
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, and providing
16 administrative support to research faculty.



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

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



1 of interest, fair treatment, and employment restrictions
2 contained in the state ethics code.

3 Because the university has subject matter expertise in the
4 area of technology transfer, sponsored research, and regulatory
5 compliance, the legislature finds it appropriate that the state
6 ethics commission consider the unique aspects of technology
7 transfer when applying the ethics code to university-supported
8 technology transfer activities and arrangements.

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



1 The purpose of this Act is to clarify the application of
2 the state ethics code to allow technology transfer activities
3 sponsored by the University of Hawaii so long as the activities
4 are likely to create specific benefits to the State or the
5 public, notwithstanding the simultaneous creation of commercial
6 benefit or individual personal benefit by the technology
7 transfer activities.

8 SECTION 2. Chapter 304A, Hawaii Revised Statutes, is
9 amended by adding a new section to part I, subpart A, to be
10 appropriately designated and to read as follows:

11 "§304A- Technology transfer; annual report. The
12 university shall submit an annual report to the legislature
13 regarding the university's technology transfer activities no
14 later than twenty days prior to the convening of each regular
15 session. The report shall describe:

16 (1) All technology and intellectual property created by
17 basic and applied research at the university and
18 transferred to the private sector during the year
19 through activities including but not limited to
20 obtaining patents on inventions by university faculty,
21 licensing the use of innovations, creating new



1 business ventures, and incubating startup companies;
2 and
3 (2) The anticipated specific benefits of those transfers
4 to the State or to the public."

5 SECTION 3. Section 84-31, Hawaii Revised Statutes, is
6 amended by amending subsection (a) to read as follows:

7 "(a) The ethics commission shall have the following powers
8 and duties:

- 9 (1) It shall prescribe forms for the disclosures required
10 by article XIV of the Hawaii constitution and section
11 84-17 and the gifts disclosure statements required by
12 section 84-11.5 and shall establish orderly procedures
13 for implementing the requirements of those provisions;
- 14 (2) It shall render advisory opinions upon the request of
15 any legislator, employee, or delegate to the
16 constitutional convention, or person formerly holding
17 such office or employment as to whether the facts and
18 circumstances of a particular case constitute or will
19 constitute a violation of the code of ethics. In
20 rendering advisory opinions concerning technology
21 transfer activities conducted by the University of



1 Hawaii, the ethics commission shall consider the
2 research compliance program of the university and may
3 permit technology transfer arrangements so long as the
4 technology transfer arrangements are likely to create
5 specific benefits to the State or the public. If no
6 advisory opinion is rendered within thirty days after
7 the request is filed with the commission, it shall be
8 deemed that an advisory opinion was rendered and that
9 the facts and circumstances of that particular case do
10 not constitute a violation of the code of ethics. The
11 opinion rendered or deemed rendered, until amended or
12 revoked, shall be binding on the commission in any
13 subsequent charges concerning the legislator,
14 employee, or delegate to the constitutional
15 convention, or person formerly holding such office or
16 employment, who sought the opinion and acted in
17 reliance on it in good faith, unless material facts
18 were omitted or misstated by such persons in the
19 request for an advisory opinion;



- 1 (3) It shall initiate, receive, and consider charges
2 concerning an alleged violation of this chapter,
3 initiate or make investigation, and hold hearings;
- 4 (4) It may subpoena witnesses, administer oaths, and take
5 testimony relating to matters before the commission
6 and require the production for examination of any
7 books or papers relative to any matter under
8 investigation or in question before the commission.
9 Before the commission shall exercise any of the powers
10 authorized in this section with respect to any
11 investigation or hearings, it shall by formal
12 resolution, supported by a vote of three or more
13 members of the commission, define the nature and scope
14 of its inquiry;
- 15 (5) It may, from time to time adopt, amend, and repeal any
16 rules, not inconsistent with this chapter, that in the
17 judgment of the commission seem appropriate [~~for the~~
18 ~~carrying out of~~] to carry out this chapter and for the
19 efficient administration thereof, including every
20 matter or thing required to be done or which may be
21 done with the approval or consent or by order or under



1 the direction or supervision of or as prescribed by
2 the commission. The rules, when adopted as provided
3 in chapter 91, shall have the force and effect of law;

4 (6) It shall have jurisdiction for purposes of
5 investigation and taking appropriate action on alleged
6 violations of this chapter in all proceedings
7 commenced within six years of an alleged violation of
8 this chapter by a legislator or employee or former
9 legislator or employee. A proceeding shall be deemed
10 commenced by the filing of a charge with the
11 commission or by the signing of a charge by three or
12 more members of the commission. Nothing herein shall
13 bar proceedings against a person who by fraud or other
14 device, prevents discovery of a violation of this
15 chapter;

16 (7) It shall distribute its publications without cost to
17 the public and shall initiate and maintain programs
18 with the purpose of educating the citizenry and all
19 legislators, delegates to the constitutional
20 convention, and employees on matters of ethics in
21 government employment; and



H.B. NO. 2194

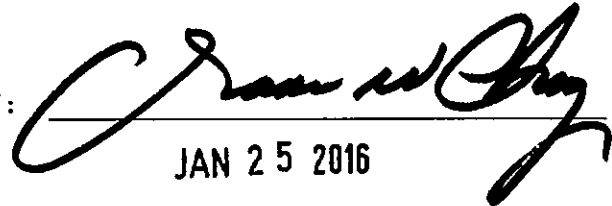
1 (8) It shall administer any code of ethics adopted by a
2 state constitutional convention, subject to the
3 procedural requirements of this part and any rules
4 adopted thereunder."

5 SECTION 4. Statutory material to be repealed is bracketed
6 and stricken. New statutory material is underscored.

7 SECTION 5. This Act shall take effect on July 1, 2016.

8

INTRODUCED BY:


JAN 25 2016



H.B. NO. 2194

Report Title:

Ethics Code; University of Hawaii; Technology Transfer

Description:

Clarifies application of ethics code to technology transfer supported by the University of Hawaii. Requires annual report.

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





UNIVERSITY OF HAWAII SYSTEM

Legislative Testimony

Testimony Presented Before the
House Committee on Higher Education
February 2, 2016 at 2:00 p.m.

by
Vassilis L. Syrmos
Vice President for Research and Innovation
University of Hawai'i

HB 2194 – RELATING TO TECHNOLOGY TRANSFER AT THE UNIVERSITY OF HAWAII

Chair Choy, Vice Chair Ichiyama and members of the Committee:

The University of Hawai'i (UH) is in support of HB 2194.

This bill, and other similar measures introduced this session, attempt to address the negative consequences of applying the current “one size fits all” State Ethics Code to the multitude of situations that arise during the course of operating the state government or UH.

In particular, UH is concerned that a strict and narrow application of the State Ethics Code would prohibit or severely hamper university activities designed to “transfer” new technology and ideas created from research at UH laboratories and faculty offices to the larger society.

The University of Hawai'i believes that technology transfer should be permitted under the State Ethics Code where such activities are likely to create specific benefits to the state or the public -- notwithstanding the simultaneous creation of commercial benefit or individual personal benefit.

The University of Hawai'i understands this is complex issue and appreciates the legislature's interest and efforts to resolve this problem as proposed in this measure, and for considering other possible alternatives, such as creation of “safe harbors.”

Thank you for this opportunity to testify in support of this measure.



Written Statement of
Robbie Melton
Executive Director & CEO
High Technology Development Corporation
before the
House Committee on Higher Education
Tuesay, February 2, 2016
2:00 p.m.
State Capitol, Conference Room 309

In consideration of
HB2194
RELATING TO TECHNOLOGY TRANSFER AT THE UNIVERSITY OF HAWAII.

Chair Choy, Vice Chair Ichiyama, and Members of the Committee on Higher Education.

The High Technology Development Corporation (HTDC) **supports the intent of** HB2194 which clarifies application of the ethics code to technology transfer supported by the University of Hawaii.

As part of HTDC's vision to create 80,000 new innovation jobs in Hawaii earning \$80,000 or more by 2030, HTDC supports initiatives aimed at increasing technology transfer out of the University of Hawaii. HTDC defers to UH on the implementation of the bill.

Thank you for the opportunity to offer these comments.



Chamber of Commerce HAWAII
The Voice of Business

**Testimony to the House Committee on Higher Education
Tuesday, February 2, 2016 at 2:00 P.M.
Conference Room 309, State Capitol**

**RE: HOUSE BILL 2194 RELATING TO TECHNOLOGY TRANSFER AT THE
UNIVERSITY OF HAWAII**

Chair Choy, Vice Chair Ichiyama, and Members of the Committee:

The Chamber of Commerce Hawaii ("The Chamber") **supports** HB 2194, which clarifies application of ethics code to technology transfer supported by the University of Hawaii and requires an annual report.

The Chamber is Hawaii's leading statewide business advocacy organization, representing about 1,000 businesses. Approximately 80% of our members are small businesses with less than 20 employees. As the "Voice of Business" in Hawaii, the organization works on behalf of members and the entire business community to improve the state's economic climate and to foster positive action on issues of common concern.

The Chamber supports HB 2194 as it would help expedite the commercialization of research from the University of Hawaii to provide information that would strengthen the local economy. This bill helps remedy many obstacles that currently exist from broad conflict of interest, fair treatment, and employment restrictions. Clarifying the State Ethics Code would prevent the deterrence of an efficient technology transfer.

Thank you for the opportunity to testify.



HAWAII STATE ETHICS COMMISSION

State of Hawaii • Bishop Square, 1001 Bishop Street, ASB Tower 970 • Honolulu, Hawaii 96813

LATE

HOUSE COMMITTEE ON HIGHER EDUCATION
The Honorable Isaac W. Choy, Chair
The Honorable Linda Ichiyama, Vice Chair

H.B. No. 2194, Relating to Technology Transfer at the University of Hawaii

Hearing: Tuesday, February 2, 2016, 2:00 p.m.

The Hawaii State Ethics Commission (“Commission”) **opposes** H.B. No. 2194 in its current form, but has been working with the University of Hawaii (“University”) to suggest language that will address the Commission’s concerns about this bill. The purpose of H.B. No. 2194 is to amend the State Ethics Code, Hawaii Revised Statutes chapter 84, to allow University-sponsored technology transfer activities that are likely to benefit the State or the public.

H.B. No. 2194 requires the Commission to consider the University’s research compliance program in rendering advisory opinions concerning technology transfer activities conducted by the University. H.B. No. 2194 further provides that the Commission may permit technology transfer arrangements so long as they are likely to create specific benefits to the State or to the public.

The Commission has a number of concerns about H.B. No. 2194 as it is currently worded:

First, the bill does not define the term, “technology transfer activities.” Without a definition of this term, it is unclear exactly what activities may be permitted by the Commission under this bill.

Second, the bill does not identify the University employees whose technology transfer activities may be permitted by the Commission. It is the Commission’s understanding that the bill is intended to apply principally to University research faculty and other professional and technical staff while they are engaged in technology transfer activities. As written, however, the bill appears to apply to any and all University employees.

Third, it is unclear why the Commission must be **required** to consider the University’s research compliance program in rendering advisory opinions concerning the application of the State Ethics Code to technology transfer activities.

Fourth, the bill states that the Commission may permit technology transfer arrangements so long as they are “likely to create specific benefits to the State or the public.” Again, it is unclear how the Commission is to determine what “specific benefits” may be derived from technology transfer activities or how likely such benefits are.

The Commission understands that the University would like the Commission to be able to consider the “unique aspects of technology transfer” when applying the State Ethics Code to University-supported technology transfer activities. While the Commission is not opposed in theory to allowing these activities under the State Ethics Code, the Commission believes that statutory language providing for this must be clearly stated and limited in scope. Although the Commission does not support H.B. No. 2194 in its current form, the Commission is continuing to work with the University to attempt to resolve the aforementioned areas of concerns and to suggest alternate statutory language. The Commission recently proposed the following language for discussion purposes to the University:

“University of Hawaii employees who are directly involved in the research or development of technology sponsored and approved by the University shall be exempt from this chapter, including section 84-18, when performing these activities and in the transfer and commercialization of the technology.”

The Commission will continue its discussions with the University about H.B. No. 2194 and the Commission’s proposed language to achieve the purpose of this bill.

Thank you for considering the Commission’s testimony on H.B. No. 2194, Relating to Technology Transfer at the University of Hawaii.