

ACT 8

S.B. NO. 589

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

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

PART I

SECTION 1. The legislature finds that the University of Hawaii cancer center reduces the burden of cancer through research, education, patient care, and community outreach. The University of Hawaii cancer center is the only National Cancer Institute-designated cancer center in Hawaii and the Pacific region. The University of Hawaii cancer center is a member of the Hawaii Cancer Consortium, which includes five hospital groups and the University of Hawaii John A. Burns school of medicine.

The University of Hawaii John A. Burns school of medicine educates and trains health care professionals, including physicians, biomedical scientists, and allied health workers. The University of Hawaii John A. Burns school of medicine also conducts fundamental medical research and translates discoveries into delivery practices. Because the University of Hawaii John A. Burns school of medicine is a community-based medical school without its own university hospital, it partners with private hospitals in the community to achieve its educational mission.

The legislature further finds that public funds and other resources the State has made available to the University of Hawaii John A. Burns school of medicine and University of Hawaii cancer center have been substantial. The magnitude of state funds and other resources provided to the University of Hawaii, the distinction of the University being the sole public institution of higher education in the State, and the University of Hawaii cancer center being the only National Cancer Institute-designated cancer center in Hawaii underscore the importance of establishing complementary strategic priorities and coordinating the management and deployment of state resources appropriated to the University of Hawaii John A. Burns school of medicine and University of Hawaii cancer center.

It is in the public's interest that State resources be efficiently and effectively managed to optimize the public benefits. Just as co-locating the physical facilities for the University of Hawaii John A. Burns school of medicine and University of Hawaii cancer center on adjoining sites in Kakaako promotes synergistic efforts, the legislature determines that it is a statewide concern to ensure that the management of public resources provided to the University of Hawaii John A. Burns school of medicine and University of Hawaii cancer center be integrated, coordinated, and focused on common priorities to avoid unnecessary duplication of administrative expenses or conflicting priorities. Maximized efficiencies will benefit the University of Hawaii cancer center, University of Hawaii John A. Burns school of medicine, University of Hawaii at Manoa, and the State by reducing or eliminating unnecessary expenditures and optimizing operations.

Accordingly, the purpose of this part is to:

- (1) Establish the University of Hawaii cancer center in statute as the cancer research center of Hawaii; and
- (2) Require the cancer research center of Hawaii to be administratively affiliated with the University of Hawaii John A. Burns school of medicine and possibly merge the administrative services and infrastructure teams of both entities to offer greater efficiency.

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:

“ . **Cancer Research Center of Hawaii**

§304A- Cancer research center of Hawaii. (a) There is established an organized research unit, hereinafter known as the cancer research center of Hawaii, to conduct cancer research. The cancer research center of Hawaii shall be administered by a director to be appointed in accordance with board of regents policy.

(b) The cancer research center of Hawaii shall be administratively affiliated with the University of Hawaii John A. Burns school of medicine. The administrative services and infrastructure teams of the cancer research center of Hawaii and the University of Hawaii John A. Burns school of medicine may be merged to achieve greater efficiency.

(c) The provost of the University of Hawaii at Manoa shall have authority to direct and achieve efficiencies at the University of Hawaii John A. Burns school of medicine and cancer research center of Hawaii.

(d) The programs of the University of Hawaii John A. Burns school of medicine and cancer research center of Hawaii, and the University of Hawaii at Manoa shall identify opportunities to:

- (1) Capitalize on collaboration between the programs; and
- (2) Maximize operational efficiencies between the University of Hawaii John A. Burns school of medicine and cancer research center of Hawaii,

including but not limited to shared services and personnel whenever feasible and utilization of centralized services available through the University of Hawaii at Manoa whenever appropriate.

(e) The cancer research center of Hawaii's research agenda shall focus on research, education, patient care, and community outreach and reflect an understanding of the ethnic, cultural, and environmental characteristics of the State and the Pacific region.

(f) The cancer research center of Hawaii may:

- (1) Engage in international research collaborations;
- (2) Undertake research studies and clinical trials; and
- (3) Participate in projects and programs of the National Cancer Institute.”

PART II

SECTION 3. The purpose of this part is to further efforts to ensure the efficient and effective management of public resources provided to the University of Hawaii John A. Burns school of medicine and cancer research center of Hawaii to optimize public benefits.

SECTION 4. (a) The University of Hawaii shall develop and implement a plan for the University of Hawaii John A. Burns school of medicine and cancer research center of Hawaii to achieve greater operational efficiencies, reduce duplication of services, and share administrative functions to the maximum extent practicable.

(b) The president of the University of Hawaii shall submit a report on the progress of the development and implementation of the plan as provided under this part to the legislature no later than twenty days prior to the convening of the regular session of 2023.

PART III

SECTION 5. The purpose of this part is to allow the University of Hawaii to continue its contribution to research commercialization and economic development by extending the sunset date of Act 38, Session Laws of Hawaii 2017, for two years, until June 30, 2024, while promoting accountability and transparency.

SECTION 6. Section 84-10, Hawaii Revised Statutes, is amended to read as follows:

“~~[[§84-10]]~~ University of Hawaii; technology transfer activities; exemption. (a) Sections 84-12, 84-13, 84-14 to 84-16, and 84-18 shall not apply to technology transfer activities sponsored by the University of Hawaii; provided that the technology transfer activities comply with the regulatory framework and research compliance program and policies approved by the board of regents of the University of Hawaii [board of regents].

(b) Notwithstanding subsection (a), the University of Hawaii shall not sponsor, enter into, or continue to engage in technology transfer activities with a private person in which an employee of the University of Hawaii has a conflict of interest as provided in section 84-14, including a financial interest, irrespective of whether the State benefits from the technology transfer activities; provided that the prohibition under this subsection shall not apply if:

- (1) The technology transfer activities with the private person promote the timely and efficient commercialization of intellectual property created by basic and applied research at the University of Hawaii;
- (2) The State stands to benefit from the technology transfer activities with the private person;
- (3) The technology transfer activities with the private person comply with the regulatory framework and research compliance program and policies approved by the board of regents of the University of Hawaii;
- (4) The employee's conflict of interest is disclosed at the time of the proposal, and the proposals and binding agreements for each of the technology transfer activities with the private person are reviewed by the state ethics commission to assure compliance with ethics laws;
- (5) Any changes to the terms and conditions of the technology transfer activities are reported to the state ethics commission;
- (6) The employee with the conflict of interest does not:
 - (A) Take official action affecting the technology transfer activities with the private person; or
 - (B) Directly or indirectly supervise an employee when that employee takes official action affecting the technology transfer activities with the private person; and
- (7) During the term of the technology transfer activities with the private person, the following employees file annually with the state ethics commission a disclosure of financial interests pursuant to section 84-17:
 - (A) Employees who have a conflict of interest as provided in section 84-14, including a financial interest, in the private person;
 - (B) Employees who take official action affecting the technology transfer activities with the private person; and

(C) Employees who directly or indirectly supervise an employee who takes official action affecting the technology transfer activities with the private person.

(c) Notwithstanding subsection (a), any technology transfer activities sponsored by, entered into, or engaged in by the University of Hawaii in violation of subsection (b) is voidable under section 84-16; provided that this subsection shall not apply to contracts for technology transfer activities entered into or extended by the University of Hawaii prior to January 1, 2022.

(d) The University of Hawaii shall file annually with the state ethics commission a disclosure, including its conflict of interest management plan, of any conflict of interest of any employee relating to its technology transfer activities.

~~[(b)]~~ (e) As used in this section~~[-“technology”]~~:

“Person” means any individual, firm, association, organization, sole proprietorship, partnership, company, corporation, joint venture, trust, or any other form of business or legal entity or group of individuals.

“Technology transfer activities” means the process of transferring scientific findings from the public sector to the private sector for the purpose of commercial development and application for personal or financial gain. “Technology transfer activities” may include creating joint ventures, limited partnerships, or other corporate forms; allocating equity shares, partnership interests, or other forms of participation; identifying new technologies; protecting technologies through patents and copyrights; forming development and commercialization strategies, arrangements, or projects; and other related activities.”

SECTION 7. Section 304A-121, Hawaii Revised Statutes, is amended to read as follows:

~~[[§304A-121]]~~ **Technology transfer; reporting.** The board of regents of the University of Hawaii shall submit a written report to the legislature no later than twenty days prior to the convening of each regular session regarding:

- (1) The development ~~[and]~~, implementation, and enforcement of its regulatory framework and research compliance program to reflect ethical research principles and technology transfer regulations used by the federal government; ~~[and]~~
- (2) The technology transfer activities of the University of Hawaii, as defined in section 84-10, and the status of such activities~~[-]; and~~
- (3) A disclosure, including the University of Hawaii’s conflict of interest management plan, of any conflict of interest of any employee of the University of Hawaii relating to its technology transfer activities.”

SECTION 8. Act 38, Session Laws of Hawaii 2017, is amended by amending section 5 to read as follows:

“SECTION 5. This Act shall take effect upon its approval; provided that this Act shall be repealed on June 30, ~~[2022.]~~ 2024.”

PART IV

SECTION 9. The legislature finds that pursuant to the repeal and reenactment provisions of Act 39, Session Laws of Hawaii 2017, chapter 304A, part IV, subpart P, Hawaii Revised Statutes, regarding the University of Hawaii innovation and commercialization initiative program, was repealed on June 30, 2021. The purpose of this part is to reenact part IV, subpart P, for three years to allow the University of Hawaii to continue the innovation and commercializa-

tion initiative program and include additional provisions that promote accountability and transparency.

SECTION 10. Chapter 304A, 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 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 nonconfidential 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. (a) 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.

(b) Notwithstanding subsection (a), the University of Hawaii shall not sponsor, enter into, or continue to engage in activities conducted pursuant to this subpart with a private person in which an employee of the University of Hawaii has a conflict of interest as provided in section 84-14, including a financial interest, irrespective of whether the State benefits from the activities; provided that the prohibition under this subsection shall not apply if:

- (1) The activities with the private person transform the products of the University of Hawaii's research and instructional activities into viable economic enterprises;
- (2) The State stands to benefit from the activities with the private person;
- (3) The activities with the private person comply with the regulatory framework and research compliance program and policies approved by the board of regents of the University of Hawaii;
- (4) The employee's conflict of interest is disclosed at the time of the proposal, and the proposals and binding agreements for each of the activities with the private person are reviewed by the state ethics commission to assure compliance with ethics laws;
- (5) Any changes to the terms and conditions of the activities are reported to the state ethics commission;
- (6) The employee with the conflict of interest does not:
 - (A) Take official action affecting the activities with the private person; or
 - (B) Directly or indirectly supervise an employee who takes official action affecting the activities with the private person; and
- (7) During the term of the activities with the private person, the following employees file annually with the state ethics commission a disclosure of financial interests pursuant to section 84-17:
 - (A) Employees who have a conflict of interest as provided in section 84-14, including a financial interest, in the private person;
 - (B) Employees who takes official action affecting the activities with the private person; and
 - (C) Employees who directly or indirectly supervise an employee who takes official action affecting the activities with the private person.

(c) Notwithstanding subsection (a), any activities conducted by the University of Hawaii pursuant to this subpart in violation of subsection (b) is voidable under section 84-16; provided that this subsection and subsection (b) shall not apply to contracts entered into or extended by the University of Hawaii prior to January 1, 2022, for activities conducted by the University of Hawaii pursuant to this subpart.

(d) The University of Hawaii shall file annually with the state ethics commission a disclosure, including its conflict of interest management plan, of any conflict of interest of any employee relating to its activities conducted pursuant to this subpart.

(e) As used in this section, "person" means any individual, firm, association, organization, sole proprietorship, partnership, company, corporation, joint venture, trust, or any other form of business or legal entity or group of individuals.

§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;
- (2) Coordinated efforts between the innovation and commercialization initiative program and other state agencies, including the Hawaii 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; and
- (3) A disclosure, including its conflict of interest management plan, of all conflicts of interest of any employee relating to its activities conducted pursuant to this subpart.”

PART V

SECTION 11. The legislature finds that on June 30, 2021, the provisions of Act 42, Session Laws of Hawaii 2018, were repealed. The purpose of this part is to temporarily reenact provisions amended by Act 42, Session Laws of Hawaii 2018, for the purpose of extending, for three years, the authority of the president of the University of Hawaii to act as the University of Hawaii's chief procurement officer for all procurement contracts under chapter 103D, Hawaii Revised Statutes.

SECTION 12. Section 103D-203, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) The chief procurement officer for each of the following state entities shall be:

- (1) The judiciary—the administrative director of the courts;
- (2) The senate—the president of the senate;
- (3) The house of representatives—the speaker of the house of representatives;
- (4) The office of Hawaiian affairs—the chairperson of the board;
- (5) The University of Hawaii—the president of the University of Hawaii; [~~provided that, except as specified in section 304A-2672(2), for contracts for construction and professional services furnished by licensees under chapter 464, the administrator of the state procurement office of the department of accounting and general services shall serve as the chief procurement officer;~~]
- (6) The department of education, excluding the Hawaii public library system—the superintendent of education;
- (7) The Hawaii health systems corporation—the chief executive officer of the Hawaii health systems corporation; and
- (8) The remaining departments of the executive branch of the State and all governmental bodies administratively attached to them—the administrator of the state procurement office of the department of accounting and general services.”

SECTION 13. Section 304A-2672, Hawaii Revised Statutes, is amended to read as follows:

“**§304A-2672 Powers of the board.** Notwithstanding any law to the contrary, the board may:

- (1) Designate as a university project, any undertaking, improvement, or facility on any one or more of the areas in one or more of the educational institutions under the jurisdiction of the board;

- (2) Construct and maintain university projects, including a university project included or to be in a university system; [~~provided that all procurements for professional services furnished by licensees under chapter 464 for construction projects shall be coordinated with the department of accounting and general services on behalf of the board; provided further that the department of accounting and general services shall not be responsible for procurements determined by both the University of Hawaii and the department of accounting and general services to be professional services furnished by licensees under chapter 464 for repair and maintenance;~~]
- (3) Combine two or more university projects into a university system on one or more of the areas on any one or more of the educational institutions under the jurisdiction of the board, and to maintain the system;
- (4) Combine two or more university projects, university systems, or university projects and university systems into a network, on any one or more of the areas on any one or more of the educational institutions under the jurisdiction of the board, and to maintain the network;
- (5) Prescribe and collect rents, fees, and charges for the use of or services furnished by any university project and the facilities thereof, and pledge any appropriation to any university project and the facilities thereof that in aggregate, produces revenue of the university at least sufficient to comply with section 304A-2681;
- (6) With the approval of the governor, issue revenue bonds under this subpart in such principal amount as may be authorized by the legislature from time to time to finance in whole or in part the cost of construction or the cost of maintenance of any university project, including funding reserves therefor;
- (7) Pledge to the punctual payment of revenue bonds and interest thereon, all or any part of the revenue of the university, including any appropriation, in an amount sufficient to pay the revenue bonds and interest as the same become due and to create and maintain reasonable reserves therefor;
- (8) Establish a loan program or a commercial paper program upon terms and conditions that the board may determine; and
- (9) Advance moneys of the university, not otherwise required, and do any and all other lawful acts as may be necessary, convenient, or desirable, for carrying into execution and administering this subpart.”

SECTION 14. The University of Hawaii shall submit an annual report to the legislature detailing a list of all capital improvement projects approved by the board of regents, prioritized by each campus, no later than twenty days prior to the convening of each regular session.

PART VI

SECTION 15. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 16. This Act shall take effect upon its approval; provided that:

- (1) Parts IV and V of this Act shall apply retroactively to any actions taken after June 30, 2021, by the University of Hawaii pursuant to the sections of law amended by those parts;

- (2) Section 10 shall be repealed on June 30, 2024; and
- (3) Sections 12, 13, and 14 shall be repealed on June 30, 2024, and sections 103D-203(a) and 304A-2672, Hawaii Revised Statutes, shall be reenacted in the form in which they read on June 11, 2018.

(Amended by Legislature to meet Governor's objections. Approved July 20, 2021.)