



HAWAII STATE ETHICS COMMISSION

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

Committee: Committee on Judiciary and Labor
Bill Number: H.B. 425, HD1, SD1
Hearing Date/Time: Tuesday, April 4, 2017, 9:45 a.m.
Re: Testimony of the Hawaii State Ethics Commission **OPPOSING**
H.B. 425, HD1, SD1, Relating to Technology Transfer at the
University of Hawaii

Dear Chair Keith-Agaran and Committee Members:

The Hawaii State Ethics Commission (“Commission”) **strongly opposes** H.B. 425, HD1, SD1, which seeks to exempt technology transfer activities from the scope of the Ethics Code, Hawaii Revised Statutes (“HRS”) chapter 84.

The Commission recommends that this Committee defer this measure. However, **if this Committee is inclined to pass this measure, the Commission respectfully recommends additional safeguards** in line with states like Maryland, Washington, and New Jersey.

As an initial matter, 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 the highest standards of ethical conduct.¹ 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. The Commission fully supports the University’s efforts to take advantage of its employees’ outstanding research, and believes that technology transfer activities are already permitted by the Ethics Code.²

¹ Hawaii Constitution, Art. XIV.

² 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

As currently written, HB 425, HD1, SD1 lacks the safeguards included in other states' technology transfer statutes. If this Committee is inclined to pass this measure, the Ethics Committee respectfully suggests that the Committee amend the measure to provide additional safeguards to protect against unethical conduct. For instance, a number of states: (1) require conflicts of interest rules promulgated by the university to be approved by the Ethics Commission or the Governor;³ (2) specify criteria that must be met before approving a technology transfer, such as whether the transfer will adversely affect research or other state interests;⁴ or (3) have more strict disclosure or approval requirements, such as requiring quarterly reports or approval in public minutes.⁵

HB 425 lacks any of these mechanisms to preserve integrity and transparency in the technology transfer process and grants the University a "blank check" to create its own rules. The only disclosure is an annual report from the University to the Legislature

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.

³ See Md. General Provisions § 5-525(b) (requiring approval by ethics commission and attorney general), available at <http://bit.ly/2oRPADr>; N.J. Stat. Ann. §§ 52:13D-19.1, 52:13D-23(b) (approval of ethics commission required), available at <http://bit.ly/2nPRHbg>; Wash. Rev. Code Ann. § 42.52.220(1) (approval of the governor required), available at <http://bit.ly/2oCyn1E>.

⁴ See Miss. Code. Ann. § 37-147-11(3), available at <http://bit.ly/2ouLjtJ>; N.M. Stat. Ann. § 21-28-25(C), available at <http://bit.ly/2nPXrlw>; Md. General Provisions § 5-525(c)(3), available at <http://bit.ly/2oRPADr>.

⁵ See Miss. Code. Ann. § 37-147-11(3)(b) (requiring that a research authority approve any technology transfers in which an employee has a financial interest in public minutes), available at <http://bit.ly/2ouLjtJ>; Md. General Provisions § 5-525(g) (requiring quarterly reports to be filed with the Ethics Commission, the Governor, and the General Assembly regarding the number of approvals and how the conflicts provisions are implemented), available at <http://bit.ly/2oRPADr>; Fla. Stat. Ann. § 1004.23(6) ("Any action taken by the university in securing or exploiting such trademarks, copyrights, or patents shall, within 30 days, be reported in writing by the president to the Department of State."), available at <http://bit.ly/2nxdDqc>.

after the transfers have taken place.

The Ethics Commission supports the University's goal of enhancing innovation, but believes that any change in the State Ethics Code should include more specific procedures governing the technology transfer process like those in Maryland. See Md. General Provisions § 5-525, available at <http://bit.ly/2oRPAD>. The Commission is more than willing to collaborate with the University to enact a comprehensive statute and rules addressing these concerns in the future.

In sum, the Commission respectfully asks that the Committee defer this measure. Instead, the Commission respectfully requests that the Legislature instead consider a related measure on technology transfer, H.B. 847, which has already been heard (and passed) by this Committee and by the Committee on Ways and Means.

Thank you for considering the Commission's testimony on H.B. 425, HD1, SD1.

Very truly yours,

Daniel Gluck
Executive Director and General Counsel



**Testimony to the Senate Committee on Judiciary and Labor
Tuesday, April 4, 2017 at 9:45 A.M.
Conference Room 016, State Capitol**

**RE: HOUSE BILL 425 HD1 SD1 RELATING TO TECHNOLOGY TRANSFER AT
THE UNIVERSITY OF HAWAII**

Chair Keith-Agaran, Vice Chair Rhoads, and Members of the Committee:

The Chamber of Commerce Hawaii ("The Chamber") **supports** HB 425 HD1 SD1 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 to the legislature every year.

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 Chamber supports this bill as it would help expedite the commercialization of research from the University of Hawaii to provide information that would strengthen the local economy. This bill helps remedy many obstacles that currently exist from broad conflict of interest, fair treatment, and employment restrictions. Clarifying the State Ethics Code would prevent the deterrence of an efficient technology transfer.

Thank you for the opportunity to testify.



Senate Judiciary and Labor Committee
Chair Gilbert Keith-Agaran, Vice Chair Karl Rhoads

04/04/2017 at 9:45 AM in Room 016
HB425 HD1 SD1 – Relating to Technology Transfer at the University of Hawaii

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

Dear Chair Keith-Agaran, Vice Chair Rhoads, and committee members:

Common Cause Hawaii opposes HB425 HD1 SD1 which would exempt technology transfer activities sponsored by the University of Hawaii from certain provisions of the State Ethics Code.

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—as the activities addressed in the bill are already permitted by the Ethics Code.

Additionally, we are concerned that this bill would open the door to additional divisions and agencies seeking exemptions to and thus weakening the Ethics Code. We do not believe it is prudent to tread down this slippery slope.

During the 1978 Constitutional Convention, the people of Hawaii directed the state to create the State Ethics Code to ensure that government officials and employees “exhibit the highest standards of ethical conduct”.¹ HB425 HD1 SD1 would create a large loophole in how our Ethics Code is applied which could erode the public’s trust in our government.

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 HB425 HD1 SD1**.

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



UNIVERSITY OF HAWAII SYSTEM

Legislative Testimony

Testimony Presented Before the
Senate Committee on Judiciary and Labor
Tuesday, April 4, 2017 at 9:45 a.m.

by

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

HB 425 HD1 SD1 – RELATING TO TECHNOLOGY TRANSFER AT THE UNIVERSITY OF HAWAII

Chair Keith-Agaran, Vice Chair Rhoads, and members of the Committee:

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

One of the University of Hawai'i's (UH) strategic directions is to grow the portfolio of sponsored research done at the University and to promote innovation and workforce diversification in the state's economy.

One critical phase of innovation is the ability to commercialize research ideas generated on campus. The phase is often known as "technology transfer" and is designed to strengthen economies by getting new ideas, inventions and processes developed in universities to the private sector as quickly as possible. Technology transfer occurs throughout the nation at other universities and it is vital for UH to be able to support its faculty and student researchers in these activities.

The purpose of this bill is to adapt the application of the Hawai'i State Ethics Code to reflect current day realities of technology transfer activities and UH's unique mission as the state's largest research enterprise. Currently, certain requirements of the State Ethics Code, if too stringently applied -- will inhibit the efficient and effective commercialization of research generated at UH.

The University of Hawai'i strongly prefers that state government support for UH technology transfer activities be more forthright, transparent and more permanently set forth in appropriate legislation. This measure provides clear guidance to UH, to its faculty and research staff, and to potential private partners by exempting technology transfer activities from selected provisions of the State Ethics Code.

Thank you for the opportunity to testify.