



# UNIVERSITY OF HAWAII SYSTEM

## Legislative Testimony

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Testimony Presented Before the  
Senate Committee on Judiciary and Labor  
Tuesday, February 24, 2015 at 9:15 am

by  
Vassilis L. Syrmos  
Vice President for Research and Innovation  
University of Hawai'i

### SB 1144 SD1 – RELATING TO TECHNOLOGY TRANSFER AT THE UNIVERSITY OF HAWAII

Chair Keith-Agaran, Vice Chair Shimabukuro, and members of the committee:

The University of Hawai'i supports this measure to facilitate UH's ability to structure complex arrangements with private sector organizations, including various types of joint ventures where UH faculty may have overlapping responsibilities, to promote the commercialization of research ideas generated on its campuses.

This commercialization (often called "technology transfer") is designed to strengthen economies by getting new ideas, inventions and processes developed in universities -- most often with encouragement and funding support by the federal government -- to the private sector as quickly as possible.

Technology transfer occurs throughout the nation at other universities. It is a vital component to the UH's efforts in the Hawai'i Innovation Initiative, a partnership with local businesses to diversify the state's economy.

A "per se" application of certain principles of the State Ethics Code, such as post-employment restrictions, or the prohibition use of public resources for business purposes, may undermine the State and University initiatives.

The University of Hawai'i believes that in determining whether specific technology transfer arrangements are permissible under the State Ethics Code, the State Ethics Commission must weigh in balance whether the arrangement is likely to produce specific benefits to the public, will promote articulated state policy, and whether the arrangements otherwise satisfy UH's internal policy and regulations on research compliance. The University research compliance program, to a large degree, reflects federal requirements. To this end, the University has submitted this measure clarifying the application of the State Ethics Code to UH technology transfer arrangements for your consideration.

The University of Hawai'i believes that the substantive portion of the bill, as currently drafted:

- Serves the public and promotes the state's policy to diversify our economy,
- Can be understood and implemented, and is appropriately flexible to handle the range of innovative means and methods to accomplish technology transfer.
- Is consistent with the approaches used by UH's counterpart public research universities and is thus necessary to keep Hawai'i competitive for research funding and attract talented faculty.
- Is consistent with the legal parameters of State Ethics Code as laid out in Hawai'i's Constitution and statutory Chapter 84, and acknowledges the administrative role to be played by the State Ethics Commission.

The University of Hawai'i acknowledges the implementation concerns raised by the State Ethics Commission in prior committee hearings in having to implement a "balancing" test. Representatives from UH have met with the commission staff and will continue to do so to develop possible alternative language.

The University of Hawai'i asks that the committee pass this bill to allow the discussion on this important topic to continue.



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## **Legislative Testimony**

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Supplemental Testimony Presented Before the  
Senate Committee on Judiciary and Labor  
Tuesday, February 24, 2015 at 9:15 am

by  
Vassilis L. Syrmos  
Vice President for Research and Innovation  
University of Hawai'i

### **SB 1144 SD1 – RELATING TO TECHNOLOGY TRANSFER AT THE UNIVERSITY OF HAWAII**

Chair Keith-Agaran, Vice Chair Shimabukuro, and members of the committee:

The University of Hawai'i appreciates this opportunity to submit supplemental testimony in support of SB 1144 SD1, in order to expand upon certain points raised in prior written testimony.

As previously stated, the University of Hawai'i believes that this measure is consistent with the legal parameters of the State Ethics Code as laid out in the Hawai'i State Constitution and statutory Chapter 84 -- and acknowledges the administrative role of the State Ethics Commission. The University also stated that legislative clarification on the applicability of the State Ethics Code is necessary to keep UH competitive for research sponsorship and faculty talent.

Many of UH's counterpart public research universities already operate under respective state statutes that permit creative technology transfer arrangements notwithstanding of their respective state ethics laws. Some states have created a legislative exemption or "carve out" from otherwise applicable state conflict of interest laws, but have imposed certain limitations or requirements to qualify for an exemption. Other states have legislatively created a separate research authority to facilitate economic development "notwithstanding" state ethics restrictions. Some states have posited approval authority with the governor.

The University would certainly consider a complete exemption from the State Ethics Code for those faculty, professional and administrative staff, executives and managers that are engaged in technology transfer activities and structures at UH. The University would also find it easier to comply with a regulatory scheme where compliance with UH's internal executive policies and administrative procedures would be "deemed" to be in compliance with the State Ethics Code.

This measure proposed by UH acknowledges two features required by the State Constitution, Article XIV. The first feature is the near universal applicability of the Ethics Code to all employees. Thus any attempt to statutorily "carve out" or exempt certain

classes of employees, such as faculty or professional researchers, might raise constitutional challenges. Second, the State Constitution contemplates that the ethics code must be administered by a separate ethics commission. Thus any legislative attempt to supplant the administrative function of the Commission might also raise constitutional concerns.

In the University's opinion, this measure comports with the constitutional requirements by authorizing that the Ethics Commission use an "all circumstance" or "balancing test" in assessing the permissibility of technology transfer arrangements under the State Ethics Code. Additionally, this measure provides the statutory authority of an earlier Ethics Commission (Advisory Opinion No. 92-2).

The University of Hawai'i respectfully urges the Senate Committee on Judiciary and Labor to pass this measure with the clarifying language necessary to allow UH to effectively continue and grow its research and technology transfer enterprise.