



UNIVERSITY OF HAWAII SYSTEM

Legislative Testimony

Testimony Presented Before the
House Committee on Judiciary
Wednesday, March 22, 2017 at 2:00 p.m.

by

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

SB 137 SD2 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 measure.

This bill provides UH with clear statutory authority to frame and support its various activities to develop and commercialize the intellectual property created by its faculty, staff or alumni. Successful commercialization, in turn, will diversify the workforce in the state, will promote a robust and dynamic innovation sector of our economy, will provide better-performing products or services to the consumers and general public, and will create potential economic returns to UH.

The University of Hawai'i's brand as a research and teaching institution will 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 attracting external research sponsorship and in hiring entrepreneurial faculty or staff, the UH must develop its commercialization capacity.

Clear statutory authority is an essential component to develop UH's capacity to commercialize its intellectual property.

Last week, the House Committee on Higher Education amended this measure by making a technical, nonsubstantive amendment for consistency, clarity and style. (HSCR 1094). Concerns have been expressed by Common Cause Hawai'i and the Society of Professional Journalists on the provision of this measure allowing the UH Board of Regents to meet in executive session to discuss confidential trade secrets or proprietary business information. In response, UH refers this Committee to -- and agrees with -- the Office of Information Practice's analysis that "the provision of this bill affecting the Sunshine Law and the UIPA [is] reasonably limited to achieve its intended purpose of protecting proprietary information without unduly restricting public access to the formation of public policy." (See Testimony on SB No. 137, SD2, submitted by Office of Information Practices, dated March 14, 2017).

Thank you for the opportunity to testify in support.



HAWAII STATE ETHICS COMMISSION

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

Committee: Committee on Judiciary
Bill Number: S.B. 137, SD2, HD1
Hearing Date/Time: Wednesday, March 22, 2017, 2:00 p.m.
Re: Testimony of the Hawaii State Ethics Commission with
COMMENTS AND PROPOSED AMENDMENTS to S.B. 137,
SD2, HD1, Relating to University of Hawaii Research

Dear Chair Nishimoto and Committee Members:

The Hawaii State Ethics Commission (“Commission”) hereby submits comments on S.B. 137, SD2, 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

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 20, 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 SB 137, SD2, HD1.

Very truly yours,

Daniel Gluck
Executive Director and General Counsel

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.



To The House Committee on Judiciary
Wednesday, March 22, 2017
2:00 pm, Room 325

LATE

RE: SB 137, SD2, HD1, RELATING TO UNIVERSITY OF HAWAII RESEARCH

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

The University of Hawaii Professional Assembly (UHPA) urges the committee to **support SB 137, SD2, HD1**. The intent of this bill is to codify what 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.

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 137, SD1, 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. **SB 137, SD2, HD1** provides an effective and efficient transfer of the results of research in a collaborative manner.

UHPA supports the passage of SB 137, SD2.

Respectfully submitted

A handwritten signature in black ink that reads "Kristeen Hanselman".

Kristeen Hanselman
Executive Director

**University of Hawaii
Professional Assembly**



Testimony to the House Committee on Judiciary

March 22, 2017

2:00 p.m.

Conference Room 325

**RE: RELATING TO TECHNOLOGY TRANSFER AT THE UNIVERSITY OF HAWAII –
SENATE BILL 137, SD2, HD1**

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

My name is Gary Kai and I am the Executive Director of the Hawaii Business Roundtable. The Hawaii Business Roundtable strongly supports Senate Bill 137, SD2, 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

OFFICE OF INFORMATION PRACTICES

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To: House Committee on Judiciary

From: Cheryl Kakazu Park, Director

Date: March 22, 2017, 2:00 p.m.
State Capitol, Conference Room 325

Re: Testimony on S.B. No. 137, S.D. 2, H.D. 1
Relating to University of Hawaii Research

Thank you for the opportunity to submit testimony on this bill. For the following reasons, 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”).

This bill (starting at page 10 line 12) 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, **under current law, 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 provision of this bill affecting the Sunshine Law and the UIPA as reasonably limited to achieve its 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.

LATE

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HVCA

HAWAII VENTURE CAPITAL ASSOCIATION

Statement of
Melialani James
President
Hawaii Venture Capital Association (HVCA)

Testimony Presented Before the
House Committee on Judiciary
Wednesday, March 22, 2017 at 2:00 PM

In consideration of
SB137, SD2, HD1 RELATING TO UNIVERSITY OF HAWAII RESEARCH

Chair Scott Y. Nishimoto, Vice Chair Joy A. San Buenaventura, and members of the Committee:

The Hawaii Venture Capital Association (HVCA) **strongly** of SB137 SD2 HD1 to provide the University of Hawaii (UH) clear statutory authority to frame and support its various activities and initiatives to develop and commercialize the intellectual property created by UH faculty, staff and alumni.

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. This bill will assist in streamlining the progress of XLR8UH, the development of UH research-based high potential commercialization projects, and innovation in Hawai'i as a whole.

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 137 SD1.

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

LATE



Statement of
Tarik Sultan
Managing Partner
Sultan Ventures

Testimony Presented Before the
House Committee on Judiciary
Wednesday, March 22, 2017 at 2:00 PM

In consideration of
SB137, SD2, HD1 RELATING TO UNIVERSITY OF HAWAII RESEARCH

Chair Scott Y. Nishimoto, Vice Chair Joy A. San Buenaventura, and members of the Committee:

Sultan Ventures respectfully submits testimony in **strong support** of SB137 SD2 HD1 to provide the University of Hawaii (UH) clear statutory authority to frame and support its various activities and initiatives to develop and commercialize the intellectual property created by UH faculty, staff and alumni.

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 UH, providing the hands-on expertise and access to capital needed to accelerate growth.

A clear statutory framework will enable UH to undertake commercialization activity with greater legal certainty and clarity in commercialization efforts such as vetting concepts, providing mentorship and guidance to university entrepreneurs, technology transfer activities to protect intellectual property and working in partnerships with third parties such as Sultan Ventures to facilitate the development and commercialization of innovative UH-based research enterprises. This will eliminate the unnecessary delays and confusion that impede the progress of XLR8UH and the development of UH research-based high potential commercialization projects.

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.



LATE

Statement of
Omar Sultan
Managing Partner
XLR8UH

Testimony Presented Before the
House Committee on Judiciary
Wednesday, March 22, 2017 at 2:00 PM

In consideration of
SB137, SD2, HD1 RELATING TO UNIVERSITY OF HAWAII RESEARCH

Chair Scott Y. Nishimoto, Vice Chair Joy A. San Buenaventura, and members of the Committee:

XLR8UH respectfully submits testimony in **strong support** of SB137 SD2 HD1 to provide the University of Hawaii (UH) clear statutory authority to frame and support its various activities and initiatives to develop and commercialize the intellectual property created by UH faculty, staff and alumni.

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 boutique venture firm. 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.

The bill before you is intended to eliminate the unnecessary delays and confusion that impede the progress of XLR8UH and the development of UH research-based high potential commercialization projects. With its undeniable strengths in ocean sciences, energy research, sustainable agriculture and astronomy; and its growing strength in cybersecurity and health sciences -- 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.

A clear legal framework, authorizing UH to participate directly and indirectly with enterprises such as the proof-of-concept and venture accelerator, XLR8UH, is needed to reduce uncertainty and to facilitate the development and commercialization of innovative UH-based research enterprises.

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 offer our comments on this bill.

From: mailinglist@capitol.hawaii.gov
Sent: Tuesday, March 21, 2017 3:17 PM
To: JUDtestimony
Cc: mendezj@hawaii.edu
Subject: *Submitted testimony for SB137 on Mar 22, 2017 14:00PM*

SB137

Submitted on: 3/21/2017

Testimony for JUD on Mar 22, 2017 14:00PM in Conference Room 325

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.

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To: House Committee on Judiciary

From: Cheryl Kakazu Park, Director

Date: March 22, 2017, 2:00 p.m.
State Capitol, Conference Room 325

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For these reasons, OIP views the provision of this bill affecting the Sunshine Law and the UIPA as reasonably limited to achieve its 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.