



# 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 Judiciary and Labor  
Committee on Ways and Means  
Bill Number: S.B. 137, SD1  
Hearing Date/Time: Tuesday, February 28, 2017, 9:50 a.m.  
Re: Testimony of the Hawaii State Ethics Commission with  
**COMMENTS AND PROPOSED AMENDMENTS** to S.B. 137,  
SD1, Relating to University of Hawaii Research

Dear Chair Keith-Agaran, Chair Tokuda, and Committee Members:

The Hawaii State Ethics Commission (“Commission”) hereby submits **comments** on S.B. 137, SD1, 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 21, 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 S.B. 137, SD1.

Very truly yours,

Daniel Gluck  
Executive Director and General Counsel

# 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 Judiciary and Labor and on Ways and Means

From: Cheryl Kakazu Park, Director

Date: February 28, 2017, 9:50 a.m.  
State Capitol, Conference Room 211

Re: Testimony on S.B. No. 137  
Relating to University of Hawaii Research

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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”).

The bill (at page 9, lines 6-9) 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 13) 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”). Here, too, 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, which is 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.

DAVID Y. IGE  
GOVERNOR



SARAH ALLEN  
ADMINISTRATOR  
MARA SMITH  
ASSISTANT ADMINISTRATOR

**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  
JUDICIARY AND LABOR  
AND  
WAYS AND MEANS

February 28, 2017, 9:50 AM

Senate Bill 137 SD1  
RELATING TO THE UNIVERSITY OF HAWAII RESEARCH

Chairs Keith-Agaran and Tokuda, Vice-Chairs Rhoads and Dela Cruz, and members of the committee, thank you for the opportunity to submit testimony on SB 137 SD1. 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 not in opposition of this bill, however, would like to submit comments pertaining to SECTION 2, page 10, lines 6 to 12.

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.



Chamber of Commerce HAWAII  
*The Voice of Business*

**Testimony to the Senate Committee on Judiciary and Labor,  
and the Senate Committee on Ways and Means  
Tuesday, February 28, 2017 at 9:50 A.M.  
Conference Room 211, State Capitol**

**RE: SENATE BILL 137 SD1 RELATING TO UNIVERSITY OF HAWAII RESEARCH**

Chairs Keith-Agaran and Tokuda, Vice Chairs Rhoads and Dela Cruz, and Members of the Committees:

The Chamber of Commerce Hawaii ("The Chamber") **supports** SB 137 SD1, 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. SB 137 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.





Senate Judiciary and Labor Committee / Senate Ways and Means Committee  
Chair Gilbert Keith-Agaran, Chair Jill Tokuda

02/28/2017 at 9:50 PM in Room 211  
SB137 SD1 – Relating to the University of Hawaii Research

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

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Dear Chair Keith-Agaran, Chair Tokuda, and committee members:

**Common Cause Hawaii opposes SB137 SD1** 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 SB137 SD1 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.

Section 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. SB137 SD1 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 SB137 SD1**, 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 SB137 SD1**.



Statement of  
**Tarik Sultan**  
Managing Partner  
Sultan Ventures

Testimony Presented Before the  
**Senate Committee on Judiciary and Labor**  
and  
**Senate Committee on Ways and Means**

Tuesday, February 28, 2017 at 9:50 AM

In Consideration of  
**SB 137 SD1 – RELATING TO UNIVERSITY OF HAWAII RESEARCH**

Chair Keith-Agaran, Vice Chair Rhoads, and members of the Judiciary and Labor Committee;

Chair Tokuda, Vice Chair Dela Cruz, and members of the Ways and Means Committee:

Sultan Ventures respectfully submits testimony in **strong support** of SB 137 SD1 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.



The Senate Committee on Judiciary and Labor  
And  
The Senate Committee on Ways and Means  
Tuesday, February 28, 2017  
9:50 am, Room 211

**RE: SB 137, SD1, RELATING TO UNIVERSITY OF HAWAII RESEARCH**

Attention: Chairs Gilbert Keith-Agaran and Jill Tokuda, Vice Chair Karl Rhoads and  
Donovan Dela Cruz and Members of the respective Committee

The University of Hawaii Professional Assembly (UHPA) supports the intent of SB 137, SD1, The intent of this bill codify what is currently now an Ethics Code Advisory Opinion (No. 1992-2) that 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 137, SD1 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 that has created roadblocks. SB 137, SD1 creates provides an effective and efficient transfer of the results of research in a collaborative manner.

**UHPA supports the passage of SB 137, SD1.**

Respectfully submitted

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

Kristeen Hanselman  
Executive Director

**University of Hawaii  
Professional Assembly**



# UNIVERSITY OF HAWAII SYSTEM

## Legislative Testimony

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Testimony Presented Before the  
Senate Committees on Judiciary and Labor  
and Ways and Means

Tuesday, February 28, 2017 at 9:50 a.m.

by

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

### SB 137 SD1 – RELATING TO UNIVERSITY OF HAWAII RESEARCH

Chairs Keith-Agaran and Tokuda, Vice Chairs Rhoads and Dela Cruz, and members of the committees:

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

The purpose of this bill is to provide UH with clear statutory authority to frame and support its various activities and initiatives to develop and commercialize the intellectual property created by UH faculty, staff or alumni. This commercialization, in turn, will contribute to a more diverse workforce in the state and promote a robust and dynamic economy.

The enactment of this measure is necessary for UH to undertake commercialization activity with greater legal certainty and clarity. These activities include vetting or “proving” commercial concepts based on UH research, providing mentorship and entrepreneurial guidance to faculty or research staff, transferring UH-owned intellectual property via patents or licenses, or actively participating in public/private joint development and partnerships. Similarly, third parties will be more willing to contribute their resources and shoulder some of the risks on forward-looking joint ventures or collaborative technology transfer activities, if the legal parameters were more clearly established.

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

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

Thank you for the opportunity to testify.

**From:** [mailinglist@capitol.hawaii.gov](mailto:mailinglist@capitol.hawaii.gov)  
**To:** [JDLTestimony](#)  
**Cc:**  
**Subject:** \*Submitted testimony for SB137 on Feb 28, 2017 09:50AM\*  
**Date:** Monday, February 27, 2017 10:38:33 AM

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**SB137**

Submitted on: 2/27/2017

Testimony for JDL/WAM on Feb 28, 2017 09:50AM in Conference Room 211

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Brandon Marc Higa	Individual	Support	No

Comments:

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