

SB 138

RELATING TO TECHNOLOGY TRANSFER AT THE UNIVERSITY OF HAWAII

Makes certain sections of the State Code of Ethics inapplicable to technology transfer activities sponsored by University of Hawaii if the activities comply with the regulatory framework and research compliance program approved by the Board of Regents. Requires the Board of Regents to submit written status reports.



HAWAII STATE ETHICS COMMISSION

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

Committee: Committee on Economic Development, Tourism, and Technology
Committee on Higher Education
Bill Number: S.B. 138, Relating to Technology Transfer at the Univ. of Hawaii
Hearing Date/Time: Wednesday, February 15, 2017, 1:20 p.m.
Re: Testimony of the State Ethics Commission **OPPOSING** S.B. 138

Dear Chair Wakai, Chair Kahele, and Committee Members:

The Hawaii State Ethics Commission (“Commission”) **opposes** S.B. 138, which seeks to exempt technology transfer activities from the scope of the Ethics Code, Hawaii Revised Statutes (“HRS”) chapter 84.

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.¹

However, the Commission opposes any efforts to exempt University employees and/or broad categories of activities from the Ethics Code itself. These exemptions contravene Hawaii’s constitutional mandate that public officers and employees exhibit

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 highest standards of ethical conduct.² This bill would set a dangerous precedent, as individual agencies or programs may seek to carve out exceptions to the Ethics Code (thus taking a strong regulatory framework to promote integrity in state government and weakening it through a series of exceptions).

This bill sends a message that certain state officials are too important to be bound by ethics laws. Recent national events, however, demonstrate the importance of ensuring that all government officials – at all levels of government – be held to uniform, fair, and reasonable ethical rules.

As such, while the Commission offers comments on a related measure on today's agenda (S.B. 137), the Commission opposes S.B. 138.

Thank you for considering the Commission's testimony on S.B. 138.

Very truly yours,

Daniel Gluck
Executive Director and General Counsel

² Hawaii Constitution, Art. XIV.



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

February 15, 2017

1:20 p.m.

Conference Room 414

**RE: RELATING TO TECHNOLOGY TRANSFER AT THE UNIVERSITY OF HAWAII –
SENATE BILL 138**

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 fully supports Senate Bill 138, relating to Technology Transfer at the University of Hawaii. The bill clarifies that certain sections of the State Ethics Code shall not apply to technology transfer arrangements supported by the University of Hawaii.

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. The ability to transfer research into commercial opportunities is a key to that 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. We continue to support our innovation sector and its role in the growth of our economy.

We realize that there must be a well-articulated policy to insure the balance between the partnership arrangements and the benefits to the public. We are confident that the University of Hawaii's Board of Regents will be able to develop a compliance program that will comply with applicable regulations.

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



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

02/15/2017 at 1:20 PM in Room 414
SB138 – Relating to Technology Transfer at the University of Hawaii

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

Dear Chair Wakai, Chair Kahele, and committee members:

Common Cause Hawaii opposes SB138 which would exempt technology transfer activities sponsored by the University of Hawaii from certain provisions of the State Ethics Code.

During the 1978 Constitutional Convention, the people of Hawaii directed the state to create the State Ethics Code to ensure that the people's faith that our government officials and employees "exhibit the highest standards of ethical conduct".¹ SB138 would create a large loophole in how our Ethics Code is applied which could erode the public's trust in our government.

While we recognize the need to be able to innovate and capitalize on research, we question the need to create such broad exemptions to core provisions of our Ethics Code—confidential information, fair treatment, conflicts of interest, and post-employment restrictions.

We encourage you to defer this bill, which prioritizes research commercialization over the public's interest.

Thank you for the opportunity to offer testimony **opposing SB138**.

¹ Hawaii State Constitution. Article XIV. <http://lrbhawaii.org/con/conart14.html>



High Technology Development Corporation

2800 Woodlawn, Ste. 100 | 808-539-3806

Honolulu, Hawaii 96822 | www.htdc.org

Written Statement of
Robbie Melton
Executive Director & CEO
High Technology Development Corporation
before the
Senate Committee on Economic Development, Tourism, and Technology
and
Committee on Higher Education

Wednesday, February 15, 2017
1:20 p.m.
State Capitol, Conference Room 414

In consideration of
SB138
RELATING TO TECHNOLOGY TRANSFER AT THE UNIVERSITY OF HAWAII.

Chairs Wakai and Kahele, Vice Chairs Taniguchi and Kidani, and Members of the Committees on Economic Development, Tourism, & Technology and Higher Education.

The High Technology Development Corporation (HTDC) **supports** SB138 that makes certain sections of the State Code of Ethics inapplicable to technology transfer activities sponsored by University of Hawaii if the activities comply with the regulatory framework and research compliance program approved by the Board of Regents and requires the Board of Regents to submit written status reports.

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 and the policies required to ensure the tech transfer program is both fair and productive.

Thank you for the opportunity to offer these comments.

From: mailinglist@capitol.hawaii.gov
Sent: Tuesday, February 7, 2017 3:34 PM
To: HRE Testimony
Cc: mendezj@hawaii.edu
Subject: *Submitted testimony for SB138 on Feb 15, 2017 13:20PM*

SB138

Submitted on: 2/7/2017

Testimony for HRE/ETT on Feb 15, 2017 13:20PM in Conference Room 414

Submitted By	Organization	Testifier Position	Present at Hearing
Javier Mendez-Alvarez	Individual	Oppose	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.

Do not reply to this email. This inbox is not monitored. For assistance please email webmaster@capitol.hawaii.gov



Testimony Presented Before the
Senate Committee on Economic Development, Tourism, and Technology
and
Senate Committee on Higher Education

Wednesday, February 15, 2017 at 1:20 PM

By
Tarik Sultan
Managing Partner
Sultan Ventures

In Consideration of
SB 138 – RELATING TO TECHNOLOGY TRANSFER AT THE UNIVERSITY OF HAWAII

Chair Wakai, Vice Chair Taniguchi, and members of the Economic Development, Tourism, and Technology Committee;

Chair Kahele, Vice Chair Kidani, and members of the Higher Education Committee:

Sultan Ventures respectfully submits testimony in support of SB 138 to clarify and modernize the application of state ethics principles set forth in the State Ethics Code to technology transfer activities sponsored by the University of Hawaii.

Sultan Ventures is a Hawaii-based boutique venture firm focusing on early stage startups and investments. As a startup catalyst, we provide pivotal resources via our powerful network of experts and investors. We work closely with innovative startups, and run the XLR8UH program in partnership with the University of Hawaii (UH), providing the hands-on expertise and access to capital needed to accelerate growth, as well as with investors, performing the diligence necessary to make strategic investment decisions.

We believe that by clearly allowing UH employees to ethically pursue commercialization of innovative research, our innovation economy will continue to grow. Through our work with the XLR8UH program, we see the impact that commercialization efforts can have on economic growth in our community.

Commercialization of innovative products will drive our innovation economy forward, leading to job creation, diversification of workforce opportunities, and further economic growth. It is essential that the application of state ethics principles to UH must be clarified and modernized to comport with the best practices of technology transfer programs at other universities for UH to remain competitive in the market. These efforts will continue to drive innovative research and entrepreneurial development throughout the university. We fully support this effort to continue the momentum of building this innovation economy and to retain talent and innovation in Hawaii.

We urge you to pass this legislation so that Hawaii can take its rightful place as a birthplace of innovation and provider of 21st century careers and jobs.

Thank you for the opportunity to provide testimony on this bill.



Testimony Presented Before the
Senate Committee on Economic Development, Tourism, and Technology
and
Senate Committee on Higher Education

Wednesday, February 15, 2017 at 1:20 PM

By
Omar Sultan
Founder and Managing Partner
XLR8UH

In Consideration of
SB 138 – RELATING TO TECHNOLOGY TRANSFER AT THE UNIVERSITY OF HAWAII

Chair Wakai, Vice Chair Taniguchi, and members of the Economic Development, Tourism, and Technology Committee;

Chair Kahele, Vice Chair Kidani, and members of the Higher Education Committee:

XLR8UH respectfully submits testimony in support of SB 138 to clarify and modernize the application of state ethics principles set forth in the state ethics code to technology transfer activities sponsored by the University of Hawaii.

By clearly allowing University employees to ethically pursue commercialization of innovative research, our innovation economy will continue to grow. We have seen first hand through our program that commercialization efforts lead to job creation, diversification of workforce opportunities and economic growth.

With its undeniable strengths in ocean sciences, energy research, sustainable agriculture and astronomy; and its growing strength in cybersecurity and health sciences – the University of Hawaii has a significant amount of academic research that has viable commercial potential. Successful commercialization contributes directly to the State's economy, its academic and business reputation and to creating diverse, well-paying jobs and careers

In order to continue the momentum of building this innovation economy in Hawaii, the application of state ethics principles must be modernized to comport with the best practices of technology transfer programs at other universities. This will ultimately benefit Hawaii's innovation economy by retaining and attracting innovative research talent to the islands.

One of the first of its kind in the nation, XLR8UH is a public-private partnership with University of Hawaii through the Office of the Vice President for Research and Innovation and Honolulu-based Sultan Ventures, a local venture accelerator. Although only a few years old, XLR8UH is already a multiple award winning, venture accelerator program, nationally recognized by the Small Business Association in 2015 and 2016 and the Economic Development Association in 2016 under the Department of Commerce Regional Innovation Strategies i6 Challenge, that makes small, targeted, high-impact investments to support startup creation, innovation and help turn technology into jobs.

We urge you to pass this legislation so that Hawaii can take its rightful place as a birthplace of innovation and provider of 21st century careers and jobs.

Thank you for the opportunity to provide testimony on this matter.



The Committee on Economic Development, Tourism and Technology
And
The Committee on Higher Education and the Arts

RE: **SB 138, Relating to Technology Transfer at the University of Hawai'i**

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

The University of Hawaii Professional Assembly (UHPA) supports the intent of SB 138 but believes that the changes should be made to HRS section 304A rather than to the Hawaii Revised Statute 84, Standards of Conduct pertaining to the Code of Ethics.

The intent of this waiver is to allow faculty members to advance technology transfer activities at the University of Hawai'i without penalties for commercializing their work which financially benefits the University.

The ability of faculty to work closely with students provides unique opportunities for mentoring, guiding and developing innovative and creative property that have the potential for commercialization. Revisions to the Code of Ethics enhances this potential.

SB 138 would support 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 roadblocks and creating an effective and efficient transfer of the results of research in a collaborative manner.

With this understanding of purpose and intent, the waiver request is specific to faculty and University needs and therefore belongs in Chapter 304A, University of Hawaii System rather than Chapter 84, Code of Ethics.

UHPA supports the passage of SB 138 with suggested amendments.

Respectfully submitted

Kristeen Hanselman

University of Hawaii
Professional Assembly

1017 Palm Drive ♦ Honolulu, Hawaii 96814-1928
Telephone: (808) 593-2157 ♦ Facsimile: (808) 593-2160
Website: www.uhpa.org



Executive Director

University of Hawaii
Professional Assembly

1017 Palm Drive ♦ Honolulu, Hawaii 96814-1928
Telephone: (808) 593-2157 ♦ Facsimile: (808) 593-2160
Website: www.uhpa.org



UNIVERSITY OF HAWAII SYSTEM

Legislative Testimony

Testimony Presented Before the
Senate Committees on Higher Education
and Economic Development, Tourism and Technology
Wednesday, February 15, 2017 at 1:20 p.m.

by

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

SB 138 – RELATING TO TECHNOLOGY TRANSFER AT THE UNIVERSITY OF HAWAII

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

The University of Hawai'i (UH) supports this measure.

The University of Hawai'i is increasingly called upon to create intellectual property and to transform discoveries that show commercial potential into useful and viable products. These products may include better and more efficient ways to cool and store food; may allow quicker and more accurate means to assess and respond to natural disasters; and may permit less invasive and more reliable medical diagnosis. The potential public benefits for new technology are far-reaching and exciting.

The faculty and research support staff at UH are eager to step up to this challenge. Their efforts may be deterred, however, by the possible unanticipated application of the State Ethics Code in a manner that restricts or prohibits the use of public university resources or university personnel to create these new commercial products. Most often, technology transfer must allow potential private economic gain to the private entrepreneurs who shoulder the risk of bringing the publicly-funded ideas to private market. The UH inventors themselves may also have the potential for "private benefit" through opportunities for equity participation in the new start-up company, or through an allocation of patent royalties. The sharing of potential economic benefits among the several participants -- the individual faculty who conceives and develops the theoretical underpinnings of the invention, the university where the ideas are incubated and the concepts are proven, and the private partner who contributes skills, experience, resources and capital -- is inherent to the nature of a collaborative public private partnership.

There is uncertainty in the application of the Ethics Code to UH-sponsored technology transfer activities because the same text of the Ethics Code must also apply to a wide range of circumstances -- from permissible uses of state facilities for non-profit fundraising, to self-dealing in approving contracts with one's state agency. Compounding this uncertainty in applying the Ethics Code to UH technology transfer

activities is that at one time, the Ethics Commission may have been liberal in permitting these technology transfer activities. At other periods of time, the Ethics Commission may have been more cautious. Moreover, the kinds of activities constituting “technology transfer” are as dynamic as the underlying technology. The Ethics Commission and its staff must currently interpret and apply Ethics Code to the ever-changing “public-private” collaborations without the benefit of express statutory guidance of the Code.

The University of Hawai'i has an excellent working relationship and open communication with the Ethics Commission and its staff. However, UH believes that with so much at stake, it is better to provide clarity, certainty, and uniformity in statutory language rather than rely on the interpretation of individuals -- either at UH or at the Commission -- who at any point of time hold the offices.

The purpose of this measure is to provide clear guidance to UH and its individual and private sector collaborators by exempting technology transfer activities from selected provisions of the State Ethics Code.

Thank you for the opportunity to testify.

EST. 1988

HVCA

HAWAII VENTURE CAPITAL ASSOCIATION

Testimony Presented Before the
Senate Committee on Economic Development, Tourism, and Technology
and
Senate Committee on Higher Education

Wednesday, February 15, 2017 at 1:20 PM

By
Melialani James
President
Hawaii Venture Capital Association (HVCA)

In Consideration of
**SB 138 – RELATING TO TECHNOLOGY TRANSFER AT THE UNIVERSITY OF
HAWAII**

Chair Wakai, Vice Chair Taniguchi, and members of the Economic Development, Tourism, and Technology Committee;

Chair Kahele, Vice Chair Kidani, and members of the Higher Education Committee:

The Hawaii Venture Capital Association (HVCA) respectfully submits testimony in **support** of SB 138 to clarify and modernize the application of state ethics principles set forth in the State Ethics Code to technology transfer activities sponsored by the University of Hawaii.

Since its founding in 1988, the Hawaii Venture Capital Association (HVCA) has stood as a nexus for entrepreneurs, capital foundation, and networking opportunities in Hawaii. Fostering entrepreneurship through education and exposure to prime members of our business community continues to be our goal as we strive to grow a vibrant and successful venture community.

UH has a significant amount of academic research that has viable commercial potential. Successful commercialization contributes directly to the State's economy, its academic and business reputation and to creating diverse, well-paying jobs and careers. In an effort to continue the momentum of building this innovation economy in Hawaii, the application of state ethics principles must be clarified and modernized to comport with the best practices of technology transfer programs at other universities to retain talent and innovation in Hawaii.

HVCA is committed to working with XLR8UH, and will actively connect newly formed companies to its wide network in order to maintain competitiveness and grow the industry. We fully agree on the relevance and importance of SB 138.

Thank you for the opportunity to offer our testimony on this bill.