



HAWAII STATE ETHICS COMMISSION

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

March 17, 2015

The Honorable Isaac W. Choy, Chair
The Honorable Linda Ichiyama, Vice Chair
Honorable Members
House Committee on Higher Education
Hawaii State Capitol, Room 327
415 South Beretania Street
Honolulu, Hawaii 96813

Re: **Testimony on S.B. No. 1144, S.D. 2, Relating to
Technology Transfer at the University of Hawaii**

Hearing: March 17, 2015, 2:00 p.m.
State Capitol, Conference Room 309

The Hawaii State Ethics Commission (“Commission”) opposes S.B. No. 1144, S.D. 2, Relating to Technology Transfer at the University of Hawaii (“University”).

S.B. No. 1144, S.D. 2, amends the State Ethics Code, Hawaii Revised Statutes chapter 84, to exempt University “faculty, professional and administrative staff, executives, and managers . . . who are engaged in technology transfer activities” from the application of the State Ethics Code. Thus, this bill creates a blanket exemption from the State Ethics Code for broad categories of University employees. Such an exemption raises serious constitutional concerns. The exemption also raises concerns about whether exempting University employees from the standards of conduct to which other state employees are required to adhere is consistent with the legislative purpose underlying the State Ethics Code, i.e., to preserve public confidence in state employees.¹

To ensure that public officers and employees exhibit the highest standards of ethical conduct, Article XIV of the State Constitution mandates the application of the State Ethics Code to employees of the State and further mandates that the responsibility for administering the State Ethics Code rests with the Commission. S.B. No. 1144, S.D. 2, appears to contravene this constitutional mandate by exempting University employees from the State Ethics Code and removing these employees from the jurisdiction of the Commission.

¹ HRS chapter 84, Preamble.

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Even if the exemption for the University employees is constitutional, the bill is directly contrary to the fundamental and express purpose of the State Ethics Code: to preserve public confidence in state employees. S.B. No. 1144, S.D. 2, states that its purpose is, “to clarify the application of the state ethics code to allow technology transfer activities sponsored by the University of Hawaii.” As written, however, the bill exempts University employees from all ethics laws even when their actions are completely unrelated to University-sponsored technology transfer activities. For example, under this bill, a University employee may use state time, equipment, and facilities to sell real estate or Amway products, may coerce subordinate employees into campaigning for a political candidate, and may award a state contract to the employee’s spouse for work unrelated to technology transfer activities. All of these activities are prohibited by the State Ethics Code, but would be permissible under this bill. In the Commission’s opinion, allowing University employees to take those types of actions is inconsistent with the State Ethics Code’s stated purpose.

Although the bill appears to attempt to “address” the concern by requiring the University’s technology transfer program to incorporate “best practices for ethical research principles,” the Commission does not understand those “principles” to be similar to the minimum standards of conduct contained in the State Ethics Code. For example, the “best practices for ethical research principles” may involve the “ethical” treatment of animals used for research purpose and may not relate to conflicts of interest between the employee’s University duties and the employee’s outside interests. At a minimum, the University must be required to adopt standards of conduct, similar to those provisions in the State Ethics Code, to be consistent with the Constitutional and statutory mandates that employees must adhere to certain minimum standards of conduct to preserve public confidence.

Finally, while the University’s technology transfer activities may provide important State benefits, other agencies and programs also conduct activities that provide important benefits to the State. Creating an ethics exemption for the University, as provided by this bill, sets a precedent that will likely prompt other agencies to seek similar ethics exemptions for their programs from the Legislature. The Commission respectfully suggests that the Legislature must remain mindful of the State constitutional mandate that public officers and employees must exhibit the highest standards of ethical conduct. Creating legislative exemptions from the State Ethics Code is contrary to this mandate.

For the reasons stated above, we oppose S.B. No. 1144, S.D. 2. If the Committee is inclined to pass the bill, the Commission strongly recommends that the Committee seek advice from the Department of the Attorney General as to whether the exemption is consistent with Article XIV of the State Constitution.