



UNIVERSITY OF HAWAII SYSTEM

Legislative Testimony

Testimony Presented Before the
Senate Committee on Ways and Means
February 28, 2018 at 11:00 a.m.

by
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SB 757 SD1 – RELATING TO THE UNIVERSITY OF HAWAII

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

The University of Hawai'i (UH) appreciates the intent behind SB 757 SD1 (and SCR 29), and thanks the committee for acknowledging the significant changes the University has made over the years in improving its stewardship on Maunakea.

While the University appreciates efforts in SD1 to narrow the definition and scope of the audit, we cannot support SB 757 SD1 as written.

First, in Sections 1(a)(10)-(15), SD1 incorporates wholesale the accusations-phrased-as-questions of the Office of Hawaiian Affairs (OHA) which sued both the State of Hawai'i and the UH regarding the exact same subject matter. For example, section 1(a)(14) states that the University is to be audited on the value of "damage" and "opportunity costs" "that can be reasonably attributed to the failure of the University of Hawai'i to adequately balance observatory development with its public trust obligations." **It is wholly inappropriate for the legislature to insert itself as judge and jury in making conclusions of law, in law, while litigation is pending**, especially where one State agency has sued the State of Hawai'i itself, as well as the UH. We would respectfully note that validating OHA's (repeat) conduct in suing other State agencies would result in additional government-to-government litigation which is typically regarded by the public as a waste of taxpayer dollars. **Sections 1(a)(10)-(15) of SD1, as adopted from OHA testimony, should be stricken**; OHA has chosen to litigate, so it should be held to litigate these questions in a court of law. The substantive financial information being "requested" by OHA is covered by the earlier provisions in SD1.

Second, the scope of the audit is still overly broad. There are no time limitations provided, and the University does not maintain records for the duration of its activities on Maunakea.

Finally, the audit is duplicative and as the Legislative Auditor testified, it will be expensive. Recognizing the desire for updated financial information, the University administration has gathered basic information about both UH and Research Corporation of the University of Hawai'i (RCUH) programs relating to Maunakea. In addition, the Board of Regents (BOR) has adopted the attached Resolution Requesting Financial Management Audit of Maunakea Activities at its February 22, 2018 BOR Meeting which was held in Hilo. The Resolution calls for the Office of Internal Audit, which reports to the BOR and its Internal Audit Committee, to conduct an audit that **shall be completed by September 30, 2018**, and shall:

- (1) Study all university funds, lease payments, and any external funds that are received and used in the support of stewardship, management, education, and other activities related to Maunakea; and
- (2) Review transfers of funds between entities including both the UH and RCUH, and payments made to university-related support programs by Maunakea observatories or other third parties.

The Committee should consider the University's audit to be pursued before the State embarks on the costly and time-consuming audit called for in this bill. As the Legislative Auditor testified at the Higher Education Committee meeting, the cost of the audit proposed in a prior proposed SD1 could be as high as \$300,000. Again, we would also point the committee to the Annual Reports on the Mauna Kea Lands filed every year, as required by Hawai'i Revised Statutes Section 304A-1905¹, and to the multiple audits already performed by the State Auditor². We welcome the opportunity to supplement and update information already requested and provided.

In that vein, the University cannot support SB 757 SD1, since it inappropriately adopts wholesale the deposition-like "questions" posed by OHA, which are pending in current litigation which OHA chose to bring, it is overly broad in duration, and it is expensive and unnecessary considering the annual audits that are already conducted and the contemplated UH Regents audit.

Thank you for this opportunity to submit testimony.

¹ The most recent Annual Report is dated November 2017, and is found at http://www.hawaii.edu/govrel/docs/reports/2018/hrs304a-1905_2018_maunakea-lands_annual-report.pdf.

² See, e.g., 2014 Follow-Up Audit of the Management of Mauna Kea and the Mauna Kea Science Reserve, Exhibit 1.7 (Office of Mauna Kea Management Allocations, Revenues, and Expenditures, FY2009-FY2013), at p. 11; link provided here <http://files.hawaii.gov/auditor/Reports/2014/14-07.pdf>.

RESOLUTION

Requesting Financial Management Audit of Maunakea Activities

WHEREAS, the University of Hawai‘i (“university”) recognizes its kuleana and role in the responsible management and stewardship of Maunakea across multiple dimensions; and

WHEREAS, in 1968, the State Department of Land and Natural Resources (“DLNR”) issued a 65-year lease to the university, as lessee, for approximately 13,321 acres situated atop Maunakea for use as a science reserve; and

WHEREAS, in 1998, by mutual agreement approximately 2,033 acres were withdrawn from the lease, leaving an area of approximately 11,288 acres at the summit of Maunakea under the management of the university; and

WHEREAS, in 1999, DLNR conveyed to the university a 55-year lease for approximately 19.26 acres at Hale Pohaku – mid-level support facilities and visitor center; and

WHEREAS, pursuant to a non-exclusive easement with DLNR, the university also manages a portion of the Summit Access Road between Hale Pohaku and the university-managed summit area (the total acreage of the summit area, Hale Pohaku mid-level facilities area, and Summit Access Road easement area under university management is hereinafter referred to as “Science Reserve”); and

WHEREAS, in April 2009, a Comprehensive Management Plan that had been developed by the university and approved by the Board of Regents was adopted by the State Board of Land and Natural Resources (“BLNR”) to provide a management framework to address existing and future uses and activities within the Science Reserve; and

WHEREAS, on March 25, 2010, the BLNR approved four sub-plans that had been developed by the university and approved by the Board of Regents addressing public access, cultural resources management, natural resources management, and decommissioning, which were incorporated into the Comprehensive Management Plan (hereinafter collectively referred to as “CMP”); and

WHEREAS, public concerns have emerged and been made known to the Board of Regents and university administration regarding the university’s operational and financial management of the Science Reserve through various university-related entities including but not limited to the Office of Maunakea Management, Institute for Astronomy, and Maunakea Observatories Support Services, which receives administrative support through the Research Corporation of the University of Hawai‘i (RCUH); and

WHEREAS, the Board of Regents desires that these public concerns be objectively studied and properly addressed; and

University of Hawai‘i Board of Regents

R E S O L U T I O N

WHEREAS, the State Auditor has conducted several audits of the management of Maunakea and the Science Reserve and has published several follow-up recommendations to those management audits, as recently as July 2017 (Report No. 17-06); and

WHEREAS, the audits conducted by the State Auditor were management and compliance audits and did not include a financial management audit.

NOW, THEREFORE, BE IT RESOLVED that the Board of Regents hereby requests, in conjunction with the university administration, that the University of Hawai‘i Office of Internal Audit perform a financial management audit of the relevant university-related entities engaged in Maunakea stewardship and management; and

BE IT FURTHER RESOLVED that the audit shall:

- (1) Study all university funds, lease payments, and any external funds that are received and used in the support of stewardship, management, education, and other activities related to Maunakea; and
- (2) Review transfers of funds between entities including both the university and RCUH, and payments made to university-related support programs by Maunakea observatories or other third parties; and

BE IT FURTHER RESOLVED that the Board of Regents requests that this audit be commenced no later than March 1, 2018, and a report made to the Board of Regents no later than September 30, 2018; the final audit report shall summarize findings and shall also contain specific recommendations on improvements to existing practices or procedures.

Adopted by the Board of Regents
University of Hawai‘i
February 22, 2018