

JAN 25 2017

A BILL FOR AN ACT

RELATING TO THE UNIVERSITY OF HAWAII RESEARCH.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. The legislature finds that it is a matter of
2 statewide concern to promote the economic health and diversify
3 the workforce opportunities of the State. The legislature
4 further finds that transforming ideas and concepts arising from
5 basic and applied research conducted at the University of
6 Hawaii, the sole public institution of higher education for this
7 State, into commercially viable and sustainable products and
8 businesses will contribute to economic health and workforce
9 diversification. Commercialization of intellectual property
10 created at or by the University thus achieves a public purpose
11 and benefits the state.

12 In the past, the Legislature has authorized and provided
13 public funds to support efforts by other state agencies to
14 promote entrepreneurial development, support research
15 commercialization, or provide access to startup investment
16 capital. These state efforts include, for example, the HI
17 Growth Initiative, the venture accelerator funding programs, and

1 other projects sponsored by the Hawaii strategic development
2 corporation.

3 Because a core function of the university is to conduct
4 basic and applied research, the legislature finds that the
5 university is uniquely positioned to identify promising
6 innovations and new discoveries arising from university
7 research. For inventions that show commercial potential, the
8 University can bring to bear the educational resources from its
9 various professional schools such as business, law, and
10 engineering to provide focused instruction, expert mentorship,
11 practical guidance, and advanced training in business
12 development. A systematic program of support in the early
13 stages of commercialization is essential to assure viable
14 businesses and sustainable employment opportunities. Education
15 and instruction are integral components of the university's core
16 mission, and applying university resources to support the
17 commercialization of inventions and concepts is a proper use of
18 public resources.

19 The legislature further finds that an impediment to the
20 effective transformation of university innovation into
21 commercial products and viable businesses is the lack of clear
22 and express legal authority to frame and support the
23 university's technology transfer programs. Lack of express

1 statutory authority for these commercialization and technology
2 transfer activities sponsored by the university creates business
3 uncertainty that deters private interests from fully engaging in
4 collaborative efforts promoted by the university. Lack of clear
5 authority for the program may also deter university faculty or
6 students from seeking and actively participating in the program.

7 The purpose of this Act is to provide express statutory
8 authority to enable and facilitate the deployment of university
9 educational and instructional resources, university managerial
10 and fiscal resources, and university personnel to promote the
11 economic health and diversification of workforce opportunities
12 in the State through the commercialization of inventions and
13 discoveries generate by or at the university. The Legislature
14 finds there is a public benefit where university resources are
15 used for such purposes, other state laws, including the state
16 ethics code, shall be construed, on balance, to effectuate the
17 intent and public purposes of this law.

18 SECTION 2. Chapter 304A, Hawaii Revised Statutes, is
19 amended by adding to part IV a new subpart to be appropriately
20 designated and to read as follows:

21 " . INNOVATION AND COMMERCIALIZATION INITIATIVE

22 §304A- **Innovation and commercialization initiative;**
23 **establishment.** There is established within the University of

1 Hawaii an innovation and commercialization initiative program
2 under the direction of the vice president for research and
3 innovation.

4 **§304A- Innovation and commercialization initiative**
5 **implementation.** The university may promote, sponsor, and
6 participate in the transformation of the products of its
7 research and instructional activities into viable economic
8 enterprises, and may create, finance, and participate in
9 organizations that contribute to economic development and
10 workforce diversification of the State using university research
11 and university personnel. The university may without
12 limitation:

- 13 (1) Adopt policies and management procedures to carry out
14 the purposes of this program;
- 15 (2) Contribute equity, loan funds, or participate directly
16 or indirectly to finance concepts or proposals that
17 are likely to lead to viable businesses, economic
18 development, or workforce opportunities based on
19 university research;
- 20 (3) Enter into contracts and other appropriate
21 arrangements with start-up ventures, to provide loans,
22 initial and expansion capital, and other forms of
23 financial assistance;

- (4) Solicit, evaluate, and assist in the preparation, drafting, and refinement of business plans and proposals;
- (5) Provide advice, instruction, training, and technical and marketing assistance, to support and promote the enterprises in which the university invests;
- (6) Develop, coordinate and deliver instruction, training and outreach programs to build and maintain the capacity to sustain these economic enterprises;
- (7) Implement specialized programs designed to encourage the development of new products, businesses, and markets;
- (8) Prepare, publish, and distribute technical studies, reports, bulletins, and other materials consistent with customary standards of university publication, subject to the maintenance and respect for confidentiality of client proprietary information;
- (9) Organize, sponsor, and participate in conferences, workshops, seminars, and other educational activity relating to the formation and financial viability of businesses that use university research products or university personnel;

S.B. NO. 1022

1 (10) Provide and pay for advisory or consulting services and
2 technical, managerial, and marketing assistance,
3 support, and promotion to carry out the purposes of
4 this subpart;

5 (11) Acquire, hold, and sell qualified securities;

6 (12) Consent, subject to the provisions of any contract with
7 noteholders or bondholders, whenever the university
8 deems it necessary or desirable in the fulfillment of
9 the purposes of this subpart, to the modification,
10 with respect to rate of interest, time of payment of
11 any installment of principal or interest, or any other
12 terms, of any contract or agreement of any kind to
13 which the university is a party;

14 (13) With the assistance of an appropriate foundation or
15 development entity, accept donations, grants,
16 bequests, and devises of money, property, service, or
17 other things of value that may be received from the
18 United States or any agency thereof, any governmental
19 agency, or any public or private institution, person,
20 firm, or corporation, to be held, used, or applied for
21 any or all of the purposes in support of this program;

22 (14) Invest any funds held in reserves or sinking funds, or
23 any funds not required for immediate disbursement, in

such investments as may be lawful for fiduciaries in
the State;

(15) Acquire real property, or an interest therein, by
purchase or foreclosure, where that acquisition is
necessary or appropriate to protect or secure any
investment or loan in which the university has an
interest; sell, transfer, and convey the property to a
buyer and, if the sale, transfer, or conveyance cannot
be effected with reasonable promptness or at a
reasonable price, to lease the property;

(16) Consistent with the purposes of the program, acquire,
own, hold, dispose of, and encumber personal property
of any nature, or any interest therein, either
directly or through intermediate entities formed or
established specifically for such purposes;

(17) Enter into agreements or other transactions with any
federal, state, or county agency to implement the
purposes of this subpart;

(18) Contract with other entities, public or private, for
the provision of all or a portion of the services
necessary for the management and operation of the
innovation and commercialization initiative program.

The university may use all appropriations, grants,

1 contractual reimbursements, and all other funds made
2 available for the purposes of the program to pay for
3 the proper general expenses of the program;

4 (19) Appear in its own behalf before state, county, or
5 federal agencies on matters relating to this program;

6 (20) Establish a risk management program appropriate to the
7 activities of this program, which may include, among
8 other components, purchase of insurance, participation
9 in the State's risk management program, or retention
10 and management of risks;

11 (21) Appoint advisory committees as deemed necessary;
12 provided that any advisory committee established
13 pursuant to this section shall not be deemed a "board"
14 subject to chapter 92; and

15 (22) Exercise any other powers of a corporation organized
16 under the laws of the State not inconsistent with the
17 purpose and intent of this program.

18 **§304A- University innovation and commercialization**
19 **initiative special fund.** (a) There is established the
20 university innovation and commercialization initiative special
21 fund into which shall be deposited and not be considered part of
22 the general fund all funds consistent with the purposes of this
23 subpart that are:

- (1) appropriated by the legislature;
- (2) Received as repayments of loans;
- (3) Earned on investments;
- (4) Received pursuant to a venture agreement;
- (5) Received as royalties;
- (6) Received as premiums or fees charged by the
university; or
- (7) Otherwise received by the program.

(b) Revenues deposited into this special fund may be expended by the university for all costs and expenses associated with the operation of this program without regard to chapters 76, 78, 89, 102, 103, and 103D. Revenues not expended as provided in this section may be transferred to other university funds to be expended for the general benefit of the university.

§304A- Confidentiality of trade secrets; disclosure of financial information. Any documents or data made or received by the university under this subpart, to the extent that the material or data consist of trade secrets or confidential commercial or financial information that may be withheld from public disclosure under chapter 92F, shall not be publicly disclosed; provided that, if the university purchases a qualified security, the non-confidential commercial and financial information regarding that security shall be a public

1 record of the university. The board of regents, or any
2 subcommittee of the board, may hold an executive session as
3 provided in section 92-4 to discuss trade secrets or
4 confidential commercial or financial information that may be
5 withheld under chapter 92F.

6 **§304A- Limitation on liability.** (a) The university

7 shall not assume or otherwise promise to answer for the debt,
8 contract, or liability of any other person or a private entity.

9 (b) Notwithstanding chapters 661 and 662, or any other law
10 to the contrary, nothing in this subpart shall create an
11 obligation, debt, claim, cause of action, claim for relief,
12 charge, or any other liability of any kind whatsoever in favor
13 of any person or entity, without regard to whether that person
14 or entity receives any benefits under this subpart, against the
15 State or its officers and employees. The State and its officers
16 and employees shall not be liable for the results of any
17 investment, purchase of securities, loan, or other assistance
18 provided pursuant to this subpart. Nothing in this subpart
19 shall be construed as authorizing any claim against the
20 university in excess of any note, loan, or other specific
21 indebtedness incurred by the university or in excess of any
22 insurance policy acquired for the university or its employees.

1 **§304A- Preservation of governmental immunity; full faith**
2 **and credit.** No contract, agreement, or statement made by the
3 university pursuant to this subpart shall constitute an express
4 or implied waiver by the university of its governmental or
5 sovereign immunity as a public agency of the State, nor shall
6 such contracts, agreements or statements constitute an express
7 or implied acceptance of liabilities in excess of liabilities
8 allowable under applicable governmental immunity laws. No
9 activity conducted by the university or agreement entered into
10 pursuant to this subpart shall be deemed a pledge of the full
11 faith and credit of the State.

12 **§304A- Cooperation with the University of Hawaii by state**
13 **agencies.** Every state agency may render services to the
14 university upon its request.

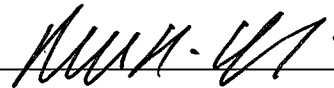
15 **§304A- Construction of subpart.** Other state laws,
16 including without limitation the state ethics code, shall be
17 applied and construed on balance in recognition of the public
18 benefits created and state interests advanced by university
19 activities conducted pursuant to this subpart.

20 **§304A- Biennial report.** Not later than twenty days prior
21 to the convening of each regular session during an odd numbered
22 year, the University of Hawaii shall submit an annual report to
23 the legislature concerning:

- 1 (1) All funds deposited into the university innovation and
2 commercialization initiative special fund and a
3 detailed description of the use of those funds; and
4 (2) Coordinated efforts between the innovation and
5 commercialization initiative program and other state
6 agencies, including the high technology development
7 corporation, the Hawaii strategic development
8 corporation, and the Hawaii state energy office to
9 move the State's innovation goals forward, and to more
10 efficiently and effectively utilize resources to
11 achieve these outcomes."

12 SECTION 4. This Act, upon its approval, shall take effect
13 on July 1, 2017.

14
15 INTRODUCED BY: _____



16 BY REQUEST

Report Title:

University of Hawaii; Hawaii Innovation Initiative

Description:

Provides express legal authority to enable the University of Hawaii to create, promote, and participate in new economic enterprises and expand workforce opportunities based on inventions and discoveries generated by or at the University.

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.

SB. NO. 1022

JUSTIFICATION SHEET

DEPARTMENT: University of Hawaii

TITLE: A BILL FOR AN ACT RELATING TO THE UNIVERSITY OF HAWAII RESEARCH.

PURPOSE: To provide explicit statutory authority for the University of Hawaii (University) to promote and participate in the transformation of discoveries and inventions generated by University research activity to commercial products and viable business enterprises, and thereby diversify Hawaii's economy and increase workforce opportunities.

MEANS: Amend chapter 304A, Hawaii Revised Statutes, by adding a new subpart to part IV.

JUSTIFICATION: The University of Hawaii is the sole public institution of higher education in the State. With its array of graduate programs in oceanography, engineering, sustainability sciences, and astronomy, among other programs, and with its professional schools such as medicine, tropical agriculture, and pharmacy, the University is the primary public institution in the State generating academic or sponsored research.

In the past, the University has secured patents on its inventions and licensed the patents to private companies willing to capitalize on the patents.

It is now clear that more active and strategically focused efforts are needed by the University to achieve its potential to contribute to the economic health and workforce diversification of the state. The University needs to more actively identify the inventions or discoveries generated by University research that have commercial

SB. NO. 1022

potential. University resources would then be deployed in a focused program to transform these concepts into viable commercial products and businesses. The program includes developing the managerial and executive level capacity to grow and sustain these new companies; instruction in developing viable business plans; making available expert mentors from the private sectors to provide practical guidance; and training novice entrepreneurs how to seek and obtain investors or capital. The focused program also enables the University, where appropriate, to participate in and contribute to the financing and capital requirements of these new enterprises.

Through prior legislation, other state agencies currently have explicit statutory authority to transform promising concepts into viable economic drivers. For example, chapter 211F, Hawaii Revised Statutes, establishes the Hawaii strategic development corporation and confers broad statutory powers to encourage economic development and diversification in Hawaii. This state-established corporation may also use public funds to co-invest with private interests.

The University currently has an accelerator program named XLR8UH to assist with the early stages of commercialization. The University, however, could more efficiently contribute to this state-wide initiative if a clear legal framework for the University were established. This express legal authority would reduce the uncertainty in creating and operating new ventures based on discoveries or inventions generated at the University, and thereby induce greater private sector participation in promising concepts. Clear authority may also induce more active participation by University faculty or students in the XLRXUH program. Clear authority also reinforces and publicizes the importance of this University strategic initiative.

SB. NO. 1022

The proposed legal framework for the university is adapted from the existing statutory authority currently applicable to the Department of Business, Economic Development, and Tourism.

Impact on the public: The public would benefit if the University could more effectively and efficiently promote its University-related research and transfer the results of its research to the economy through collaborative arrangements with private entities. The public would benefit by increasing and diversifying workforce opportunities and expanding the economy.

Impact on the department and other agencies: The university would be better able to collaborate in other research commercialization or venture funding programs sponsored by other state agencies such as the Department of Business, Economic Development, and Tourism. There would be a more coordinated state-wide effort, less duplication, and the university could emphasize its unique contributions as the generator of research with commercial potential.

The state Ethics Commission would be encouraged to use a balanced approach in applying the Ethics Code to commercialization activity in recognition of the potential benefits to the public created by the commercialization of University generated intellectual property, and the advancement of state interests in diversifying work force opportunities and expanding the economic base of the state.

GENERAL FUND: None.

OTHER FUNDS: None.

SB. NO. 1022

PPBS PROGRAM
DESIGNATION:

UOH 900.

OTHER AFFECTED
AGENCIES:

Department of Business, Economic
Development, and Tourism, State Ethics
Commission

EFFECTIVE DATE:

July 1, 2017.