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# A BILL FOR AN ACT

RELATING TO LAND USE.

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:**

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**PART I**

SECTION 1. The Hawaii Revised Statutes is amended by adding a new chapter to be appropriately designated and to read as follows:

**"CHAPTER**

**MAUNA KEA MANAGEMENT AUTHORITY**

§ -1 **Findings and purpose.** The legislature finds that Mauna Kea is of profound cultural and genealogical importance to Native Hawaiians. Mauna Kea is also valued as an exceptional site for astronomical advancements. The summit region of Mauna Kea is a spiritual site that is home to cultural landscapes, fragile alpine habitats, and historical and archaeological treasures, as well as endemic species found nowhere else on the planet. Mauna Kea's exceptional atmospheric conditions make it the world's premier site for astronomical observations. In addition, the legislature recognizes the critical need to manage these sensitive cultural and natural resources in a way that



1 supports the continuance of traditional and customary practices  
2 and science and technology.

3 The legislature further finds that the protection and  
4 preservation of Mauna Kea through proper management and  
5 stewardship is of statewide concern. Since 1998, four audits by  
6 the state auditor have been critical of the management,  
7 stewardship, and protection of Mauna Kea. Although significant  
8 changes have occurred on Mauna Kea since the 1998 audit,  
9 negative experiences over the past fifty years have eroded  
10 public confidence and demonstrated the critical need for fresh  
11 leadership centered on a new organizational structure,  
12 management system, and procedures.

13 Accordingly, the legislature finds that there is a clear  
14 need for one entity to serve as a single focal point of  
15 management, responsibility, communication, and enforcement  
16 regarding Mauna Kea. This new entity will increase the  
17 accountability of all tenants on Mauna Kea and will ensure that  
18 each tenant is aware of its obligations and responsibilities.  
19 This entity will also provide the necessary stewardship for the  
20 sustainable use of Mauna Kea and the proper generation of  
21 revenue from that use. This entity will be headquartered on the



1 island of Hawaii and will be recognized by the general public  
2 and the State as the single point of contact for Mauna Kea's  
3 summit region and midlevel facilities. The legislature intends  
4 that this new entity will be led by a board whose members have  
5 no inherent conflicts of interest regarding Mauna Kea, and who  
6 will provide the requisite level of independence, objectivity,  
7 competence, relevant expertise, commitment, and willingness to  
8 be engaged in order for the new entity to achieve its goals.  
9 Revenues generated by the authority will primarily be used for  
10 the management and proper stewardship of the approximately  
11 eleven thousand four hundred acres of lands on Mauna Kea under  
12 the authority's jurisdiction. The legislature further intends  
13 for the new entity to supersede all existing entities that are  
14 responsible for the management and stewardship of Mauna Kea.

15 The purpose of this Act is to establish a Mauna Kea  
16 management authority.

17 § -2 Definitions. As used in this chapter, unless the  
18 context otherwise requires:

19 "Authority" means the Mauna Kea management authority.

20 "Candidate advisory council" means the Mauna Kea candidate  
21 advisory council.



1 "Chairperson" means the chairperson of the Mauna Kea  
2 management authority.

3 "Holder of record having a security interest" means a  
4 person who is the owner or possessor of a security interest in  
5 Mauna Kea lands.

6 "Land" includes all interests therein and natural resources  
7 including water, minerals, and all things connected with land,  
8 unless expressly provided otherwise.

9 "Land license" means a privilege granted to enter land for  
10 a certain special purpose such as the removal of timber, soil,  
11 sand, gravel, stone, hapuu, and plants, but not including water  
12 rights, ground or surface, nor removal of minerals.

13 "Lease" means the right to possess and use land for a term  
14 of years.

15 "Mauna Kea" means all real property identified in part II  
16 of this Act that is situated on the mountain on the island of  
17 Hawaii known variously as Mauna Kea, Maunakea, Mauna a Wakea,  
18 Mauna O Wakea, Ka Mauna a Kea, or Mauna Akea.

19 "Mauna Kea lands" means all lands held in trust or  
20 otherwise controlled by the Mauna Kea management authority.



1 "Person" includes an individual, a partnership, a  
2 corporation, or an association, except as otherwise defined in  
3 this chapter.

4 "Vice chairperson" means the vice chairperson of the Mauna  
5 Kea management authority.

6 § -3 Mauna Kea management authority; established. (a)

7 There is established the Mauna Kea management authority, which  
8 shall be a body corporate and a public instrumentality of the  
9 State for the purpose of implementing this chapter. The  
10 authority shall be attached to the department of accounting and  
11 general services for administrative purposes.

12 (b) The authority shall consist of nine voting members who  
13 shall be appointed by the governor from lists of qualified  
14 candidates presented to the governor by the candidate advisory  
15 council, pursuant to section -5, unless otherwise provided  
16 for by this subsection, and shall be confirmed by the senate.

17 The members shall include:

- 18 (1) A native Hawaiian practitioner or lineal descendant of  
19 practitioners of native Hawaiian traditional and  
20 customary practices associated with Mauna Kea, who  
21 shall be appointed from a list of three qualified



1           nominees submitted to the governor by the office of  
2           Hawaiian affairs trustees;

3           (2) A native Hawaiian individual with demonstrated  
4           expertise in Native Hawaiian traditional and customary  
5           practices or Hawaiian history, as evidenced by:

6           (A) A college or post-graduate degree in a relevant  
7           field, such as Hawaiian studies, native Hawaiian  
8           law, native Hawaiian traditional and customary  
9           practices, or related subject area;

10          (B) Work history that demonstrates an appropriate  
11          level of knowledge in native Hawaiian traditional  
12          and customary practices or native Hawaiian  
13          history; or

14          (C) Substantial experience as a practitioner of  
15          native Hawaiian traditions and customs,  
16          who shall be appointed from a list of three qualified  
17          nominees submitted to the governor by the office of  
18          Hawaiian affairs trustees;

19          (3) A native Hawaiian practitioner or lineal descendant of  
20          practitioners of native Hawaiian traditional and  
21          customary practices associated with Mauna Kea, who



- 1 shall be appointed from a list of three qualified  
2 nominees submitted to the governor by the candidate  
3 advisory council;
- 4 (4) A native Hawaiian educational specialist with  
5 expertise in either early, secondary, or post-  
6 secondary education as evidenced by a college or post-  
7 graduate degree in education and a minimum of ten  
8 years experience in the department of education or  
9 University of Hawaii system, who shall be appointed  
10 from a list of three qualified nominees submitted to  
11 the governor by the candidate advisory council;
- 12 (5) A native Hawaiian individual who has expertise in  
13 business, accounting, finance, economics, or  
14 innovation with a minimum of ten years of business  
15 experience in the State, who shall be appointed from a  
16 list of three qualified nominees submitted to the  
17 governor by the candidate advisory council;
- 18 (6) An environmental expert with demonstrated expertise in  
19 environmental sciences or relevance to the natural  
20 resources and ecological attributes of Mauna Kea, as  
21 evidenced by a post college or post-graduate degree in



1 biology, ecology, invasive species management, or  
2 other relevant field or work history that demonstrates  
3 an appropriate level of knowledge of Mauna Kea's  
4 natural resources and ecology, who shall be appointed  
5 from a list of three qualified nominees submitted to  
6 the governor by the candidate advisory council;

7 (7) An astronomy expert as evidenced by a post college or  
8 post-graduate degree in astronomy or astrophysics who  
9 is not currently employed at an astronomy facility  
10 associated with Mauna Kea or the University of Hawaii  
11 institute for astronomy, who shall be appointed from a  
12 list of three qualified nominees submitted to the  
13 governor by the candidate advisory council;

14 (8) A business expert with expertise in accounting,  
15 finance, economics, and innovation, as evidenced by a  
16 college or post-graduate degree in business  
17 administration, who shall be appointed from a list of  
18 three qualified nominees submitted to the governor by  
19 the candidate advisory council; and

20 (9) A land management expert with demonstrated expertise  
21 in real estate, property appraisal, and leases, as



1 well as subject matter expertise in Hawaii's land use  
2 laws, who shall be appointed from a list of three  
3 qualified nominees submitted to the governor by the  
4 candidate advisory council;  
5 provided that all members of the authority shall be residents of  
6 the county of Hawaii.

7 A majority of all members shall constitute a quorum to do  
8 business, and the concurrence of a majority of all members shall  
9 be necessary to make any action of the authority valid. All  
10 members shall continue in office until their respective  
11 successors have been appointed and confirmed.

12 (c) The authority shall annually elect the chairperson and  
13 vice chairperson from among its members.

14 (d) The members of the authority shall serve for a term of  
15 four years and shall not serve more than two terms; provided  
16 that the initial terms shall be staggered, as determined by the  
17 governor.

18 (e) The members of the authority appointed under  
19 subsection (b) shall serve without compensation but shall be  
20 reimbursed for expenses, including travel expenses, meals, and  
21 per diem, incurred in carrying out their duties.



1 (f) The authority's day-to-day operations shall be led by  
2 the chairperson. The authority's organizational structure shall  
3 include but not be limited to six divisions as follows:

4 (1) Enforcement, which shall be led by a chief enforcement  
5 officer and include communication center operators,  
6 rangers and other law enforcement officers pursuant to  
7 section -41, and other staff. This division shall  
8 be responsible for the health, safety, and welfare of  
9 visitors to Mauna Kea, including responding to  
10 emergencies of a medical or law enforcement nature,  
11 and for the protection of natural resources, on Mauna  
12 Kea lands;

13 (2) Culture and the environment, which shall be led by a  
14 chief culture and environment officer and be  
15 responsible for the protection, preservation, and  
16 appreciation of cultural and natural resources within  
17 the authority's managed areas. This division shall  
18 work with lineal descendants, community members,  
19 environmentalists, and individuals traditionally  
20 associated with cultural resources on Mauna Kea  
21 through appropriate programs of research, planning,



1 and stewardship. This division shall also work with  
2 the state historic preservation division and the  
3 Hawaii island burial council, as necessary;

4 (3) Revenue management, which shall be led by a chief  
5 financial officer and be responsible for the fiscal  
6 management of all financial resources associated with  
7 the Mauna Kea summit, observatories, Hale Pohaku,  
8 visitor center, and all commercial activities,  
9 including budget and accounting functions. A  
10 certified public accountant shall be a member of the  
11 division staff;

12 (4) Operations, which shall be led by a chief operations  
13 officer and be responsible for planning and organizing  
14 operations to achieve maximum efficiency and for the  
15 daily management and oversight of Mauna Kea's  
16 facilities, parks, trails, and natural and cultural  
17 resources. This division shall also manage the entry  
18 and access center, cultural and visitor center, all  
19 infrastructure within the authority's jurisdiction,  
20 the Mauna Kea access road, and all water, wastewater,



1 and power functions associated with summit and Hale

2 Pohaku operations;

3 (5) Legal, which shall be led by a chief legal officer and

4 general counsel and shall be responsible for

5 overseeing all applications of all laws, court

6 decisions, and rules pertaining to the authority, and

7 shall include attorneys who shall be responsible for

8 the management of contracts, subleases, memoranda of

9 understanding, and memoranda of agreement entered into

10 by the authority; and

11 (6) Community relations, which shall be led by a chief

12 community relations officer and be responsible for

13 strengthening community engagement and education

14 through grants, scholarships, and community benefits

15 programs. Community relations staff shall work in

16 coordination with community and business groups, the

17 department of education, and the University of Hawaii

18 to prepare local residents for careers in the science,

19 technology, engineering, and mathematics fields. This

20 division shall also coordinate interactive educational

21 opportunities for Mauna Kea visitors and develop a



1 summit access program and a peace park concept at Hale  
2 Pohaku.

3 § -4 Powers and responsibilities; generally. (a) The  
4 authority shall hold title to the lands situated on Mauna Kea as  
5 identified in section -2 and shall establish access,  
6 stewardship, and management policies for Mauna Kea lands,  
7 including but not limited to policies pertaining to the  
8 protection of natural and cultural resources, all recreational  
9 activities, and all commercial uses.

10 Except as otherwise limited by this chapter, the authority  
11 may:

- 12 (1) Sue and be sued;
- 13 (2) Have a seal and alter the same at pleasure;
- 14 (3) Make and execute contracts, leases, and all other  
15 instruments necessary or convenient for the exercise  
16 of its powers and functions under this chapter;
- 17 (4) Make and alter bylaws for its organization and  
18 internal management;
- 19 (5) Adopt rules pursuant to chapter 91 for the purposes of  
20 this chapter;



- 1 (6) Appoint officers, agents, and employees, prescribe  
2 their duties and qualifications, and fix their  
3 salaries, subject to chapters 76 and 89;
- 4 (7) Prepare or cause to be prepared a current and  
5 comprehensive management plan for all aspects of  
6 public and private access and use of Mauna Kea lands,  
7 which shall include benchmarks;
- 8 (8) Provide advisory, consultative, training, and  
9 educational services, technical assistance, and advice  
10 to any person, partnership, or corporation, either  
11 public or private, to carry out the purposes of this  
12 chapter, and engage the services of consultants on a  
13 contractual basis for rendering professional and  
14 technical assistance and advice;
- 15 (9) Procure insurance against any loss in connection with  
16 its property and other assets and operations in  
17 amounts and from insurers as it deems desirable;
- 18 (10) Contract for and accept gifts or grants in any form  
19 from any public agency or from any other source;



- 1       (11) Adopt rules governing the procurement and purchase of
- 2           goods, services, and construction, subject to the
- 3           requirements of chapter 103D;
- 4       (12) Prevent trespassing and other illegal activities on
- 5           Mauna Kea lands;
- 6       (13) Cause all persons trespassing on or unlawfully
- 7           occupying Mauna Kea lands, and their effects, and all
- 8           unauthorized animals to be removed therefrom and to
- 9           impound the animals according to law;
- 10      (14) Enter any Mauna Kea lands in order to take possession
- 11           thereof, and to resume possession of any Mauna Kea
- 12           lands in case of surrender, forfeiture, or escheat;
- 13      (15) Enforce contracts respecting sales, leases, licenses,
- 14           permits, or other disposition of Mauna Kea lands;
- 15      (16) Recover money due the authority for damage done to any
- 16           Mauna Kea lands by wrongful entry and occupation or by
- 17           wrongful removal therefrom or destruction of any
- 18           property;
- 19      (17) Bring actions and proceedings as may be necessary to
- 20           carry out the powers and duties of the authority in



- 1 the name of the State and to defend actions brought  
2 against the State as may be authorized;
- 3 (18) Enforce laws and rules within all Mauna Kea lands,  
4 pursuant to sections -3(f)(1), -40, and -41;
- 5 (19) Do any and all things necessary to carry out its  
6 purposes and exercise the powers granted in this  
7 chapter;
- 8 (20) Review, revise, and update as necessary all management  
9 plans for Mauna Kea, including but not limited to the  
10 2000 Mauna Kea science reserve master plan, the 2009  
11 Mauna Kea comprehensive management plan, the cultural  
12 resources management plan, the natural resources  
13 management plan, the public access plan, and the  
14 decommissioning plan; and
- 15 (21) Establish advisory committees to advise the authority  
16 on culture, science, environment, education,  
17 astronomy, and business.
- 18 (b) Notwithstanding any other law to the contrary:
- 19 (1) The authority may grant easements, by direct  
20 negotiation or otherwise, for particular purposes in  
21 perpetuity on terms as may be set by the board,



1 subject to reverter to the authority upon termination  
2 or abandonment of the specific purpose for which it  
3 was granted; provided the sale price of an easement  
4 shall be determined pursuant to section -9; and

5 (2) No person who has had a previous lease, license,  
6 permit, or easement covering Mauna Kea lands canceled,  
7 during the five years preceding the date of  
8 disposition, for failure to satisfy the terms and  
9 conditions thereof shall be eligible to lease Mauna  
10 Kea lands or to be granted a lease, license, permit,  
11 or easement covering Mauna Kea lands.

12 (c) The authority shall be subject to chapters 92 and 92F.

13 (d) The authority shall be prohibited from selling any  
14 Mauna Kea lands.

15 § -5 Mauna Kea candidate advisory council for the Mauna  
16 Kea management authority. (a) The Mauna Kea candidate advisory  
17 council for the authority shall recruit, evaluate, and present  
18 to the governor qualified candidates for nomination to  
19 applicable vacant seats on the authority as provided in section  
20 -3(b).

21 (b) The candidate advisory council shall:



- 1 (1) Develop and implement a fair and independent procedure  
2 for evaluating candidates to serve on the authority;
- 3 (2) Actively solicit and accept applications from  
4 potential candidates;
- 5 (3) Evaluate candidates for the authority on their  
6 background, experience, and potential for discharging  
7 the responsibilities of a member of the authority,  
8 based upon the qualifications pursuant to section  
9 -3(b); and
- 10 (4) Vote by secret ballot to select qualified nominees for  
11 the authority; and
- 12 (5) Present a list of at least three candidates to the  
13 governor for nomination and appointment for each  
14 vacant seat on the authority pursuant to section  
15 -3(b).
- 16 (c) The candidate advisory council shall initiate the  
17 recruitment and evaluation of candidates for each applicable  
18 vacancy on the authority, pursuant to section -3(b), within:
- 19 (1) Sixty days of a vacancy; or
- 20 (2) At least one hundred twenty days prior to the  
21 expiration of a member of the authority's term.



1 (d) To provide continuity to the authority, the governor  
2 may recommend to the candidate advisory council the  
3 reappointment of a member of the authority, subject to advice  
4 and consent of the senate.

5 (e) The candidate advisory council shall consist of eleven  
6 voting members to be appointed without regard to section 26-34  
7 as follows:

8 (1) The representative of the island of Hawaii on the  
9 office of Hawaiian affair's board of trustees;

10 (2) The member on the Hawaiian homes commission who  
11 represents the island of Hawaii; provided that the  
12 member shall alternate between the east Hawaii member  
13 and west Hawaii member every two years;

14 (3) The department chair of the University of Hawaii at  
15 Hilo astronomy program;

16 (4) The executive director of the 'Imiloa astronomy center;

17 (5) The aha moku advisory committee Hawaii island  
18 committee member;

19 (6) A representative from the royal order of Kamehameha I,  
20 Moku o Mamalahoa Heiau;



- 1 (7) The president of the Hawai'i Island Chamber of  
2 Commerce, or the president's designee;
- 3 (8) The president of the Sierra Club, Hawaii island  
4 chapter, or the president's designee;
- 5 (9) A representative from the Mauna Kea observatories;
- 6 (10) The president of the Hawaii Island Contractors  
7 Association, or the president's designee; and
- 8 (11) A representative from the Edith Kanakaole Foundation.
- 9 (f) Members of the candidate advisory council shall serve  
10 a term of four years; provided that the member on the Hawaiian  
11 homes commission who represents east Hawaii or west Hawaii shall  
12 serve two years.
- 13 (g) Any member of the candidate advisory council whose  
14 term has expired may continue in office as a holdover member  
15 until a successor is appointed; provided that a holdover member  
16 shall not hold office for more than six months following the  
17 expiration of the member's term of office.
- 18 (h) The chairperson of the candidate advisory council  
19 shall be elected by a majority of the voting members of the  
20 candidate advisory council. A majority of the members to which  
21 the candidate advisory council is entitled shall constitute a



1 quorum to conduct business. The concurrence of a majority of  
2 the members of the candidate advisory council shall be necessary  
3 to make any action of the candidate advisory council valid. The  
4 candidate advisory council shall meet annually and at other  
5 times as necessary. The candidate advisory council shall be  
6 exempt from part I of chapter 92.

7 (i) Members of the candidate advisory council shall serve  
8 without compensation but shall be reimbursed for expenses,  
9 including travel expenses, necessary for the performance of  
10 their duties.

11 § -6 Auction. Except as otherwise specifically  
12 provided, all disposition of lands by the authority shall be  
13 made at public auction after public notice as provided in  
14 section -8. All applicable auctions shall be held at the  
15 door of the office of the land agent or at a place that is  
16 convenient in the district in which the land is located, and  
17 shall be conducted by the land agent or by any authorized  
18 employee of the authority under the direction of the authority,  
19 all of whom shall perform this service without extra  
20 compensation.



1           **§ -7 Drawing.** Whenever Mauna Kea lands are to be leased  
2 by drawing, the authority shall notify by publication of  
3 applications for the drawing as provided in section -8 with  
4 all details concerning the drawing as it shall deem necessary  
5 and desirable. Applications to participate in the drawing shall  
6 be filed with the authority within two weeks after the last  
7 publication date. Within forty-five days after the closing date  
8 for applications, the authority shall screen the qualifications  
9 of the applicants, select those qualified to participate, notify  
10 all applicants of the selection, and conduct a drawing. The  
11 date of the drawing shall be published as set forth in section  
12 -8. The award shall be made within one week and all  
13 applicants shall be notified of the result of the drawing. The  
14 lease shall be issued within ninety days after the drawing or  
15 when conditions of sale are fulfilled.

16           **§ -8 Notices.** (a) Public notice of any proposed  
17 disposition by auction shall be given at least once statewide  
18 and once in the county where the land being disposed of is  
19 located. Notice of the auction shall contain the following:

20           (1) Time and place of the auction;



1 (2) General description of the land, including the address  
2 and tax map key;

3 (3) Specific use for which the disposition is intended;  
4 and

5 (4) Rental price to be charged.

6 The maps showing the metes and bounds description and the  
7 classification of the land shall be kept in the office of the  
8 authority and of its land agent in the county in which the land  
9 is situated, and shall be open for inspection at all reasonable  
10 hours.

11 (b) Whenever a disposition by drawing by lots is proposed,  
12 public notice inviting applications to participate in the  
13 drawing shall be given once statewide and once in the county  
14 where the land being disposed of is located. The notice shall  
15 contain:

16 (1) The qualifications required of applicants;

17 (2) A general description of the land, including the  
18 address and tax map key;

19 (3) The specific use for which the disposition is  
20 intended; and



1           (4) The date by which all applications must be filed,  
2                    which shall be not less than fourteen days after the  
3                    last notice.

4    Within forty-five days after the closing date for applications,  
5    the authority shall screen and select those qualified to  
6    participate in the drawing, notify all applicants of the  
7    selection, and conduct the drawing.

8            The notice of selection of applicants qualified to  
9    participate in the drawing, together with the notice of drawing,  
10   shall be mailed to each applicant, whether or not the applicant,  
11   in fact, qualified. The notice of the drawing shall state the  
12   time and place of the drawing. Upon completion of the drawing,  
13   the award shall be announced within one week, and the lease  
14   issued within ninety days after the drawing or when the  
15   conditions of the sale are fulfilled.

16           (c) Public notice of a proposed disposition by negotiation  
17   shall be given at least once statewide and once in the county  
18   where the land being disposed of is located; provided that the  
19   notices are not required for permits. The notice shall invite  
20   proposals and state in general terms the size, location, and  
21   prices or rental of lots to be leased, the terms of lease, and



1 the last date upon which application will be received by the  
2 authority, which shall not be less than thirty days after the  
3 last date of the notice. The notice shall also state the times  
4 and places at which more detailed information with respect to  
5 the lease may be secured by interested persons.

6 (d) In addition to giving public notice, any public notice  
7 required under this section shall also be posted on the Internet  
8 in an easily-located manner.

9 § -9 Appraisals. (a) The appraisal of Mauna Kea lands  
10 for lease at public auction for the determination of the upset  
11 price may be performed by an employee of the authority qualified  
12 to appraise lands, or by at least one but not more than three  
13 disinterested appraisers whose services shall be contracted by  
14 the authority; provided that the upset rental shall be  
15 determined by disinterested appraisal whenever prudent  
16 management so dictates. No lands shall be leased for a sum less  
17 than the value fixed by appraisal; provided that for any lease  
18 at public auction, the authority board may establish the rental  
19 price at less than the appraisal value set by an employee of the  
20 authority and the lands may be leased at that price. The  
21 authority shall be reimbursed by the lessee for the cost of any



1 appraisal required to be made by a disinterested appraiser or  
2 appraisers contracted by the authority.

3 (b) The lease rental of lands to be disposed of by drawing  
4 or by negotiation shall be no less than the value determined by:

5 (1) An employee of the authority qualified to appraise  
6 lands; or

7 (2) A disinterested appraiser or appraisers whose services  
8 shall be contracted by the authority; provided that  
9 the appraisal, and any further appraisal with the  
10 approval of the authority, shall be at the cost of the  
11 lessee;

12 provided that the lease rental shall be determined by  
13 disinterested appraisal whenever prudent management so dictates;  
14 provided further that if the lessee does not agree upon the  
15 lease rental, the lessee may appoint an appraiser who shall  
16 conduct an appraisal on behalf of the lessee. If, after the  
17 lessee's appraisal, the authority and the lessee do not agree on  
18 the lease rental, the parties shall make a good faith effort to  
19 resolve the dispute through nonbinding mediation by a single  
20 mediator, appointed by mutual agreement of the parties. The  
21 cost of mediation shall be borne equally by the parties. If



1 mediation does not resolve the dispute, the lessee's appraiser  
2 together with the authority's appraiser shall appoint a third  
3 appraiser, and the lease rental shall be determined by  
4 arbitration as provided for in chapter 658A, which shall be  
5 final and binding. The lessee shall pay for all appraisal  
6 costs, except that the cost of the third appraiser shall be  
7 borne equally by the lessee and the authority.

8 (c) If a reopening of the rental to be paid on a lease  
9 occurs, the rental for any ensuing period shall be the fair  
10 market rental at the time of reopening. At least six months  
11 prior to the time of reopening, the fair market rental shall be  
12 determined by:

13 (1) An employee of the authority qualified to appraise  
14 lands; or

15 (2) A disinterested appraiser whose services shall be  
16 contracted by the authority,

17 and the lessee shall be promptly notified of the determination  
18 and provided with the complete appraisal prepared by the  
19 authority or the authority's appraiser; provided that if the  
20 lessee does not agree upon the fair market rental, the lessee  
21 may appoint the lessee's own appraiser and the lessee shall



1 provide the authority with the complete appraisal prepared by  
2 the lessee's appraiser. Each party shall pay for its own  
3 appraiser. If the authority's and the lessee's appraisers do  
4 not agree upon the lease rental, the lessee and the authority  
5 shall in good faith attempt to resolve the dispute by nonbinding  
6 mediation by a single mediator mutually agreed upon by the  
7 parties. If the dispute is not resolved by the mediation, the  
8 fair market rental shall be determined by arbitration as  
9 provided in chapter 658A, which shall be final and binding.

10 Either the authority or the lessee may initiate arbitration by a  
11 written demand to the other party. The arbitration shall be  
12 conducted by a single arbitrator, who shall be an attorney  
13 licensed in the State, a person with experience in contracts and  
14 real estate valuation, or another qualified person, who shall be  
15 mutually agreed upon by the parties. If an arbitrator is not  
16 selected within fifteen days of the demand for arbitration,  
17 appointment of an arbitrator may be requested by either party by  
18 motion made to the circuit court in the circuit in which the  
19 land is located. The cost of mediation or arbitration shall be  
20 borne equally by the lessee and the authority. Any language in  
21 present leases to the contrary notwithstanding, the provisions



1 of this subsection, when possible and notwithstanding the six-  
2 month notice required, shall apply to leases with original lease  
3 rental reopening dates effective before and after July 1, 1996.

4 (d) Complete appraisal reports, including all comparables  
5 relied upon in the appraisal reports, shall be available for  
6 review by the public. All complete appraisal reports shall be  
7 provided to the opposing party prior to the commencement of  
8 mediation or arbitration, if applicable, of the valuation  
9 dispute.

10 § -10 Notice of breach or default. Except as otherwise  
11 specifically provided in this chapter, if a breach or default of  
12 any term, covenant, restriction, or condition of any lease  
13 heretofore or hereafter issued under this chapter occurs, the  
14 authority shall deliver a written notice of the breach or  
15 default by personal service or by registered or certified mail  
16 to the party in default and to each holder of record having any  
17 security interest in the land covered by or subject to the lease  
18 making demand upon the party to cure or remedy the breach or  
19 default within sixty days from the date of receipt of the  
20 notice; provided that if the breach involves a failure to make  
21 timely rental payments pursuant to the lease heretofore or



1 hereafter issued under this chapter, the written notice shall  
2 include a demand upon the party to cure the breach within less  
3 than sixty days, but not less than five business days, after  
4 receipt of the notice. Upon failure of the party to cure or  
5 remedy the breach or default within the time period provided  
6 herein or within an additional period as the authority may allow  
7 for good cause, the authority may exercise rights that it may  
8 have at law or as set forth in the lease, subject to section  
9 -11.

10 § -11 Rights of holder of security interest. Whenever  
11 any notice of breach or default is given to any party under  
12 section -10, or under the terms of any lease, license,  
13 agreement, or other instrument issued or to be issued under this  
14 chapter, a copy of the notice shall be delivered by the  
15 authority to all holders of record of any security interest in  
16 the land or interest covered by the lease, license, agreement,  
17 or other instrument whose security interest has been recorded  
18 with the authority. If the authority seeks to forfeit the  
19 privilege, interest, or estate created by the lease, license,  
20 agreement, or other instrument, each holder, at the holder's  
21 option, may cure or remedy the breach or default, if it can be



1 cured or remedied, by the payment of money or by performing or  
2 undertake in writing to perform all the terms, covenants,  
3 restrictions, or conditions of any lease, patent, license,  
4 agreement, or other instrument capable of performance by the  
5 holder, as determined by the board, within the time period  
6 provided in section -10 or within an additional period as the  
7 authority may allow for good cause and add the cost thereof to  
8 the mortgage debt and the lien of the mortgage. Any lease,  
9 license, agreement, or other instrument transferred pursuant to  
10 this section shall not be subject to the requirements in section  
11 -6. Upon failure of the holder to exercise the holder's  
12 option, the authority may:

13 (1) Pay to the holder from any moneys at its disposal,  
14 including the Mauna Kea management revolving fund,  
15 which is made available for that purpose, the amount  
16 of the mortgage debt, together with interest and  
17 penalties, and secure an assignment of the debt and  
18 mortgage from the holder, or if ownership of the  
19 interest or estate has vested in the holder by way of  
20 foreclosure or action in lieu thereof, the authority  
21 shall be entitled to a conveyance of the interest or



1 estate upon payment to the holder of the amount of the  
2 mortgage debt, including interest and penalties, and  
3 all reasonable expenses incurred by the holder in  
4 connection with the foreclosure and preservation of  
5 its security interest, less appropriate credits,  
6 including income received from the privilege,  
7 interest, or estate subsequent to the foreclosure; or  
8 (2) If the property cannot be reasonably reassigned  
9 without loss to the State, then terminate the  
10 outstanding privilege, interest, or estate without  
11 prejudice to any other right or remedy for arrears of  
12 rent or for any preceding or other breach or default,  
13 and use its best efforts to redispense of the affected  
14 land to a qualified and responsible person free and  
15 clear of the mortgage and the debt thereby secured;  
16 provided that a reasonable delay by the authority in  
17 instituting or prosecuting any right or remedy it may  
18 have under this section shall not operate as a waiver  
19 of the right or deprive it of the remedy when it may  
20 still attempt otherwise to resolve the problems  
21 created by the breach or default involved.



1 The proceeds of any disposition under paragraph (2) shall be  
2 applied: first, to reimburse the authority for costs and  
3 expenses in connection with the disposition; second, to  
4 discharge in full any unpaid purchase price or other  
5 indebtedness owing the State in connection with the privilege,  
6 interest, or estate terminated; third, to the mortgagee to the  
7 extent of the value received by the State upon disposition  
8 that exceeds the fair market lease value of the land as  
9 previously determined by the State's appraiser; and fourth, to  
10 the owner of the privilege, interest, or estate. Nothing  
11 contained in this section shall be construed in a manner as to  
12 infringe upon or prejudice in any way the rights of a holder of  
13 record having a security interest that has vested prior to the  
14 effective date of this chapter.

15 § -12 Report to legislature. (a) The authority shall  
16 submit a written report annually to the legislature, no later  
17 than ten days prior to the convening of each regular session.  
18 The report shall include an update on the status of all  
19 administrative rules, including rules on the management,  
20 stewardship, and protection of Mauna Kea lands and cultural  
21 resources; an update on the preparation, update, amendment, and



1 implementation of a comprehensive management plan; and a  
2 description of all land dispositions made in the preceding year,  
3 including leases, licenses, concessions, and permits; the  
4 persons to whom made; the size of each disposition; the purpose  
5 for which made; the land classification of each; the tax map key  
6 number; the per unit price paid or set; and whether the  
7 disposition was by auction, drawing, or negotiation. When land  
8 originally leased by the authority is, in turn, subleased by the  
9 authority's lessee or sublessee, the report shall include, in  
10 addition to the foregoing information, the reason for the  
11 approval of the sublease by the authority and the estimated net  
12 economic result accruing to the State, lessee, and sublessee.

13 (b) Whenever in this chapter any lease, easement, license,  
14 executive order, quitclaim, or other disposition is made subject  
15 to disapproval of the legislature, a written report thereof  
16 containing the information required in subsection (a) shall be  
17 submitted to the legislature in the session next following the  
18 date of the disposition; provided the report shall be submitted  
19 no later than ten days prior to the convening of the session.

20 § -13 Policy. Unless otherwise specifically authorized  
21 in this chapter or by subsequent legislative acts, all



1 dispositions shall be by lease only, disposed of by public  
2 auction in accordance with the procedure set forth in sections  
3 -6 and -8.

4 § -14 **Planning; generally.** Prior to any notice of  
5 intended disposition, the authority shall:

- 6 (1) Classify the land according to its use or uses as  
7 provided in this chapter;
- 8 (2) Determine the specific use or uses for which the  
9 disposition is intended;
- 10 (3) Parcel land into units of minimum size areas related  
11 to the intended specific use or uses and sufficient  
12 for an economic operation, hereinafter called an  
13 "economic unit";
- 14 (4) Determine the requirements for the construction of any  
15 building or other improvements, which are necessary or  
16 desirable to encourage the highest use of the land;
- 17 (5) Determine the lease rental, based upon the fair market  
18 value of the land employed to the specific use or uses  
19 for which the disposition is being made, with due  
20 consideration for all of the terms and conditions of  
21 the disposition;



- 1           (6) Determine the necessary conditions of disposition that
- 2           will discourage speculation;
- 3           (7) In the case of leases, determine the minimum tenure
- 4           necessary to support the intended use or uses and the
- 5           necessity for periodic rent openings in long-term
- 6           leases to assure the State a fair return;
- 7           (8) Prepare the proposed documents and make them available
- 8           for public inspection;
- 9           (9) Determine, two years before the expiration of the term
- 10          of any lease, whether the premises are to be demised
- 11          for the same use or uses under a new lease or whether
- 12          all or any part thereof is to be reserved for other
- 13          use or uses and then promptly notify the lessee of the
- 14          determination; and
- 15          (10) Ensure that all project labor agreements are honored;
- 16          provided that future project labor agreements for the
- 17          construction of any building, telescope, or other
- 18          improvements shall require a minimum of           per cent
- 19          of local construction industry business, to the
- 20          maximum extent possible.



1           §   -15   **Lease provisions; generally.**   Every lease issued  
2 by the authority shall contain:

3           (1)   The specific use or uses to which the land is to be  
4               employed;

5           (2)   The improvements required; provided that a minimum  
6               reasonable time be allowed for the completion of the  
7               improvements;

8           (3)   Restrictions against alienation as set forth in  
9               section     -16;

10          (4)   The rent, as established by the authority or at public  
11               auction, which shall be payable not more than one year  
12               in advance, in monthly, quarterly, semiannual, or  
13               annual payments;

14          (5)   Where applicable, adequate protection of forests,  
15               watershed areas, game management areas, wildlife  
16               sanctuaries, and public hunting areas, reservation of  
17               rights-of-way and access to other Mauna Kea lands,  
18               public hunting areas, game management areas, or public  
19               beaches, and prevention of nuisance and waste; and



1           (6) Any other terms and conditions as the authority deems  
2           advisable to effectuate the purposes of the state  
3           constitution and of this chapter.

4           § -16 Lease restrictions; generally. (a) Except as  
5 otherwise provided, the following restrictions shall apply to  
6 all leases:

- 7           (1) Options for renewal of terms are prohibited;
- 8           (2) No lease shall be for a longer term than sixty-five  
9           years;
- 10          (3) No lease shall be made for any land under a lease that  
11          has more than two years to run;
- 12          (4) No lease shall be made to any person who is in arrears  
13          in the payment of taxes, rents, or other obligations  
14          owing the State or any county;
- 15          (5) No lease shall be transferable or assignable, except  
16          by devise, bequest, or intestate succession; provided  
17          that with the approval of the authority, the  
18          assignment and transfer of a lease or unit thereof may  
19          be made in accordance with current industry standards,  
20          as determined by the authority; provided further that  
21          prior to the approval of any assignment of lease, the



1 authority shall have the right to review and approve  
2 the consideration to be paid by the assignee and may  
3 condition its consent to the assignment of the lease  
4 on payment by the lessee of a premium based on the  
5 amount by which the consideration for the assignment,  
6 whether by cash, credit, or otherwise, exceeds the  
7 depreciated cost of improvements and trade fixtures  
8 being transferred to the assignee; provided further  
9 that with respect to state agricultural leases, in the  
10 event of foreclosure or sale, the premium, if any,  
11 shall be assessed only after the encumbrances of  
12 record and any other advances made by the holder of a  
13 security interest are paid;

14 (6) The lessee shall not sublet the whole or any part of  
15 the demised premises except with the approval of the  
16 authority; provided that prior to the approval, the  
17 authority shall have the right to review and approve  
18 the rent to be charged to the sublessee; provided  
19 further that in the case where the lessee is required  
20 to pay rent based on a percentage of its gross  
21 receipts, the receipts of the sublessee shall be



1 included as part of the lessee's gross receipts;  
2 provided further that the authority shall have the  
3 right to review and, if necessary, revise the rent of  
4 the demised premises based upon the rental rate  
5 charged to the sublessee including the percentage  
6 rent, if applicable, and provided that the rent may  
7 not be revised downward;

8 (7) The lease shall be for a specific use or uses and  
9 shall not include waste lands, unless it is  
10 impractical to provide otherwise; and

11 (8) Mineral and metallic rights and surface and ground  
12 water shall be reserved to the State.

13 (b) The authority, from time to time, may:

14 (1) Modify or eliminate any of the restrictions specified  
15 in subsection (a);

16 (2) Extend or modify the fixed rental period of the lease;  
17 provided that the aggregate of the initial term and  
18 any extension granted shall not exceed sixty-five  
19 years; or

20 (3) Extend the term of the lease,



1 to the extent necessary to qualify the lease for mortgage  
2 lending or guaranty purposes with any federal mortgage lending  
3 agency; to qualify the lessee for any state or private lending  
4 institution loan, private loan guaranteed by the State, or any  
5 loan in which the State and any private lender participates; or  
6 to amortize the cost of substantial improvements to the demised  
7 premises that are paid for by the lessee without institutional  
8 financing, the extension being based on the economic life of the  
9 improvements as determined by the authority or an independent  
10 appraiser.

11 (c) The approval of any extension under subsection (b)  
12 shall be subject to the following:

13 (1) The demised premises have been used substantially for  
14 the purpose for which they were originally leased;

15 (2) The aggregate of the initial term and any extension  
16 granted shall not be for more than sixty-five years;

17 (3) If a reopening occurs, the rental for any ensuing  
18 period shall be the fair market rental at the time of  
19 reopening;

20 (4) Any federal or private lending institution shall be  
21 qualified to do business in the State;



1 (5) Proceeds of any mortgage or loan shall be used solely  
2 for the operations or improvements on the demised  
3 premises;

4 (6) Where improvements are financed by the lessee, the  
5 lessee shall submit receipts of expenditures within a  
6 time period specified by the authority, otherwise the  
7 lease extension shall be canceled; and

8 (7) The rules of the authority, setting forth any  
9 additional terms and conditions, which shall ensure  
10 and promote the purposes of the demised lands.

11 (d) The authority, from time to time, during the term of  
12 any lease, may modify or eliminate any of the restrictions  
13 specified in subsection (a), extend or modify the fixed rental  
14 period of the lease, or extend the term of the lease upon a  
15 showing of significant economic hardship directly caused by:

16 (1) State disaster, pursuant to chapter 209, including  
17 seismic or tidal wave, tsunami, hurricane, volcanic  
18 eruption, typhoon, earthquake, flood, or severe  
19 drought; or

20 (2) A taking of a portion of the area of the lease by  
21 government action by eminent domain, withdrawal, or



1 conservation easement; provided that the portion taken  
2 shall not be less than ten per cent of the entire  
3 leased area unless otherwise approved by the  
4 authority; provided further that the authority  
5 determines that the lessee will not be adequately  
6 compensated pursuant to the lease provisions.

7 (e) The approval of any extension granted pursuant to  
8 subsection (d) shall be subject to the following:

9 (1) The demised premises have been used substantially for  
10 the purposes for which they were originally leased;

11 (2) The aggregate of the initial term and any extension  
12 granted shall not be for more than fifty-five years;

13 (3) The rental shall not be less than the rental for the  
14 preceding term;

15 (4) The rules of the authority, setting forth any  
16 additional terms and conditions that shall ensure and  
17 promote the purposes of the demised lands; and

18 (5) The length of the extension shall not exceed a  
19 reasonable length of time for the purpose of providing  
20 relief and shall in no case exceed five years.



1           **§ -17 Reservation of rights to prehistoric and historic**  
2 **remains on leased lands.** The authority, in leases of lands,  
3 shall retain the rights to all prehistoric and historic remains  
4 found on those lands.

5           **§ -18 Lands for historic preservation and restoration.**

6 (a) Any law to the contrary notwithstanding, the authority may  
7 lease lands for use in historic preservation and restoration  
8 projects:

9           (1) Through negotiations; and

10           (2) For a price that shall be determined by the authority.

11           (b) The authority shall adopt rules pursuant to chapter 91  
12 to determine what constitutes historic preservation and  
13 restoration projects for the purposes of this section; provided  
14 that no definition or criteria established shall conflict with  
15 any federal, state, or county law.

16           (c) All subleases of land disposed of pursuant to this  
17 section shall be subject to the approval of the authority.

18           **§ -19 Condemnation of leases.** Every lease issued by the  
19 authority shall provide that whenever a portion of the public  
20 land under lease is condemned for public purposes by the State,  
21 any county or city and county, or any other governmental agency



1 or subdivision, the rental shall be reduced in proportion to the  
2 value of the portion of the premises condemned and the lessee  
3 shall be entitled to receive from the condemning authority the  
4 proportionate value of the lessee's permanent improvements taken  
5 in the proportion that it bears to the unexpired term of the  
6 lease. The lessee, in the alternative, may remove and relocate  
7 the lessee's improvements to the remainder of the lands occupied  
8 by the lessee. The foregoing rights of the lessee shall not be  
9 exclusive of any other to which the lessee may be entitled by  
10 law. Where the portion taken renders the remainder unsuitable  
11 for the uses for which the land was leased, the lessee shall  
12 have the option to surrender the lessee's lease and be  
13 discharged for any further liability therefor; provided that the  
14 lessee may remove the lessee's permanent improvements within a  
15 reasonable period allowed by the authority.

16 § -20 **Leases; forfeiture.** Upon the violation of any  
17 condition or term of any lease to be observed or performed by  
18 the lessee or tenant, the authority, after the notice of default  
19 as provided in section -10, and subject to the rights of each  
20 holder of record having a security interest as provided in  
21 section -11, shall terminate the lease or tenancy and take



1 possession of the leased land, without demand or previous entry  
2 and without legal process, together with all improvements placed  
3 thereon and shall retain all rent paid in advance as damages for  
4 the violations.

5       § -21 **Expired leases; holdover.** Upon expiration of the  
6 lease term, if the leased land is not otherwise disposed of, the  
7 authority may allow the lessee to continue to hold the land for  
8 a period not exceeding one year upon the rent, terms, and  
9 conditions as the authority may prescribe.

10       Upon expiration of the one-year extension, if the authority  
11 has not yet decided upon the re-lease of the land or reservation  
12 for other purposes, the authority may issue a temporary permit  
13 to the lessee, subject to the rent and other terms and  
14 conditions as the authority may prescribe.

15       § -22 **Lessees within the last ten years of their lease**  
16 **terms; requests for interest.** (a) Notwithstanding any other  
17 law to the contrary, and except as otherwise provided in section  
18 -16(b), (c), and (d), a lessee of public land that is  
19 classified as conservation lands pursuant to section 205-2, and  
20 that is subject to the management, administration, or control of  
21 the authority, during the last ten years of the term of the



1 original lease, may submit a written request to the authority to  
2 initiate a request for interest process as provided in this  
3 section.

4 (b) Within one hundred eighty days of a lessee's written  
5 request to initiate a request for interest, the authority shall:

6 (1) Appraise the value of the land and any improvements to  
7 the land that existed as of the date of the written  
8 request pursuant to section -9(a) and require the  
9 awardee of a new lease executed pursuant to this  
10 section to reimburse the authority for the appraisal;  
11 and

12 (2) Publish a request for interest and request for  
13 qualifications notice inviting persons to express  
14 their interest in leasing the land and their  
15 qualifications as potential lessees and describing any  
16 improvements to the land that exist as of the date of  
17 the written request. The notice shall be given at  
18 least once statewide and at least once in the county  
19 where the land is located and shall contain:

20 (A) The qualifications required of eligible lessees;



- 1 (B) A general description of the land, including the  
2 address and tax map key, and of any improvements  
3 to the land that existed as of the date of the  
4 written request;
- 5 (C) That the land to be leased is classified as  
6 conservation lands pursuant to section 205-2;
- 7 (D) The appraised value of the land and of any  
8 improvements to the land that existed as of the  
9 date of the written request;
- 10 (E) The closing date and manner by which a person  
11 shall indicate interest and submit a statement of  
12 qualifications; and
- 13 (F) Notice that a business plan is a prerequisite to  
14 participate at time of auction or direct  
15 negotiation, if applicable, and shall be made a  
16 term of the lease.
- 17 (c) Within ninety days after the closing date specified in  
18 the notice, the authority shall determine if any persons have  
19 qualified under the terms of the request for qualifications and  
20 shall notify all persons who expressed interest as to whether



1 they qualified. The authority shall also notify the current  
2 lessee as to whether any other persons qualified.

3 (d) The authority shall enter into direct negotiation with  
4 the current lessee immediately upon notification if no other  
5 qualified persons have expressed interest in the property.

6 (e) If the land is not leased pursuant to subsection (d)  
7 within three years before the termination date of the lease, the  
8 authority shall dispose of the land by public auction as  
9 provided in this chapter; provided that the authority has  
10 determined that at least one person, who:

11 (1) Is not the current lessee;

12 (2) Has been determined by the authority to be qualified;  
13 and

14 (3) Has submitted a business plan prior to the date of the  
15 auction,

16 has expressed interest in leasing the land and any improvements  
17 to the land that existed as of the date of the written request  
18 in subsection (a). The auction upset price shall be the greater  
19 of the current rent or the fair market rent pursuant to section  
20 -9(d) based upon the appraised value of the land and any



1 improvements to the land that existed as of the date of the  
2 written request.

3 The current lessee may bid on a new lease at the public  
4 auction. The current lessee's business plan shall be deemed  
5 acceptable to the authority and the current lessee shall not be  
6 required to submit a new business plan; provided that the  
7 current lessee is in compliance with the terms of the existing  
8 lease and has submitted a business plan prior to the date of the  
9 auction.

10 (f) Lease terms for any new lease executed pursuant to  
11 this section shall be determined by the authority and shall:

12 (1) Not commence prior to the termination of the current  
13 lease;

14 (2) Establish the rent at no less than the greater of the  
15 current rent or the fair market rent pursuant to  
16 section -9(d) based upon the appraised value of the  
17 land and any improvements to the land that existed as  
18 of the date of the written request;

19 (3) If the lease is awarded after public auction to any  
20 person other than the current lessee, include a  
21 premium equal to the value of any improvements to the



1 land made after the date of the written request in  
2 subsection (a), which shall be paid to the current  
3 lessee prior to transfer of the land and improvements  
4 to the new lessee; and

5 (4) Include the previously submitted business plan.

6 (g) Unless specifically required to do so by the  
7 authority, the current lessee shall not be required to remove  
8 improvements or restore the land to a vacant condition at the  
9 expiration of the lease; provided that, without prejudice to any  
10 other rights or remedies that the current lessee or State may  
11 have, this subsection shall not alter any obligation of a  
12 current lessee to indemnify, defend, and hold the State harmless  
13 from any claims regarding pollution or contamination of the land  
14 with potentially hazardous substances.

15 (h) This section shall not apply to:

16 (1) Any lessee who is in arrears in the payment of taxes,  
17 rents, or other obligations owing to the State or any  
18 county or who has had, during the five years preceding  
19 the anticipated disposition of the applicable land at  
20 a public auction or direct negotiation, a sale, lease,  
21 license, permit, or easement covering other Mauna Kea



1 lands canceled for failure to satisfy the terms and  
2 conditions thereof; or

3 (2) Any lease that is subject to cancellation for failure  
4 to satisfy the terms or conditions of a lease,  
5 license, permit, or easement covering Mauna Kea lands.

6 (i) As used in this section, "improvements" means all  
7 physical improvements constructed, owned, or constructed and  
8 owned by the lessee during the lease term and shall exclude all  
9 infrastructure constructed, owned, or constructed and owned by  
10 third parties, such as water and sewer pipes, electricity and  
11 telephone lines and cables, or other infrastructure.

12 § -23 Lease to eleemosynary organizations. The  
13 authority may lease, at a nominal consideration, by direct  
14 negotiation and without recourse to public auction, public lands  
15 to an eleemosynary organization that has been certified to be  
16 tax exempt under section 501(c)(1) or 501(c)(3) of the Internal  
17 Revenue Code of 1986, as amended. The lands shall be used by  
18 the eleemosynary organizations for the purposes for which their  
19 charter was issued and for which they were certified by the  
20 Internal Revenue Service as tax exempt.



1           §   -24   **Land license.**   The authority may issue land  
2 licenses affecting Mauna Kea lands for a period not exceeding  
3 twenty years. No land license shall be disposed of except at  
4 public auction as provided in this chapter; provided that the  
5 authority, after publication of notice in accordance with  
6 section     -8, may dispose of a land license by negotiation,  
7 without recourse to public auction, if it determines that the  
8 public interest will best be served thereby. The disposition of  
9 a land license by negotiation shall be upon terms and conditions  
10 that the authority determines shall best serve the public  
11 interest.

12           §   -25   **Permits.**   Notwithstanding any other law to the  
13 contrary, the authority may issue permits for the temporary  
14 occupancy of state lands or an interest therein on a month-to-  
15 month basis by direct negotiation without public auction, under  
16 conditions and rent that serve the best interests of the State,  
17 subject to restrictions expressly imposed by the authority. A  
18 permit on a month-to-month basis may continue for a period not  
19 to exceed one year from the date of its issuance; provided that  
20 the authority may allow the permit to continue on a month-to-  
21 month basis for additional one-year periods.



1           **§ -26 Contract or license for concessions or concession**  
2 **space.** The authority, subject to chapter 102, may dispose of  
3 concessions, as defined in chapter 102, and shall enter into  
4 contracts or issue licenses for those concessions; provided that  
5 the duration of the contract or license shall be related to the  
6 investment required, but in no event to exceed fifteen years.

7           **§ -27 Minerals and water rights.** Except as provided in  
8 this section, the right to any mineral or surface or ground  
9 water shall not be included in any lease, agreement, or sale,  
10 this right being reserved to the State; provided that the  
11 authority may make provisions in the lease, agreement, or sale,  
12 for the payment of just compensation to the surface owner for  
13 improvements taken as a condition precedent to the exercise by  
14 the State of any reserved rights to enter, sever, and remove  
15 minerals or to capture, divert, or impound water.

16           **§ -28 Disposition by negotiation.** A lease of Mauna Kea  
17 lands may be disposed of through negotiation upon a finding by  
18 the authority that the public interest demands it.

19           After a determination is made to negotiate the disposition  
20 of a lease, the authority shall:



- 1           (1) Give public notice as in public auction, in accordance  
2           with the procedure set forth in section       -8(a), of  
3           its intention to lease Mauna Kea lands through  
4           negotiation setting forth the minimum conditions  
5           thereunder, the use for which the land will be leased.  
6           Any person interested in securing the lease shall file  
7           an application with the authority no later than forty-  
8           five days after the first publication of the notice;
- 9           (2) Establish reasonable criteria for the selection of the  
10          lessee; provided that where the intended use of the  
11          land is agriculture, the department of agriculture  
12          shall establish the criteria; and
- 13          (3) Determine the applicants who meet the criteria for  
14          selection set by the authority or the department of  
15          agriculture, as the case may be, and notify all  
16          applicants of its determination. Any applicant may  
17          examine the basis of the determination, which shall be  
18          in writing, to ascertain whether or not the conditions  
19          and criteria established by the authority or the  
20          department of agriculture were followed; provided that  
21          if any applicant does not notify the authority of the



1 applicant's objections, and the grounds therefor, in  
2 writing, within twenty days of the receipt of the  
3 notice, the applicant shall be barred from proceeding  
4 to seek legal remedy for any alleged failure of the  
5 authority to follow the conditions and criteria.

6 If only one applicant meets the criteria for selection of  
7 the lessee, the authority, after notice as provided in paragraph  
8 (3) may dispose of the lease by negotiation.

9 If two or more applicants meet the criteria for the  
10 selection of the lessee, the authority shall select the lessee  
11 who submits the highest offer contained in a sealed bid  
12 deposited with the authority.

13 § -29 Covenants against discrimination. The authority  
14 shall provide in every deed, lease, agreement, license, or  
15 permit that the use and enjoyment of the premises being granted  
16 shall not be in support of any policy that discriminates against  
17 anyone based upon race, creed, color, national origin, sex, or a  
18 physical disability. The authority shall not dispose of any  
19 Mauna Kea lands to any person who practices discrimination based  
20 upon race, creed, color, national origin, sex, or a physical  
21 disability. As used in this section, "physical disability"



1 means a physical impairment that substantially limits one or  
2 more of a person's major life activities.

3       § -30 Disposition to governments, governmental agencies,  
4 and public utilities. (a) Notwithstanding any limitations to  
5 the contrary, the authority, without public auction, may:

- 6       (1) Lease Mauna Kea lands to governments, agencies, and  
7           public utilities for terms up to, but not in excess  
8           of, sixty-five years at rental and other terms and  
9           conditions as the authority may determine;
- 10       (2) Grant licenses and easements to governments, agencies,  
11           and public utilities on terms and conditions as the  
12           authority may determine for road, pipeline, utility,  
13           communication cable, and other rights-of-way;
- 14       (3) Execute quitclaim deeds to governments and agencies,  
15           with or without consideration, releasing any claim to  
16           the property involved made upon disputed legal or  
17           equitable grounds, whenever the authority in its  
18           discretion deems it beneficial to the State; and
- 19       (4) Waive or modify building and other requirements and  
20           conditions contained in deeds, sales agreements, or



1 leases held by governments and agencies whenever the  
2 waiver or modification is beneficial to the State.

3 (b) In any disposition to public utilities under this  
4 section:

5 (1) The lease rental shall be no less than the value  
6 determined in accordance with section -9(b);  
7 provided that the lease rental may be on a nominal  
8 basis if the authority finds that an easement is  
9 required in connection with a government project;

10 (2) Disposition shall not be made to any public utility if  
11 the utility has suitable lands of its own; and

12 (3) The disposition to public utilities shall be subject  
13 to disapproval by the legislature by two-thirds vote  
14 of either the senate or the house of representatives  
15 or by majority vote of both, in any regular or special  
16 session next following the date of the disposition.

17 (c) For the purposes of this section, "public utility"  
18 shall have the same meaning as in section 269-1.

19 § -31 Telescopes; leases; impacts. In addition to any  
20 other requirements under this chapter and other applicable law,  
21 and notwithstanding the eleemosynary, governmental, or public



1 utility natures of any lessee, the authority shall take into  
2 account, in issuing any lease pertaining to telescopes on Mauna  
3 Kea lands, the value of land use, telescope viewing time, and  
4 impacts to natural and cultural resources and traditional and  
5 customary cultural practices, including the costs of preventing  
6 and remediating any anticipated and potential unanticipated  
7 impacts to land, natural and cultural resources, and cultural  
8 sites that may result directly and indirectly from those land  
9 uses as a result of telescope-related activities.

10       **§ -32 Telescopes; limitations.** No more than thirteen  
11 telescopes shall be present on Mauna Kea lands at any time;  
12 provided that no more than nine telescopes shall be present on  
13 Mauna Kea lands by January 1, 2028.

14       **§ -33 Footprint; limitations.** At no time after  
15 December 31, 2031, shall the total combined footprint of all  
16 improvements, including buildings, roads, telescopes,  
17 decommissioned telescope structures, and all infrastructure, on  
18 Mauna Kea lands exceed the total developed footprint of  
19 improvements, including buildings, roads, telescopes, and all  
20 infrastructure present on Mauna Kea as of December 31, 2031.



1           §   -34   Rules; management, stewardship, and protection of  
2   cultural resources. The authority shall expedite the  
3   establishment of rules pursuant to chapter 91 on the management,  
4   stewardship, and protection of lands and cultural resources, and  
5   any fees and fee waivers under its jurisdiction; provided that  
6   the authority shall consult with the office of Hawaiian affairs  
7   to ensure that any proposed rules shall not affect any right,  
8   customarily and traditionally exercised for subsistence,  
9   cultural, and religious purposes, by descendants of native  
10   Hawaiians who inhabited the Hawaiian Islands prior to 1778,  
11   subject to the right of the State to regulate such rights.  
12   Rules adopted under this section shall follow existing law,  
13   rules, ordinances, and regulations as closely as is consistent  
14   with standards to meet minimum requirements of good design,  
15   health, safety, and coordinated development; provided that the  
16   rules, at a minimum, shall require that:

17           (1)   A nominal fee shall be charged for all non-Hawaii  
18                 residents traveling to the Hale Pohaku Visitor Center;  
19                 and

20           (2)   No privately owned vehicles shall travel to the Mauna  
21                 Kea summit unless they are:



- 1 (A) Four-wheel-drive vehicles; and
- 2 (B) Used to provide access for customarily and
- 3 traditionally exercised practices protected under
- 4 article XII, section 7, of the Hawaii State
- 5 Constitution or as otherwise provided by permit
- 6 or rule;

7 provided that no fee shall be charged for a private  
 8 vehicle to travel to the Mauna Kea summit for purposes  
 9 of providing access for customarily and traditionally  
 10 exercised practices protected under article XII,  
 11 section 7, of the Hawaii State Constitution.

12 On the effective date of the initial rules adopted pursuant  
 13 to this section, all previously adopted rules pertaining to  
 14 Mauna Kea lands, established by the University of Hawaii,  
 15 including but not limited to the office of Mauna Kea management,  
 16 Mauna Kea management authority board, and Kahu Ku Mauna, shall  
 17 be void. The authority shall coordinate and enter into  
 18 memoranda of agreement as necessary with other government  
 19 entities, including the office of Hawaiian affairs, department  
 20 of Hawaiian home lands, department of land and natural  
 21 resources, department of transportation, and county of Hawaii



1 with regard to the use and maintenance of the portions of the  
2 Mauna Kea summit access road that traverse lands controlled by  
3 those entities.

4       **§ -35 Project approval authorization.** The authority is  
5 authorized to approve or disapprove all projects, including but  
6 not limited to design review, on all Mauna Kea lands; provided  
7 that all land use complies with relevant conservation district  
8 rules.

9       **§ -36 Mauna Kea management revolving fund.** There is  
10 established the Mauna Kea management revolving fund into which  
11 all receipts and revenues of the authority shall be deposited.  
12 Proceeds from the fund shall be used for administration, capital  
13 improvement projects, and other purposes pursuant to this  
14 chapter.

15       **§ -37 Expenditures of revolving funds under the**  
16 **authority exempt from appropriation and allotment.** Except as to  
17 administrative expenditures, and except as otherwise provided by  
18 law, expenditures from any revolving fund administered by the  
19 authority may be made by the authority, subject to appropriation  
20 or allotment of the legislature; provided that no expenditure  
21 shall be made from and no obligation shall be incurred against



1 any revolving fund in excess of the amount standing to the  
2 credit of the fund or for any purpose for which the fund may not  
3 lawfully be expended. Nothing in sections 37-31 to 37-41 shall  
4 require the proceeds of any revolving fund administered by the  
5 authority to be reappropriated annually.

6       **§ -38 Transfer and renegotiation of leases, subleases,**  
7 **easements, permits, and licenses.** All leases, subleases,  
8 easements, permits, and licenses executed by the University of  
9 Hawaii or department of land and natural resources, and  
10 pertaining to Mauna Kea, shall be transferred to the authority  
11 and shall be subject to renegotiation upon mutual agreement of  
12 the parties. The authority shall renegotiate subleases  
13 pertaining to telescopes on Mauna Kea in accordance with  
14 section -9 and take into account the value of land use and  
15 telescope viewing time. In addition, any future leases shall  
16 include, at a minimum, a stewardship component, community  
17 benefits package, and conversion of the applicable facility to a  
18 self-contained, zero-discharge waste system; provided that, if  
19 applicable, all future leases shall include language for  
20 percentage-based rent that is calculated and agreed to be based  
21 on the gross receipts from the sale of telescope viewing time;



1 provided further that rent negotiations shall be reopened every  
2 twenty years.

3       **§ -39 Managed access.** The authority shall develop a  
4 visitor center along the Mauna Kea summit access road that shall  
5 include, at a minimum, a kiosk entrance to manage access to  
6 Mauna Kea. All visitors who travel beyond the visitor center  
7 shall be required to register at the visitor center, pay  
8 applicable fees there, and receive orientation regarding safety,  
9 environmental protection, and cultural traditions and  
10 sensitivities. Except as provided under section -34 or this  
11 section, all visitors who travel to the summit shall be required  
12 to use a shuttle service established by the authority. The  
13 authority shall establish a policy that allows reasonable access  
14 without an entrance fee to visitors seeking to exercise Native  
15 Hawaiian traditional and customary practices protected under  
16 article XII, section 7, of the Hawaii State Constitution.

17       **§ -40 Mauna Kea management authority; police powers.**  
18 (a) The authority shall have police powers with respect to  
19 Mauna Kea lands and may appoint and commission enforcement  
20 officers, who shall be known as rangers. Persons appointed and  
21 commissioned under this section shall have and may exercise all



1 of the powers and authority of a police officer, including the  
2 power of arrest, and may enforce all state laws and rules and  
3 county ordinances and rules within all Mauna Kea lands; provided  
4 that those powers shall remain in force and effect only while in  
5 actual performance of their duties, which shall include off-duty  
6 employment when that employment is for other state departments  
7 or agencies.

8 (b) An enforcement officer, upon arresting any person, may  
9 immediately take the person arrested to a police station,  
10 pursuant to an agreement between the authority and the  
11 applicable police department, or before a district judge, or  
12 take the name, address, and the number of the licenses or  
13 permits, if any, of the person, and note the violation of the  
14 law or rule by the person, and issue the person a summons or  
15 citation, printed in the form described in section -42,  
16 directing the person to appear and to answer to the charge  
17 against the person at a certain place and time within seven days  
18 after the arrest. Any person failing to obey a summons issued  
19 pursuant to this section shall be subject to section -43.

20 § -41 Enforcement; rangers; powers; duties. (a)

21 Pursuant to sections -3(f)(1) and -40, the authority shall



1 establish a unit of rangers who shall enforce laws and rules  
2 within Mauna Kea lands.

3 (b) Rangers employed pursuant to this section shall be law  
4 enforcement officers who shall:

5 (1) Be responsible for the health, safety, and welfare of  
6 visitors to Mauna Kea, including responding to  
7 emergencies of a medical or law enforcement nature,  
8 enforcement of laws related to crimes against property  
9 rights under parts II and III of chapter 708, the  
10 protection of natural resources, and the enforcement  
11 of other laws and rules as necessary, on Mauna Kea  
12 lands;

13 (2) Investigate complaints, gather evidence, conduct  
14 investigations, and conduct field observations and  
15 inspections as required or assigned, on Mauna Kea  
16 lands;

17 (3) Cooperate with enforcement authorities of the State,  
18 counties, and the federal government in the  
19 development of programs and mutual aid agreements for  
20 the protection of Mauna Kea lands and the enforcement  
21 of applicable laws;



- 1 (4) Cooperate with established search and rescue agencies  
2 of the State, counties, and the federal government in  
3 developing plans and programs and mutual aid  
4 agreements for search and rescue activities within the  
5 State;
- 6 (5) Check and verify all leases, permits, and licenses  
7 issued by the authority;
- 8 (6) Enforce the laws relating to firearms, ammunition, and  
9 dangerous weapons contained in chapter 134, on Mauna  
10 Kea lands; and
- 11 (7) Carry out other duties and responsibilities as the  
12 authority shall direct.
- 13 (c) The authority may establish memoranda of agreement  
14 with:
- 15 (1) The department of land and natural resources to  
16 provide assistance from the division of conservation  
17 and resources enforcement with law enforcement,  
18 applicable training, and certification of rangers; and
- 19 (2) The county of Hawaii police department to provide  
20 assistance with law enforcement and related matters



1           such as access to holding cells, fingerprinting, and  
2           other processing of persons detained by rangers;  
3 provided that the memoranda may provide for reimbursement by the  
4 authority for applicable expenses.

5           (d) Rangers may also serve as interpretive officers who  
6 provide information to Mauna Kea visitors.

7           § -42 **Summons or citation.** There shall be a form of  
8 summons or citation for use in citing violators for violations  
9 that do not mandate the physical arrest of the violators. The  
10 summons or citation shall be printed in a form commensurate with  
11 the form of other summons or citation used in modern methods of  
12 arrest and shall be so designed to include all necessary  
13 information to make it valid and legal within the laws and rules  
14 of the State. The form and content of the summons or citation  
15 shall be adopted or prescribed by the district courts.

16           In every case where a summons or citation is issued, the  
17 original of the same shall be given to the violator; provided  
18 that the district courts may prescribe the issuance to the  
19 violator of a carbon copy of the summons or citation and provide  
20 for the disposition of the original and any other copies. Every



1 summons or citation shall be consecutively numbered and each  
2 carbon copy shall bear the number of its respective original.

3       § -43 Failure to obey a summons. (a) Any person who  
4 fails to appear at the place and within the time specified in  
5 the summons or citation issued by the officers or their agents  
6 or subordinates, upon that person's arrest, shall be guilty of a  
7 petty misdemeanor and, upon conviction, shall be fined not more  
8 than \$500 or be imprisoned not more than thirty days, or both.

9       (b) If any person fails to comply with a summons or  
10 citation issued, or if any person fails or refuses to deposit  
11 bail as required and within the time permitted, the officers  
12 shall cause a complaint to be entered against the person and  
13 secure the issuance of a warrant for the person's arrest.

14       (c) When a complaint of the violation is made to any  
15 prosecuting officer, the officer who issued the summons or  
16 citation shall subscribe to it under oath administered by  
17 another official or officials of the authority whose names have  
18 been submitted to the prosecuting officer and who have been  
19 designated by the executive director of the authority to  
20 administer the same.



1           §   -44   Search and seizure; forfeiture of property.   (a)

2   Any law enforcement officer or agent of the authority upon whom  
3   the authority has conferred powers of law enforcement officers,  
4   shall have the authority to conduct searches on probable cause  
5   as provided by law and to seize any equipment, article,  
6   instrument, aircraft, vehicle, vessel, business records, or  
7   natural resource used or taken in violation of the laws of the  
8   State, or any rules adopted thereunder. For purposes of this  
9   section, "natural resource" includes any archaeological  
10   artifacts, minerals, any aquatic life or wildlife or parts  
11   thereof, including their eggs, and any land plants or parts  
12   thereof, including seeds.

13           (b) Any equipment, article, instrument, aircraft, vehicle,  
14   vessel, business records, or natural resource seized is subject  
15   to forfeiture pursuant to chapter 712A. Unless otherwise  
16   directed by the environmental court pursuant to chapter 712A,  
17   any item, other than a natural resource, seized shall be ordered  
18   forfeited to the State for disposition as determined by the  
19   authority, or may be destroyed, or may be kept and retained and  
20   utilized by the authority or any other state agency. If not  
21   needed or required by the authority or other state agency, the



1 forfeited items shall be disposed of as provided by chapter  
2 712A. Notwithstanding any other law to the contrary, any live  
3 natural resource seized may be immediately returned to its  
4 natural environment or suitable habitat or may be disposed of as  
5 determined by the authority; provided that if the natural  
6 resource disposed of was unlawfully seized, the authority shall  
7 be liable to the owner for the fair market value of the items  
8 disposed of.

9 (c) The authority shall compile a list of all equipment,  
10 articles, instruments, aircraft, vehicles, vessels, or any  
11 natural resource forfeited as provided in this section and shall  
12 publish the list in its annual report.

13 (d) Notwithstanding any other law to the contrary, the  
14 authority may sell or take actions to cause the sale of any  
15 perishable natural resource that is seized to prevent the waste  
16 of the natural resource and to ensure the economic value of the  
17 natural resource; provided that the authority may not sell or  
18 cause the sale of any threatened or endangered species or any  
19 other species whose sale is prohibited by law. The authority  
20 may require the person or persons who took the natural resources  
21 to sell the seized natural resources at fair market value. The



1 authority may require any person purchasing any seized natural  
2 resource to deliver the proceeds of the sale to the authority or  
3 its authorized representative. Any person who refuses to sell  
4 the seized natural resources at fair market value or any person  
5 who fails to deliver the proceeds of the sale, as directed by  
6 the authority, shall be in violation of this subsection and  
7 punishable as provided by law. The authority shall deposit and  
8 keep the proceeds of the sale in an interest-bearing account  
9 until the suspected violation is settled between the person or  
10 persons who took the natural resource, consignee or consignees,  
11 if any, and the authority. Should a settlement not be reached,  
12 the authority shall submit the proceeds of the sale to the  
13 environmental court. The proceeds of the sale, after deducting  
14 any reasonable costs of the sale incurred by the authority,  
15 shall be subject to any administrative or judicial proceedings  
16 in the same manner as the seized natural resource would have  
17 been, including an action in rem for the forfeiture of the  
18 proceeds. Seizure and sale of a natural resource is without  
19 prejudice to any other remedy or sanction authorized by law.

20 § -45 Fees and surcharges. (a) The authority shall  
21 establish an annual fee for each non-Hawaii resident visitor to



1 Mauna Kea; provided that the fee shall be waived for visitors  
2 who access Mauna Kea to exercise their customary and traditional  
3 practice rights under article XII, section 7, of the Hawaii  
4 State Constitution; provided further that the authority shall  
5 establish rules for fee waivers, pursuant to section -34.

6 (b) The authority shall establish an annual fee for  
7 commercial tour operators to access Mauna Kea, the total annual  
8 net revenues of which shall be calculated to approximately equal  
9 the authority's annual operations and maintenance costs.

10 (c) The authority may establish a commercial tour fee  
11 surcharge, the net revenues of which shall be used for cultural  
12 and educational programs related to activities on Mauna Kea.

13 (d) The University of Hawaii shall not be exempt from any  
14 fee that is associated with access to Mauna Kea and established  
15 pursuant to this chapter.

16 (e) For the purposes of this section, "net revenues" means  
17 the revenues realized by the authority after the amount  
18 collected and owed to the office of Hawaiian affairs pursuant to  
19 section -46 has been deducted.

20 § -46 Revenue to be shared with the office of Hawaiian  
21 affairs. The authority and the University of Hawaii shall



1 transfer to the office of Hawaiian affairs twenty per cent of  
2 all receipts collected by the authority or university as a  
3 result of lease rent, fees, penalties, commercial activities,  
4 technology transfers, monetization of intellectual properties or  
5 discoveries, and other revenue sources, pertaining to the use of  
6 Mauna Kea lands; provided that any funds transferred to the  
7 office of Hawaiian affairs pursuant to this section shall be  
8 deemed income and proceeds from the use of public land trust  
9 lands by the authority and university to be expended by the  
10 office of Hawaiian affairs under section 10-3.

11       **§ -47 Exemption from taxation.** The authority shall not  
12 be required to pay assessments levied by any county, nor shall  
13 the authority be required to pay state taxes of any kind.

14       **§ -48 Assistance by state and county agencies.** Any  
15 state or county agency may render services upon request of the  
16 authority.

17       **§ -49 Annual report.** No later than twenty days prior to  
18 the convening of each regular session, the authority shall  
19 submit to the governor and the legislature, a complete and  
20 detailed report of its activities, including but not limited to:



- 1 (1) The status of transfers of title to lands from the  
2 department of land and natural resources to the  
3 authority pursuant to part II of Act , Session  
4 Laws of Hawaii 2018;
- 5 (2) The status of all leases and subleases of Mauna Kea  
6 lands; and
- 7 (3) An accounting of all revenue collected and expended by  
8 the authority.

9 The report submitted prior to the 2019 regular session  
10 shall include:

- 11 (1) The status of rulemaking pursuant to section -34;
- 12 (2) A comprehensive review of all existing commercial tour  
13 permits, fees, and associated environmental impacts  
14 with the possible elimination of all commercial tours  
15 to the summit of Mauna Kea by January 1, 2020; and
- 16 (3) A comprehensive review of all access plans to  
17 determine future access to the Hale Pōhaku mid-level  
18 facility and Mauna Kea summit for cultural  
19 practitioners, residents, hunters, environmentalists,  
20 non-residents, astronomers, and maintenance  
21 technicians.



1           §   -50   **Court proceedings; preferences; venue.**   (a)   Any  
2   action or proceeding to which the authority, the State, or a  
3   county may be a party, in which any question arises as to the  
4   validity of this chapter or any portion of this chapter, shall  
5   be brought in the circuit court of the circuit where the case or  
6   controversy arises, which court is hereby vested with original  
7   jurisdiction over the action or proceeding.   The action or  
8   proceeding shall be heard and determined in preference to all  
9   other civil cases pending therein except election cases,  
10   irrespective of position on the calendar.   Upon application of  
11   counsel to the authority, the same preference shall be granted  
12   in any action or proceeding questioning the validity of this  
13   chapter in which the authority may be allowed to intervene.

14           (b)   Notwithstanding any provision of law to the contrary,  
15   declaratory relief may be obtained for an action or proceeding  
16   under this section.

17           (c)   Any party aggrieved by the decision of the circuit  
18   court may appeal in accordance with part I of chapter 641 and  
19   the appeal shall be given priority.

20           §   -51   **Contested cases; conservation district use.**   (a)  
21   Notwithstanding any law to the contrary, conservation district



1 rules applicability shall maintain contested case opportunities  
2 in the conversation district use application process.

3 (b) Notwithstanding any law to the contrary, any decisions  
4 by the authority, insofar as they impact constitutional rights,  
5 including but not limited to Native Hawaiian traditional and  
6 customary rights and the right to a healthful environment, shall  
7 require the granting of contested case hearings.

8 § -52 **Issuance of bonds.** The director of finance may,  
9 from time to time, issue general obligation bonds pursuant to  
10 chapter 39 in amounts authorized by the legislature, for the  
11 purposes of this chapter.

12 § -53 **General administrative penalties.** (a) Except as  
13 otherwise provided by law, the authority or its authorized  
14 representative by proper delegation may set, charge, and collect  
15 administrative fines or bring legal action to recover  
16 administrative fees and costs as documented by receipts or  
17 affidavit, including attorneys' fees and costs; or bring legal  
18 action to recover administrative fines, fees, and costs,  
19 including attorneys' fees and costs, or payment for damages  
20 resulting from a violation of this chapter or any rule adopted



1 pursuant to this chapter. The administrative fines shall be as  
2 follows:

- 3 (1) For a first violation, a fine of not more than \$2,500;  
4 (2) For a second violation within five years of a previous  
5 violation, a fine of not more than \$5,000; and  
6 (3) For a third or subsequent violation within five years  
7 of the last violation, a fine of not more than  
8 \$10,000.

9 (b) Any criminal action against a person for any violation  
10 of this chapter or any rule adopted pursuant to this chapter  
11 shall not preclude the State from pursuing civil legal action  
12 against that person. Any civil legal action against a person to  
13 recover administrative fines and costs for any violation of this  
14 chapter or any rule adopted pursuant to this chapter shall not  
15 preclude the State from pursuing any criminal action against  
16 that person. Each day of each violation shall constitute a  
17 separate offense.

18 § -54 Violations and penalties. (a) The authority may  
19 set, charge, and collect reasonable fines for a violation of  
20 this chapter or any rule adopted pursuant to chapter 91.



1 (b) Any person found guilty of a violation of this chapter  
2 or any rules adopted thereunder shall be guilty of a petty  
3 misdemeanor and shall be punished as follows:

4 (1) For a first offense, by a mandatory fine of not less  
5 than \$500 or imprisonment of not more than thirty days  
6 or both;

7 (2) For a second offense within five years of a previous  
8 conviction under this section, by a mandatory fine of  
9 not less than \$1,000 or imprisonment of not more than  
10 thirty days or both; and

11 (3) For a third or subsequent offense within five years of  
12 two prior convictions under this section, by a  
13 mandatory fine of not less than \$2,000 or imprisonment  
14 of not more than thirty days or both.

15 (c) Any criminal action against a person for any violation  
16 under this section shall not preclude the State from pursuing  
17 civil legal action to recover administrative fines and costs  
18 against the person. Any civil legal action against a person to  
19 recover administrative fines and costs for any violation of this  
20 chapter or any rules adopted thereunder shall not preclude the



1 State from pursuing any criminal action against that person  
2 pursuant to this section.

3 (d) The authority may maintain an action for an injunction  
4 to restrain any violation of this chapter and may take any other  
5 lawful action to prevent or remedy any violation.

6 (e) The continuance of a violation after conviction shall  
7 be deemed a new offense for each day of a violation's  
8 continuance."

9 SECTION 2. Section 171-2, Hawaii Revised Statutes, is  
10 amended to read as follows:

11 "§171-2 Definition of public lands. "Public lands" means  
12 all lands or interest therein in the State classed as government  
13 or crown lands previous to August 15, 1895, or acquired or  
14 reserved by the government upon or subsequent to that date by  
15 purchase, exchange, escheat, or the exercise of the right of  
16 eminent domain, or in any other manner; including lands accreted  
17 after May 20, 2003, and not otherwise awarded, submerged lands,  
18 and lands beneath tidal waters that are suitable for  
19 reclamation, together with reclaimed lands that have been given  
20 the status of public lands under this chapter, except:



- 1 (1) Lands designated in section 203 of the Hawaiian Homes  
2 Commission Act, 1920, as amended;
- 3 (2) Lands set aside pursuant to law for the use of the  
4 United States;
- 5 (3) Lands being used for roads and streets;
- 6 (4) Lands to which the United States relinquished the  
7 absolute fee and ownership under section 91 of the  
8 Hawaiian Organic Act prior to the admission of Hawaii  
9 as a state of the United States unless subsequently  
10 placed under the control of the board of land and  
11 natural resources and given the status of public lands  
12 in accordance with the state constitution, the  
13 Hawaiian Homes Commission Act, 1920, as amended, or  
14 other laws;
- 15 (5) Lands to which the University of Hawaii holds title;
- 16 (6) Lands to which the Hawaii housing finance and  
17 development corporation in its corporate capacity  
18 holds title;
- 19 (7) Lands to which the Hawaii community development  
20 authority in its corporate capacity holds title;



- 1 (8) Lands to which the department of agriculture holds  
2 title by way of foreclosure, voluntary surrender, or  
3 otherwise, to recover moneys loaned or to recover  
4 debts otherwise owed the department under chapter 167;
- 5 (9) Lands that are set aside by the governor to the Aloha  
6 Tower development corporation; lands leased to the  
7 Aloha Tower development corporation by any department  
8 or agency of the State; or lands to which the Aloha  
9 Tower development corporation holds title in its  
10 corporate capacity;
- 11 (10) Lands that are set aside by the governor to the  
12 agribusiness development corporation; lands leased to  
13 the agribusiness development corporation by any  
14 department or agency of the State; or lands to which  
15 the agribusiness development corporation in its  
16 corporate capacity holds title; [and]
- 17 (11) Lands to which the Hawaii technology development  
18 corporation in its corporate capacity holds title; and
- 19 (12) Lands to which the Mauna Kea management authority  
20 holds title, that the authority controls by lease from  
21 any state department or agency, or that are designated



1 by the governor under section 171-11 for management by  
2 the authority;

3 provided that, except as otherwise limited under federal law and  
4 except for state land used as an airport as defined in section  
5 262-1, public lands shall include the air rights over any  
6 portion of state land upon which a county mass transit project  
7 is developed after July 11, 2005."

8 SECTION 3. Section 199-3, Hawaii Revised Statutes, is  
9 amended to read as follows:

10 **"§199-3 Conservation and resources enforcement officers,**  
11 **duties; other law enforcement officers.** (a) The conservation  
12 and resources enforcement officers, with respect to all state  
13 lands, including public lands, state parks, forest reserves,  
14 forests, aquatic life and wildlife areas, Kaho'olawe island  
15 reserve, Mauna Kea lands as defined in section -2, and any  
16 other lands and waters within the State, shall:

17 (1) Enforce title 12, chapters 6D, 6E, and 6K, and rules  
18 adopted thereunder;

19 (2) Investigate complaints, gather evidence, conduct  
20 investigations, and conduct field observations and  
21 inspections as required or assigned;



- 1 (3) Cooperate with enforcement authorities of the State,  
2 counties, and federal government in development of  
3 programs and mutual aid agreements for conservation  
4 and resources enforcement activities within the State;
- 5 (4) Cooperate with established search and rescue agencies  
6 of the counties and the federal government in  
7 developing plans and programs and mutual aid  
8 agreements for search and rescue activities within the  
9 State;
- 10 (5) Check and verify all leases, permits, and licenses  
11 issued by the department of land and natural  
12 resources;
- 13 (6) Enforce the laws relating to firearms, ammunition, and  
14 dangerous weapons contained in chapter 134;
- 15 (7) Enforce the laws in chapter 291E relating to operating  
16 a vessel on or in the waters of the State while using  
17 intoxicants;
- 18 (8) Whether through a specifically designated marine  
19 patrol or otherwise, enforce the rules in the areas of  
20 boating safety, conservation, and search and rescue  
21 relative to the control and management of boating



1 facilities owned or controlled by the State, ocean  
2 waters, and navigable streams and any activities  
3 thereon or therein, and beaches encumbered with  
4 easements in favor of the public, and the rules  
5 regulating vessels and their use in the waters of the  
6 State; [~~and~~]

7 (9) Enforce laws and rules under chapter relating to  
8 Mauna Kea lands, in cooperation with the Mauna Kea  
9 management authority; and

10 [~~(9)~~] (10) Carry out other duties and responsibilities as  
11 the board of land and natural resources from time to  
12 time may direct.

13 (b) Every state and county officer charged with the  
14 enforcement of laws and ordinances shall enforce and assist in  
15 the enforcement of title 12, chapters 6E and 6K, and rules  
16 adopted thereunder and in the enforcement of chapters 266, [~~and~~]  
17 267, and, and of all rules adopted thereunder."

18 SECTION 4. Section 199-4, Hawaii Revised Statutes, is  
19 amended to read as follows:

20 "**§199-4 Board of land and natural resources, police**  
21 **powers.** (a) The board of land and natural resources shall have



1 police powers and may appoint and commission enforcement  
2 officers within the conservation and resources enforcement  
3 program. Persons appointed and commissioned under this section  
4 shall have and may exercise all of the powers and authority of a  
5 police officer, including the power of arrest, and in addition  
6 to enforcing title 12, chapters 6D, 6E, and 6K, and rules  
7 adopted thereunder, may enforce all other state laws and rules,  
8 and county ordinances within all lands and waters of the  
9 State[+], including Mauna Kea lands as defined in section -2  
10 and pursuant to section -41(c); provided that [~~such~~] those  
11 powers shall remain in force and effect only while in actual  
12 performance of their duties, which shall include off-duty  
13 employment when such employment is for other state departments  
14 or agencies. These enforcement officers shall consist of  
15 personnel whose primary duty will be the enforcement of title  
16 12, chapters 6D, 6E, and 6K, and the rules adopted thereunder  
17 within the areas under the jurisdiction of the department of  
18 land and natural resources.

19 (b) An enforcement officer, upon arresting any person for  
20 violation of title 12, chapter 6D, 6E, or 6K, or any other state  
21 law or county ordinance or rule adopted thereunder, may



1 immediately take the person arrested to a police station or  
2 before a district judge, or take the name, address, and the  
3 number of the fishing, hunting, or other licenses or permits, if  
4 any, of the person, and note the violation of the law or rule by  
5 the person, and issue the person a summons or citation, printed  
6 in the form described in section 199-5, warning the person to  
7 appear and to answer to the charge against the person at a  
8 certain place and time within seven days after the arrest. Any  
9 person failing to obey a summons issued pursuant to this section  
10 shall be subject to section 199-6."

11 SECTION 5. Chapter 304A, part IV, subpart O, is repealed.

12 SECTION 6. Section 304A-2170, Hawaii Revised Statutes, is  
13 repealed.

14 ~~["§304A-2170] Mauna Kea lands management special fund.~~

15 ~~(a) There is established the Mauna Kea lands management special~~  
16 ~~fund, into which shall be deposited:~~

17 ~~(1) Appropriations by the legislature;~~

18 ~~(2) All net rents from leases, licenses, and permits,~~  
19 ~~including fees and charges for the use of land and~~  
20 ~~facilities within the Mauna Kea lands;~~



- 1       ~~(3) All moneys collected for violations of subpart O of~~  
2           ~~part IV; and~~
- 3       ~~(4) Interest earned or accrued on moneys in the special~~  
4           ~~fund.~~
- 5       ~~(b) The proceeds of the special fund shall be used for:~~
- 6       ~~(1) Managing the Mauna Kea lands, including maintenance,~~  
7           ~~administrative expenses, salaries and benefits of~~  
8           ~~employees, contractor services, supplies, security,~~  
9           ~~equipment, janitorial services, insurance, utilities,~~  
10          ~~and other operational expenses; and~~
- 11       ~~(2) Enforcing administrative rules adopted relating to the~~  
12           ~~Mauna Kea lands.~~
- 13       ~~(c) No moneys deposited into the Mauna Kea lands~~  
14       ~~management special fund may be used by the governor or the~~  
15       ~~director of finance as a justification for reducing any budget~~  
16       ~~request or allotment to the University of Hawaii unless the~~  
17       ~~University of Hawaii requests the reduction.~~
- 18       ~~(d) The University of Hawaii may establish separate~~  
19       ~~accounts within the special fund for major program activities.~~
- 20       ~~(e) All expenditures from the special fund shall be~~  
21       ~~subject to legislative appropriation.~~





1 thereof as may be necessary for fiscal year 2018-2019 for start  
2 up costs for the Mauna Kea management authority.

3 The sum appropriated shall be expended by the Mauna Kea  
4 management authority for the purposes of this Act.

5 SECTION 10. There is appropriated out of the Mauna Kea  
6 management revolving fund the sum of \$250,000 or so much thereof  
7 as may be necessary for fiscal year 2018-2019 for the purpose of  
8 administration, capital improvement projects, and other purposes  
9 pursuant to this Act.

10 The sum appropriated shall be expended by the Mauna Kea  
11 management authority for the purposes of this Act.

12 **PART IV**

13 SECTION 11. Statutory material to be repealed is bracketed  
14 and stricken. New statutory material is underscored.

15 SECTION 12. This Act shall take effect upon its approval;  
16 provided that sections 9 and 10 of this Act shall take effect on  
17 July 1, 2018.

18



**Report Title:**

Mauna Kea Management Authority; Established; Mauna Kea;  
Appropriation

**Description:**

Establishes the Mauna Kea Management Authority and membership of the Authority. Establishes and specifies duties of the Mauna Kea candidate advisory council. Limits the number of telescopes that may be authorized on Mauna Kea. Authorizes the renegotiation of leases, subleases, easements, permits, and licenses pertaining to Mauna Kea. Requires that revenue derived from activities on Mauna Kea be shared with the Office of Hawaiian Affairs. Excludes Mauna Kea lands from the definition of "public lands". Provides for free access to Mauna Kea for traditional cultural purposes. Establishes police powers and provides for enforcement of laws on land under the jurisdiction of the Mauna Kea Management Authority. Appropriates funds. Takes effect upon approval. (Proposed SD1)

*The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.*

