

HAWAII STATE LEGISLATURE
MARCH 29, 2017
Hawaii State Legislature
Hawaii State Capitol
415 South Beretania Street
Honolulu, HI 96813

House Bill 424 SD1– Relating to the University of Hawaii
Letter of Concern

Richard D. Legon

President, Association of Governing Boards of Universities and Colleges

On behalf of the Association of Governing Boards of Universities and Colleges (AGB), I respectfully submit this letter in opposition to the current iteration of House Bill 424 SD1 (HB 424 SD1), which as amended would establish two ex-officio, non-voting faculty positions on the University of Hawaii Board of Regents, as well as establish a cap on tuition until an unspecified date. AGB recognizes House Bill 424 HD1, which passed the Hawaii House of Representatives, and opposes HB 424 SD1.

Established in 1921, AGB's mission is to educate the governing bodies of some 2000 institutions. We work with institution and state system leadership and their board members, providing education and counsel to over 40,000 leaders across higher education. AGB has helped to shape best practices in institution and board governance with a primary focus on institution mission achievement. AGB's board of directors, most of whom serve as college and university board members, is committed to advancing policies that strengthen and improve governance and leadership.

Unfortunately, HB 424 SD1 as amended is problematic for two reasons. First, adding faculty representation can be contradictory to the values and best practices of citizen trusteeship. Second, adding a legislative cap on tuition and fees would prevent the board of regents from fulfilling its fiduciary duty and authority to oversee and adjust university finances in a changing economy.

AGB recognizes that the Hawaii legislature wishes to strengthen input from faculty and students by including two faculty representatives on the board. However, adding faculty representation to accomplish that goal would significantly undermine effective governance. As a best practice, governing boards should not have designated voting or non-voting slots for faculty. Citizen trusteeship should be comprised of citizens who are independent in their individual and collective judgment. They should serve the people of the state, not segments of the state or special interests. Their primary duty is to hold the university system's assets in trust for current and future generations.

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As indicated in AGB's 2010 [Statement on Board Responsibility for Institutional Governance](#):

It is AGB's view that faculty, staff, and students ordinarily should not serve as voting members of their own institution's governing board because such involvement runs counter to the principle of independence of judgment required of board members. Particularly in the case of faculty or staff members, board membership can place them in conflict with their employment status. Even when constituent groups are represented on the board, the board should be mindful that the presence of one or more students, faculty, or staff as members of the board or its committees or institutional task forces neither constitutes nor substitutes for communication and consultation with these constituent groups.

Furthermore, faculty board membership is outside the mainstream of standard board composition. According to AGB's benchmark survey report, [Policies, Practices, and Composition of Governing and Foundation Boards 2016](#), 79.5 percent of public board respondents indicated that they do *not* have faculty board membership. Of respondents that do have faculty board membership, only a handful are public systems.

An alternative to formal faculty board membership would be a designated faculty representative to the board. The representative could provide regular updates to the board on faculty issues and concerns. It is also common practice for faculty to serve on board committees, both standing and ad hoc, if board bylaws permit such representation.

I also wish to respond to the tuition capping measure that has been added to HB 424 SD1. If enacted, the amended bill would indefinitely prohibit the University of Hawaii Board of Regents from increasing tuition charges, resulting in a tuition freeze that could ultimately harm the strength of the University and its ability to serve the students of the state. The cap, coupled with no legislative commitment regarding state funding, makes the proposal even more challenging. The cap restricts the authority of the board of regents to make important decisions regarding the long-term financial sustainability of the system. It also erodes the board's autonomy and the management flexibility of the system's executive leadership and could cripple the University's ability to fulfill its public purpose. These positions are directly addressed in AGB's 2012 [Statement on External Influences on Universities and Colleges](#):

Both private and public institutions need a high degree of independence and autonomy from direct government control or any self-serving or political agenda. Because of higher education's unique mission to transmit and advance knowledge, colleges and universities function at their best when teaching and scholarship are unencumbered by unnecessary restrictions, preordained outcomes, or undue expectations or influences—whether from government officials, donors, or any other individuals or groups. The integrity of research findings and advancement of knowledge require free and independent inquiry. When necessary, boards must be willing to take a strong stand in defense of institutional autonomy and independence, providing a buffer between the college or university and inappropriate outside intrusion or criticism.

Discussions surrounding college affordability are important and I commend the legislature for its attention to the financial realities of a postsecondary education for students and families in Hawaii. However, in order to serve those students and their families, governing boards must have the authority and responsibility (as fiduciaries) to ensure the viability and success of their

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institutions. In AGB's 2016 report, [Consequential Board Governance in Public Higher Education Systems](#), state policy makers are specifically encouraged to "ensure system governing boards hold financial control commensurate with high expectations for system leadership." This control includes the power to set tuition for students, and provides the foundation for university systems like the University of Hawaii to pursue their missions efficiently, responsibly, and thoughtfully.

AGB recommends that the Hawaii State Legislature consider reverting House Bill 424 SD1 to its revised version, House Bill 424 HD1.

In my opinion, based on over 30 years of studying higher education boards and consistent with this association's principles of governance independence, I see no sound reason to enact HB 424 SD1. Doing so could cause unforeseen harm to the University of Hawaii System, a great resource for the people of Hawaii.

I am available to answer any questions related to this letter. Please do not hesitate to contact me at rlegon@agb.org or 703-505-6916.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Richard D. Legon", followed by a horizontal line extending to the right.

Richard D. Legon
President, AGB