

A Bill for an Act Relating to University of Hawaii Research.

Be It Enacted by the Legislature of the State of Hawaii:

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

In the past, the legislature has authorized and provided public funds to support efforts by other state agencies to promote entrepreneurial development, support research commercialization, or provide access to startup investment capital. These state efforts include, for example, the HI growth initiative, the venture accelerator funding programs, and other projects sponsored by the Hawaii strategic development corporation.

Because a core function of the University of Hawaii is to conduct basic and applied research, the legislature further finds that the university is uniquely positioned to identify promising innovations and new discoveries arising from university research. For inventions that show commercial potential, the university can use the educational resources from its various professional schools, such as business, law, and engineering, to provide focused instruction, expert mentorship, practical guidance, and advanced training in business development. A systematic program of support in the early stages of commercialization is essential to ensure the viability of businesses and sustainable employment opportunities. The legislature further finds that education and instruction are integral components of the university's core mission, and applying university resources to support the commercialization of inventions and concepts is a proper use of public resources.

The legislature also finds that an impediment to the effective transformation of university innovation into commercial products and viable businesses is the lack of clear and express legal authority to frame and support the university's technology transfer programs. Lack of express statutory authority for these commercialization and technology transfer activities sponsored by the university creates business uncertainty that deters private interests from fully engaging in collaborative efforts promoted by the university. Lack of clear authority for any innovation or commercialization program within the university may also deter university faculty or students from seeking and actively participating in the program.

The purpose of this Act is to provide express statutory authority to enable and facilitate the deployment of university educational and instructional resources, university managerial and fiscal resources, and university personnel to promote the economic health and diversification of workforce opportunities in the State through the commercialization of inventions and discoveries generated by or at the university. The legislature finds that there is a public benefit when university resources are used for such purposes, and accordingly, other state laws, including the state code of ethics, should be construed, on balance, to effectuate the intent and public purposes of this Act.

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

“ . INNOVATION AND COMMERCIALIZATION INITIATIVE PROGRAM

§304A- Innovation and commercialization initiative program; establishment. There is established within the University of Hawaii an innovation and commercialization initiative program under the direction of the vice president for research and innovation.

§304A- Innovation and commercialization initiative program; implementation. In implementing the innovation and commercialization initiative program, the University of Hawaii may promote, sponsor, and participate in the transformation of the products of its research and instructional activities into viable economic enterprises, and may create, finance, and participate in organizations that contribute to the economic development and workforce diversification of the State using university research and university personnel. The university, without limitation, may:

- (1) Adopt policies and management procedures to carry out the purposes of the program;
- (2) Contribute equity, loan funds, or participate directly or indirectly to finance concepts or proposals that are likely to lead to viable businesses, economic development, or workforce opportunities based on university research;
- (3) Enter into contracts and other appropriate arrangements with start-up ventures to provide loans, initial and expansion capital, and other forms of 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 activities relating to the formation and financial viability of businesses that use university research products or university personnel;
- (10) Provide and pay for advisory or consulting services and technical, managerial, and marketing assistance, support, and promotion to carry out the purposes of this subpart;
- (11) Acquire, hold, and sell qualified securities;
- (12) Consent, subject to the provisions of any contract with noteholders or bondholders, whenever the university deems it necessary or desirable in the fulfillment of the purposes of this subpart, to the modification, with respect to rate of interest, time of payment of

- any installment of principal or interest, or any other terms, of any contract or agreement of any kind to which the university is a party;
- (13) With the assistance of an appropriate foundation or development entity, accept donations, grants, bequests, and devises of money, property, service, or other things of value that may be received from the United States or any agency thereof, any governmental agency, or any public or private institution, person, firm, or corporation, to be held, used, or applied for any or all of the purposes in support of this program;
 - (14) Invest any funds held in reserves or sinking funds, or 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 the program's 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 program. The university may use all appropriations, grants, contractual reimbursements, and all other funds made available for the purposes of the program to pay for the proper general expenses of the program;
 - (19) Appear on its own behalf before state, county, or federal agencies on matters relating to the program;
 - (20) Establish a risk management program appropriate to the activities of the program, which may include, among other components, the purchase of insurance, participation in the State's risk management program, or retention and management of risks;
 - (21) Appoint advisory committees as deemed necessary; and
 - (22) Exercise any other powers of a corporation organized under the laws of the State not inconsistent with the purpose and intent of the program.

§304A- University innovation and commercialization initiative special fund. (a) There is established the university innovation and commercialization initiative special fund into which shall be deposited, and shall not be considered part of the general fund, all funds consistent with the purposes of this 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 the special fund may be expended by the University of Hawaii for all costs and expenses associated with the operation of the innovation and commercialization initiative 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 of Hawaii 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 record of the university. The board of regents, or any subcommittee of the board, may hold an executive session as provided in section 92-4 to discuss trade secrets or confidential commercial or financial information that may be withheld under chapter 92F.

§304A- Limitation on liability. (a) The University of Hawaii shall not assume or otherwise promise to answer for the debt, contract, or liability of any other person or private entity involved with the innovation and commercialization initiative program.

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

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

§304A- Cooperation with the University of Hawaii by state agencies. Every state agency may render services to the University of Hawaii upon the university's request for any purpose related to this subpart.

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

ACT 39

§304A- Biennial report. No later than twenty days prior to the convening of the regular session of each odd-numbered year, the University of Hawaii shall submit a report to the legislature concerning:

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

SECTION 3. This Act shall take effect on July 1, 2017, and shall be repealed on June 30, 2021.

(Approved June 19, 2017.)