



# HAWAII STATE ETHICS COMMISSION

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

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Committee: Committee on Economic Development, Tourism, and Technology  
Committee on Higher Education  
Bill Number: S.B. 138, Relating to Technology Transfer at the Univ. of Hawaii  
Hearing Date/Time: Wednesday, February 15, 2017, 1:20 p.m.  
Re: Testimony of the State Ethics Commission **OPPOSING** S.B. 138

Dear Chair Wakai, Chair Kahele, and Committee Members:

The Hawaii State Ethics Commission (“Commission”) **opposes** S.B. 138, which seeks to exempt technology transfer activities from the scope of the Ethics Code, Hawaii Revised Statutes (“HRS”) chapter 84.

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.<sup>1</sup>

However, the Commission opposes any efforts to exempt University employees and/or broad categories of activities from the Ethics Code itself. These exemptions contravene Hawaii’s constitutional mandate that public officers and employees exhibit

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<sup>1</sup> 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 highest standards of ethical conduct.<sup>2</sup> This bill would set a dangerous precedent, as individual agencies or programs may seek to carve out exceptions to the Ethics Code (thus taking a strong regulatory framework to promote integrity in state government and weakening it through a series of exceptions).

This bill sends a message that certain state officials are too important to be bound by ethics laws. Recent national events, however, demonstrate the importance of ensuring that all government officials – at all levels of government – be held to uniform, fair, and reasonable ethical rules.

As such, while the Commission offers comments on a related measure on today's agenda (S.B. 137), the Commission opposes S.B. 138.

Thank you for considering the Commission's testimony on S.B. 138.

Very truly yours,

Daniel Gluck  
Executive Director and General Counsel

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<sup>2</sup> Hawaii Constitution, Art. XIV.