



# HAWAII STATE ETHICS COMMISSION

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

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March 3, 2015

The Honorable Gilbert S. C. Keith-Agaran, Chair  
The Honorable Maile S. L. Shimabukuro, Vice Chair  
Honorable Members  
Senate Committee on Judiciary and Labor  
Hawaii State Capitol, Room 016  
415 South Beretania Street  
Honolulu, Hawaii 96813

Re: **Testimony on S.B. No. 1144 S.D. 1, Relating to Technology Transfer at the University of Hawaii**

Decision making: Tuesday, March 3, 2015, 9:15 a.m.  
State Capitol, Conference Room 016

Thank you for the opportunity to testify on S.B. No. 1144 S.D. 1, Relating to Technology Transfer at the University of Hawaii (“University”). The State Ethics Commission (“Commission”) opposes this bill and asks that the bill be deferred, for the reasons stated below.

S.B. No. 1144 S.D. 1 amends the State Ethics Code, Hawaii Revised Statutes chapter 84, by requiring the Commission to consider the University’s research compliance program in rendering advisory opinions concerning “technology transfer activities” conducted by the University. S.B. No. 1144 S.D. 1 also provides that the Commission may permit “technology transfer arrangements” so long as such arrangements are likely to create “specific benefits” to the State or to the public.

In essence, the University is asking that the Commission be required to consider whether a University employee’s activities serve a state or public benefit when determining whether or not the employee’s participation in a “technology transfer arrangement” is prohibited under the State Ethics Code; and if the Commission determines that there is such a benefit, the Commission may permit the employee to engage in such an activity.

The Honorable Gilbert S. C. Keith-Agaran, Chair  
The Honorable Maile S. L. Shimabukuro, Vice Chair  
Honorable Members  
Senate Committee on Judiciary and Labor  
March 3, 2015  
Page 2

It appears that the University's position is that "technology transfer arrangements" benefit the State and/or the public. However, the wording of S.B. No. 1144 S.D. 1 is vague and overly broad. The term "technology transfer activity" or "technology transfer arrangement" is not clearly defined, and it is unclear what criteria would be used to determine whether an activity creates "specific benefits to the State or the public." In addition, it is unclear why the Commission must be "required" under the State Ethics Code to consider the University's research compliance program in determining whether such an activity is consistent with the State Ethics Code.<sup>1</sup> Finally, we question whether S.B. No. 1144 S.D. 1 is the appropriate or necessary means by which to achieve what the University is asking the Commission to do with respect to "technology transfer arrangements." The Commission therefore opposes this bill in its current form.

In effect, the University appears to be seeking an "exception" in the State Ethics Code to allow the University to enter into "technology transfer arrangements" which otherwise may be prohibited under a strict application of the State Ethics Code. The legal basis for allowing such an exception, however, is unclear. It is a constitutional mandate that public officers exhibit the highest standards of ethical conduct and that the State Ethics Code apply to all employees of the State,<sup>2</sup> including employees of the University. Further, while the University's "technology transfer activities" may provide important benefits to the State, other agencies and programs also conduct activities that provide important State benefits. Creating an ethics exception for the University will encourage other agencies to seek similar ethics exceptions for their programs from the Legislature. The Commission respectfully suggests that the Legislature should be mindful of the State constitutional mandate that public officers exhibit the highest standards of ethical conduct. The purpose of the State Ethics Code dictates that exemptions to the law should be narrow and, absent extraordinary circumstances, should not be expanded.

The Commission understands the University's position that it would like the Commission to be able to consider certain "unique aspects of technology transfer" when applying the State Ethics Code to University-supported "technology transfer activities." For this reason, the Commission's staff has been working with the University to attempt to resolve the aforementioned areas of concerns.

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<sup>1</sup> To date, the Commission has not prohibited activities involving the commercialization of research projects generated at the University.

<sup>2</sup> Article XIV, Hawaii State Constitution.

The Honorable Gilbert S. C. Keith-Agaran, Chair  
The Honorable Maile S. L. Shimabukuro, Vice Chair  
Honorable Members  
Senate Committee on Judiciary and Labor  
March 3, 2015  
Page 3

This bill, however, raises complex issues, including possible constitutional issues, which require additional research and consideration. The Commission is amenable to continuing to work with the University on these issues, but believes that this bill should be deferred to allow a more thorough and thoughtful review.

We appreciate the opportunity to testify on S.B. No. 1144 S.D. 1, Relating to Technology Transfer at the University of Hawaii. We would like to thank this Committee for its consideration of our testimony.