



WRITTEN TESTIMONY OF THE DEPARTMENT OF THE ATTORNEY GENERAL TWENTY-EIGHTH LEGISLATURE, 2016

ON THE FOLLOWING MEASURE:

S.B. NO. 2940, S.D. 1, RELATING TO TECHNOLOGY TRANSFER AT THE UNIVERSITY OF HAWAII.

BEFORE THE:

SENATE COMMITTEE ON JUDICIARY AND LABOR

DATE: Monday, February 29, 2016

TIME: 10:05 a.m.

LOCATION: State Capitol, Room 016

TESTIFIER(S): **WRITTEN TESTIMONY ONLY.**

(For more information, contact Diane Erickson, Deputy Attorney General, at 586-0618)

Chair Keith-Agaran and Members of the Committee:

The Department of the Attorney General has concerns about Senate Bill No. 2940, S.D. 1 in its current form.

This bill proposes to encourage technology transfers at the University of Hawai'i. Section 2 of the bill adds a new section to the State Ethics Code, chapter 84, Hawaii Revised Statutes, which provides that "[e]mployees of the University of Hawaii who are directly involved in the research or development of technology sponsored and approved by the university shall be exempt from this chapter, including section 84-18, when performing technology transfer activities."

This bill is broader than it needs to be to encourage technology transfer because it purports to exempt employees from the **entire** Ethics Code, even, for example, from the gift disclosure provision of sections 84-11 and 84-11.5, Hawaii Revised Statutes. The apparent purpose of this bill, the encouragement of technology transfer, can be accomplished without creating an exemption from the entire Ethics Code.

Furthermore, exempting certain employees from provisions of the State Ethics Code is contrary to article XIV of the Hawai'i State Constitution, which unambiguously provides in relevant part that "the legislature . . . shall adopt a code of ethics which **shall apply** to appointed and elected officials and employees of the State." (Emphasis added.) Therefore, the State Ethics Code applies to all appointed and elected officials and state employees and "individual

employees may not, consistent with article XIV, be exempted from the State Ethics Code." *See* Haw. Att'y Gen. Op. No. 15-2 at 6.

The purpose of this bill can be achieved by revising the bill to exempt certain conduct or activity, i.e., technology transfer activities, from the State Ethics Code. Alternatively, the purpose of this bill could be accomplished by legislation that proposes a constitutional amendment to allow exemption of employees from the State Ethics Code.

Thank you for the opportunity to provide our comments.



HAWAII STATE ETHICS COMMISSION

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

SENATE COMMITTEE ON JUDICIARY AND LABOR

The Honorable Gilbert S. C. Keith-Agaran, Chair

The Honorable Maile S. L. Shimabukuro, Vice Chair

S.B. No. 2940, S.D. 1, Relating to Technology Transfer At the University of Hawaii

Decision Making: Monday, February 29, 2016, 10:05 a.m.

The Hawaii State Ethics Commission (“Commission”) offers the following comments about S.B. No. 2940, S.D. 1, whose purpose is to facilitate the University of Hawaii’s contribution to research commercialization and economic development for the State. Under this bill, employees who are directly involved in the research or development of technology sponsored and approved by the University of Hawaii (“University”) would be exempt from the State Ethics Code when performing technology transfer activities and in the transfer and commercialization of the technology.

If the Legislature agrees that an exemption from the ethics laws for University-sponsored research technology transfer activities is needed, the Commission believes the exemption must be clearly stated and limited in scope. The bill, in its original form, was overly broad and would exempt from the ethics laws all employees who happen to have some involvement in the University’s research or technology development activities, no matter how indirect or how remote. S.B. No. 2940, S.D. 1 limits the exemption from the ethics laws to employees who are directly involved in University-sponsored research or technology development.

If the intent of the bill is to allow University employees to use University resources, including their time, lab facilities and materials, and graduate assistants, to perform research and to develop technology that may be commercialized, the bill does not achieve that purpose. The exemption provided by this bill only applies to employees “when performing technology transfer activities and in the transfer and commercialization of the technology.” The bill does not create an exemption for employees when performing research or technology development activities.

Thank you for considering the Commission’s testimony on S.B. No. 2940, S.D. 1, Relating to Technology Transfer at the University of Hawaii.



UNIVERSITY OF HAWAII SYSTEM

Legislative Testimony

Testimony Presented Before the
Senate Committee on Judiciary and Labor
February 29, 2016 at 10:05 a.m.

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

SB 2940 SD1 – RELATING TO TECHNOLOGY TRANSFER AT THE UNIVERSITY OF HAWAII

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

Thank you for this opportunity to testify in support of the intent of this measure.

The University of Hawai'i (UH) believes there is consensus that the State Ethics Code needs to be adapted to reflect current-day practices of technology transfer at public universities. While there may be agreement with intent, there are reasonable disagreements on how the statutory language effectuating that intent should be written.

UH understands the State Attorney General is concerned that Senate Draft 1 of this bill raises constitutional concerns because SD 1 purports to exempt certain employees from the State Ethics Code. This measure as originally introduced, however, may comport with constitutional requirements because it specifies how technology transfer activities are to be treated under the Ethics Code.

To mitigate the constitutional concerns, UH recommends that SB 2940 SD 1 be reported out as Senate Draft 2, with a reversion to the language as originally introduced.

UH also suggests that the operative statutory text for University-sponsored technology transfer activity be added to Chapter 304A (governing the University, in general), and not as an amendment to Chapter 84 (State Ethics Code).

UH further suggest amending the definition of technology transfer to clarify that the primary goals of successful technology transfer include practical benefits to society, innovation and introduction of new products, and diversification of workforce opportunities. Personal financial gain to the inventor may be a consequence of successful commercialization of research, but this consequence is not the purpose driving the UH's sponsorship of technology transfer.

The University of Hawai'i is in discussion with staff of the State Ethics Commission to craft acceptable language.



Chamber of Commerce HAWAII
The Voice of Business

**Testimony to the House Committee on Judiciary & Labor
Monday, February 29, 2016 at 10:05 A.M.
Conference Room 016, State Capitol**

**RE: SENATE BILL 2940 SD 1 RELATING TO TECHNOLOGY TRANSFER AT THE
UNIVERSITY OF HAWAII**

Chair Keith-Agaran, Vice Chair Shimabukuro, and Members of the Committee:

The Chamber of Commerce Hawaii ("The Chamber") **supports** SB 2940 SD 1, which clarifies that the State ethics code shall not apply to University of Hawaii employees who are directly involved in the research or development of technology sponsored and approved by the university when performing technology transfer activities. Requires such activities to comply with the regulatory framework and research compliance program approved by the board of regents. Requires a written status report to the legislature every two years.

The Chamber is Hawaii's leading statewide business advocacy organization, representing about 1,000 businesses. Approximately 80% of our members are small businesses with less than 20 employees. As the "Voice of Business" in Hawaii, the organization works on behalf of members and the entire business community to improve the state's economic climate and to foster positive action on issues of common concern.

The Chamber supports SB 2940 SD 1 as it would help expedite the commercialization of research from the University of Hawaii to provide information that would strengthen the local economy. This bill helps remedy many obstacles that currently exist from broad conflict of interest, fair treatment, and employment restrictions. Clarifying the State Ethics Code would prevent the deterrence of an efficient technology transfer.

Thank you for the opportunity to testify.