



# UNIVERSITY OF HAWAII SYSTEM

## Legislative Testimony

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Testimony Presented Before the  
Senate Committees on Higher Education and  
Economic Development, Tourism, and Technology  
March 17, 2017 at 1:30 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

Chairs Kahele and Wakai, Vice Chairs Kidani and Taniguchi, and members of the committees:

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.

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 to commercialize promising discoveries.

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.

Thank you for the opportunity to testify on this measure.



**STATE OF HAWAII  
STATE PROCUREMENT OFFICE**

P.O. Box 119  
Honolulu, Hawaii 96810-0119  
Tel: (808) 586-0554  
email: [state.procurement.office@hawaii.gov](mailto:state.procurement.office@hawaii.gov)  
<http://spo.hawaii.gov>  
Twitter: [@hawaiispo](https://twitter.com/hawaiispo)

TESTIMONY  
OF  
SARAH ALLEN, ADMINISTRATOR  
STATE PROCUREMENT OFFICE

TO THE SENATE COMMITTEES  
ON  
ECONOMIC DEVELOPMENT, TOURISM AND TECHNOLOGY  
AND  
HIGHER EDUCATION  
MARCH 17, 2017, 1:30 PM

HOUSE BILL 847, HOUSE DRAFT 1  
RELATING TO THE UNIVERSITY OF HAWAII RESEARCH

Chairs Wakai and Kahele, Vice-Chairs Taniguchi and Kidani, and members of the committees, thank you for the opportunity to submit testimony on House Bill 847, House Draft 1. 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 in opposition of this Bill's exemption from the Procurement Code as stated in SECTION 2, page 10, lines 4 to 10.

This exemption is not necessary. The Code already provides flexibility to address the needs of the University of Hawaii's Innovation and Commercialization Initiative Program's needs. HRS §103D-102(b)(4)(L) gives the Chief Procurement Officer, the President of the University of Hawaii, the authority to exempt specific purchases when it is not advantageous or practicable. HAR §3-120-5 provides the mechanism for the head of a purchasing agency to follow when requesting an exemption to the Code.

The harm of granting a statutory blanket exemption is that the procurement would not be reviewed to determine the appropriateness of that exemption, which over a period of time may

change. In addition, 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 Committee on Higher Education and the Arts  
And  
The Committee on Economic Development, Tourism and Technology  
Friday, March 17, 2017  
1:30 pm, Room 414

RE: HB 847, HD1, RELATING TO UNIVERSITY OF HAWAII RESEARCH

Attention: Chairs Kai Kahele and Glenn Wakai, Vice Chairs Michelle Kidani and  
Brian Taniguchi and Members of the Committee

The University of Hawaii Professional Assembly (UHPA) **supports HB 847, HD1**. The purpose of this bill is to codify through placement into statute, that which is currently an Ethics Code Advisory Opinion (No. 1992-2) that allows faculty members to advance technology transfer activities at the University of Hawai'i without penalties for commercializing their work which financially benefits the University. UHPA believes this proposed legislation will make it clear that technology transfer is recognized appropriately in state law.

HB 847, HD1 would ensure the long-standing ethical research principles and technology transfer regulations currently used by the federal government. This also supports the ability of the University to be competitive for external research funding and attracting and retaining innovative faculty.

This benefits both the State and the University by removing current uncertainties surrounding the Advisory Opinion. HB 847, HD1 provides an effective and efficient transfer of the results of research in a collaborative manner.

**UHPA supports the passage of HB 847, HD1.**

Respectfully submitted

Kristeen Hanselman  
Executive Director

# OFFICE OF INFORMATION PRACTICES

STATE OF HAWAII  
NO. 1 CAPITOL DISTRICT BUILDING  
250 SOUTH HOTEL STREET, SUITE 107  
HONOLULU, HAWAII 96813  
TELEPHONE: 808-586-1400 FAX: 808-586-1412  
EMAIL: oip@hawaii.gov

To: Senate Committees on Higher Education and on Economic Development,  
Tourism, and Technology

From: Cheryl Kakazu Park, Director

Date: March 17, 2017, 1:30 p.m.  
State Capitol, Conference Room 414

Re: Testimony on H.B. No. 847, H.D. 1  
Relating to University of Hawaii Research

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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 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”). Even though the UIPA allows an agency to withhold such information in response to a public record request, the Sunshine Law, part I of chapter 92, does not generally allow a board to hold a closed meeting to protect such information, because the UIPA’s exceptions to public disclosure are not confidentiality statutes and thus a board could not go into executive session to protect information falling under a UIPA exception (unless some other executive session purpose applied). Thus, **without this provision, the UH Board of Regents would be able to withhold trade secrets or confidential commercial or financial information in response to a public UIPA request, but it would not be able to discuss that information in a closed session under the Sunshine Law.** 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, as it would simply allow the board to protect the information from disclosure at a public meeting to an extent 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.



# HAWAII STATE ETHICS COMMISSION

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

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Committee: Committee on Economic Development, Tourism, and Technology  
Committee on Higher Education  
Bill Number: H.B. 847, HD1  
Hearing Date/Time: Friday, March 17, 2017, 1:30 p.m.  
Re: Testimony of the Hawaii State Ethics Commission with  
**COMMENTS AND PROPOSED AMENDMENTS** to H.B. 847,  
HD1, Relating to University of Hawaii Research

Dear Chair Wakai, Chair Kahele, and Committee Members:

The Hawaii State Ethics Commission (“Commission”) hereby submits **comments and proposed amendments** to 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.<sup>1</sup>

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<sup>1</sup> 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



The Commission respectfully submits that the 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 ethics” 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



Chamber of Commerce HAWAII  
*The Voice of Business*

**Testimony to the Senate Committee on  
Economic Development, Tourism, and Technology  
and the Senate Committee on Higher Education  
Friday, March 17, 2017 at 1:30 P.M.  
Conference Room 414, State Capitol**

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

Chairs Wakai and Kahele, Vice Chairs Taniguchi and Kidani, and Members of the Committees:

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. This bill 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.



**Testimony to the Senate Committee on Economic Development, Tourism, and  
Technology and the Senate Committee on Higher Education**

**March 17, 2017**

**1:30 p.m.**

**Conference Room 414**

**RE: RELATING TO TECHNOLOGY TRANSFER AT THE UNIVERSITY OF HAWAII –  
HOUSE BILL 847, HD1**

Chairs Wakai and Kahele, Vice Chairs Taniguchi and Kidani 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 847, HD1, relating to the University of Hawaii Research. The bill is to provide to provide express statutory authority to enable and facilitate the deployment of university educational and instructional resources, university managerial and fiscal resources, and university personnel to promote the economic health and diversification of workforce opportunities in the State through the commercialization of inventions and discoveries generated by or at the university.

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



March 17, 2017

Sens. Glenn Wakai and Kaiali'i Kahele  
Committees on Economic Development and Higher Education  
State Capitol  
Honolulu, HI 96813

Re: House Bill 847, HD 1

Chairmen Wakai and Kahele 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 from disclosure under the Uniform Information Practices Act and under the Sunshine Law because it would involve meetings about trade secrets that are already confidential under state law.

We are particularly worried about broad exemptions to the Sunshine Law, where public meetings on such items as budgets are closed because they relate to trade secrets but at the same do not disclose such secrets.

Thank you for your time.

Sincerely,

Stirling Morita  
President, Hawaii Chapter SPJ



Senate Higher Education Committee / Senate Economic Development, Tourism, and Technology Committee  
Chair Kaiali'i Kahele, Chair Glenn Wakai

03/17/2017 at 1:30 PM in Room 414  
HB847 HD1 – Relating to the University of Hawaii Research

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

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Dear Chair Kahele, Chair Wakai, 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.

Subsection 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**.

**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Tuesday, March 14, 2017 9:13 PM  
**To:** HRE Testimony  
**Cc:** Dwamato@hawaii.edu  
**Subject:** \*Submitted testimony for HB847 on Mar 17, 2017 13:30PM\*

**HB847**

Submitted on: 3/14/2017

Testimony for HRE/ETT on Mar 17, 2017 13:30PM in Conference Room 414

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Dwamato	Individual	Support	No

Comments:

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

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