



UNIVERSITY OF HAWAII SYSTEM

Legislative Testimony

Testimony Presented Before the
House Committee on Judiciary
Wednesday, February 15, 2017 at 2:00 p.m.

by

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

HB 847 HD1 – RELATING TO UNIVERSITY OF HAWAII RESEARCH

Chair Nishimoto, Vice Chair San Buenaventura, 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 UH-generated intellectual property.

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 the University of Hawai'i needs to be more active in its support and more focused in its efforts to commercialize its research products. These efforts, in turn, will contribute to a dynamic and more diverse workforce in the state and promote economic health.

If a clear legal framework authorizing UH to participate directly and indirectly in new commercial enterprises were established, UH could more efficiently contribute to the Hawai'i Innovation Initiative's goal to diversify the state's economy. This express legal authority would reduce the uncertainty in creating, financing, and operating new ventures affiliated with UH, and could thereby induce greater private sector participation in promising concepts.

The University of Hawai'i's brand will also be enhanced. Currently, UH lags its peer institutions in having the support infrastructure to encourage and nurture technology transfer. To keep UH competitive with its mainland peers in the competition for external commercial research sponsorship and in the completion for hiring entrepreneurial faculty or staff, we need to develop a capacity to commercialize its intellectual property.

The House Committee on Higher Education passed this measure with technical, nonsubstantive amendments for consistency, clarity, and style. The Committee on Higher Education also retained the original language regarding the application of the State Ethics Code to such activity. The University of Hawai'i agrees that it will provide greater clarity and certainty if the section called "Construction of subpart" beginning at line 18, page 12 and ending on line 2, page 13, were retained in this measure.

Thank you for the opportunity to testify on this measure.



HAWAII STATE ETHICS COMMISSION

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

Committee: Committee on Judiciary
Bill Number: H.B. 847, HD1, Relating to University of Hawaii Research
Hearing Date/Time: Wednesday, February 15, 2017, 2:00 p.m.
Re: Testimony of the Hawaii State Ethics Commission with
COMMENTS on H.B. 847, HD1

Dear Chair Nishimoto and Committee Members:

The Hawaii State Ethics Commission (“Commission”) hereby submits **comments** on H.B. 847, HD1, 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 submits that the proposed language in 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.

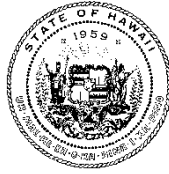
As such, the Commission respectfully suggests that this Committee **amend this measure** on page 12, line 19, to remove the phrase “including without limitation the state code of ethics”; similarly, the Commission respectfully suggests that the Committee remove the phrase “including the state code of ethic on page 3, line 18.

Thank you for considering the Commission’s testimony on H.B. 847, HD1.

Very truly yours,

Daniel Gluck
Executive Director and General Counsel

DAVID Y. IGE
GOVERNOR



SARAH ALLEN
ADMINISTRATOR
MARA SMITH
ASSISTANT ADMINISTRATOR

**STATE OF HAWAII
STATE PROCUREMENT OFFICE**

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TESTIMONY
OF
SARAH ALLEN, ADMINISTRATOR
STATE PROCUREMENT OFFICE

TO THE HOUSE COMMITTEE
ON
JUDICIARY

February 15, 2017, 2:00 PM

House Bill 847 HD1
RELATING TO THE UNIVERSITY OF HAWAII RESEARCH

Chair Nishimoto, Vice-Chair San Buenaventura, and members of the committee, thank you for the opportunity to submit testimony on HB 847 HD1. 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 10, lines 5 to 8.

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.

LATE

OFFICE OF INFORMATION PRACTICES

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To: House Committee on Judiciary

From: Cheryl Kakazu Park, Director

Date: February 15, 2017, 2:00 p.m.
State Capitol, Conference Room 325

Re: Testimony on H.B. No. 847, H.D. 1
Relating to 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 9, lines 4-7) 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 10 line 11) 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.



House Judiciary Committee
Chair Scott Nishimoto, Vice Chair Joy San Buenaventura

02/15/2017 at 2:00 PM in Room 325
HB847 HD1 – Relating to the University of Hawaii Research

TESTIMONY — OPPOSE
Corie Tanida, Executive Director, Common Cause Hawaii

Dear Chair Nishimoto, Vice Chair San Buenaventura, and committee members:

Common Cause Hawaii opposes HB847 HD1 which would authorize the University of Hawaii (“UH” or “University”) to create, promote, and participate in new economic enterprises and expand workforce opportunities based on inventions and discoveries generated by or at UH.

While we recognize the need to be able to innovate and capitalize on research, we believe certain provisions of HB847 HD1 creates an overly broad exemption to our Sunshine Laws, which could lead to ethical issues in the future and be detrimental to the public’s access to information.

Section 21 under “Innovation and commercialization initiative program; implementation” (page 9, line 4) allows UH to appoint advisory committees which are exempt from Hawaii Revised Statutes Chapter 92. This would open a large loophole in our Sunshine Laws, in an area rife with the potential for conflicts of interest. Additionally, given the University’s spotty record of compliance with Chapter 92, we question the reasoning and need for an exemption this broad.

Additionally, the section entitled “Confidentially of trade secrets; disclosure of financial information” raises concerns. Under current law, trade secrets “may” be withheld from public disclosure. HB847 HD1 would convert this permissive clause into a requirement that such materials “shall not be publicly disclosed”. As this blanket ban denies the public access to information, we again question the reasoning and need for this overly broad provision.

We also believe that the provision under the section entitled “Confidentially of trade secrets; disclosure of financial information” that allows UH’s board of regents and their subcommittees to discuss trade secrets in executive meetings is unnecessary as our current Sunshine Laws, which are designed to protect trade secrets while protecting the public’s interest, already provide for closed executive meetings.

We respectfully ask that you **defer HB847 HD1**, as opening the door to these overly broad exemptions would, simply put, not be in the public’s interest.

Thank you for the opportunity to offer testimony **opposing HB847 HD1**.

THE CIVIL BEAT
LAW CENTER FOR THE PUBLIC INTEREST

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House Committee on Judiciary
Honorable Scott Y. Nishimoto, Chair
Honorable Joy A. San Buenaventura, Vice Chair

**RE: Testimony Commenting on H.B. 847 H.D. 1,
Relating to the University of Hawai`i Research**
Hearing: February 2, 2017 at 2:00 p.m.

Dear Chair and Members of the Committee:

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. 847 H.D. 1. 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. 847 H.D. 1 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 the bill 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 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.

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 non-confidential commercial and financial information regarding that security shall be a public record of the university.”

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 the bill borrows select language from statutes concerning Hawaii’s Strategic Development Corporation and mentions its other programs in the preamble, H.B. 847 H.D. 1 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.



Feb. 15, 2017

Rep. Scott Nishimoto
House Judiciary Committee
State Capitol
Honolulu, HI 96813

Re: House Bill 847, H.D. 1

Chairman Nishimoto and Committee Members:

We do not offer an opinion on whether the committee should create an innovation program at the University of Hawaii.

However, we ask you to delete the provision for confidentiality of trade secrets since trade secrets already have protections against disclosure under the Uniform Information Practices Act and under the Sunshine Law because it would involve meetings about trade secrets that are confidential under state law.

We have seen disclosure problems that result from broad, unfettered exemptions to our public meetings and records laws.

Thank you for your time.

Sincerely,

Stirling Morita
President, Hawaii Chapter SPJ



Written Statement of
Robbie Melton
Executive Director & CEO
High Technology Development Corporation
before the
House Committee on Judiciary
Wednesday, February 15, 2017
2:00 p.m.
State Capitol, Conference Room 325

In consideration of
HB847 HD1
RELATING TO UNIVERSITY OF HAWAII RESEARCH.

Chair Nishimoto, Vice Chair San Buenaventura, and Members of the Committee on Judiciary.

The High Technology Development Corporation (HTDC) **supports** HB847 HD1 that establishes the Innovation and Commercialization Initiative Program to expressly give the University of Hawaii the legal authority to create, promote, and participate in new economic enterprises and expand workforce opportunities based on inventions and discoveries generated by or at the University.

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 promoting technology and innovation jobs. HB847 allows UH to engage in economic promotion activities that will support university technology transfer and workforce development through programs like XLR8UH.

The XLR8UH Proof of Concept Commercialization Center was funded by UH to accelerate early stage innovation and talent affiliated with the University of Hawai'i. XLR8UH fills the critical void that was historically present as nascent technologies and novice entrepreneurs attempted to cross the "commercialization chasm" or "valley of death." XLR8UH therefore provides much needed guidance, support, and investment resources, and its programs help nurture the efforts of regionally developed intellectual property, entrepreneurs, and startups affiliated with the university. We look forward to continued partnerships with the XLR8UH program.

HTDC is also partnered with the University of Hawaii Engineering and Computer Science departments in facilitating stronger connections between industry, students, and professors through HTDC's WetWare Wednesday networking event. The monthly event has been bringing together stakeholders in the tech community for the past 5 years.

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 Judiciary
Wednesday, February 15, 2017 at 2:00 P.M.
Conference Room 325, State Capitol**

LATE

RE: HOUSE BILL 847 HD1 RELATING TO UNIVERSITY OF HAWAII RESEARCH

Chair Nishimoto, Vice Chair San Buenaventura, and Members of the Committee:

The Chamber of Commerce Hawaii ("The Chamber") **supports** HB 847 HD1, which establishes the Innovation and Commercialization Initiative Program to expressly give the University of Hawaii the legal authority 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 847 HD1 would establish the Innovation and Commercialization Initiative Program and 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.