



# UNIVERSITY OF HAWAII SYSTEM

## Legislative Testimony

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Testimony Presented Before the  
Senate Committee on Higher Education  
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By  
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SB 3269 Proposed SD1 – RELATING TO ACADEMIC TENURE AT THE UNIVERSITY OF HAWAII

Chair Kim, Vice Chair Kidani, and members of the committee:

Thank you for the opportunity to provide testimony in opposition to proposed SB 3269 SD1, which among other things, outlines: tenure requirements and criteria for tenure-track faculty, requires a minimum of at least one performance review every five years for tenured and tenure-track faculty, alters who may receive tenure, and reconfigures the classification system throughout the University of Hawai'i System (UH System).

The University of Hawai'i (University) welcomes efforts to improve higher education efficiency and enhance the UH System's ability to provide a quality and affordable education to Hawai'i's citizens through its ten campuses. The role the University plays in educating the workforce of Hawai'i, as well as providing leaders, innovators, public servants, and civically engaged individuals, is well-known. In addition, the University's research enterprise brings into Hawai'i hundreds of millions of dollars annually to address many of Hawai'i's most pressing challenges and opportunities including but not limited to climate change, sea level rise, coastal resilience, health disparities, renewable energy, invasive species, threats to agriculture, disaster resilience and more.

To achieve these critical outcomes for Hawai'i, the University extends employment security to its faculty and staff, either through the tenure system for faculty or civil service for its staff. As a general principle, the University supports such job security because it provides stability in the workforce and continuity for the institution, a characteristic of higher education essential to student success. The University also has the duty and contractual obligation to define its classification and performance standards within the scope of collective bargaining with the respective unions.

The University must be able to establish its own internal policy on faculty classifications, develop its classification systems to best suit its needs, and engage in good faith negotiations with the University of Hawai'i Professional Assembly (UHPA) over tenure and post-tenure review issues. As a result, the University does not support the proposed changes to Chapter 304A introduced by SB 3269, and we seek deferral of this measure for the following reasons.

First, the bill's timing preempts a critical conversation on faculty classifications and tenurability of some types of existing faculty positions that should be at the institutional level. The introductory language of SB 3269 implies that SCR 201 S.D.1, H.D.1 that resolved that the University should set up a task force to investigate tenure resulted in the formation of a Board of Regents (BOR) permitted interaction group (PIG). Such a statement is factually inaccurate. The PIG was established before SCR 201's passage and issued independent policy recommendations to the BOR. The SCR 201 task force and its report included different, though overlapping members and had a different mandate.

However, SB 3269 appears to adopt the proposed policy language presented to the Board of Regents by the PIG with only some revisions. Not only were the recommendations of the PIG tabled pending the outcome and recommendations of the SCR 201 task force, but the PIG's proposals were never fully developed or intended to be final drafts. Furthermore, the draft policy language submitted by the PIG to the BOR was intended to be University policy and not statutory language. To use this draft language to so extensively revise Chapter 304A without thoroughly deliberating on the meaning of the changes the language considers will inevitably have negative implications, some of which are described below.

Second, the bill undermines both the spirit and the letter of HRS Chapter 89. This bill bypasses the collective bargaining process by imposing statute-specific classifications and unilaterally removing specific faculty from the protection of tenure without appropriate bargaining with UHPA. Both tenure and faculty classifications are subject to collective bargaining under the "other conditions of employment" clause as outlined in Chapter 89-1. HRS §89-9(3) states that "[o]ther terms and conditions of employment which are subject to collective bargaining and which are to be embodied in a written agreement as specified in section 89-10." As such, the governing contract between the University and UHPA with negotiated language under Article XII doesn't restrict the granting of tenure to certain Faculty classifications as proposed in SB 3269. To make such a restriction and to eliminate some faculty from tenure entirely fundamentally alters a condition of employment and may have repercussions for existing faculty and future hires.

The new language may have a direct negative impact on existing faculty. The negotiated language under Article XII, Tenure and Service, provides that the President may grant tenure upon initial appointment to Faculty Members that have previously held tenure at a comparable institution. As such, the President's authority will be limited to only providing tenure upon initial appointment for those Faculty classifications that can be granted tenure under SB 3269. There are instances when a Tenured Faculty Member could transfer their locus of tenure within the UH System with the possibility of also changing their classification and will be harmed by the language in this bill.

Third, the requirements included in SB 3269 regarding review after tenure are unnecessary as all faculty already undergo periodic review after tenure. Additionally, the University already has procedures in place for addressing underperformance independent of the periodic review process and appropriate guidelines established to accomplish these goals.

Fourth, while the University agrees that classifications should be revised, that process must be completed internally under the UH System and only after considerable consultation and debate. The faculty classification language in SB 3269 raises serious questions that are not resolved or addressed. For example, while SB 3269 SD1 has revised the language to clarify that there should be a classification for Community College faculty (C), SB 3269 SD1 language currently precludes CC faculty from being tenured because only (F) faculty can be tenured.

Additionally, while the language in the bill is to be applied prospectively, it is unclear what that means in the context of legislation. Is the intent that upon inclusion in the statute, it will apply to future faculty or apply after a specific time period or academic year?

Enshrining such detailed language regarding a new classification scheme into law undermines the autonomy of the UH System and the collective bargaining agreement upon which employment by faculty is based. It also may introduce unintended and unfavorable consequences into legislation that will be very difficult to alter in future years. Ultimately, the University requests that the Board of Regents and the President in consultation with the UHPA be allowed to develop the appropriate policy framework for both tenure and faculty classifications.

We oppose this measure and request that it be deferred.