

JAN 20 2017

A BILL FOR AN ACT

RELATING TO UNIVERSITY OF HAWAII RESEARCH.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. The legislature finds that it is a matter of
2 statewide concern to promote the economic health and diversify
3 the workforce opportunities of the State. The legislature
4 further finds that transforming ideas and concepts arising from
5 basic and applied research conducted at the University of
6 Hawaii, the sole public institution of higher education for this
7 State, into commercially viable and sustainable products and
8 businesses will contribute to economic health and workforce
9 diversification. Commercialization of intellectual property
10 created at or by the university thus achieves a public purpose
11 and benefits the State.

12 In the past, the legislature has authorized and provided
13 public funds to support efforts by other state agencies to
14 promote entrepreneurial development, support research
15 commercialization, or provide access to startup investment
16 capital. These state efforts include, for example, the HI
17 growth initiative, the venture accelerator funding programs, and



1 other projects sponsored by the Hawaii strategic development
2 corporation.

3 Because a core function of the University of Hawaii is to
4 conduct basic and applied research, the legislature further
5 finds that the university is uniquely positioned to identify
6 promising innovations and new discoveries arising from
7 university research. For inventions that show commercial
8 potential, the university can bring to bear the educational
9 resources from its various professional schools such as
10 business, law, and engineering to provide focused instruction,
11 expert mentorship, practical guidance, and advanced training in
12 business development. A systematic program of support in the
13 early stages of commercialization is essential to assure viable
14 businesses and sustainable employment opportunities. Education
15 and instruction are integral components of the university's core
16 mission, and applying university resources to support the
17 commercialization of inventions and concepts is a proper use of
18 public resources.

19 The legislature further finds that an impediment to the
20 effective transformation of university innovation into
21 commercial products and viable businesses is the lack of clear



1 and express legal authority to frame and support the
2 university's technology transfer programs. Lack of express
3 statutory authority for these commercialization and technology
4 transfer activities sponsored by the university creates business
5 uncertainty that deters private interests from fully engaging in
6 collaborative efforts promoted by the university. Lack of clear
7 authority for the program may also deter university faculty or
8 students from seeking and actively participating in the program.

9 The purpose of this Act is to provide express statutory
10 authority to enable and facilitate the deployment of university
11 educational and instructional resources, university managerial
12 and fiscal resources, and university personnel to promote the
13 economic health and diversification of workforce opportunities
14 in the State through the commercialization of inventions and
15 discoveries generated by or at the university. The legislature
16 finds there is a public benefit where university resources are
17 used for such purposes, and accordingly, other state laws,
18 including the state code of ethics, should be construed, on
19 balance, to effectuate the intent and public purposes of this
20 Act.



1 SECTION 2. Chapter 304A, Part IV, Hawaii Revised Statutes,
2 is amended by adding a new subpart to be appropriately
3 designated and to read as follows:

4 "INNOVATION AND COMMERCIALIZATION INITIATIVE PROGRAM

5 §304A- Innovation and commercialization initiative
6 program; establishment. There is established within the
7 University of Hawaii an innovation and commercialization
8 initiative program under the direction of the vice president for
9 research and innovation.

10 §304A- Innovation and commercialization initiative
11 program; implementation. In implementing the innovation and
12 commercialization initiative program, the University of Hawaii
13 may promote, sponsor, and participate in the transformation of
14 the products of its research and instructional activities into
15 viable economic enterprises, and may create, finance, and
16 participate in organizations that contribute to economic
17 development and workforce diversification of the State using
18 university research and university personnel. The university
19 may without limitation:

20 (1) Adopt policies and management procedures to carry out
21 the purposes of the program;



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- 1 (2) Contribute equity, loan funds, or participate directly
2 or indirectly to finance concepts or proposals that
3 are likely to lead to viable businesses, economic
4 development, or workforce opportunities based on
5 university research;
- 6 (3) Enter into contracts and other appropriate
7 arrangements with start-up ventures, to provide loans,
8 initial and expansion capital, and other forms of
9 financial assistance;
- 10 (4) Solicit, evaluate, and assist in the preparation,
11 drafting, and refinement of business plans and
12 proposals;
- 13 (5) Provide advice, instruction, training, and technical
14 and marketing assistance, to support and promote the
15 enterprises in which the university invests;
- 16 (6) Develop, coordinate and deliver instruction, training
17 and outreach programs to build and maintain the
18 capacity to sustain these economic enterprises;
- 19 (7) Implement specialized programs designed to encourage
20 the development of new products, businesses, and
21 markets;



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- 1 (8) Prepare, publish, and distribute technical studies,
2 reports, bulletins, and other materials consistent
3 with customary standards of university publication,
4 subject to the maintenance and respect for
5 confidentiality of client proprietary information;
- 6 (9) Organize, sponsor, and participate in conferences,
7 workshops, seminars, and other educational activity
8 relating to the formation and financial viability of
9 businesses that use university research products or
10 university personnel;
- 11 (10) Provide and pay for advisory or consulting services
12 and technical, managerial, and marketing assistance,
13 support, and promotion to carry out the purposes of
14 this subpart;
- 15 (11) Acquire, hold, and sell qualified securities;
- 16 (12) Consent, subject to the provisions of any contract
17 with noteholders or bondholders, whenever the
18 university deems it necessary or desirable in the
19 fulfillment of the purposes of this subpart, to the
20 modification, with respect to rate of interest, time
21 of payment of any installment of principal or



1 interest, or any other terms, of any contract or
2 agreement of any kind to which the university is a
3 party;

4 (13) With the assistance of an appropriate foundation or
5 development entity, accept donations, grants,
6 bequests, and devises of money, property, service, or
7 other things of value that may be received from the
8 United States or any agency thereof, any governmental
9 agency, or any public or private institution, person,
10 firm, or corporation, to be held, used, or applied for
11 any or all of the purposes in support of this program;

12 (14) Invest any funds held in reserves or sinking funds, or
13 any funds not required for immediate disbursement, in
14 such investments as may be lawful for fiduciaries in
15 the State;

16 (15) Acquire real property, or an interest therein, by
17 purchase or foreclosure, where that acquisition is
18 necessary or appropriate to protect or secure any
19 investment or loan in which the university has an
20 interest; sell, transfer, and convey the property to a
21 buyer and, if the sale, transfer, or conveyance cannot



- 1 be effected with reasonable promptness or at a
2 reasonable price, to lease the property;
- 3 (16) Consistent with the purposes of the program, acquire,
4 own, hold, dispose of, and encumber personal property
5 of any nature, or any interest therein, either
6 directly or through intermediate entities formed or
7 established specifically for such purposes;
- 8 (17) Enter into agreements or other transactions with any
9 federal, state, or county agency to implement the
10 purposes of this subpart;
- 11 (18) Contract with other entities, public or private, for
12 the provision of all or a portion of the services
13 necessary for the management and operation of the
14 program. The university may use all appropriations,
15 grants, contractual reimbursements, and all other
16 funds made available for the purposes of the program
17 to pay for the proper general expenses of the program;
- 18 (19) Appear on its own behalf before state, county, or
19 federal agencies on matters relating to the program;
- 20 (20) Establish a risk management program appropriate to the
21 activities of the program, which may include, among



1 other components, purchase of insurance, participation
2 in the State's risk management program, or retention
3 and management of risks;

4 (21) Appoint advisory committees as deemed necessary;
5 provided that any advisory committee established
6 pursuant to this section shall not be deemed a "board"
7 subject to chapter 92; and

8 (22) Exercise any other powers of a corporation organized
9 under the laws of the State not inconsistent with the
10 purpose and intent of the program.

11 **§304A- University innovation and commercialization**

12 **initiative special fund.** (a) There is established the
13 university innovation and commercialization initiative special
14 fund into which shall be deposited and not be considered part of
15 the general fund all funds consistent with the purposes of this
16 subpart that are:

- 17 (1) Appropriated by the legislature;
18 (2) Received as repayments of loans;
19 (3) Earned on investments;
20 (4) Received pursuant to a venture agreement;
21 (5) Received as royalties;



1 (6) Received as premiums or fees charged by the
2 university; or

3 (7) Otherwise received by the program.

4 (b) Revenues deposited into the special fund may be
5 expended by the University of Hawaii for all costs and expenses
6 associated with the operation of the innovation and
7 commercialization program without regard to chapters 76, 78, 89,
8 102, 103, and 103D. Revenues not expended as provided in this
9 section may be transferred to other university funds to be
10 expended for the general benefit of the university.

11 **§304A- Confidentiality of trade secrets; disclosure of**
12 **financial information.** Any documents or data made or received
13 by the University of Hawaii under this subpart, to the extent
14 that the material or data consist of trade secrets or
15 confidential commercial or financial information that may be
16 withheld from public disclosure under chapter 92F, shall not be
17 publicly disclosed; provided that, if the university purchases a
18 qualified security, the non-confidential commercial and
19 financial information regarding that security shall be a public
20 record of the university. The board of regents, or any
21 subcommittee of the board, may hold an executive session as



1 provided in section 92-4 to discuss trade secrets or
2 confidential commercial or financial information that may be
3 withheld under chapter 92F.

4 **§304A- Limitation on liability.** (a) The University of
5 Hawaii shall not assume or otherwise promise to answer for the
6 debt, contract, or liability of any other person or private
7 entity.

8 (b) Notwithstanding chapters 661 and 662, or any other law
9 to the contrary, nothing in this subpart shall create an
10 obligation, debt, claim, cause of action, claim for relief,
11 charge, or any other liability of any kind whatsoever in favor
12 of any person or entity, without regard to whether that person
13 or entity receives any benefits under this subpart, against the
14 State or its officers and employees. The State and its officers
15 and employees shall not be liable for the results of any
16 investment, purchase of securities, loan, or other assistance
17 provided pursuant to this subpart. Nothing in this subpart
18 shall be construed as authorizing any claim against the
19 University of Hawaii in excess of any note, loan, or other
20 specific indebtedness incurred by the university or in excess of



1 any insurance policy acquired for the university or its
2 employees.

3 **§304A- Preservation of governmental immunity; full faith**
4 **and credit.** No contract, agreement, or statement made by the
5 University of Hawaii pursuant to this subpart shall constitute
6 an express or implied waiver by the university of its
7 governmental or sovereign immunity as a public agency of the
8 State, nor shall such contracts, agreements, or statements
9 constitute an express or implied acceptance of liabilities in
10 excess of liabilities allowable under applicable governmental
11 immunity laws. No activity conducted by the university or
12 agreement entered into pursuant to this subpart shall be deemed
13 a pledge of the full faith and credit of the State.

14 **§304A- Cooperation with the University of Hawaii by**
15 **state agencies.** Every state agency may render services to the
16 University of Hawaii upon its request for any purpose related to
17 this subpart.

18 **§304A- Construction of subpart.** Other state laws,
19 including without limitation the state code of ethics, shall be
20 applied and construed on balance in recognition of the public



1 benefits created and state interests advanced by the activities
2 conducted by the University of Hawaii pursuant to this subpart.

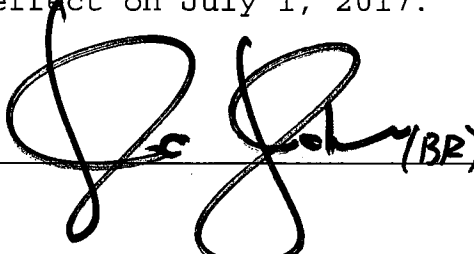
3 §304A- Biennial report. Not later than twenty days
4 prior to the convening of the regular session of each odd-
5 numbered year, the University of Hawaii shall submit an annual
6 report to the legislature concerning:

- 7 (1) All funds deposited into the university innovation and
- 8 commercialization initiative special fund and a
- 9 detailed description of the use of those funds; and
- 10 (2) Coordinated efforts between the innovation and
- 11 commercialization initiative program and other state
- 12 agencies, including the high technology development
- 13 corporation, the Hawaii strategic development
- 14 corporation, and the Hawaii state energy office to
- 15 move the State's innovation goals forward, and to more
- 16 efficiently and effectively utilize resources to
- 17 achieve these outcomes."

18 SECTION 3. This Act shall take effect on July 1, 2017.

19

INTRODUCED BY:

 (BR)



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Report Title:

University of Hawaii; Innovation and Commercialization Initiative Program

Description:

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 summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.

