

RE: S.C.R. No. 115
S.D. 1

Honorable Ronald D. Kouchi
President of the Senate
Thirty-First State Legislature
Regular Session of 2021
State of Hawaii
Sir:

Your Committee on Higher Education, to which was referred S.C.R. No. 115 entitled:
"SENATE CONCURRENT RESOLUTION REQUESTING THE UNIVERSITY OF HAWAII TO UNDERTAKE A
BROADLY BASED ECONOMIC AND SOCIOLOGICAL STUDY TO IDENTIFY FACTORS THAT CONTRIBUTE TO
CRIME IN THE STATE,"

begs leave to report as follows:

The purpose and intent of this measure is to request the University of Hawaii (University) to undertake a broadly based economic and sociological study to identify factors that contribute to crime in the State.

Your Committee received testimony in support of this measure from two individuals.

Prior to the hearing on this measure, your Committee posted and made available for the public review a proposed S.D. 1, which deletes the contents of the measure and inserts language to request the University, with the oversight of the Chairperson of the Board of Regents of the University of Hawaii (Board of Regents), to examine and assess the reasonableness and feasibility of the existing policies, standards, rules, guidelines, and procedures governing the University's rental housing program for its faculty.

Your Committee received comments on the proposed version of this measure from the University of Hawaii's System.

Your Committee finds that the University is the only system of public education in Hawaii that is supported by state funds, uses public land set aside for university purposes, and is continually supported by other public resources. The University of Hawaii at Manoa University Housing Program offers rental housing to new employees during their initial years of employment. The program consists of three rental housing projects located in Manoa, named the Waialeale Rental Project, the Kuaikahaloa Nui Rental Project, and the Kuaikahaloa Iki Project (collectively, Oahu Rental Projects), consisting of a total of consisting of 237 units. Your Committee further finds that concerns have been raised over the administration of the Oahu Rental Projects, including policies on eligibility criteria, rent, and duration of tenancy, and the University's enforcement thereof.

Your Committee finds that Board of Regents Policy 9.209 (RP 9.209) specifically provides that the purpose of the Oahu Rental Projects is to serve as temporary transitional housing for newly recruited university personnel. Your Committee further finds that according to a report produced by the University of Hawaii's Office of Internal Audit (University Internal Audit) in November 2019 (2019 Audit Report), in similar reports issued in December 2010 and February 2013, various issues were identified relating to the University Housing Program's noncompliance with the policies of the Board of Regents (Board Policies) and the Internal Revenue Code (IRC). These issues included the program's:

(1) Historical failure to enforce the maximum term of stay resulting in low housing turnover as of January 2018, forty-seven percent of the tenant-faculty were staying in their units for over five years, despite the maximum lease term under Board Policies being one or three years depending on the employee's position, while having a waitlist of one hundred eighty-one applicants;

(2) Potential violation of section 119(d) of the IRC by failing to report the difference between the market value rent and the lower rent charged as the tenant-faculty's gross income and withholding applicable taxes therefrom; and

(3) Lack of policies and procedures pertaining to the subleasing of faculty rental housing

Your Committee finds that in 2019, the University Internal Audit re-evaluated the University Housing Program's process, procedures, and compliance with University policies. According to the 2019 Audit Report, the Board of Regents revised its policies governing the University Housing Assistance Program (UHAP), i.e., RP 9.209 and Executive Policy (EP) 9.230 in October 2014 to address the issues raised in 2013 and 2014.

Eligibility (RP 9.209). Your Committee finds that, to be eligible for the Oahu Rental Projects, the prospective tenant must be a full-time employee of the University: (1) who is appointed to an Oahu campus; (2) whose workplace is on Oahu; and (3) who does not own real property on Oahu. Your Committee notes that the final criterion differs from that of other UHAP programs, such as the financial assistance program, which requires the applicant to not own "an interest" in "residential" real property "within the State".

Priority of Assignment (RP 9.209). Your Committee further finds that assignment of the units at the Oahu Rental Projects is prioritized based on the employee's status and rank as follows: (Priority 1) tenure-track assistant faculty; (Priority 2) other tenure-track faculty; (Priority 3) tenured faculty; (Priority 4) administrative, professional and technical (APT)

personnel; and (Priority 5) all other employees. RP 9.209 provides that if the number of prospective tenants exceed the number of available rental units, the vacancies will be assigned first to applicants with initial appointment dates of three years or less; and then to applicants with the lowest salaries, within each respective priority rank.

Maximum Lease Period (EP 9.230 and RP 9.209). Your Committee also finds that Board of Regents Policies require the standard lease term for the Oahu Rental Projects to be one year. The policies do not allow the lease term for Priority 4 and 5 tenants to be renewed. The lease term for tenure-track and tenured faculty may be renewed annually for up to a maximum of three years. At the end of the maximum three-year lease period, tenure-track faculty who have not achieved tenure by then may apply for lease extensions, which will be considered and approved by the President on a case by case basis. The Board of Regents Policies do not provide a basis for allowing the extension of a tenured faculty's lease beyond the maximum three-year lease period; provided that the President may extend the lease terms beyond the standard maximum to maintain the occupancy rates at appropriate levels, i.e., when there are vacancies and no eligible applicants are on the waitlist.

Your Committee notes that the Board of Regents Policies do not provide explicitly guidance as to the priority between lease extension requests filed by existing tenants and applicants on the waitlist with newer initial appointment dates. Your Committee further notes that the policies only require "vacancies" to be assigned first to applicants with initial appointment dates of three years or less. Your Committee is uncertain if these policies resonate with the purpose of the Oahu Rental Projects, i.e., to serve as temporary transitional housing for newly recruited university personnel.

Your Committee also notes that according to the 2019 Audit Report, the University started sending out notices in May 2014 to tenants of the Oahu Rental Projects who had exceeded the maximum term of tenancy, to vacate their units within one year from the receipt of the notice. As of August 2019, the waitlist has decreased to forty, compared to one hundred eighty-one in January 2013. Your Committee commends the University's progress, however, believes the one-year period to vacate to be too long, especially considering the fact that as of June 30, 2019, approximately one third of the tenants (seventy-one out of the two hundred six leased units) still exceeded the maximum term of their tenancy, despite having forty people on the waitlist. Your Committee's concerns are compounded by the University's statements that it is now strictly enforcing its five-year maximum tenancy requirement (instead of the one or three-year period under the policies) and when asked for the basis for the five-years, replied that it was what other schools were doing. Your Committee believes that if the University finds current policies to be stale or not on a par with other peer institutions, it should amend the policies instead of arbitrarily violating them.

Compliance with section 119(d) of the IRC. Your Committee finds that EP 9.230 states that the University must adhere to applicable federal and state laws and regulations, including section 119 of the IRC, which states that if the amount of annual rent paid by a tenant is less than five percent of the appraised value of the qualified campus lodging, the difference (taxable benefit) shall be reported as gross income to the tenant. According to the 2019 Audit Report, the University is now requiring the taxable benefit to be reported as taxable income on the employees' IRS Form W-2, Wages and Tax Statement. Your Committee commends the University's efforts in becoming compliant with the IRC. However, your Committee notes that EP 9.230 states that appraisals of campus lodging will be conducted at a minimum every three years, however, according to the 2019 Audit Report, the IRS requires such appraisals to be conducted on an annual basis.

Your Committee is uncertain as to whether the University addressed this discrepancy. Furthermore, your Committee finds it concerning that the University is unaware as to whether the implications of its previous failure to report the taxable benefits have been dealt with.

Subletting and Assignment (EP 9.230). Your Committee finds that the EP 9.230 prohibits the subletting and assignment of the units, parking stalls, and parking permits at the Oahu Rental Projects, unless agreed to by the University Housing Program. The policy further states that violations of this policy could result in eviction. According to the 2019 Audit Report, the program has not approved and was unaware of any tenant subleasing their unit. Your Committee notes the University's testimony regarding its efforts to investigate and evict a couple of tenants who had been in violation of this policy. Your Committee commends the University's efforts in enforcing this policy.

Based on the documents submitted by the University and its testimony, your Committee has amended this measure by adopting the proposed S.D. 1 and further amending the measure by:

- (1) Inserting clauses noting the internal audit conducted by the University Internal Audit in November 2019;
- (2) Amending the subjects to be included in the task force's report by:
 - (A) Eliminating matters already provided in the 2019 Audit Report;
 - (B) Adding matters based on the 2019 Audit Report, including information pertaining to the value of each type of unit, additional tenant information, assessment of lease extensions approved by the University, the process by which the University verifies compliance, and proposed policies on lease extensions and time period to vacate the premises;
 - (C) Specifying that information be included on whether the unit is occupied as of May 1, 2021; and
 - (D) Clarifying the language relating to ownership of property; and
- (3) Making technical, nonsubstantive amendments for the purposes of clarity and consistency.

As affirmed by the record of votes of the members of your Committee on Higher Education that is attached to this report, your Committee concurs with the intent and purpose of S.C.R. No. 115, as amended herein, and recommends its adoption in the form attached hereto as S.C.R. No. 115, S.D. 1.

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

DONNA MERCADO KIM, Chair