



UNIVERSITY OF HAWAII SYSTEM

Legislative Testimony

Supplemental Testimony Presented Before the
Senate Committee on Judiciary and Labor
Tuesday, February 24, 2015 at 9:15 am
by
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SB 1144 SD1 – RELATING TO TECHNOLOGY TRANSFER AT THE UNIVERSITY OF HAWAII

Chair Keith-Agaran, Vice Chair Shimabukuro, and members of the committee:

The University of Hawai'i appreciates this opportunity to submit supplemental testimony in support of SB 1144 SD1, in order to expand upon certain points raised in prior written testimony.

As previously stated, the University of Hawai'i believes that this measure is consistent with the legal parameters of the State Ethics Code as laid out in the Hawai'i State Constitution and statutory Chapter 84 -- and acknowledges the administrative role of the State Ethics Commission. The University also stated that legislative clarification on the applicability of the State Ethics Code is necessary to keep UH competitive for research sponsorship and faculty talent.

Many of UH's counterpart public research universities already operate under respective state statutes that permit creative technology transfer arrangements notwithstanding of their respective state ethics laws. Some states have created a legislative exemption or "carve out" from otherwise applicable state conflict of interest laws, but have imposed certain limitations or requirements to qualify for an exemption. Other states have legislatively created a separate research authority to facilitate economic development "notwithstanding" state ethics restrictions. Some states have posited approval authority with the governor.

The University would certainly consider a complete exemption from the State Ethics Code for those faculty, professional and administrative staff, executives and managers that are engaged in technology transfer activities and structures at UH. The University would also find it easier to comply with a regulatory scheme where compliance with UH's internal executive policies and administrative procedures would be "deemed" to be in compliance with the State Ethics Code.

This measure proposed by UH acknowledges two features required by the State Constitution, Article XIV. The first feature is the near universal applicability of the Ethics Code to all employees. Thus any attempt to statutorily "carve out" or exempt certain

classes of employees, such as faculty or professional researchers, might raise constitutional challenges. Second, the State Constitution contemplates that the ethics code must be administered by a separate ethics commission. Thus any legislative attempt to supplant the administrative function of the Commission might also raise constitutional concerns.

In the University's opinion, this measure comports with the constitutional requirements by authorizing that the Ethics Commission use an "all circumstance" or "balancing test" in assessing the permissibility of technology transfer arrangements under the State Ethics Code. Additionally, this measure provides the statutory authority of an earlier Ethics Commission (Advisory Opinion No. 92-2).

The University of Hawai'i respectfully urges the Senate Committee on Judiciary and Labor to pass this measure with the clarifying language necessary to allow UH to effectively continue and grow its research and technology transfer enterprise.

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Submitted By	Organization	Testifier Position	Present at Hearing
Javier Mendez-Alvarez	Individual	Support	No

Comments:

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