



UNIVERSITY OF HAWAII SYSTEM

Legislative Testimony

Testimony Presented Before the
House Committee on Legislative Management
April 5, 2010 at 3:30pm

by

James R. Gaines

Vice President for Research

HCR 311 HD1/HR 226 HD1 – REQUESTING THE UNIVERSITY OF HAWAII BOARD OF REGENTS TO SUBMIT TO THE LEGISLATURE A REPORT OF OBSERVATION VIEWING TIME ON THE TELESCOPES ON MAUNA KEA

Chair Tokioka, Vice Chair Oshiro and members of the Committee:

The University of Hawai'i supports and will comply with resolutions HCR 311 HD1/HR 226 HD1, which requests the Board of Regents to submit a report of observation viewing time on the telescopes on Mauna Kea.

Thank you for the opportunity to testify.



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COMMITTEE ON LEGISLATIVE MANAGEMENT

Rep. James Kunane Tokioka, Chair

Rep. Blake Oshiro, Vice Chair

Monday, April 5, 2010

3:30 p.m.

Room 423

STRONG SUPPORT for HCR 311 HD1/HR 226 HD1 – Mauna Kea

HRETestimony@capitol.hawaii.gov

Aloha Chair Tokioka, Vice Chair Oshiro and Members of the Committee!

My name is Kat Brady and I am the Assistant Executive Director of Life of the Land, Hawai'i's own energy, environmental and community action group advocating for the people and `aina for over four decades. Our mission is to preserve and protect the life of the land through sound energy and land use policies and to promote open government through research, education, advocacy and, when necessary, litigation.

HCR 311 HD1/HR 226 HD1 requests that the UH Institute for Astronomy provide a written report of viewing time on the telescopes of Mauna Kea.

Life of the Land is in strong support of this Resolution.

These dire financial times force Hawai'i to look for revenue to repair and mend the safety net that protects her most vulnerable people. If we look at the science reserve from a business standpoint, it is quite common for businesses to lease a building and then pay someone else to manage the property. Therefore, it makes sense that:

- The owners of the telescopes would pay rent to have their equipment on the premier viewing site on the planet. These funds would go into the general fund.
- The owners of the telescopes would pay for the management of the science reserve. This money would go to UH to cover the \$2.1 million they are requesting from the general fund for protection and management of Mauna Kea and/or time on the telescopes.

As proponents of open government, Life of the Land supports the audit. Transparency and accountability are crucial to good government. The legislature has a responsibility to the people of Hawai'i to ensure that these special places are protected and cared for.

Mahalo for this opportunity to share our thoughts.

Testimony in Support
With
Critical Amendments

House Concurrent Resolution 311 and House Resolution 226

REQUESTING THE UNIVERSITY OF HAWAII BOARD OF REGENTS TO
SUBMIT TO THE LEGISLATURE A REPORT OF OBSERVATION VIEWING
TIME ON THE TELESCOPES ON MAUNA KEA.

House Legislative Management Committee

April 5, 2010

Room 423

3:30 p.m.

Aloha,

My name is Keomailani Von Gogh. I am a resident of Ola`a, Hawai`i and am a Mauna Kea Hawaiian Cultural and Traditional Practitioner.

I support the original intent and purpose of HCR311/HR226 and therefore can only support these measures with critical amendments (*Please* see requested amendments below). The reasons to support the original language contained in HRC311/HR226 are **simple**:

These resolutions are SOLUTIONS measures meant to resolve and help fix some of the State's problems not create them – DON'T GET CONFUSED BY THE UH.

Because:

--For forty (40) years, the people of Hawai`i have shared Mauna Kea with the International Astronomy Industry. The Astronomy Industry has profited by being allowed to build the largest astronomy center in the world – and all for the **bargaining basement lease rental price of ONLY \$1.00 per year (paid by each observatory)**. More specifically for 40 years the wealthiest entities on earth, have been allowed by the State's Board of Land and Natural Resources (BLNR) and the University of Hawai`i (UH) to escape paying "fair-market" lease rent *into* the states general fund as state law requires (see HRS 171-17)--and this is outrageous!

-- DON'T BE CONFUSED--despite the University's claim that House Bill 1174 (Act 132) passed last year, gives them jurisdiction over Mauna Kea and the right to collect and keep for themselves any money collected from the foreign and non-state entities for the use of Mauna Kea. **The plain fact of the matter is--** nothing in HB1174 overturns HRS 171 or the other relevant laws governing the conservation district of Mauna Kea. HRS 171 is the law and it should have been followed for the last 40 years.

--DON'T BE CONFUSED by the claim that some Hawaiian scholarships will be paid by some future telescope project like the Thirty Meter Telescope (TMT). This project has yet to be approved and HRS 171 is the law and it should have been followed for the last 40 years.

--DON'T BE CONFUSED -- Mauna Kea summit is conservation and Public Trust Land and HRS 171 requires "fair-market" lease rent to be assessed and charged to the foreign and non-state entities using Mauna Kea and all funds received must, in turn, be deposited into the general fund for the benefit of all--not just Hawaiians not just the UH and its agents but all the people of Hawai'i. HRS 171 is the law and it should have been followed for the last 40 years.

1. **We support these measures because they will help the people of Hawai'i.** The people of Hawai'i are suffering under this severe economic crisis. They are suffering the loss of jobs, wages, homes, health and other benefits and basic needs and services. You the lawmakers have the power to reduce this suffering. And we would hope and pray that before you consider raising taxes or selling our Public Trust Lands that you look to any and all alternatives sources of funding--these measures provide such an alternative.
2. **We support these measures because they are reasonable--and will help put a stop to the outrageous \$1.00 per year lease rent currently paid to the people of Hawai'i by some of the wealthiest entities on earth.**
3. **We support these measures because they will help reduce the need to raise taxes.** Calling for a financial audit and accounting for the purpose of accessing fair and equitable lease rent to be paid by the foreign nations, corporations and non-state entities using Mauna Kea will help to reduce the need to raise taxes which in turn reduces the burdens placed on the people of Hawai'i.
4. **We support these measures because they will ensure compliance with existing state law.** State law already requires the fair-market lease rent to be collected for the use of Mauna Kea. And for more than 40 years the observatories have not complied with existing state law. HRS 171 requires

fair market rent to be collected and deposited into the general fund for the benefit of all the people of Hawai'i. **When the state does not collect rent -no money is deposited into the general fund--and the people suffer.** Furthermore, when the State does not charge lease rent--it means **the people are in effect subsidizing foreign direct investment on our own land--this is outrageous!** The foreign and non-state entities using Mauna Kea include some of the wealthiest in the world. For example, the William M. Keck Foundation which owns and operates the KECK Telescopes reports a total asset worth of a \$1 billion dollars. The governments of the United Kingdom, France, Canada, and Japan each are able to provide their people universal health care and education--yet we here in Hawai'i--cannot. These nations manage their budgets for their people, and I am sure the \$1.00 per year in lease rent they pay doesn't hurt either.

5. **We support these measures because the taxpayers have paid enough.** The taxpayers subsidize the astronomy industry in more ways than one--the taxpayers paid for the paving of the summit road. The road up to Hale Pohaku belongs to Hawaiian Home Lands yet they receive no monies from the observatories for the use of the road. The taxpayers pay for roads, parks, schools and other public services that the foreign nationals (who are exempt from paying income tax) enjoy. The taxpayers absorb the cost of high energy consumption--just one facility up there can draw energy equivalent to 2,500 single family homes. The taxpayers have paid enough!
6. **Lastly, we support these measures because charging and collecting rent does not negatively impact the University or its students. EVEN AS THE UH HAS PREVIOUSLY TESTIFIED IN OPPOSITION TO THESE RESOLUTIONS --the plain fact of the matter is** the University draws from the general fund too--this year alone they are asking for \$253 million dollars from the legislature. The university has raised student tuition numerous times all the while the wealthiest on earth continue to pay only \$1.00 per year into the general fund. In the end, while the observatories may be out some money (small compared to their annual operating budgets--that can reach into the hundreds of millions of dollars)--such a cost is the least they can offer during these extreme times. The benefit from lease rents can, on the other hand, make a big difference to the people of Hawai'i Nei.

II. SUPPORT WITH AMENDMENTS

The Amendments Needed Are:

The amendments needed to bring these measures (1) back into compliance with existing state law and (2) protect Public Trust Lands and any funds derived from these lands are as follow:

1) AMEND THE TITLE OF THE RESOLUTION. The title of the resolution has been changed a couple times. We request it be changed simply to read:

“REQUESTING THAT THE UNIVERSITY OF HAWAII, PROVIDE A WRITTEN REPORT OF VIEWING TIME IN LIEU OF LEASE RENT, PRIVATE-PUBLIC PARTNERSHIPS AGREEMENTS, EXCHANGES OF MONEY AND/OR SERVICES MADE BY THE OBSERVATORIES USING PUBLIC TRUST LANDS ON THE SUMMIT OF MAUNA KEA, TO THE LEGISLATURE AND STATE AUDITOR; FOR THE PURPOSE OF ASSESSING AND CHARGING FAIR-MARKET LEASE RENT TO BE PAID BY THE OBSERVATORIES USING MAUNA KEA.”

2.) We would like to request that you **REMOVE** all THEREFORE BE IT RESOLVED LANGUAGE FROM HCR311, HD_1, HR226 and **RESTORE** all of the original THEREFORE BE IT RESOLVED LANGUAGE found in the first versions of HCR311/HR226 language.

These amendments will help insure -the Legislature and the State Auditor are required to assess all the information provided by the UH .

3) We would like to request that you **REMOVE "Where As" numbers 12-16** that reference ACT 132 (HB1174), allowing the UH to charge and keep rent from the observatories, instead the state charging and using the rent to offset the budget short fall pursuant to HRS 171.

4) We would like to request that you **REMOVE "Where As" clause, numbers 18-19**. This statement is not wholly correct since the UH is actually asking for \$253 million from the general fund this year. The \$2.1 million reference includes funding for the UH Office of Mauna Kea Management but also tax payer funds to hire outside legal counsel to "to secure the bid for the Thirty Meter Telescope." The state taxpayers should not fund non-state entities lawyer fees - this is outrageous. The California based TMT that is back by the California based multi-billion dollar Gordon and Betty Moore Foundation, should pay for their own lawyers.

The amendments that the UH has in the present version of resolution HCR311/HR226 give the University the ability to audit themselves. Wouldn't that be nice if we could just tell the IRS that "I'll do an audit on myself and let you know what I come up with." I would like to know what the UH is hiding. Why are so resistant.

Rent is due. By the way, when some one wants to rent a house, they are not charged based on what they make or profit. Please don't get pressured by the political climate around this issue. Our state needs this revenue - please call for an audit as called for in the original HRC311/HR226 and lets start charging fair market rents for our beloved Mauna Kea as the law requires.

I thank you for giving me this opportunity to testify on these important matters.

Aloha,

Keomailani Von Gogh

Ola`a, Hawai`i



HOUSE OF REPRESENTATIVES

STATE OF HAWAII
STATE CAPITOL
HONOLULU, HAWAII 96813

April 5, 2010

Testimony of Representative Faye P. Hanohano before the Committee on Legislative Management in **support** of HCR 311 REQUESTING THE UNIVERSITY OF HAWAII BOARD OF REGENTS TO SUBMIT TO THE LEGISLATURE A REPORT OF OBSERVATION VIEWING TIME ON THE TELESCOPES ON MAUNA KEA.

Aloha Chair Tokioka, Vice Chair Oshiro and committee members,

I wish to express my support of this concurrent resolution which will bring us closer to understanding the monetary value of viewing time on the telescopes of Mauna Kea/

Mahalo,

Faye P. Hanohano
State Representative, District 4

HO'OKAHI NO KA 'AIHA A ME NA KANAKA

KAHEA

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LATE TESTIMONY

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HCR311/HR226 Fair Market Rent for Use of Mauna Kea
Room 423 3:30 pm
April 5, 2010

Aloha Chairman Tokioka and members of the Committee on Legislative Management and Government,

Mahalo for this opportunity to express our **support for HCR311 and HR226 with important amendments**. We know that the Legislature is confronting many problems this session, but these resolutions – if restored to their original purpose – offer solutions for all of us, even the University.

The original purpose of these resolutions was to get a financial audit on the use of Mauna Kea by foreign institutions and corporations other than the University. The state is in an extreme financial crisis and new sources of money must be found or basic public services will be lost. We all know that millions of dollars exchange hands over the private use of Mauna Kea with no benefit to the general fund. So it is reasonable to ask: ***how much money is being generated by the non-public entities using Mauna Kea?***

In the weeks since these resolutions were introduced, public hearings have been held and University representatives have not been able to answer basic questions about the financial transactions that occur over Mauna Kea. ***If you trust the University's testimony, then you know one thing for certain: they have no idea how much money is being made from the use of public lands on Mauna Kea.*** They were not involved in the \$12-million-dollar-deal between CalTech and Yale University last year. They have no ledger to document any proceeds collected from the information gained and the equipment constructed as a result of the work done on our public mountain.

The fact that the University cannot answer your basic questions is reason enough to commission an independent audit on the financial transactions involving Mauna Kea.

Surprisingly, though, the University has worked hard over the last few weeks to water down these resolutions and redirect their purpose. This must make you wonder: why does the University not want to know how much money is being made from the use of Mauna Kea?

If the University were properly managing Mauna Kea and abiding by the law, then taxes, fees, and rent from the use of Mauna Kea's public land would currently be deposited in the general fund. At least \$50 million dollars a year would have been collected and the general fund would not face as severe a shortfall as we see today.

With all of the problems this Legislature faces, these resolutions – if restored to their original purpose – offer a solution. A solution that benefits all of us – even the University. Please amend HCR311/HR226 to direct the Office of the Auditor to evaluate the financial transactions involving Mauna Kea for the purposes of collecting rent, fees, and taxes for the general fund. Please see attached amendments.

Mahalo,



Marti Townsend,
Program Director

Necessary Amendments for HCR311/HR226

The amendments needed to bring these measures (1) back into compliance with existing state law and (2) protect Public Trust Lands and any funds derived from these lands are as follow:

1) AMEND THE TITLE OF THE RESOLUTION. The title of the resolution has been changed a couple times. We request it be changed simply to read:

“Requesting that the University of Hawaii provide a written report of viewing time in lieu of lease rent, private-public partnership agreements, exchanges of money and/or services made by the observatories using public trust lands on the summit of Mauna Kea, to the Legislature and State Auditor, for the purpose of assessing and charging fair-market lease rent to be paid to the general fund by the observatories using Mauna Kea.”

2) RESTORE all of the original THEREFORE BE IT RESOLVED LANGUAGE found in the first versions of HCR311/HR226. REMOVE all THEREFORE BE IT RESOLVED LANGAUGE found in the HD 1 versions.

These amendments are important to ensure the Legislature and the State Auditor are required to assess all of the information provided by the University.

3) REMOVE the "Where As" statements numbered 12-16 that reference ACT 132 (SLH 2009, H.B. 1174). As written now, this language allows the University to charge and keep rent from the observatories, instead of the state collecting rent to offset the budget shortfall. Hawaii Revised Statute 171-18 requires that rent from the use of public lands be deposited in the general fund. Act 132 did not amend this statute.

4) REMOVE the "Where As" statements numbered 18-19. This statement is not wholly correct since the University is actually asking for \$253 million from the general fund this year. The \$2.1million reference includes funding for UH's Office of Mauna Kea Management, as well as taxpayer funds to hire outside legal counsel "to secure the bid for the Thirty Meter Telescope." The state taxpayers should not fund the lawyer fees of non-state entities. The California-based TMT is financially supported in part by the California-based multi-billion dollar foundation of Gordon and Betty Moore; it should finance its own attorneys.

HŌ'ŌKĀHI NO KĀ'ĀINA A ME NA KANAKA

KAHEA

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**HCR311/HR226 Fair Market Rent for Use of Mauna Kea
Room 423 3:30 pm
April 5, 2010**

Aloha Chairman Tokioka and members of the Committee on Legislative Management and Government,

The public strongly supports the original version of HCR311/HR226. More than 200 of our local members have written to their legislators urging them to support an audit of the financial activities involving Mauna Kea, as requested by **HCR311/HR226 and the companion SCR227/SR118**. Attached are 50 copies of testimony that are representative of the hundreds we have already received.

Please take this demonstration of public support into consideration as you deliberate on these resolutions. We strongly urge you to restore these important resolutions to their original intent and purpose.

Mahalo,



Marti Townsend,
Program Director

LATE TESTIMY



HCR 311; HR 226

Relating to a request for the University of Hawaii Board of Regents to submit to the Legislature a report of observation viewing time on the telescopes of Mauna Kea
House Committee on Legislative Management

April 5, 2010

3:30pm

Room: 423

The Office of Hawaiian Affairs (OHA) **SUPPORTS** HCR 311 and HR 226, which would request the University of Hawai'i Board of Regents (UH BOR) to submit to the Legislature a report of observation and viewing time of the telescopes of Mauna Kea.

Mauna Kea is a part of the ceded lands corpus and thus part of the public lands trust, held by the state for the benefit of the people of Hawai'i, including Native Hawaiians. In addition to being invaluable and sacred to Native Hawaiians, Mauna Kea is also viewed as one of the premier astronomical sites in the world. The university leases these public trust lands from the Board of Land and Natural Resources (BLNR) for \$1 a year. The lease agreement allows for subleases with BLNR approval. The university has contracted through sub-lease and use agreements with commercial entities, foreign governments, as well as public and private universities and institutions.

The terms of the university's sub-leases and use agreements have not been made available for public review, thus details of the profits or other in-kind services received by the university is generally unknown. The way that rents or in-kind services are used have also been absent from the public record. This lack of accounting has fueled controversy on whether the subleases have been for fair market value and importantly whether the "ceded lands" beneficiaries are receiving their fair share of this public trust resource. HCR 311 and HR 226 would help to address this issue and assist the Department of Land and Natural Resources in fulfilling its obligations to administer the public land trust for the benefit of Hawai'i's people, including Native Hawaiians.

OHA, the agency created to hold in trust a pro rata portion of the income and proceeds derived from the public land trust for the betterment of the conditions of Native Hawaiians, supports a reporting on the total viewing time provided to UH and the Institute for Astronomy (IFA), valuation of all benefits (including financial gain, viewing time, and in-kind exchanges) received by UH and IFA on the aforementioned sub-leases and use agreements, and a summary of all contracts, sub-leases, use agreements, or written understandings entered into by UH and IFA for the use of Mauna Kea.

This would assist OHA in determining whether the university is charging and receiving fair market value for the use of Mauna Kea and what portion of the income and proceeds should be used to fulfill OHA's mandate.

Therefore, OHA urges the committees to PASS HCR 311 and HR 226. Thank you for the opportunity to testify.