July 6, 2021

The Honorable Ronald D. Kouchi,  
President and Members of the Senate  
Thirty First State Legislature  
State Capitol, Room 409  
Honolulu, Hawai'i 96813

The Honorable Scott K. Saiki,  
Speaker and Members of the House of Representatives  
Thirty First State Legislature  
State Capitol, Room 431  
Honolulu, Hawai'i 96813

Dear President Kouchi, Speaker Saiki, and Members of the Legislature:

I am transmitting herewith SB589 SD2 HD2 CD1, without my approval and with the statement of objections relating to the measure.

SB589 SD2 HD2 CD1 RELATING TO THE UNIVERSITY OF HAWAII.

Sincerely,

DAVID Y. IGE  
Governor, State of Hawai'i
Statement of Objections to Senate Bill No. 589

Honorable Members
Thirty-First Legislature
State of Hawai‘i

Pursuant to Section 16 of Article III of the Constitution of the State of Hawai‘i, I am returning herewith, without my approval, Senate Bill No. 589, entitled "A Bill for an Act Relating to the University of Hawaii."

This bill includes provisions that impact the University of Hawaii (UH) Cancer Center by: (1) establishing the University of Hawaii (UH) Cancer Center in statute as the "Cancer Research Center of Hawaii" (CRCH); (2) requiring the Director of the CRCH to be appointed by the Board of Regents (BOR) upon recommendation of the Provost of UH-Manoa and with the concurrence of the UH President; (3) requiring the CRCH to be administratively affiliated with the John A. Burns School of Medicine (JABSOM); (4) requiring funds expended from the Tuition and Fees special fund or Research and Training revolving fund for JABSOM or the CRCH to be used for educational or research and research-related purposes only; and (5) requiring UH to develop a plan for JABSOM and the CRCH to achieve greater operational efficiencies. Also, while this bill extends the sunset date of Act 38, Session Laws of Hawaii (SLH) 2017, exempting UH’s technology transfer activities from certain provisions of the State Ethics Code, to June 30, 2024, it prohibits technology transfer activities in which UH employees have a conflict of interest. It similarly extends the sunset date of Act 39, SLH 2017, establishing UH’s Innovation and Commercialization Initiative Program (ICIP), to June 30, 2024, but prohibits program activities in which UH employees have a conflict of interest.

This bill is objectionable because the prohibitions on certain technology transfer activities and program activities in parts III and IV of the bill may impair existing
UH contracts, in violation of the Contract Clause of the United States Constitution, which prohibits states from passing laws that impair the obligations of contracts. Such prohibitions may also intrude upon the BOR’s exclusive jurisdiction over the internal structure, management, and operation of UH because the bill does not identify parts III and IV as statewide concerns, in violation of section 6 of article X of the Hawaii State Constitution.

In addition, by codifying the UH Cancer Center into law and setting organizational reporting into statute, the bill limits UH’s flexibility to make changes to the structure in the future. While there may be cost savings as a result of merging the administrative functions of the Cancer Center and Medical School, such organizational changes should be made in consultation with the leadership of the respective institutions and UH Manoa leadership.

For the foregoing reasons, I am returning Senate Bill No. 589 without my approval.

Respectfully,

[Signature]

DAVID Y. IGE
Governor of Hawaii
A BILL FOR AN ACT

RELATING TO THE UNIVERSITY OF HAWAII.

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

PART I

SECTION 1. The legislature finds that the University of Hawaii cancer center reduces the burden of cancer through research, education, patient care, and community outreach. The University of Hawaii cancer center is the only National Cancer Institute-designated cancer center in Hawaii and the Pacific region. The University of Hawaii cancer center is a member of the Hawaii Cancer Consortium, which includes five hospital groups and the University of Hawaii John A. Burns school of medicine.

The University of Hawaii John A. Burns school of medicine educates and trains health care professionals, including physicians, biomedical scientists, and allied health workers. The University of Hawaii John A. Burns school of medicine also conducts fundamental medical research and translates discoveries into delivery practices. Because the University of Hawaii John A. Burns school of medicine is a community-based medical school
without its own university hospital, it partners with private
hospitals in the community to achieve its educational mission.

The legislature further finds that public funds and other
resources the State has made available to the University of
Hawaii John A. Burns school of medicine and University of Hawaii
cancer center have been substantial. The magnitude of state
funds and other resources provided to the University of Hawaii,
the distinction of the University being the sole public
institution of higher education in the State, and the University
of Hawaii cancer center being the only National Cancer
Institute-designated cancer center in Hawaii underscore the
importance of establishing complementary strategic priorities
and coordinating the management and deployment of state
resources appropriated to the University of Hawaii John A. Burns
school of medicine and University of Hawaii cancer center.

It is in the public's interest that State resources be
efficiently and effectively managed to optimize the public
benefits. Just as co-locating the physical facilities for the
University of Hawaii John A. Burns school of medicine and
University of Hawaii cancer center on adjoining sites in Kakaako
promotes synergistic efforts, the legislature determines that it
is a statewide concern to ensure that the management of public
resources provided to the University of Hawaii John A. Burns
school of medicine and University of Hawaii cancer center be
integrated, coordinated, and focused on common priorities to
avoid unnecessary duplication of administrative expenses or
conflicting priorities. Maximized efficiencies will benefit the
University of Hawaii cancer center, University of Hawaii John A.
Burns school of medicine, University of Hawaii at Manoa, and the
State by reducing or eliminating unnecessary expenditures and
optimizing operations.

The director of the University of Hawaii cancer center and
dean of the University of Hawaii John A. Burns school of
medicine shall report and be accountable to the provost of the
University of Hawaii at Manoa, who shall have authority to
direct and achieve efficiencies at the Kakaako campus that
comprises the John A. Burns school of medicine and University of
Hawaii cancer center; and shall coordinate with the president of
the University of Hawaii.

Accordingly, the purpose of this part is to:

(1) Establish the University of Hawaii cancer center in
statute as the cancer research center of Hawaii;
(2) Require the director of the cancer research center of Hawaii to be appointed by University of Hawaii's board of regents upon recommendation from the provost of the University of Hawaii at Manoa and with the concurrence of the president of the University of Hawaii;

(3) Require the cancer research center of Hawaii to be administratively affiliated with the University of Hawaii John A. Burns school of medicine, and that the administrative services and infrastructure teams of both entities be merged to offer efficiency;

(4) Require the director of the cancer research center of Hawaii and dean of the University of Hawaii John A. Burns school of medicine to report to the provost of the University of Hawaii at Manoa and coordinate with the president of the University;

(5) Require funds expended from or originating from the University of Hawaii tuition and fees special fund for the University of Hawaii John A. Burns school of medicine or cancer research center of Hawaii to be used for educational purposes only; and
(6) Require funds expended from or originating from the research and training revolving fund for the University of Hawaii John A. Burns school of medicine or cancer research center of Hawaii to be used for research and research-related purposes only.

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

"... Cancer Research Center of Hawaii

§304A—Cancer research center of Hawaii. (a) There is established an organized research unit, hereinafter known as the cancer research center of Hawaii, to conduct cancer research. The cancer research center of Hawaii shall be administered by a director to be appointed by the board of regents upon recommendation by the provost of the University of Hawaii at Manoa with concurrence by the president of the University of Hawaii.

(b) The cancer research center of Hawaii shall be administratively affiliated with the University of Hawaii John A. Burns school of medicine. The administrative services and infrastructure teams of the cancer research center of Hawaii and
the University of Hawaii John A. Burns school of medicine shall
be merged for efficiency purposes.

(c) The director of the cancer research center of Hawaii
and dean of the University of Hawaii John A. Burns school of
medicine shall:

(1) Report and be accountable to the provost of the
University of Hawaii at Manoa; and

(2) Coordinate with the president of the University of
Hawaii.

(d) The provost of the University of Hawaii shall have
authority to direct and achieve efficiencies at the University
of Hawaii John A. Burns school of medicine and cancer research
center of Hawaii.

(e) The programs of the University of Hawaii John A. Burns
school of medicine and cancer research center of Hawaii, and the
University of Hawaii at Manoa shall identify opportunities to:

(1) Capitalize on collaboration between the programs; and

(2) Maximize operational efficiencies between the
University of Hawaii John A. Burns school of medicine
and cancer research center of Hawaii,
including but not limited to shared services and personnel whenever feasible and utilization of centralized services available through the University of Hawaii at Manoa whenever appropriate.

(f) The cancer research center of Hawaii's research agenda shall focus on research, education, patient care, and community outreach and reflect an understanding of the ethnic, cultural, and environmental characteristics of the State and the Pacific region.

(g) The cancer research center of Hawaii may:

(1) Engage in international research collaborations;

(2) Undertake research studies and clinical trials; and

(3) Participate in projects and programs of the National Cancer Institute."
fee charges, and any other charges to students, except as
provided by law. Moneys deposited into the fund shall be
expended to maintain or improve the university's programs and
operations and shall not be:

(1) Used as a justification for reducing any budget
request or allotment to the university unless the
university requests such a reduction;

(2) Transferred unless otherwise authorized by the
legislature; and

(3) Restricted by the governor or the director of finance
without the prior approval of the legislature.

Any rule, policy, or action of any agency or individual in
contravention of this subsection shall be void as against public
policy.

(b) Any law to the contrary notwithstanding, the board of
regents may authorize expenditures of up to $3,000,000 annually,
excluding in-kind services, from this fund for the purposes of
promoting alumni relations and generating private donations for
deposit into the University of Hawaii Foundation for the
purposes of the university. Any expenditure authorized pursuant
to this subsection shall be for a public purpose and shall not
be subject to chapters 42F, 103, 103D, and 103F. The university shall submit a comprehensive report to the legislature detailing the use of any funds authorized by the board under this subsection no later than twenty days prior to the convening of each regular session.

The report shall:

1. Identify each department of the University of Hawaii Foundation supported by moneys from the fund;
2. Describe the purposes and activities of each department identified in paragraph (1) and how it participates in fundraising activities and benefits the university;
3. Provide the total expenditures of each department identified in paragraph (1) by primary expense categories;
4. Identify all moneys from the fund transferred to any fund of the university and provide a justification of how these moneys are used to benefit the university;
5. Provide a financial summary of the operating activities of the University of Hawaii Foundation,
including revenues and expenditures by major reporting
categories; and

(6) Identify amounts and purposes of all expenditures from
the University of Hawaii support fund.

(c) Any law to the contrary notwithstanding, the
university may transfer funds from the University of Hawaii
tuition and fees special fund into the scholarship and
assistance special fund established pursuant to section
304A-2159.

(d) In estimating its quarterly budget requirements, each
campus of the University of Hawaii shall prepare a plan for the
fiscal year for the operation of each of the programs that it is
responsible for administering. The operations plan shall be:

(1) In such form and content as the vice president for
budget and finance and chief financial officer of the
University of Hawaii may prescribe; and

(2) Submitted, together with the estimated quarterly
budget requirements, to the vice president for budget
and finance and chief financial officer on [such] a
date [as] that the vice president for budget and
finance and chief financial officer may prescribe.
(e) The president and vice president for budget and finance and chief financial officer of the University of Hawaii:

(1) Shall review the operations plan for each campus to determine if:

(A) It is consistent with the policy decisions of the board of regents and appropriations by the legislature;

(B) It reflects proper planning and efficient management methods; and

(C) Appropriations have been made for the planned purpose and will not be exhausted before the end of the fiscal year;

(2) Shall approve the operations plan for each campus if they determine that the operations plan meets the requirements of paragraph (1); and

(3) May modify or withhold the planned expenditures of any campus at any time during the appropriations period.

(f) At the end of each fiscal year, the moneys in the University of Hawaii tuition and fees special fund for each campus shall lapse to the credit of program identification number UOH900 (University of Hawaii, system wide support).
(g) Notwithstanding any other law to the contrary, funds expended from or originating from the University of Hawaii tuition and fees fund for the University of Hawaii John A. Burns school of medicine or the cancer research center of Hawaii shall be used by the John A. Burns school of medicine or the cancer research center of Hawaii for educational purposes only."

SECTION 4. Section 304A-2253, Hawaii Revised Statutes, is amended to read as follows:

"§304A-2253 Research and training revolving fund. (a) There is established a University of Hawaii research and training revolving fund into which shall be deposited one hundred per cent of the total amount of indirect overhead revenues generated by the university from research and training programs. The board of regents is authorized to expend one hundred per cent of the revenues deposited in the fund for:

(1) Research and training purposes that may result in additional research and training grants and contracts;

(2) Facilitating research and training at the university; and

(3) Further deposit into the discoveries and inventions special fund."
(b) The annual report required to be made for this revolving fund shall include but not be limited to a breakdown of travel expenses.

(c) Notwithstanding section 304A-107 to the contrary, the board of regents, or its designee, may establish a separate account within the research and training revolving fund for the purpose of providing advance funding to meet reimbursable costs incurred in connection with federally financed research and training projects. Any reimbursement received as a result of providing advance funding shall be deposited into the research and training revolving fund to be used for the purpose of meeting reimbursable costs incurred in connection with federally financed projects.

(d) Revenues deposited into the fund shall not be used as a basis for reducing any current or future budget request or allotment to the university unless the university requests such a reduction.

(e) Notwithstanding any other law to the contrary, funds expended from or originating from the research and training revolving fund for the University of Hawaii John A. Burns school of medicine or the cancer research center of Hawaii shall be
used by the University of Hawaii John A. Burns school of medicine or the cancer research center of Hawaii for research and research-related purposes only."

PART II

SECTION 5. The purpose of this part is to further efforts to ensure the efficient and effective management of public resources provided to the University of Hawaii John A. Burns school of medicine and cancer research center of Hawaii to optimize public benefits.

SECTION 6. (a) The University of Hawaii shall develop and implement a plan for the University of Hawaii John A. Burns school of medicine and cancer research center of Hawaii to achieve greater operational efficiencies, reduce duplication of services, and share administrative functions to the maximum extent practicable.

(b) The president of the University of Hawaii shall submit a report on the progress of the development and implementation of the plan as provided under this part to the legislature no later than twenty days prior to the convening of the regular session of 2023.

PART III
SECTION 7. The purpose of this part is to allow the University of Hawaii to continue its contribution to research commercialization and economic development by extending the sunset date of Act 38, Session Laws of Hawaii 2017, for two years, until June 30, 2024, while promoting accountability and transparency.

SECTION 8. Section 84-10, Hawaii Revised Statutes, is amended to read as follows:

"[§ 84-10] University of Hawaii; technology transfer activities; exemption. (a) Sections 84-12, 84-13, 84-14 to 84-16, and 84-18 shall not apply to technology transfer activities sponsored by the University of Hawaii; provided that the technology transfer activities comply with the regulatory framework and research compliance program and policies approved by the board of regents of the University of Hawaii [board of regents].

(b) Notwithstanding subsection (a), the University of Hawaii shall not sponsor, enter into, or continue to engage in technology transfer activities with a private person in which an employee of the University of Hawaii has a conflict of interest as provided in section 84-14, including a financial interest,
irrespective of whether the State benefits from the technology
transfer activities; provided that the prohibition under this
subsection shall not apply if:

(1) The technology transfer activities with the private
person promote the timely and efficient
commercialization of intellectual property created by
basic and applied research at the University of
Hawaii;

(2) The State stands to benefit from the technology
transfer activities with the private person;

(3) The technology transfer activities with the private
person is the only means by which the specific
scientific findings by the University of Hawaii or
intellectual property created by the University of
Hawaii may be commercialized;

(4) The technology transfer activities with the private
person comply with the regulatory framework and
research compliance program and policies approved by
the board of regents of the University of Hawaii;

(5) The employee's conflict of interest is disclosed at
the time of the proposal, and the proposals and
binding agreements for each of the technology transfer activities with the private person are reviewed and approved by the state ethics commission to assure compliance with ethics laws;

(6) Any changes to the terms and conditions of the technology transfer activities are reported to and approved by the state ethics commission;

(7) The employee with the conflict of interest does not:

(A) Take official action affecting the technology transfer activities with the private person; or

(B) Directly or indirectly supervise an employee who takes official action affecting the technology transfer activities with the private person; and

(8) During the term of the technology transfer activities with the private person, the following employees file annually with the state ethics commission a disclosure of financial interests pursuant to section 84-17:

(A) Employees who have a conflict of interest as provided in section 84-14, including a financial interest, in the private person;
(B) Employees who take official action affecting the
    technology transfer activities with the private
    person; and

(C) Employees who directly or indirectly supervise an
    employee who takes official action affecting the
    technology transfer activities with the private
    person.

(c) Notwithstanding subsection (a), any technology
    transfer activities sponsored by, entered into, or engaged in by
    the University of Hawaii in violation of subsection (b) is
    voidable under section 84-16.

(d) The University of Hawaii shall file annually with the
    state ethic commission a disclosure, including its conflict of
    interest management plan, of any conflict of interest of any
    employee relating to its technology transfer activities.

[e] As used in this section, "technology"

"Person" means any individual, firm, association,
organization, sole proprietorship, partnership, company,
corporation, joint venture, trust, or any other form of business
or legal entity or group of individuals.
"Technology transfer activities" means the process of transferring scientific findings from the public sector to the private sector for the purpose of commercial development and application for personal or financial gain. "Technology transfer activities" may include creating joint ventures, limited partnerships, or other corporate forms; allocating equity shares, partnership interests, or other forms of participation; identifying new technologies; protecting technologies through patents and copyrights; forming development and commercialization strategies, arrangements, or projects; and other related activities."

SECTION 9. Section 304A-121, Hawaii Revised Statutes, is amended to read as follows:

"[+]§304A-121[+] Technology transfer; reporting. The board of regents of the University of Hawaii shall submit a written report to the legislature no later than twenty days prior to the convening of each regular session regarding:

(1) The development [and] implementation, and enforcement of its regulatory framework and research compliance program to reflect ethical research principles and
technology transfer regulations used by the federal
government; [and]

(2) The technology transfer activities of the University
of Hawaii, as defined in section 84-10, and the status
of such activities[ ]; and

(3) A disclosure, including the University of Hawaii's
conflict of interest management plan, of any conflict
of interest of any employee of the University of
Hawaii relating to its technology transfer
activities."

SECTION 10. Act 38, Session Laws of Hawaii 2017, is
amended by amending section 5 to read as follows:

"SECTION 5. This Act shall take effect upon its approval;
provided that this Act shall be repealed on June 30, [2022-]
2024."

PART IV

SECTION 11. The purpose of this part is to allow the
University of Hawaii to continue its innovation and
commercialization initiative program by extending the sunset
date of Act 39, Session Laws of Hawaii 2017, for three years,
until June 30, 2024, while promoting accountability and transparency.

SECTION 12. Section 304A-1958, Hawaii Revised Statutes, is amended to read as follows:

"[+]§304A-1958[+] Construction of subpart. (a) Other state laws, including without limitation the state code of ethics, shall be applied and construed on balance in recognition of the public benefits created and state interests advanced by the activities conducted by the University of Hawaii pursuant to this subpart.

(b) Notwithstanding subsection (a), the University of Hawaii shall not sponsor, enter into, or continue to engage in activities conducted pursuant to this subpart with a private person in which an employee of the University of Hawaii has a conflict of interest as provided in section 84-14, including a financial interest, irrespective of whether the State benefits from the activities; provided that the prohibition under this subsection shall not apply if:

(1) The activities with the private person transform the products of the University of Hawaii's research and
1. instructional activities into viable economic enterprises;

2. The State stands to benefit from the activities with the private person;

3. The activities with the private person are the only means by which the specific products of the University of Hawaii's research and instructional activities may be transformed into viable economic enterprises;

4. The activities with the private person comply with the regulatory framework and research compliance program and policies approved by the board of regents of the University of Hawaii;

5. The employee's conflict of interest is disclosed at the time of the proposal, and the proposals and binding agreements for each of the activities with the private person are reviewed and approved by the state ethics commission to assure compliance with ethics laws;

6. Any changes to the terms and conditions of the activities are reported to and approved by the state ethics commission;
(7) The employee with the conflict of interest does not:

(A) Take official action affecting the activities with the private person; or

(B) Directly or indirectly supervise an employee who takes official action affecting the activities with the private person; and

(8) During the term of the activities with the private person, the following employees file annually with the state ethics commission a disclosure of financial interests pursuant to section 84-17:

(A) Employees who have a conflict of interest as provided in section 84-14, including a financial interest, in the private person;

(B) Employees who takes official action affecting the activities with the private person; and

(C) Employees who directly or indirectly supervise an employee who takes official action affecting the activities with the private person.

(c) Notwithstanding subsection (a), any activities conducted by the University of Hawaii pursuant to this subpart in violation of subsection (b) is voidable under section 84-16.
(d) The University of Hawaii shall file annually with the state ethic commission a disclosure, including its conflict of interest management plan, of any conflict of interest of any employee relating to its activities conducted pursuant to this subpart.

(e) As used in this section, "person" means any individual, firm, association, organization, sole proprietorship, partnership, company, corporation, joint venture, trust, or any other form of business or legal entity or group of individuals."

SECTION 13. Section 304A-1959, Hawaii Revised Statutes, is amended to read as follows:

"§304A-1959 Biennial report. No later than twenty days prior to the convening of the regular session of each odd-numbered year, the University of Hawaii shall submit a report to the legislature concerning:

(1) All funds deposited into the university innovation and commercialization initiative special fund and a detailed description of the use of those funds; [and]

(2) Coordinated efforts between the innovation and commercialization initiative program and other state
agencies, including the Hawaii technology development corporation, the Hawaii strategic development corporation, and the Hawaii state energy office, to move the State's innovation goals forward, and to more efficiently and effectively utilize resources to achieve these outcomes; and

(3) A disclosure, including its conflict of interest management plan, of all conflicts of interest of any employee relating to its activities conducted pursuant to part IV, subpart P."

SECTION 14. Act 39, Session Laws of Hawaii 2017, is amended by amending section 3 to read as follows:

"SECTION 3. This Act shall take effect on July 1, 2017, and shall be repealed on June 30, 2024."

PART V

SECTION 15. The purpose of this part is to extend for three years, the authority of the president of the University of Hawaii to act as the University of Hawaii's chief procurement officer for all procurement contracts under chapter 103D, Hawaii Revised Statutes.
SECTION 16. Act 42, Session Laws of Hawaii 2018, is amended by amending section 6 to read as follows:

"SECTION 6. This Act shall take effect upon its approval; provided that on June 30, [2021] 2024, this Act shall be repealed and sections 103D-203(a) and 304A-2672, Hawaii Revised Statutes, shall be reenacted in the form in which they read on the day prior to the effective date of this Act."

PART VI

SECTION 17. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 18. This Act shall take effect upon its approval; provided that sections 8, 9, 12, and 13 of this Act shall be repealed on June 30, 2024; provided further that:

(1) Section 84-10, Hawaii Revised Statutes, shall be reenacted in the form in which it read on June 18, 2017; and

(2) Sections 304A-121, 304A-1958, and 304A-1959, Hawaii Revised Statutes, shall be reenacted in the form in which they read on the day before the effective date of this Act.
S.B. NO. 589
S.D. 2
H.D. 2
C.D. 1

APPROVED this day of , 2021

GOVERNOR OF THE STATE OF HAWAII
THE SENATE OF THE STATE OF HAWAIʻI

Date: April 27, 2021
Honolulu, Hawaii 96813

We hereby certify that the foregoing Bill this day passed Final Reading in the Senate of the Thirty-First Legislature of the State of Hawaiʻi, Regular Session of 2021.

[Signature]
President of the Senate

[Signature]
Clerk of the Senate
SB No. 589, SD 2, HD 2, CD 1

THE HOUSE OF REPRESENTATIVES OF THE STATE OF HAWAII

Date: April 27, 2021
Honolulu, Hawaii

We hereby certify that the above-referenced Bill on this day passed Final Reading in the House of Representatives of the Thirty-First Legislature of the State of Hawaii, Regular Session of 2021.

Scott K. Saiki
Speaker
House of Representatives

Brian L. Takeshita
Chief Clerk
House of Representatives