



UNIVERSITY OF HAWAII SYSTEM

Legislative Testimony

Testimony Presented Before the
Senate Higher Education Committee
and
Senate Water, Land, Agriculture, and Hawaiian Affairs Committee
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by
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HB1174, HD3 RELATING TO THE UNIVERSITY OF HAWAII

Chairs Tokuda and Hee, and Members of the Committees:

There is no doubt that Mauna Kea, particularly the summit region, is a special place. Mauna Kea contains an alpine environment in a tropical region, which is rare on the planet; it is one of the most culturally significant and archaeologically important places in the Hawaiian Islands; and it is recognized globally as a premier center for astronomical research. Mauna Kea is visited by those exercising traditional cultural practices, researchers in a variety of disciplines, astronomers, recreational users, educators, tourists and island residents. While each comes to visit, enjoy, and contemplate Mauna Kea in their own way, many do not realize how they, individually and collectively, may impact the mountain. The University is seeking express rule-making authority for the purpose of enabling the University to better manage these uses and activities and protect Mauna Kea's unique cultural and natural resources.

It is important to understand the land classification system and agencies responsible for managing the lands to protect the resources. For example, the upper region of Mauna Kea is zoned conservation district lands and is divided into three types of land designations. Beginning at the summit is the Mauna Kea Science Reserve (11,288 acres) and the Mauna Kea Ice Age Natural Area Reserve (3,893.5 acres). Surrounding these two parcels is the Mauna Kea Forest Reserve (52,500 acres). The Mauna Kea Science Reserve was originally classified Forest Reserve lands. In 1968 the Science Reserve was established when it was removed from the Forest Reserve by the Board of Land and Natural Resources (Land Board) and leased to the University for 65 years to be used as a scientific complex.

The Department of Land and Natural Resources (DLNR) is mandated to protect the resources on its lands and has adopted administrative rules governing the use of lands within the Forest Reserve, the Natural Area Reserves System, and the Conservation District. While the DLNR's conservation district rules apply to the Mauna Kea Science Reserve, there have not been any administrative rules adopted to specifically cover activities within the Mauna Kea Science Reserve.

The University understands the need and accepts its responsibility to protect the resources on the lands it uses on Mauna Kea, including lands comprising the following: (1) the Mauna Kea Science Reserve, (2) Hale Pohaku, and (3) the Mauna Kea Access Road above Hale Pohaku. While the University believes it has the implied authority to promulgate rules, it nevertheless

feels there is a need to eliminate any ambiguity and uncertainty regarding rule making and seeks express statutory authority to adopt administrative rules. The authority to adopt administrative rules is expected to help the University more effectively and efficiently carry out its management obligations under the Land Board's lease of the Mauna Kea lands to the University. The University has completed and submitted to the DLNR a Mauna Kea Comprehensive Management Plan (CMP) that is designed to protect and preserve the natural and cultural resources on and within the University's Mauna Kea lands. The University will be seeking the Land Board's approval for the CMP, which will require the University to carry out a variety of oversight and management functions and responsibilities. Having rule making authority will enable the University to more efficiently carry out these CMP functions and responsibilities.

Moreover, granting the University the authority to assess and collect administrative fines should enable the University to more effectively enforce such rules. In adopting such rules, the University will be required to address and resolve any conflicts with other applicable statutes or rules.

The House amended this bill to: (1) clarify that the rule making authority sought by the University would only cover public and commercial activities and (2) provide definitions for "public" and "commercial" activities.

At the request of the Hawai'i State Legislature, the Legislative Auditor conducted an initial audit of the management of Mauna Kea (1998) and a follow up audit (2005) in which the Legislative Auditor stated clearly that the University, not DLNR, should develop rules.

The University has been trying to comply with the Legislative Auditor's recommendations and submitted bills to the Legislature seeking statutory rule making authority in 2005 and again in 2006. Neither bill, however, was approved by the Legislature. If the current version of the bill is not passed by the Legislature, it would make it more difficult for the University to meet its management and oversight obligations relating to Mauna Kea, including implementing the Mauna Kea CMP and performing the related functions and responsibilities. Without the ability to adopt or enforce rules, the University could, at best, only ask a violator or potential violator to stop such prohibited or restricted activity (e.g., continued desecration of or intrusion into culturally significant sites (including improper entry into or activity within a historic or culturally significant site), littering, graffiti, and unsafe or improper operation of recreational, off-road, and other motor vehicles that may be damaging sensitive areas).

The bill requires that the University should "[e]ncourage and foster a process of collaboration and involvement between its Mauna Kea lands advisory bodies and community interests to ensure that the process of developing any administrative rules for the Mauna Kea lands is accomplished with community participation and input." It also requires that in establishing administrative rules, the University "address and reconcile any conflicts with other statutes or rules that are applicable to the Mauna Kea lands." To accomplish this, the University is committed to working with the community, particularly the Big Island community, and other public entities, such as the DLNR and the Office of Hawaiian Affairs, in preparing, establishing, and adopting any administrative rules applicable to the Mauna Kea lands.

This bill also proposes to establish a Mauna Kea management special fund. This is viewed as an affirmation of the University's commitment to improving the conditions on Mauna Kea. This fund would afford the University the necessary flexibility to better carry out its management responsibilities, particularly under the CMP. The CMP clearly articulates an overall management strategy, with sufficient specific component plans, that is designed to protect Mauna Kea's unique cultural and natural resources. The CMP was developed using an integrated approach drawing upon the Hawaiian approach to managing natural and cultural resources, as well as contemporary science based management tools. The CMP also applies an adaptive management practice, which is a systematic process for continually improving management policies and practices for resource protection by learning from outcomes of past and current management activities. Just as the CMP is designed to continually evolve and improve, the University's ability to fund any measures or activities to implement such improvements needs to be assured and preserved. Having such a fund will help provide this assurance and protection. A special fund will also assist the University in accounting for and keeping track of the benefits and costs relating specifically to Mauna Kea.

Without a separate special fund dedicated to Mauna Kea, the statutes establishing one or more of the University's special or revolving funds (such as the real property and facilities fund established pursuant to HRS section 304A-2274) would need to be amended so that funds arising from all Mauna Kea related activities could be deposited and expended from the fund. Creating such a niche in an existing fund used by the entire University system (and not just for Mauna Kea) could pose some challenges. Part of such an amendment to other statutes would need to include the ability of the University to deposit and expend monies collected by the University as administrative fines.

The University supports passage of this bill. Thank you for your thoughtful consideration.