



HAWAII STATE ETHICS COMMISSION

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

Committee: Committee on Economic Development and Business
Bill Number: H.B. 1156
Hearing Date/Time: Wednesday, February 1, 2017, 9:00 a.m.
Re: Testimony of the Hawaii State Ethics Commission with
COMMENTS on H.B. 1156, Relating to the University of Hawaii
Research

Dear Chair Nakashima and Committee Members:

The Hawaii State Ethics Commission (“Commission”) hereby submits **comments** on H.B. 1156, which seeks to promote the commercialization of research conducted at the University of Hawaii.

In short, the Ethics Commission fully supports the University’s efforts to take advantage of its employees’ outstanding research; as the saying goes, a rising tide lifts all boats, and the University and its employees ought to be encouraged to promote (and profit from) their many accomplishments. So long as the University establishes safeguards to ensure that the University’s interests are adequately protected, these activities are already permitted by the Ethics Code, Hawaii Revised Statutes (“HRS”) chapter 84.¹

¹ Indeed, more than twenty years ago, the Commission issued an Advisory Opinion stating:

[W]hen the State of Hawaii stood to benefit from arrangements in which an employee acquired a financial interest subject to his official action, or took official action directly affecting that interest, or assisted or represented a business on a matter in which the employee had participated or would participate, or assisted or represented that business before the agency of which he or she was an employee, the conflicts of interests law did not per se prohibit such arrangements, so long as the State’s interest was adequately protected.

See Hawaii State Ethics Commission, Advisory Opinion No. 1992-2 at 5-6, available at <http://files.hawaii.gov/ethics/advice/AO1992-2.pdf>. The Commission reviewed several technology transfer proposals and concluded that they satisfied the Ethics Code because, among other things, they were subject to “strict oversight and review by appropriate State authorities for the purpose of insuring that [University employees’] official action would be directed toward the stated goals of the proposal.” Id. at 8.

The Legislature intended that Advisory Opinions “be a source of reference for all persons concerned and contribute to a proper understanding of the code. These opinions should reflect the practical operation of the code and begin to develop a body of ‘case law’ on ethics.” Conf. Comm. Rep. No. 16, in 1967 House Journal, at 856.

The Commission respectfully suggests that the proposed language in HRS § 304A-___ (page 11, lines 15-19 of the bill), requiring that the Ethics Code be construed “in recognition of the public benefits created and state interests advanced by university activities,” is redundant. Both the Commission and the courts already construe statutes in relation to one another; the phrase used by courts is that statutes that are “in pari materia,” or on the same subject matter, are to be construed together. In evaluating the Ethics Code’s application to any proposed activities, the Commission always considers the state purpose at hand; as such, while the Commission does not oppose the proposed language, the Commission respectfully suggests that it is unnecessary.

The Commission does, however, oppose any efforts to exempt University employees and/or broad categories of activities from the Ethics Code itself. As such, while the Commission offers comments on this measure and a similar measure on today’s agenda (H.B. 166), the Commission opposes a third measure on today’s agenda (H.B. 1157).

Thank you for considering the Commission’s testimony on H.B. 1156.

Very truly yours,

Daniel Gluck
Executive Director and General Counsel



UNIVERSITY OF HAWAII SYSTEM

Legislative Testimony

Testimony Presented Before the
House Committee on Economic Development & Business
Wednesday, February 1, 2017 at 9:00 a.m.

by

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

HB 1156 – RELATING TO THE UNIVERSITY OF HAWAII RESEARCH

Chair Nakashima, Vice Chair Keohokalole and members of the committee:

The University of Hawai'i (UH) supports this bill which would provide UH express statutory authority to encourage, promote, financially support and directly participate in the commercialization of university-generated research. The legal framework is adapted from chapter 211F, Hawai'i Revised Statutes, applicable to the Department of Business, Economic Development and Tourism (DBEDT).

With its array of program strengths in ocean sciences, energy research, sustainable agriculture and astronomy; and its growing strength in cybersecurity and health sciences -- UH is the primary public institution generating academic research in the state.

A portion of the academic research has the potential to be converted to commercially viable products. In the past, UH secured patents on its inventions and licensed the patents to private companies willing to risk commercialization. After observing how UH's mainland public university counterparts promote innovation and research, it is clear that University of Hawai'i needs to be more active in its support and more focused in its efforts to commercialize its research products.

The University of Hawai'i established a proof of concept center/venture accelerator program named "XLR8UH" to turn university-related research into viable commercial products in cooperation with private investment. If a clear legal framework authorizing UH to participate directly and indirectly in new enterprises were established, UH could more efficiently contribute to the Hawai'i Innovation Initiative's effort to help diversify the state's economy. This express legal authority would reduce the uncertainty in creating, financing, and operating new ventures affiliated with UH, and would thereby induce greater private sector participation in promising concepts.

Thank you for this opportunity to testify on this measure.

OFFICE OF INFORMATION PRACTICES

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To: House Committee on Economic Development and Business

From: Cheryl Kakazu Park, Director

Date: February 1, 2017, 9:00 a.m.
State Capitol, Conference Room 309

Re: Testimony on H.B. No. 1156
Relating to the University of Hawaii Research

Thank you for the opportunity to submit testimony on this bill. The Office of Information Practices (“OIP”) takes no position on this bill, which proposes an innovation and commercialization program at the University of Hawaii (“UH”).

The bill (at page 8, lines 11-14) would create an exemption to the Sunshine Law, part I of chapter 92, HRS, for any advisory committees created by UH under the innovation and commercialization program proposed by this bill. However, given the quasi-commercial nature of the proposed program, the stated intent of which is to transform UH research into commercially viable products and businesses, it does not appear that such advisory committees would be discussing issues central to public policy, so OIP does not have any strong concerns about the proposed exception. Rather, OIP views the decision on whether such advisory groups should be subject to the Sunshine Law as a policy call for the Legislature to make.

OIP further notes that this bill (starting at page 9 line 15) would create a special executive session purpose allowing the UH Board of Regents to hold a closed session to discuss trade secrets or confidential commercial or financial information that UH could properly withhold from public disclosure under chapter 92F, HRS, the Uniform Information Practices Act (“UIPA”). Here, too, OIP does not have concerns over the proposal to allow the UH Board of Regents to maintain the confidentiality of trade secrets or other sensitive commercial information coming before it in connection with the proposed program, which is consistent with existing UIPA protections.

For these reasons, OIP views the provisions of this bill affecting the Sunshine Law and the UIPA as reasonably limited to achieve their intended purpose of protecting proprietary information without unduly restricting public access to the formation of public policy, and believes that the decision of whether to provide that protection is a policy call for the Legislature to make. Thus, OIP takes no position on this bill.

Thank you for the opportunity to testify.

DAVID Y. IGE
GOVERNOR



SARAH ALLEN
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TESTIMONY
OF
SARAH ALLEN, ADMINISTRATOR
STATE PROCUREMENT OFFICE

HOUSE COMMITTEES
ON
ECONOMIC DEVELOPMENT & BUSINESS
AND
LABOR & PUBLIC EMPLOYMENT

February 1, 2017, 9:00 AM

House Bill 1156
RELATING TO THE UNIVERSITY OF HAWAII RESEARCH

Chairs Nakashima and Johanson, Vice-Chairs Keohokalole and Holt, and members of the committee, thank you for the opportunity to submit testimony on HB 1156. The State Procurement Office's (SPO) comments are limited to SECTION 2 of the bill amending HRS §304A by adding a section exempting all costs and expenses expended from the University's innovation and commercialization initiative special fund's revenues from chapter 103D as follows:

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

The SPO is not in opposition of this bill, however, would like to submit comments pertaining to SECTION 2, page 9, lines 9 to 14.

Statutory exemptions are contrary to the Hawaii Public Procurement Code (Code), section 103D-102, HRS, on the applicability of the chapter that states in part "...shall apply to all procurement contracts made by governmental bodies whether the consideration for the contract is cash, revenues, realizations, receipts, or earnings..." Any governmental agency with the authority to expend funds should be in compliance with chapter 103D, which promotes the policy of fair and equitable treatment of all persons who deal with the procurement system; fosters effective broad-based competition; and increases public confidence in public procurement.

The Code should not be viewed as an obstacle to a purchasing agency's mission, but rather as the single source of public procurement policy to be applied equally and uniformly to obtain its

requirements, which was the legislature's intent for the Code. If individual agencies are exempted and allowed to develop their own individual processes, it becomes problematic for the administration and vendors/contractors that must comply with a variety of processes. Most agencies agree that fairness, open competition, a level playing field, and government disclosure and transparency in procurement and contracting process are vital to good government. They believe that for this to be accomplished, we must participate in the process with one set of statutes and rules.

One of public procurement's primary objectives is to provide everyone equal opportunity to compete for government contracts, to prevent favoritism, collusion, or fraud in the awarding of contracts. Another critical objective is to ensure disclosure and public visibility into the way taxpayer dollars are being spent. As such, along with open competition the Code provides safeguards to ensure procurement integrity, determination of fair and reasonable pricing, public notice, and transparency. The Code also provides consistency in the manner in which purchasing agencies procure goods, services, and construction.

The National Association of State Procurement Officials state: "Businesses suffer when there is inconsistency in procurement laws and regulations. Complex, arcane procurement rules of numerous jurisdictions discourage competition by raising the costs to businesses to understand and comply with these different rules. Higher costs are recovered through the prices offered by a smaller pool of competitors, resulting in unnecessarily inflated costs to state and local governments."

Exemptions to the Code mean that all procurements made with taxpayer monies for this authority, will not have the same oversight, accountability and transparency requirements mandated by those procurements processes provided in the Code. It means that there is no requirement for due diligence, proper planning or consideration of protections for the State in contract terms and conditions, nor are there any set requirements to conduct cost and price analysis and market research or post-award contract management. As such, the authority can choose whether to compete any procurement or go directly to one contractor. As a result, leveraging economies of scale and cost saving efficiencies found in the consistent application of the procurement code are lost. It also means the authority is not required to adhere to the Code's procurement integrity laws.

When public bodies are removed from the State's procurement code it results in the harm described above. As these entities create their own procurement rules, businesses are forced to track their various practices. Moreover, a public body often can no longer achieve the benefits of aggregation by using another public body's contract because different state laws and regulations may apply to the various public bodies making compliance more difficult.

Each year new procurement laws are applied to state agencies causing state agency contracts to become more complex and costly, while other public bodies, such as agencies with strong legislative influence, are exempted. Relieving some public bodies from some laws by exempting or excluding them from compliance with a common set of legal requirements creates an imbalance wherein the competitive environment becomes different among the different jurisdictions and the entire procurement process becomes less efficient and more costly for the State and vendors.

Thank you.

THE CIVIL BEAT
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House Committee on Economic Development & Business
Honorable Mark M. Nakashima, Chair
Honorable Jarrett Keohokalole, Vice Chair

House Committee on Labor & Public Employment
Honorable Aaron Ling Johanson, Chair
Honorable Daniel Holt, Vice Chair

**RE: Testimony Commenting on H.B. 1156,
Relating to the University of Hawai'i Research**
Hearing: February 1, 2017 at 9:00 a.m.

Dear Chairs and Members of the Committees:

My name is Brian Black. I am the Executive Director of the Civil Beat Law Center for the Public Interest, a nonprofit organization whose primary mission concerns solutions that promote governmental transparency. Thank you for the opportunity to submit testimony **commenting** on an unnecessary provision in H.B. 1156. To avoid confusion, the Law Center recommends removing or clarifying the intent of the first sentence of proposed section 304A-, concerning confidential records.¹

On its face, the confidential records provision of H.B. 1156 only repeats existing law under the Uniform Information Practices Act (UIPA). The provision specifies certain information (trade secrets and confidential business information) as confidential if protected by the UIPA and otherwise a public record if not confidential. That is law already under the UIPA, which has protected trade secrets and confidential business information for more than two decades. *See, e.g.,* OIP Op. No. 94-14 at 5-6. Thus, the confidential records portion of H.B. 1156 does not add to the law.

If that provision is intended to do something different than existing UIPA law, the intent should be clarified. Otherwise, the provision will cause confusion because standard rules of statutory interpretation would counsel that a statute must not be superfluous. *E.g., Keliipuleole v. Wilson*, 85 Hawai'i 217, 221, 941 P.2d 300, 304 (1997) (“[C]ourts are

¹ “Any documents or data made or received by the university under this subpart, to the extent that the material or data consist of trade secrets or confidential commercial or financial information that may be withheld from public disclosure under chapter 92F, shall not be disclosed; provided that if the university purchases a qualified security, the nonconfidential commercial and financial information regarding that security shall be a public record of the university.”

bound to give effect to all parts of a statute, and that no clause, sentence, or word shall be construed as superfluous, void, or insignificant if a construction can be legitimately found which will give force to and preserve all words of the statute.”). As it stands, the provision seems entirely unnecessary in light of existing law.

Further, it is unclear why the statute only references public access when the University purchases a qualified security. The public has a comparable interest in access to information – and would have access under the UIPA – when the University provides loans or other financial assistance to a project, yet none others are mentioned. While H.B. 1156 borrows select language from statutes concerning Hawaii’s Strategic Development Corporation and mentions its other programs in the preamble, H.B. 1156 fails to incorporate all the relevant language from that statute (*e.g.*, defining “qualified securities,” see HRS § 211F-1).

We note that the second sentence of proposed section 304A- (concerning confidential records) allows for an executive session under Sunshine Law, HRS chapter 92, that otherwise does not exist. Thus, that portion of the bill is not superfluous and does not suffer from the same lack of clarity as the rest of that section.

Thank you again for the opportunity to testify.



Chamber of Commerce HAWAII
The Voice of Business

**Testimony to the House Committee on Economic Development & Business
and Committee on Labor & Public Employment
Wednesday, February 1, 2017 at 9:00 A.M.
Conference Room 309, State Capitol**

RE: HOUSE BILL 1156 TO THE UNIVERSITY OF HAWAII RESEARCH

Chairs Nakashima and Johanson, Vice Chairs Keohokalole and Holt, and Members of the Committees:

The Chamber of Commerce Hawaii ("The Chamber") **supports** HB 1156, which provides express legal authority to enable the University of Hawaii to create, promote, and participate in new economic enterprises and expand workforce opportunities based on inventions and discoveries generated by or at the University.

The Chamber is Hawaii's leading statewide business advocacy organization, representing about 1,600+ 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 University of Hawaii is the state's public institution supporting an array of programs such as ocean sciences, energy research, sustainable agriculture, astronomy, and more. Much of the research produced by these many fields has strong commercial potential that has not been capitalized. In order to reach its full potential, UH needs to proactively move these research projects to commercialization in order to become a major contributor to the state's economy and workforce. HB 1156 would create the second state agency with this capability that could help move projects along and achieve maximum commercial potential within the University.

Thank you for the opportunity to testify.



**Testimony to the House Committee on Economic Development & Business and the
House Committee on Labor & Public Employment**

February 1, 2017

9:00 a.m.

Conference Room 309

**RE: RELATING TO TECHNOLOGY TRANSFER AT THE UNIVERSITY OF HAWAII –
HOUSE BILL 1156**

Chairs Nakashima and Johanson, Vice Chairs Keohokalole and Holt and Members of the Committees:

My name is Gary Kai and I am the Executive Director of the Hawaii Business Roundtable. The Hawaii Business Roundtable strongly supports House Bill 1156, relating to the University of Hawaii Research. The bill is to provide express statutory authority for the University of Hawaii to create, promote and participate in the economic use of University research activity.

The Hawaii Business Roundtable strongly believes that a strong research and innovation sector led by the University of Hawaii can be a large and important magnet for new money and new fields of job growth in Hawai'i. We concur with the Legislature that the commercialization of the intellectual property created by basic and applied research conducted at the University of Hawaii, holds great promise to contribute to the creation of jobs and economic growth. It is a vital component of the creation of jobs in the local economies of many universities across the country and we believe it can be done here in Hawaii.

The University of Hawaii has many areas of program strengths, including ocean sciences, energy research, sustainable agriculture and astronomy, cybersecurity and health sciences. These efforts have already attracted numerous technology start up organizations that have been attracted by and benefited from the research done in these areas that have been recognized internationally. This legislation will help foster even greater growth in this sector.

Providing the University with the express authority to engage in economic activities already conducted by other state agencies is a significant step and will signal Hawaii's willingness and desire to grow our Innovation Economy. The workforce opportunities created will benefit our young people immensely.

We realize that there must be a well-articulated policy and strong management procedures, to insure the balance between the economic activities and the benefits to the public. The members of the Roundtable are prepared and willing to lend our support and expertise in collaboration with the University.

This legislation is one very good example of growing our Research and Innovation Economy which is critical for the future of our young people. It provides them with the choice to live and work in their island home -- and the opportunity to come home after gaining experience on the mainland or abroad. Furthermore, it helps to improve the quality of their lives and the lives of all who live here.

Thank you very much for the opportunity to testify.

Gary K. Kai, Executive Director
Hawaii Business Roundtable