



UNIVERSITY OF HAWAI'I SYSTEM

TESTIMONY

SB 904 SD 1 RELATING TO THE MANAGEMENT OF THE
UNIVERSITY OF HAWAII

Testimony Presented Before the
House Committee on Higher Education

March 17, 2005

by

Ruth Tsujimura
University Deputy General Counsel
University of Hawai'i

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Good afternoon Chair Waters, Vice Chair Shimabukuro and Committee Members:

My name is Ruth Tsujimura, University Deputy General Counsel, and I am here to testify in support of S.B. 904, S.D. 1, with an amendment.

The purpose of S.B. 904, S.D. 1, is to provide express statutory authority to the University to allow it to adopt administrative rules pursuant to chapter 91, Hawai'i Revised Statutes (HRS), to regulate public recreational and commercial activities on lands under its control, most particularly at the Mauna Kea Science Reserve (Science Reserve).

The Science Reserve, which is in conservation district, was established in 1968 when the Board of Land and Natural Resources approved a 65-year lease to the University for educational and research use. All of the law and rules and regulations applicable to conservation district and historic preservation which are administered by the Department of Land and Natural Resources (DLNR) still apply to the Science Reserve. In 1994, however, the DLNR amended their conservation district administrative rules, and differentiated between "uses" such as construction of new and/or temporary facilities, and "activities" such as hiking, camping, skiing, snow boarding, etc. As a result, DLNR's line agencies modified their respective administrative rules to cover public recreational activities in their charge areas, such as

forest reserves, natural area reserves, state parks, etc. The Science Reserve is leased land, and does not fall within any of these DLNR designations, and therefore, there are no administrative rules governing public recreational activities.

Because public recreational and commercial activities are permitted on the Science Reserve, via the lease agreement between the state and the University, and the 2000 Mauna Kea Science Reserve Master Plan, administrative rules are necessary to ensure public safety, and cultural and natural resource protection. In 1998, the Legislative Auditor issued a report on the management of Mauna Kea and the Science Reserve, and strongly recommended the adoption of administrative rules. Further, the UH Board of Regents-approved Mauna Kea Science Reserve Master Plan also calls for the adoption of administrative rules by the University.

The University of Hawai'i currently has statutory authority to promulgate administrative rules for certain purposes, however, it was concluded that the University currently lacked express statutory authority to regulate public recreational and commercial activities on lands it controls. For example, HRS § 304-4(a) grants authority to the board of regents to promulgate rules pursuant to chapter 91 to "manage the inventory, equipment, surplus property, and expenditures of the university" and to control and regulate the same. HRS § 304-4(c) authorizes the board of regents to adopt administrative rules to define residency for tuition purposes. Moreover, under HRS § 304-2(1) and (6), the university, under the direction of the board of regents has the authority to "adopt, amend and repeal bylaws governing the conduct of its business and the performance of the powers and duties granted to or imposed upon it by law" and "to take such actions as may be necessary or appropriate to carry out the powers

conferred upon it by law.” It was determined that these statutory authorizations did not clearly confer upon the University the authority to promulgate administrative rules to regulate public recreational and commercial activities.

As this bill has been heard in the Senate, and now the House, we have heard concerns that the bill does not specifically mention Mauna Kea. To alleviate those concerns, we suggest adding a sentence to the end of Section 2 (a), to read: The board of regents may also adopt rules, subject to chapter 91, to regulate activities at the Mauna Kea Science Reserve, Hale Pohaku, and the road corridor leading to and from Hale Pohaku to the Mauna Kea Science Reserve.

The University has consulted with the DLNR and the Department of the Attorney General. In fact, numerous meetings have occurred between these departments over the course of several years. It was the consensus of all three departments that a bill seeking statutory authorization to promulgate administrative rules should be introduced by the University. The language contained in this bill is the result of these efforts.

In the original S.B. 904, there was additional language authorizing the University to impose administrative fines for violation of administrative rules. We request that the language be reinserted. We also request the restoration of authority to enforce the rules through an administrative hearing process. The penalty portion of the language is vital to the enforcement of any administrative rules promulgated.

When this bill was heard before the Senate Higher Education Committee, there was also language authorizing the assessment of the cost of enforcement to be assessed against a person adjudged to have violated the rules, including attorneys fees. We are not seeking the restoration of that language.

We have attached draft language for your consideration. We respectfully request the passage of this bill. Thank you for your thoughtful consideration of this bill. Mr. Bill Stormont, Director of the Mauna Kea Management Office, who is here with me today, and I are available to answer any questions that the members may have.

Suggested language from the University of Hawai'i to be inserted into SB 904 S.D. 1, page 3, line 14.

Through rulemaking, the board may set, charge, and collect fines for violations of any administrative rule adopted pursuant to this chapter. The board shall provide for procedures pursuant to chapter 91, including contested case hearings, for the purpose of enforcing its rules. Fines shall be established as follows:

(1) For the first violation, a fine of not more than \$2,500;

(2) For the second violation within five years of a previous violation, a fine of not more than \$5,000; and

(3) For the third and any subsequent violation within five years of the last violation, a fine of not more than \$10,000.

Each day of violation shall constitute a separate offense.