

JAN 27 2016

A BILL FOR AN ACT

RELATING TO THE UNIVERSITY OF HAWAII RESEARCH.

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

1 SECTION 1. The legislature finds that it is a matter of
2 statewide concern to promote the economic health and diversity
3 workforce opportunities of the State. The legislature further
4 finds that the commercialization of intellectual property
5 created by basic and applied research conducted at the
6 University of Hawaii, the sole public institution of higher
7 education for this State, holds great promise to contribute to
8 economic health and workforce diversification.

9 Through prior legislation, the legislature authorized and
10 provided public funds to support efforts by other state agencies
11 to promote entrepreneurial development, research
12 commercialization, and access to startup investment capital.
13 These efforts include, for example, the HI Growth Initiative,
14 the venture accelerator funding programs, and other projects
15 sponsored by the Hawaii strategic development corporation.

16 Because one of the core functions of the university is
17 conducting basic and applied research, the legislature finds
18 that the university may significantly contribute to the creation

1 of a statewide "eco-system" of innovation by transforming
2 university-generated research into viable economic enterprises.
3 The university is uniquely able to identify and assist in the
4 creation and growth of innovative public-private business forms
5 that draw upon the active participation of university-affiliated
6 personnel and are based on university research products.

7 The legislature further finds that an impediment to the
8 effective transfer of technology at the university is the lack
9 of clear and express legal authority to frame its innovation
10 initiatives. Lack of express authority for the university
11 creates business uncertainty that deters private interests from
12 engaging in collaborative efforts promoted by the university.

13 The purpose of this Act is to provide express authority to
14 the university to engage in the types of economic promotion
15 activities already conducted by other state agencies, and
16 thereby facilitate the university's contribution of its research
17 products and its affiliated personnel to the economic health and
18 diversification of workforce opportunities in the State.

19 SECTION 2. Chapter 304A, Hawaii Revised Statutes, is
20 amended by adding to part IV a new subpart to be appropriately
21 designated and to read as follows:

22 " . INNOVATION AND COMMERCIALIZATION INITIATIVE

1 §304A-A Innovation and commercialization initiative;
2 establishment. There is established within the University of
3 Hawaii an innovation and commercialization initiative program
4 under the direction of the vice president for research and
5 innovation.

6 §304A-B Innovation and commercialization initiative
7 implementation. The university may promote, sponsor, and
8 participate in the transformation of the products of its
9 research and instructional activities into viable economic
10 enterprises, and may create, finance, and participate in
11 organizations that contribute to economic development and
12 workforce diversification of the State using university research
13 and affiliated university personnel. For the implementation of
14 the innovation and commercialization initiative program, the
15 university may:

- 16 (1) Adopt internal policies during meetings held pursuant
17 to chapter 92 and management procedures to carry out
18 the purposes of this program;
- 19 (2) Contribute equity, loan funds, or participate directly
20 or indirectly to finance concepts or proposals that
21 are likely to lead to viable businesses, economic
22 development, or workforce opportunities based on
23 university research;

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- 1 (3) Enter into contracts and other appropriate
2 arrangements with start-up ventures, including the
3 provision of loans, initial and expansion capital, and
4 other forms of financial assistance;
- 5 (4) Solicit, evaluate, and assist in the preparation,
6 drafting, and refinement of business plans and
7 proposals;
- 8 (5) Provide advice, instruction, training, and technical
9 and marketing assistance, to support and promote the
10 enterprises in which the university invests;
- 11 (6) Coordinate and deliver the university's education,
12 instruction, training and outreach programs to build
13 and maintain the capacity to sustain these economic
14 enterprises;
- 15 (7) Implement specialized programs designed to encourage
16 the development of new products, businesses, and
17 markets;
- 18 (8) Prepare, publish, and distribute technical studies,
19 reports, bulletins, and other materials consistent
20 with customary standards of university publication,
21 subject to the maintenance and respect for
22 confidentiality of client proprietary information;

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- 1 (9) Organize, sponsor, and participate in conferences,
2 workshops, seminars, and other educational activity
3 relating to the formation and financial viability of
4 businesses that use university research products or
5 university affiliated personnel;
- 6 (10) Provide and pay for advisory or consulting services and
7 technical, managerial, and marketing assistance,
8 support, and promotion to carry out the purposes of
9 this subpart;
- 10 (11) Acquire, hold, and sell qualified securities;
- 11 (12) Consent, subject to the provisions of any contract with
12 noteholders or bondholders, whenever the university
13 deems it necessary or desirable in the fulfillment of
14 the purposes of this subpart, to the modification,
15 with respect to rate of interest, time of payment of
16 any installment of principal or interest, or any other
17 terms, of any contract or agreement of any kind to
18 which the university is a party;
- 19 (13) With the assistance of an appropriate foundation or
20 development entity, accept donations, grants,
21 bequests, and devises of money, property, service, or
22 other things of value that may be received from the
23 United States or any agency thereof, any governmental

- 1 agency, or any public or private institution, person,
2 firm, or corporation, to be held, used, or applied for
3 any or all of the purposes in support of this program;
- 4 (14) Invest any funds held in reserves or sinking funds, or
5 any funds not required for immediate disbursement, in
6 such investments as may be lawful for fiduciaries in
7 the State;
- 8 (15) Acquire real property, or an interest therein, by
9 purchase or foreclosure, where that acquisition is
10 necessary or appropriate to protect or secure any
11 investment or loan in which the university has an
12 interest; sell, transfer, and convey the property to a
13 buyer and, if the sale, transfer, or conveyance cannot
14 be effected with reasonable promptness or at a
15 reasonable price, to lease the property;
- 16 (16) Consistent with the purposes of the program, acquire,
17 own, hold, dispose of, and encumber personal property
18 of any nature, or any interest therein, either
19 directly or through intermediate entities formed or
20 established specifically for such purposes;
- 21 (17) Enter into agreements or other transactions with any
22 federal, state, or county agency to implement the
23 purposes of this subpart;

- 1 (18) Contract with others, public or private, for the
2 provision of all or a portion of the services
3 necessary for the management and operation of the
4 program. The university may use all appropriations,
5 grants, contractual reimbursements, and all other
6 funds made available for the purposes of the program
7 to pay for the proper general expenses of the program;
- 8 (19) Appear in its own behalf before state, county, or
9 federal agencies on matters relating to this program;
- 10 (20) Establish a risk management program appropriate to the
11 activities of this program, which may include, among
12 other components, purchase of insurance, participation
13 in the State's risk management program, or retention
14 and management of risks;
- 15 (21) Appoint advisory committees as deemed necessary;
16 provided that any advisory committee established
17 pursuant to this section shall not be deemed a "board"
18 subject to chapter 92; and
- 19 (22) Exercise any other powers of a corporation organized
20 under the laws of the State not inconsistent with the
21 purpose and intent of this program.

22 §304A-C University innovation and commercialization
23 initiative special fund. (a) There is established the

1 university innovation and commercialization initiative special
2 fund. The following moneys shall be deposited into the
3 university innovation and commercialization initiative special
4 fund and shall not be considered part of the general fund:

5 (1) All moneys:

6 (A) Appropriated by the legislature;

7 (B) Received as repayments of loans;

8 (C) Earned on investments;

9 (D) Received pursuant to a venture agreement;

10 (E) Received as royalties;

11 (F) Received as premiums or fees charged by the
12 university; or

13 (G) Otherwise received by the program.

14 (b) Revenues deposited into this special fund may be
15 expended by the university for all costs and expenses associated
16 with the operation of this program without regard to chapters
17 76, 78, 89, 102, 103, and 103D. Revenues not expended as
18 provided in this section may be transferred to other university
19 funds to be expended for the general benefit of the university.

20 §304A-D Confidentiality of trade secrets; disclosure of
21 financial information. Notwithstanding chapters 92 and 92F, or
22 any other law to the contrary, any documents or data made or
23 received by the university to the extent that the material or

1 data consist of trade secrets or commercial or financial
2 information shall not be a public record; provided that, if the
3 university purchases a qualified security, the commercial and
4 financial information, excluding confidential business
5 information, shall be deemed to become a public record of the
6 university. If the information is made or received by any
7 member or employee of the university after the purchase of the
8 qualified security, it shall become a public record three years
9 from the date the information was made or received. Any
10 discussion or consideration of trade secrets or commercial or
11 financial information, shall be held by the board of regents, or
12 any subcommittee of the board, in executive sessions closed to
13 the public; provided that the purpose of any such executive
14 session shall be set forth in the official minutes of the board
15 of regents.

16 §304A-E Limitation on liability. (a) The university
17 shall not assume or otherwise promise to answer for the debt,
18 contract, or liability of any other person or a private entity.

19 (b) Notwithstanding chapters 661 and 662, or any other law
20 to the contrary, nothing in this subpart shall create an
21 obligation, debt, claim, cause of action, claim for relief,
22 charge, or any other liability of any kind whatsoever in favor
23 of any person or entity, without regard to whether that person

1 or entity receives any benefits under this subpart, against the
2 State or its officers and employees. The State and its officers
3 and employees shall not be liable for the results of any
4 investment, purchase of securities, loan, or other assistance
5 provided pursuant to this subpart. Nothing in this subpart
6 shall be construed as authorizing any claim against the
7 university in excess of any note, loan, or other specific
8 indebtedness incurred by the university or in excess of any
9 insurance policy acquired for the university or its employees.

10 **§304A-F Preservation of governmental immunity; full faith**
11 **and credit.** No contract, agreement, or statement made by the
12 university pursuant to this subpart shall constitute an express
13 or implied waiver by the university of its governmental or
14 sovereign immunity as a public agency of the State, nor shall
15 such contracts, agreements or statements constitute an express
16 or implied acceptance of liabilities in excess of liabilities
17 allowable under applicable governmental immunity laws. No
18 activity conducted by the university or agreement entered into
19 pursuant to this subpart shall be deemed a pledge of the full
20 faith and credit of the State.

21 **§304A-G Cooperation with the University of Hawaii by state**
22 **agencies.** Every state agency may render services to the
23 university upon its request.

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1 §304A-H Construction of subpart. In the application of
2 other laws of the State to activities conducted pursuant to this
3 subpart, such laws shall be construed and balanced to effect the
4 purpose and intent of this program."

5 SECTION 3. In codifying the new sections added to chapter
6 304A, Hawaii Revised Statutes, by section 2 of this Act, the
7 revisor of statutes shall substitute appropriate section numbers
8 for the letters used in designating the new sections in this
9 Act.

10 SECTION 4. This Act, upon its approval, shall take effect
11 on July 1, 2016.

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INTRODUCED BY: *M. D. W.*

14

BY REQUEST

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Report Title:

University of Hawaii; Hawaii Innovation Initiative

Description:

Provides express legal authority to enable the University of Hawaii to create, promote, and participate in new economic enterprises that use university research and provide workforce opportunities for affiliated university personnel.

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 THE UNIVERSITY OF HAWAII RESEARCH.

PURPOSE: To provide explicit statutory authority for the University of Hawaii to create, promote, and participate in the economic use of University research activity and in the diversification of workforce opportunities.

MEANS: Amend chapter 304A, Hawaii Revised Statutes, by adding a new subpart to part IV.

JUSTIFICATION: The University of Hawaii is the sole public institution of higher education in the State. With its array of graduate programs in oceanography, engineering, sustainability sciences, and astronomy, among other programs, and with its professional schools such as medicine, tropical agriculture, and pharmacy, the university is the primary public institution in the State generating academic research.

In the past, the university has secured patents on its inventions and licensed the patents to private companies willing to capitalize on the patents.

It is now clear that more active and focused efforts are needed by the university to achieve its potential to contribute to the economic health and workforce diversification of the state. This effort calls upon the university to identify the most viable proposals that draw upon university research and affiliated personnel and to assist with the development and refinement of business plans. The focused efforts include systematically developing the managerial and executive level capacity

to grow and sustain these new companies. The focused effort also enables the university, where appropriate, to participate in and contribute to the financing and capital requirements of these new enterprises.

Through prior legislation, other state agencies currently have explicit statutory authority to transform promising concepts into viable economic drivers. For example, chapter 211F, Hawaii Revised Statutes, establishes the Hawaii strategic development corporation and confers broad statutory powers to encourage economic development and diversification in Hawaii. This state-established corporation may also use public funds to co-invest with private interest.

The university currently has an accelerator program named XLR8UH to turn university-related research into viable commercial products in cooperation with private investment. The university, however, could more efficiently contribute to this state-wide initiative if a clear legal framework for the university were established. This express legal authority would reduce the uncertainty in creating and operating new ventures affiliated with the university, and thereby induce greater private sector participation in promising concepts.

The purpose of this proposal is to provide the university with express statutory authority to promote, support and participate in innovation and commercialization of university-related research. The legal framework is adapted from the existing statutory authority currently applicable to the Department of Business, Economic Development, and Tourism.

Impact on the public: The public would benefit if the university could more effectively and efficiently promote its university-related research and transfer the

results of its research to the economy through collaborative arrangements with private entities. The public would benefit by increasing and diversifying workforce opportunities and expanding the economy.

Impact on the department and other agencies:

The university would be better able to collaborate in other research commercialization or venture funding programs sponsored by other state agencies such as the Department of Business, Economic Development, and Tourism. There would be a more coordinated state-wide effort, less duplication, and the university could emphasize its unique contributions as the generator of research with commercial potential.

GENERAL FUND: None.

OTHER FUNDS: None.

PPBS PROGRAM
DESIGNATION: UOH 900.

OTHER AFFECTED
AGENCIES: None.

EFFECTIVE DATE: July 1, 2016.