



HAWAII STATE ETHICS COMMISSION

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

Committee: Committee on Economic Development and Business
Bill Number: H.B. 166
Hearing Date/Time: Wednesday, February 1, 2017, 9:00 a.m.
Re: Testimony of the Hawaii State Ethics Commission with
COMMENTS on H.B. 166, Relating to the University of Hawaii
Research

Dear Chair Nakashima and Committee Members:

The Hawaii State Ethics Commission (“Commission”) hereby submits **comments** on H.B. 166, 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 84.¹

¹ 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 should reflect the practical operation of the code and begin to develop a body of ‘case law’ on ethics.” Conf. Comm. Rep. No. 16, in 1967 House Journal, at 856.

The Commission respectfully suggests that the proposed language in HRS § 304A-H (page 12, lines 1-5 of 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.

The Commission does, however, oppose any efforts to exempt University employees and/or broad categories of activities from the Ethics Code itself. As such, while the Commission offers comments on this measure and a similar measure on today’s agenda (H.B. 1156), the Commission opposes a third measure on today’s agenda (H.B. 1157).

Thank you for considering the Commission’s testimony on H.B. 166.

Very truly yours,

Daniel Gluck
Executive Director and General Counsel