date: Feb. 19, 1982

Prior Dates Amended: Aug. 30, 1966; Oct. 31, 2014 (recodified) Review Date: August 2019

#### **I. Purpose**

To set forth policy regarding political activity.

#### **II. Definitions**

No policy specific or unique definitions apply.

#### **III. Board of Regents Policy**

#### **HAWAI'I EDUCATIONAL POLICY CENTER**

1776 University Avenue, Castle Memorial Hall 133 • Honolulu, Hawai'i 96822

Dr. Jim Shon, Director Phone (808) 282-1509 • [jshon@Hawaii'i.edu](mailto:jshon@Hawaii'i.edu)

<http://manoa.Hawaii'i.edu/hepc/>

A. The board believes that it is the right of employees as citizens to engage in politics so long as these activities do not interfere with their university duties or violate established rules of the university. Furthermore, the board has expressed the belief that political activities by employees, in accordance with the following statement, ***should result in no embarrassment to the university.***

1. It is expected that university employees will use appropriate discretion in the exercise of the political rights which they share in common with other citizens; that they will be careful always to emphasize that their utterances and actions in political matters are theirs as individuals and in no manner represent the university; that they will always recognize that their first obligation is to the university; ***that they will accord the university administration the courtesy of prior notice of any political commitment which is likely to bring them into prominence.***

2. ***Because of a conflict in interest and/or an appearance of impropriety*** in campaigning for and holding a public elective office and being employed at the university, the board has established the following policy in regard to campaigning for and holding such an office.

3. All employees under the jurisdiction of the board seeking a public elective office shall, without exception:

a. Request, or in absence of such request, to ***be placed on a leave of absence without pay in accordance with university policy upon actively seeking political office***, but in no event later than the filing of nomination papers or the announcement of candidacy for such office;

b. Be subject to the general university policies governing appearances and activities of political candidates on campus;

c. Insure that they do not give the appearance that their views, utterances and/or actions are representative of the university; and

d. Be separated from university service through either resignation, or termination upon assumption of the elective office.

#### **IV. Delegation of Authority**

There is no policy specific delegation of authority.

#### **V. Contact Information**

Office of the Vice President for Administration, 956-6405, [jgouveia@hawaii.edu](mailto:jgouveia@hawaii.edu)

#### **VI. References**

A. <http://www.hawaii.edu/offices/bor/>

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**LATE**

The House Committee on Higher Education  
Tuesday, February 9, 2016  
2:00 p.m., Room 309

**RE: HB 1556, HD1, Relating to the University of Hawai'i**

Attention: Chair Isaac Choy, Vice Chair Linda Ichiyama and  
Members of the Committee

The University of Hawaii Professional Assembly (UHPA) urges the committee **support the passage of HB1556, HD1** that provides faculty the opportunity to serve their communities not only as an educator but as a public servant.

The value added to the student of a faculty member who has experienced the process of being elected to public office, serving the people through knowing the community needs and crafting the language for county ordinances or state statutes that improve their lives is not found in academic text. This experience is where praxis intersects with theory and excellence is achieved.

The University of Hawai'i faculty are members of communities throughout the State of Hawai'i and must be provided equal opportunity, just like other citizens of Hawai'i to hold public office.

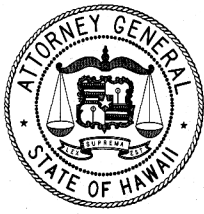
UHPA urges **passage of HB1556, HD1.**

Respectfully submitted,

A handwritten signature in black ink that reads "Kristeen Hanselman".

Kristeen Hanselman  
Executive Director

**University of Hawaii  
Professional Assembly**



**TESTIMONY OF  
THE DEPARTMENT OF THE ATTORNEY GENERAL  
TWENTY-EIGHTH LEGISLATURE, 2016**

**LATE**

**ON THE FOLLOWING MEASURE:**

**H.B. NO. 1556, H.D. 1, RELATING TO THE UNIVERSITY OF HAWAII.**

**BEFORE THE:**

**HOUSE COMMITTEE ON HIGHER EDUCATION**

**DATE:** Tuesday, February 9, 2016

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

**LOCATION:** State Capitol, Room 309

**TESTIFIER(S):** Douglas S. Chin, Attorney General, or  
James E. Halvorson, Deputy Attorney General

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Chair Choy and Members of the Committee:

The Department of the Attorney General takes no position on this bill. However, we do have a concern as set forth below.

Any public sector employee whose employer receives federal funding is subject to the Hatch Act. Pursuant to 5 U.S.C. §§ 1212(a)(5), 1215(a)(1)(B), 1216(a)(2), 1502(a)(3), and 1504, state public employees who work for a public entity receiving Federal funds are prohibited from running for an elected office.

Thank you for the opportunity to testify on this matter.