

JAN 28 2015

A BILL FOR AN ACT

RELATING TO TECHNOLOGY TRANSFER AT THE UNIVERSITY OF HAWAII.

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

1 SECTION 1. The University of Hawaii is the only public
2 institution of higher education in the state. With its array of
3 graduate programs and professional schools, the university
4 engages in research that is often supported by federal research
5 grants or cooperative agreements. University research
6 activities often take place in state-supported public
7 facilities, such as university research laboratories, centers,
8 or classrooms. These public facilities are often constructed
9 with proceeds from state or university public financing bonds.

10 The university significantly contributes to the economic
11 diversification and health of the state by "transferring" the
12 fruits of its research activities to the private sector through
13 activities such as obtaining patents on inventions by university
14 faculty, licensing the use of innovations, creating new business
15 ventures, incubating startup companies, providing administrative
16 support to research faculty, and so forth.

17 The board of regents of the university has established a
18 regulatory framework and compliance program to balance the

1 unique benefits and ethical issues specific to university
2 research and technology transfer and to assure compliance with
3 applicable external regulations. The university framework and
4 compliance program incorporates long-standing ethical research
5 principles and technology transfer regulations currently used by
6 the federal government. The board periodically updates its
7 policies and procedures to reflect the best practices currently
8 in place at several of the university's peer institutions. In
9 this manner, the university strives to remain competitive for
10 external research funding and to continue to attract innovative
11 faculty.

12 The legislature finds that it is a matter of statewide
13 concern to support the contributions by the University of Hawaii
14 to the economic health and diversification of the State. The
15 legislature further finds that the timely and efficient
16 commercialization of intellectual property created by basic and
17 applied research at the university benefits the public.
18 Efficient and effect technology transfer, however, may be
19 hampered by overly broad interpretation of general conflict of
20 interest, fair treatment, and employment restrictions contained
21 in the state ethics code.

22 Because the university has subject matter expertise in the
23 area of technology transfer, sponsored research, and regulatory

1 compliance, the legislature finds it appropriate that the state
2 ethics commission consider unique aspects of technology transfer
3 when applying the ethics code to university-supported technology
4 transfer activities and arrangements.

5 Where public resources are used to produce benefits to the
6 public and promote economic development and diversification for
7 the State, but where such technology transfer activity may
8 simultaneously benefit collaborating commercial organizations or
9 may also create personal benefits to individuals employed by the
10 university, such arrangements should be permitted under the
11 ethics code so long as the State and the public receive specific
12 and significant benefits that would not otherwise be created,
13 and so long as the university has established an internal
14 regulatory compliance program and policies to assure compliance
15 with applicable federal regulations or public financing
16 covenants.

17 The purpose of this Act is to clarify the application of
18 the state ethics code to allow technology transfer activities
19 sponsored by the University of Hawaii so long as the activities
20 are likely to create specific benefits to the State or the
21 public, notwithstanding the simultaneous creation of commercial
22 benefit or individual personal benefit.

1 SECTION 2. Section 84-31, Hawaii Revised Statutes, is
2 amended by amending subsection (a) to read as follows:

3 "(a) The ethics commission shall have the following powers
4 and duties:

5 (1) It shall prescribe forms for the disclosures required
6 by article XIV of the Hawaii constitution and section
7 84-17 and the gifts disclosure statements required by
8 section 84-11.5 and shall establish orderly procedures
9 for implementing the requirements of those provisions;

10 (2) It shall render advisory opinions upon the request of
11 any legislator, employee, or delegate to the
12 constitutional convention, or person formerly holding
13 such office or employment as to whether the facts and
14 circumstances of a particular case constitute or will
15 constitute a violation of the code of ethics. In
16 rendering advisory opinions concerning technology
17 transfer activities conducted by the University of
18 Hawaii, the ethics commission shall consider the
19 research compliance program of the University and may
20 permit technology transfer arrangements so long as the
21 technology transfer arrangements are likely to create
22 specific benefits to the State or the public. If no
23 advisory opinion is rendered within thirty days after

1 the request is filed with the commission, it shall be
2 deemed that an advisory opinion was rendered and that
3 the facts and circumstances of that particular case do
4 not constitute a violation of the code of ethics. The
5 opinion rendered or deemed rendered, until amended or
6 revoked, shall be binding on the commission in any
7 subsequent charges concerning the legislator,
8 employee, or delegate to the constitutional
9 convention, or person formerly holding such office or
10 employment, who sought the opinion and acted in
11 reliance on it in good faith, unless material facts
12 were omitted or misstated by such persons in the
13 request for an advisory opinion;

14 (3) It shall initiate, receive, and consider charges
15 concerning alleged violation of this chapter, initiate
16 or make investigation, and hold hearings;

17 (4) It may subpoena witnesses, administer oaths, and take
18 testimony relating to matters before the commission
19 and require the production for examination of any
20 books or papers relative to any matter under
21 investigation or in question before the
22 commission. Before the commission shall exercise any
23 of the powers authorized in this section with respect

1 to any investigation or hearings it shall by formal
2 resolution, supported by a vote of three or more
3 members of the commission, define the nature and scope
4 of its inquiry;

5 (5) It may, from time to time adopt, amend, and repeal any
6 rules, not inconsistent with this chapter, that in the
7 judgment of the commission seem appropriate for the
8 carrying out of this chapter and for the efficient
9 administration thereof, including every matter or
10 thing required to be done or which may be done with
11 the approval or consent or by order or under the
12 direction or supervision of or as prescribed by the
13 commission. The rules, when adopted as provided in
14 chapter 91, shall have the force and effect of law;

15 (6) It shall have jurisdiction for purposes of
16 investigation and taking appropriate action on alleged
17 violations of this chapter in all proceedings
18 commenced within six years of an alleged violation of
19 this chapter by a legislator or employee or former
20 legislator or employee. A proceeding shall be deemed
21 commenced by the filing of a charge with the
22 commission or by the signing of a charge by three or
23 more members of the commission. Nothing herein shall

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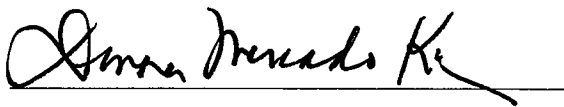
1 bar proceedings against a person who by fraud or other
2 device, prevents discovery of a violation of this
3 chapter;

4 (7) It shall distribute its publications without cost to
5 the public and shall initiate and maintain programs
6 with the purpose of educating the citizenry and all
7 legislators, delegates to the constitutional
8 convention, and employees on matters of ethics in
9 government employment; and

10 (8) It shall administer any code of ethics adopted by a
11 state constitutional convention, subject to the
12 procedural requirements of this part and any rules
13 adopted thereunder."

14 SECTION 3. New statutory material is underscored.

15 SECTION 4. This Act shall take effect upon its approval.

16
17 INTRODUCED BY: 

18 BY REQUEST

Report Title:

State Ethics Code; University of Hawaii

Description:

Clarifies application of State Ethics Code to technology transfer arrangements supported by the University of Hawaii.

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

JUSTIFICATION SHEET

DEPARTMENT: University of Hawaii

TITLE: A BILL FOR AN ACT RELATING TO TECHNOLOGY TRANSFER AT THE UNIVERSITY OF HAWAII.

PURPOSE: Clarifies the application of the State Ethics Code to allow technology transfer activities sponsored by University of Hawaii so long as the activities are likely to create specific benefits to the State or the public, notwithstanding the simultaneous creation of commercial benefit or individual personal benefit.

MEANS: Amend section 84-31(a), Hawaii Revised Statutes.

JUSTIFICATION: The University of Hawaii is the sole public institution of higher education in the State. With its wide array of graduate programs and professional schools, the University is also the primary public institution in the State conducting sponsored research and, where appropriate, commercializing research products through licensing of patents, providing administrative support to faculty, and entering into business transactions with private entities.

This commercialization (often called "technology transfer") is designed to strengthen economies by getting new ideas, inventions, and processes developed in universities--most often with federal funding support--to the private sector as quickly as possible. This technology transfer occurs throughout the nation at other universities.

Many states have conflict of interest laws that hinder timely and efficient

commercialization. These laws, for example, may forbid equity participation in startup companies by state institutions, or they may limit direct involvement by faculty in new business ventures, or may broadly prohibit use of public property--such as university equipment, facilities or support personnel--for business purposes. In order to remain competitive for research funding and to strengthen their local economy, several other states have enacted specific exemptions to their ethics laws, or have created some form of "safe harbor" from specific sections of their respective ethics code, or have established parallel, but exempt institutions for their university researchers.

The purpose of this proposal is to facilitate University-driven technology transfer by requiring that whenever the Hawaii Ethics Commission applies the state Ethics Code to University-supported technology transfer arrangements, the Ethics Commission must consider the overall context and purpose of technology transfer activities, the research compliance programs established by the University, and the specific facts of the arrangement under question. These additional factors would include, for example, private use thresholds under bond financing covenants, applicable federal regulation and guidelines, federal policy, and specific conflict of interest and financial disclosure policies and requirements established by the University for its faculty.

The proposed amendment would permit technology transfer arrangements where specific benefits to the State or the public are likely to result. Of particular concern is the current provision in the Ethics Code that prohibits the use of state resources for private business purposes. In a collaborative "public/private" partnership for technology transfer, the use of state

resources may simultaneously create public benefits to the State, commercial benefits to the private company, and personal benefits to the individual faculty/researcher. Such arrangements should not be per se prohibited by the application of the Ethics Code.

Impact on the public: The public would benefit if the University could more effectively and efficiently transfer the results of its research to the economy through collaborative arrangements with commercial entities.

Impact on the department and other agencies: The State Ethics Commission would be required to examine all circumstances and facts in applying the broad principles established by the Ethics Code to specific technology transfer arrangements sponsored by the University.

GENERAL FUND: None.

OTHER FUNDS: None.

PPBS PROGRAM DESIGNATION: UOH-900, UOH-800, UOH-700, UOH-210, UOH-100.

OTHER AFFECTED AGENCIES: State Ethics Commission.

EFFECTIVE DATE: Upon approval.