



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. 425, HD1
Hearing Date/Time: Thursday, February 23, 2017, 2:00 p.m.
Re: Testimony of the Hawaii State Ethics Commission **OPPOSING**
H.B. 425, HD1 Relating to Technology Transfer at the University
of Hawaii

Dear Chair Nishimoto and Committee Members:

The Hawaii State Ethics Commission (“Commission”) **opposes** H.B. 425, HD1, 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.

The Commission is aware of several other pending measures relating to technology transfer at the University of Hawaii, including H.B. 487, HD1 (heard by FIN on Wednesday, February 22); the Commission has offered comments on (and proposed amendments to) those measures, but the Commission does not oppose those measures.

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

Very truly yours,

Daniel Gluck
Executive Director and General Counsel

² Hawaii Constitution, Art. XIV.



UNIVERSITY OF HAWAII SYSTEM

Legislative Testimony

Testimony Presented Before the
House Committee on Judiciary
Thursday, February 23, 2017 at 2:00 p.m.

by

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

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

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

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

One of UH's strategic goals is to grow its portfolio of sponsored research and take commercially promising inventions to market. The process of creating, proving, refining and transforming research concepts from the laboratory into viable commercial products in the market is called "technology transfer." Technology transfer emanating from UH benefits the state by diversifying the state's workforce, by creating a more robust economy and by offering potential return on the public resources committed to UH.

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 who wish to engage in these activities. Also, these activities contribute to UH remaining competitive in attracting extramural research funds and in attracting or retaining talented faculty and researchers.

It is often the case that UH and its faculty/inventor needs to partner with people or organizations in the private sector that possess the skill, know-how, experience and resources to successfully commercialize the ideas. A key deterrent, however, is whether such technology transfer activities at UH are permissible under the State Ethics Code, because such technology transfer activities might be viewed as impermissibly using public resources to promote a private business or to confer upon the inventor an unfair, personal benefit. The purpose of this bill is to amend 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.

The University of Hawai'i currently enjoys a productive professional relationship with the Ethics Commission staff. However, it is too important to leave the treatment of technology transfer under the Ethics Code to personal/professional relationships. The University of Hawai'i strongly prefers that support for UH-based technology transfer be more transparent and more permanently set forth in appropriate legislation.

Outside private sector partners would be reluctant to invest their funds, their efforts, and their resources if there is always a cloud hanging over the project, which could only be resolved by case-by-case discussions with the Ethics Commission staff.

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 in support.



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

02/23/2017 at 2:00 PM in Room 325
HB425 HD1 – Relating to Technology Transfer at the University of Hawaii

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

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

Common Cause Hawaii opposes HB425 HD1 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 government officials and employees “exhibit the highest standards of ethical conduct”.¹ HB425 HD1 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 HB425 HD1**.

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

EST. 1988

HVCA

HAWAII VENTURE CAPITAL ASSOCIATION

Testimony Presented Before the
House Committee on Judiciary
Thursday, February 23, 2017 at 2:00 p.m.

By
Melialani James
President
Hawaii Venture Capital Association (HVCA)

In Consideration of
HB 425 HD1 – Relating to technology transfer at the University of Hawaii

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

The Hawaii Venture Capital Association (HVCA) respectfully submits testimony in **support** of HB 425 HD1 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 HB425 HD1.

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



Chamber of Commerce HAWAII
The Voice of Business

**Testimony to the House Committee on Judiciary
Thursday, February 23, 2017 at 2:00 P.M.
Conference Room 325, State Capitol**

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

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

The Chamber of Commerce Hawaii ("The Chamber") **supports** HB 425 HD1 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.

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.

From: mailinglist@capitol.hawaii.gov
Sent: Tuesday, February 21, 2017 2:41 PM
To: JUDtestimony
Cc: mendezj@hawaii.edu
Subject: *Submitted testimony for HB425 on Feb 23, 2017 14:00PM*

HB425

Submitted on: 2/21/2017

Testimony for JUD on Feb 23, 2017 14:00PM in Conference Room 325

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