
A BILL FOR AN ACT

RELATING TO LAND USE.

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

1 **PART I**

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

5 **"CHAPTER**

6 **MAUNA KEA MANAGEMENT AUTHORITY**

7 § -1 **Findings and purpose.** The legislature finds that
8 Mauna Kea is of profound cultural and genealogical importance to
9 Native Hawaiians. Mauna Kea is also valued as an exceptional
10 site for astronomical advancements. The summit region of Mauna
11 Kea is a spiritual site that is home to cultural landscapes,
12 fragile alpine habitats, and historical and archaeological
13 treasures, as well as endemic species found nowhere else on the
14 planet. Mauna Kea's exceptional atmospheric conditions make it
15 the world's premier site for astronomical observations. In
16 addition, the legislature recognizes the critical need to manage
17 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; and all lands held
19 in trust or otherwise controlled by lease from any state
20 department or agency, or that are designated by the governor
21 under section 171-11, for management by the 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, leases, subleases,
9 memoranda of understanding, and memoranda of agreement
10 entered into 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) Provide advisory, consultative, training, and
5 educational services, technical assistance, and advice
6 to any person, partnership, or corporation, either
7 public or private, to carry out the purposes of this
8 chapter, and engage the services of consultants on a
9 contractual basis for rendering professional and
10 technical assistance and advice;
- 11 (8) Procure insurance against any loss in connection with
12 its property and other assets and operations in
13 amounts and from insurers as it deems desirable;
- 14 (9) Contract for and accept gifts or grants in any form
15 from any public agency or from any other source;
- 16 (10) Adopt rules governing the procurement and purchase of
17 goods, services, and construction, subject to the
18 requirements of chapter 103D;
- 19 (11) Prevent trespassing and other illegal activities on
20 Mauna Kea lands;



- 1 (12) Cause all persons trespassing on or unlawfully
2 occupying Mauna Kea lands, and their effects, and all
3 unauthorized animals to be removed therefrom and to
4 impound the animals according to law;
- 5 (13) Enter any Mauna Kea lands in order to take possession
6 thereof, and to resume possession of any Mauna Kea
7 lands in case of surrender, forfeiture, or escheat;
- 8 (14) Enforce contracts respecting leases, licenses, or
9 permits of Mauna Kea lands;
- 10 (15) Recover money due the authority for damage done to any
11 Mauna Kea lands by wrongful entry and occupation or by
12 wrongful removal therefrom or destruction of any
13 property;
- 14 (16) Bring actions and proceedings as may be necessary to
15 carry out the powers and duties of the authority in
16 the name of the State and to defend actions brought
17 against the State as may be authorized;
- 18 (17) Enforce laws and rules within all Mauna Kea lands,
19 pursuant to sections -3(f)(1), -40, and -41;



- 1 (18) Do any and all things necessary to carry out its
2 purposes and exercise the powers granted in this
3 chapter;
- 4 (19) 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, and review, revise,
8 and update as necessary all management plans for Mauna
9 Kea, including but not limited to the 2000 Mauna Kea
10 science reserve master plan, the 2009 Mauna Kea
11 comprehensive management plan, the cultural resources
12 management plan, the natural resources management
13 plan, the public access plan, and the decommissioning
14 plan; and
- 15 (20) 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 authority,



1 subject to revert 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 twelve
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 chair of the Sierra Club, Moku Loa Group, or the
4 chair'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;
- 8 (11) A representative from the Edith Kanakaole Foundation;
9 and
- 10 (12) The board of land and natural resources Hawai'i island
11 member.
- 12 (f) Members of the candidate advisory council shall serve
13 a term of four years; provided that the member on the Hawaiian
14 homes commission who represents east Hawaii or west Hawaii shall
15 serve two years.
- 16 (g) Any member of the candidate advisory council whose
17 term has expired may continue in office as a holdover member
18 until a successor is appointed; provided that a holdover member
19 shall not hold office for more than six months following the
20 expiration of the member's term of office.



1 (h) The chairperson of the candidate advisory council
2 shall be elected by a majority of the voting members of the
3 candidate advisory council. A majority of the members to which
4 the candidate advisory council is entitled shall constitute a
5 quorum to conduct business. The concurrence of a majority of
6 the members of the candidate advisory council shall be necessary
7 to make any action of the candidate advisory council valid. The
8 candidate advisory council shall meet annually and at other
9 times as necessary. The candidate advisory council shall be
10 exempt from part I of chapter 92.

11 (i) Members of the candidate advisory council shall serve
12 without compensation but shall be reimbursed for expenses,
13 including travel expenses, necessary for the performance of
14 their duties.

15 § -6 Auction. Except as otherwise specifically
16 provided, all disposition of lands by the authority shall be
17 made at public auction after public notice as provided in
18 section -8. All applicable auctions shall be held at the
19 door of the office of the land agent or at a place that is
20 convenient in the district in which the land is located, and
21 shall be conducted by the land agent or by any authorized



1 employee of the authority under the direction of the authority,
2 all of whom shall perform this service without extra
3 compensation.

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

19 **§ -8 Notices.** (a) Public notice of any proposed
20 disposition by auction shall be given at least once statewide



1 and once in the county where the land being disposed of is
2 located. Notice of the auction shall contain the following:

- 3 (1) Time and place of the auction;
- 4 (2) General description of the land, including the address
5 and tax map key;
- 6 (3) Specific use for which the disposition is intended;
7 and
- 8 (4) Rental price to be charged.

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

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

- 19 (1) The qualifications required of applicants;
- 20 (2) A general description of the land, including the
21 address and tax map key;



- 1 (3) The specific use for which the disposition is
2 intended; and
- 3 (4) The date by which all applications must be filed,
4 which shall be not less than fourteen days after the
5 last notice.

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

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

18 (c) Public notice of a proposed disposition by negotiation
19 shall be given at least once statewide and once in the county
20 where the land being disposed of is located; provided that the
21 notices are not required for permits. The notice shall invite



1 proposals and state in general terms the size, location, and
2 prices or rental of lots to be leased, the terms of lease, and
3 the last date upon which application will be received by the
4 authority, which shall not be less than thirty days after the
5 last date of the notice. The notice shall also state the times
6 and places at which more detailed information with respect to
7 the lease may be secured by interested persons.

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

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



1 authority and the lands may be leased at that price. The
2 authority shall be reimbursed by the lessee for the cost of any
3 appraisal required to be made by a disinterested appraiser or
4 appraisers contracted by the authority.

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

7 (1) An employee of the authority qualified to appraise
8 lands; or

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

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



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

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

15 (1) An employee of the authority qualified to appraise
16 lands; or

17 (2) A disinterested appraiser whose services shall be
18 contracted by the authority,

19 and the lessee shall be promptly notified of the determination
20 and provided with the complete appraisal prepared by the
21 authority or the authority's appraiser; provided that if the



1 lessee does not agree upon the fair market rental, the lessee
2 may appoint the lessee's own appraiser and the lessee shall
3 provide the authority with the complete appraisal prepared by
4 the lessee's appraiser. Each party shall pay for its own
5 appraiser. If the authority's and the lessee's appraisers do
6 not agree upon the lease rental, the lessee and the authority
7 shall in good faith attempt to resolve the dispute by nonbinding
8 mediation by a single mediator mutually agreed upon by the
9 parties. If the dispute is not resolved by the mediation, the
10 fair market rental shall be determined by arbitration as
11 provided in chapter 658A, which shall be final and binding.
12 Either the authority or the lessee may initiate arbitration by a
13 written demand to the other party. The arbitration shall be
14 conducted by a single arbitrator, who shall be an attorney
15 licensed in the State, a person with experience in contracts and
16 real estate valuation, or another qualified person, who shall be
17 mutually agreed upon by the parties. If an arbitrator is not
18 selected within fifteen days of the demand for arbitration,
19 appointment of an arbitrator may be requested by either party by
20 motion made to the circuit court in the circuit in which the
21 land is located. The cost of mediation or arbitration shall be



1 borne equally by the lessee and the authority. Any language in
2 present leases to the contrary notwithstanding, the provisions
3 of this subsection, when possible and notwithstanding the six-
4 month notice required, shall apply to leases with original lease
5 rental reopening dates effective before and after July 1, 1996.

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

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



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

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



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

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



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



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

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



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

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



1 § -13 **Policy.** Unless otherwise specifically authorized
2 in this chapter or by subsequent legislative acts, all
3 dispositions shall be by lease only, disposed of by public
4 auction in accordance with the procedure set forth in sections
5 -6 and -8.

6 § -14 **Planning; generally.** Prior to any notice of
7 intended disposition, the authority shall:

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



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



1 of local construction industry business, to the
2 maximum extent possible.

3 § -15 Lease provisions; generally. Every lease issued
4 by the authority shall contain:

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

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

10 (3) Restrictions against alienation as set forth in
11 section -16;

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

16 (5) Where applicable, adequate protection of forests,
17 watershed areas, game management areas, wildlife
18 sanctuaries, and public hunting areas, reservation of
19 rights-of-way and access to other Mauna Kea lands,
20 public hunting areas, game management areas, or public
21 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 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 or agreement, this
10 right being reserved to the State; provided that the authority
11 may make provisions in the lease or agreement, for the payment
12 of just compensation to the surface owner for improvements taken
13 as a condition precedent to the exercise by the State of any
14 reserved rights to enter, sever, and remove minerals or to
15 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; and
- 11 (3) Determine the applicants who meet the criteria for
12 selection set by the authority, as the case may be,
13 and notify all applicants of its determination. Any
14 applicant may examine the basis of the determination,
15 which shall be in writing, to ascertain whether or not
16 the conditions and criteria established by the
17 authority or the department of agriculture were
18 followed; provided that if any applicant does not
19 notify the authority of the applicant's objections,
20 and the grounds therefor, in writing, within twenty
21 days of the receipt of the notice, the applicant shall



1 be barred from proceeding to seek legal remedy for any
2 alleged failure of the authority to follow the
3 conditions and criteria.

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

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

11 **§ -29 Covenants against discrimination.** The authority
12 shall provide in every lease, agreement, license, or permit that
13 the use and enjoyment of the premises being granted shall not be
14 in support of any policy that discriminates against anyone based
15 upon race, creed, color, national origin, sex, or a physical
16 disability. The authority shall not dispose of any Mauna Kea
17 lands to any person who practices discrimination based upon
18 race, creed, color, national origin, sex, or a physical
19 disability. As used in this section, "physical disability"
20 means a physical impairment that substantially limits one or
21 more of a person's major life activities.



1 § -30 Disposition to governments, governmental agencies,
2 and public utilities. (a) Notwithstanding any limitations to
3 the contrary, the authority, without public auction, may:

4 (1) Lease Mauna Kea lands to governments, agencies, and
5 public utilities for terms up to, but not in excess
6 of, sixty-five years at rental and other terms and
7 conditions as the authority may determine;

8 (2) Grant licenses and easements to governments, agencies,
9 and public utilities on terms and conditions as the
10 authority may determine for road, pipeline, utility,
11 communication cable, and other rights-of-way; and

12 (3) Waive or modify building and other requirements and
13 conditions contained in deeds, sales agreements, or
14 leases held by governments and agencies whenever the
15 waiver or modification is beneficial to the State.

16 (b) In any disposition to public utilities under this
17 section:

18 (1) The lease rental shall be no less than the value
19 determined in accordance with section -9(b);
20 provided that the lease rental may be on a nominal



1 basis if the authority finds that an easement is
2 required in connection with a government project;
3 (2) Disposition shall not be made to any public utility if
4 the utility has suitable lands of its own; and
5 (3) The disposition to public utilities shall be subject
6 to disapproval by the legislature by two-thirds vote
7 of either the senate or the house of representatives
8 or by majority vote of both, in any regular or special
9 session next following the date of the disposition.

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

12 § -31 Telescopes; leases; impacts. In addition to any
13 other requirements under this chapter and other applicable law,
14 and notwithstanding the eleemosynary, governmental, or public
15 utility natures of any lessee, the authority shall take into
16 account, in issuing any lease pertaining to telescopes on Mauna
17 Kea lands, the value of land use, telescope viewing time, and
18 impacts to natural and cultural resources and traditional and
19 customary cultural practices, including the costs of preventing
20 and remediating any anticipated and potential unanticipated
21 impacts to land, natural and cultural resources, and cultural



1 sites that may result directly and indirectly from those land
2 uses as a result of telescope-related activities.

3 **§ -32 Telescopes; limitations.** No more than thirteen
4 telescopes shall be present on Mauna Kea lands at any time;
5 provided that no more than nine telescopes shall be present on
6 Mauna Kea lands by January 1, 2028.

7 **§ -33 Footprint; limitations.** At no time after
8 December 31, 2031, shall the total combined footprint of all
9 improvements, including buildings, roads, telescopes,
10 decommissioned telescope structures, and all infrastructure, on
11 Mauna Kea lands exceed the total developed footprint of
12 improvements, including buildings, roads, telescopes, and all
13 infrastructure present on Mauna Kea as of December 31, 2031.

14 **§ -34 Rules; management, stewardship, and protection of**
15 **cultural resources.** The authority shall expedite the
16 establishment of rules pursuant to chapter 91 on the management,
17 stewardship, and protection of lands and cultural resources, and
18 any fees and fee waivers under its jurisdiction; provided that
19 the authority shall consult with the office of Hawaiian affairs
20 to ensure that any proposed rules shall not affect any right,
21 customarily and traditionally exercised for subsistence,



1 cultural, and religious purposes, by descendants of native
2 Hawaiians who inhabited the Hawaiian Islands prior to 1778,
3 subject to the right of the State to regulate such rights.
4 Rules adopted under this section shall follow existing law,
5 rules, ordinances, and regulations as closely as is consistent
6 with standards to meet minimum requirements of good design,
7 health, safety, and coordinated development; provided that the
8 rules, at a minimum, shall require that:

- 9 (1) A nominal fee shall be charged for all non-Hawaii
10 residents traveling to the Hale Pohaku Visitor Center;
11 and
- 12 (2) No privately owned vehicles shall travel to the Mauna
13 Kea summit unless they are:
- 14 (A) Four-wheel-drive vehicles; and
- 15 (B) Used to provide access for customarily and
16 traditionally exercised practices protected under
17 article XII, section 7, of the Hawaii State
18 Constitution or as otherwise provided by permit
19 or rule;
- 20 provided that no fee shall be charged for a private
21 vehicle to travel to the Mauna Kea summit for purposes



1 of providing access for customarily and traditionally
2 exercised practices protected under article XII,
3 section 7, of the Hawaii State Constitution.

4 On the effective date of the initial rules adopted pursuant
5 to this section, all previously adopted rules pertaining to
6 Mauna Kea lands, established by the University of Hawaii,
7 including but not limited to the office of Mauna Kea management,
8 Mauna Kea management authority board, and Kahu Ku Mauna, shall
9 be void. The authority shall coordinate and enter into
10 memoranda of agreement as necessary with other government
11 entities, including the office of Hawaiian affairs, department
12 of Hawaiian home lands, department of land and natural
13 resources, department of transportation, and county of Hawaii
14 with regard to the use and maintenance of the portions of the
15 Mauna Kea summit access road that traverse lands controlled by
16 those entities.

17 § -35 Project approval authorization. The authority is
18 authorized to approve or disapprove all projects, including but
19 not limited to design review, on all Mauna Kea lands; provided
20 that all land use complies with relevant conservation district
21 rules.



1 **§ -36 Mauna Kea management revolving fund.** There is
2 established the Mauna Kea management revolving fund into which
3 all receipts and revenues of the authority shall be deposited.
4 Proceeds from the fund shall be used for administration, capital
5 improvement projects, and other purposes pursuant to this
6 chapter.

7 **§ -37 Expenditures of revolving funds under the**
8 **authority exempt from appropriation and allotment.** Except as to
9 administrative expenditures, and except as otherwise provided by
10 law, expenditures from any revolving fund administered by the
11 authority may be made by the authority, subject to appropriation
12 or allotment of the legislature; provided that no expenditure
13 shall be made from and no obligation shall be incurred against
14 any revolving fund in excess of the amount standing to the
15 credit of the fund or for any purpose for which the fund may not
16 lawfully be expended. Nothing in sections 37-31 to 37-41 shall
17 require the proceeds of any revolving fund administered by the
18 authority to be reappropriated annually.

19 **§ -38 Transfer and renegotiation of leases, subleases,**
20 **easements, permits, and licenses.** All leases, subleases,
21 easements, permits, and licenses executed by the University of



1 Hawaii or department of land and natural resources, and
2 pertaining to Mauna Kea, shall be transferred to the authority
3 and shall be subject to renegotiation upon mutual agreement of
4 the parties. The authority shall renegotiate subleases
5 pertaining to telescopes on Mauna Kea in accordance with
6 section -9 and take into account the value of land use and
7 telescope viewing time. In addition, any future leases shall
8 include, at a minimum, a stewardship component, community
9 benefits package, and conversion of the applicable facility to a
10 self-contained, zero-discharge waste system; provided that, if
11 applicable, all future leases shall include language for
12 percentage-based rent that is calculated and agreed to be based
13 on the gross receipts from the sale of telescope viewing time;
14 provided further that rent negotiations shall be reopened every
15 twenty years.

16 § -39 **Managed access.** The authority shall develop a
17 visitor center along the Mauna Kea summit access road that shall
18 include, at a minimum, a kiosk entrance to manage access to
19 Mauna Kea. All visitors who travel beyond the visitor center
20 shall be required to register at the visitor center, pay
21 applicable fees there, and receive orientation regarding safety,



1 environmental protection, and cultural traditions and
2 sensitivities. Except as provided under section -34 or this
3 section, all visitors who travel to the summit shall be required
4 to use a shuttle service established by the authority. The
5 authority shall establish a policy that allows reasonable access
6 without an entrance fee to visitors seeking to exercise Native
7 Hawaiian traditional and customary practices protected under
8 article XII, section 7, of the Hawaii State Constitution.

9 § -40 Mauna Kea management authority; police powers.

10 (a) The authority shall have police powers with respect to
11 Mauna Kea lands and may appoint and commission enforcement
12 officers, who shall be known as rangers. Persons appointed and
13 commissioned under this section shall have and may exercise all
14 of the powers and authority of a police officer, including the
15 power of arrest, and may enforce all state laws and rules and
16 county ordinances and rules within all Mauna Kea lands; provided
17 that those powers shall remain in force and effect only while in
18 actual performance of their duties, which shall include off-duty
19 employment when that employment is for other state departments
20 or agencies.



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

13 § -41 Enforcement; rangers; powers; duties. (a)
14 Pursuant to sections -3(f)(1) and -40, the authority shall
15 establish a unit of rangers who shall enforce laws and rules
16 within Mauna Kea lands.

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

19 (1) Be responsible for the health, safety, and welfare of
20 visitors to Mauna Kea, including responding to
21 emergencies of a medical or law enforcement nature,



- 1 enforcement of laws related to crimes against property
2 rights under parts II and III of chapter 708, the
3 protection of natural resources, and the enforcement
4 of other laws and rules as necessary, on Mauna Kea
5 lands;
- 6 (2) Investigate complaints, gather evidence, conduct
7 investigations, and conduct field observations and
8 inspections as required or assigned, on Mauna Kea
9 lands;
- 10 (3) Cooperate with enforcement authorities of the State,
11 counties, and the federal government in the
12 development of programs and mutual aid agreements for
13 the protection of Mauna Kea lands and the enforcement
14 of applicable laws;
- 15 (4) Cooperate with established search and rescue agencies
16 of the State, counties, and the federal government in
17 developing plans and programs and mutual aid
18 agreements for search and rescue activities within the
19 State;
- 20 (5) Check and verify all leases, permits, and licenses
21 issued by the authority;



1 (6) Enforce the laws relating to firearms, ammunition, and
2 dangerous weapons contained in chapter 134, on Mauna
3 Kea lands; and

4 (7) Carry out other duties and responsibilities as the
5 authority shall direct.

6 (c) The authority may establish memoranda of agreement
7 with:

8 (1) The department of land and natural resources to
9 provide assistance from the division of conservation
10 and resources enforcement with law enforcement,
11 applicable training, and certification of rangers; and

12 (2) The county of Hawaii police department to provide
13 assistance with law enforcement and related matters
14 such as access to holding cells, fingerprinting, and
15 other processing of persons detained by rangers;

16 provided that the memoranda may provide for reimbursement by the
17 authority for applicable expenses.

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

20 § -42 **Summons or citation.** There shall be a form of
21 summons or citation for use in citing violators for violations



1 that do not mandate the physical arrest of the violators. The
2 summons or citation shall be printed in a form commensurate with
3 the form of other summons or citation used in modern methods of
4 arrest and shall be so designed to include all necessary
5 information to make it valid and legal within the laws and rules
6 of the State. The form and content of the summons or citation
7 shall be adopted or prescribed by the district courts.

8 In every case where a summons or citation is issued, the
9 original of the same shall be given to the violator; provided
10 that the district courts may prescribe the issuance to the
11 violator of a carbon copy of the summons or citation and provide
12 for the disposition of the original and any other copies. Every
13 summons or citation shall be consecutively numbered and each
14 carbon copy shall bear the number of its respective original.

15 § -43 Failure to obey a summons. (a) Any person who
16 fails to appear at the place and within the time specified in
17 the summons or citation issued by the officers or their agents
18 or subordinates, upon that person's arrest, shall be guilty of a
19 petty misdemeanor and, upon conviction, shall be fined not more
20 than \$500 or be imprisoned not more than thirty days, or both.



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

6 (c) When a complaint of the violation is made to any
7 prosecuting officer, the officer who issued the summons or
8 citation shall subscribe to it under oath administered by
9 another official or officials of the authority whose names have
10 been submitted to the prosecuting officer and who have been
11 designated by the executive director of the authority to
12 administer the same.

13 **§ -44 Search and seizure; forfeiture of property.** (a)
14 Any law enforcement officer or agent of the authority upon whom
15 the authority has conferred powers of law enforcement officers,
16 shall have the authority to conduct searches on probable cause
17 as provided by law and to seize any equipment, article,
18 instrument, aircraft, vehicle, vessel, business records, or
19 natural resource used or taken in violation of the laws of the
20 State, or any rules adopted thereunder. For purposes of this
21 section, "natural resource" includes any archaeological



1 artifacts, minerals, any aquatic life or wildlife or parts
2 thereof, including their eggs, and any land plants or parts
3 thereof, including seeds.

4 (b) Any equipment, article, instrument, aircraft, vehicle,
5 vessel, business records, or natural resource seized is subject
6 to forfeiture pursuant to chapter 712A. Unless otherwise
7 directed by the environmental court pursuant to chapter 712A,
8 any item, other than a natural resource, seized shall be ordered
9 forfeited to the State for disposition as determined by the
10 authority, or may be destroyed, or may be kept and retained and
11 utilized by the authority or any other state agency. If not
12 needed or required by the authority or other state agency, the
13 forfeited items shall be disposed of as provided by chapter
14 712A. Notwithstanding any other law to the contrary, any live
15 natural resource seized may be immediately returned to its
16 natural environment or suitable habitat or may be disposed of as
17 determined by the authority; provided that if the natural
18 resource disposed of was unlawfully seized, the authority shall
19 be liable to the owner for the fair market value of the items
20 disposed of.



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

5 (d) Notwithstanding any other law to the contrary, the
6 authority may sell or take actions to cause the sale of any
7 perishable natural resource that is seized to prevent the waste
8 of the natural resource and to ensure the economic value of the
9 natural resource; provided that the authority may not sell or
10 cause the sale of any threatened or endangered species or any
11 other species whose sale is prohibited by law. The authority
12 may require the person or persons who took the natural resources
13 to sell the seized natural resources at fair market value. The
14 authority may require any person purchasing any seized natural
15 resource to deliver the proceeds of the sale to the authority or
16 its authorized representative. Any person who refuses to sell
17 the seized natural resources at fair market value or any person
18 who fails to deliver the proceeds of the sale, as directed by
19 the authority, shall be in violation of this subsection and
20 punishable as provided by law. The authority shall deposit and
21 keep the proceeds of the sale in an interest-bearing account



1 until the suspected violation is settled between the person or
2 persons who took the natural resource, consignee or consignees,
3 if any, and the authority. Should a settlement not be reached,
4 the authority shall submit the proceeds of the sale to the
5 environmental court. The proceeds of the sale, after deducting
6 any reasonable costs of the sale incurred by the authority,
7 shall be subject to any administrative or judicial proceedings
8 in the same manner as the seized natural resource would have
9 been, including an action in rem for the forfeiture of the
10 proceeds. Seizure and sale of a natural resource is without
11 prejudice to any other remedy or sanction authorized by law.

12 **§ -45 Fees and surcharges.** (a) The authority shall
13 establish an annual fee for each non-Hawaii resident visitor to
14 Mauna Kea; provided that the fee shall be waived for visitors
15 who access Mauna Kea to exercise their customary and traditional
16 practice rights under article XII, section 7, of the Hawaii
17 State Constitution; provided further that the authority shall
18 establish rules for fee waivers, pursuant to section -34.

19 (b) The authority shall establish an annual fee for
20 commercial tour operators to access Mauna Kea, the total annual



1 net revenues of which shall be calculated to approximately equal
2 the authority's annual operations and maintenance costs.

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

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

9 (e) For the purposes of this section, "net revenues" means
10 the revenues realized by the authority after the amounts
11 collected and owed to the office of Hawaiian affairs and to the
12 department of Hawaiian home lands, and the amounts designated
13 for educational and other community purposes pursuant to section
14 -46 have been deducted.

15 § -46 Revenue to be shared with the office of Hawaiian
16 affairs and department of Hawaiian home lands; used for
17 educational and other community purposes. (a) The authority
18 and the University of Hawaii shall transfer to the office of
19 Hawaiian affairs twenty per cent of all receipts collected by
20 the authority or university as a result of lease rent, fees,
21 penalties, commercial activities, technology transfers,



1 monetization of intellectual properties or discoveries, and
2 other revenue sources, pertaining to the use of Mauna Kea lands;
3 provided that any funds transferred to the office of Hawaiian
4 affairs pursuant to this section shall be deemed income and
5 proceeds from the use of public land trust lands by the
6 authority and university to be expended by the office of
7 Hawaiian affairs under section 10-3.

8 (b) The authority and the University of Hawaii shall
9 allocate to the community relations division established in
10 section -3(f)(6) \$ from all receipts collected by
11 the authority or university as a result of lease rent, fees,
12 penalties, commercial activities, technology transfers,
13 monetization of intellectual properties or discoveries, and
14 other revenue sources, pertaining to the use of Mauna Kea lands
15 for education, grants, and community benefits for native
16 Hawaiian children and children that come primarily from
17 underserved, rural, and financially challenged communities on
18 Hawaii island.

19 (c) The authority and the University of Hawaii shall
20 transfer to the department of Hawaiian home lands per cent
21 of all receipts collected by the authority or university as a



1 result of lease rent, fees, penalties, commercial activities,
2 technology transfers, monetization of intellectual properties or
3 discoveries, and other revenue sources, pertaining to the use of
4 Mauna Kea lands.

5 **§ -47 Exemption from taxation.** The authority shall not
6 be required to pay assessments levied by any county, nor shall
7 the authority be required to pay state taxes of any kind.

8 **§ -48 Assistance by state and county agencies.** Any
9 state or county agency may render services upon request of the
10 authority.

11 **§ -49 Annual report.** No later than twenty days prior to
12 the convening of each regular session, the authority shall
13 submit to the governor and the legislature, a complete and
14 detailed report of its activities, including but not limited to:

15 (1) The status of transfers of title to lands from the
16 department of land and natural resources to the
17 authority pursuant to part II of Act , Session
18 Laws of Hawaii 2018;

19 (2) The status of all leases and subleases of Mauna Kea
20 lands; and



1 (3) An accounting of all revenue collected and expended by
2 the authority.

3 The report submitted prior to the 2019 regular session
4 shall include:

5 (1) The status of rulemaking pursuant to section -34;

6 (2) A comprehensive review of all existing commercial tour
7 permits, fees, and associated environmental impacts
8 with the possible elimination of all commercial tours
9 to the summit of Mauna Kea by January 1, 2020; and

10 (3) A comprehensive review of all access plans to
11 determine future access to the Hale Pōhaku mid-level
12 facility and Mauna Kea summit for cultural
13 practitioners, residents, hunters, environmentalists,
14 non-residents, astronomers, and maintenance
15 technicians.

16 § -50 **Court proceedings; preferences; venue.** (a) Any
17 action or proceeding to which the authority, the State, or a
18 county may be a party, in which any question arises as to the
19 validity of this chapter or any portion of this chapter, shall
20 be brought in the circuit court of the circuit where the case or
21 controversy arises, which court is hereby vested with original



1 jurisdiction over the action or proceeding. The action or
2 proceeding shall be heard and determined in preference to all
3 other civil cases pending therein except election cases,
4 irrespective of position on the calendar. Upon application of
5 counsel to the authority, the same preference shall be granted
6 in any action or proceeding questioning the validity of this
7 chapter in which the authority may be allowed to intervene.

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

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

14 § -51 Contested cases; conservation district use. (a)
15 Notwithstanding any law to the contrary, conservation district
16 rules applicability shall maintain contested case opportunities
17 in the conversation district use application process.

18 (b) Notwithstanding any law to the contrary, any decisions
19 by the authority, insofar as they impact constitutional rights,
20 including but not limited to Native Hawaiian traditional and



1 customary rights and the right to a healthful environment, shall
2 require the granting of contested case hearings.

3 § -52 **Issuance of bonds.** The director of finance may,
4 from time to time, issue general obligation bonds pursuant to
5 chapter 39 in amounts authorized by the legislature, for the
6 purposes of this chapter.

7 § -53 **General administrative penalties.** (a) Except as
8 otherwise provided by law, the authority or its authorized
9 representative by proper delegation may set, charge, and collect
10 administrative fines or bring legal action to recover
11 administrative fees and costs as documented by receipts or
12 affidavit, including attorneys' fees and costs; or bring legal
13 action to recover administrative fines, fees, and costs,
14 including attorneys' fees and costs, or payment for damages
15 resulting from a violation of this chapter or any rule adopted
16 pursuant to this chapter. The administrative fines shall be as
17 follows:

- 18 (1) For a first violation, a fine of not more than \$2,500;
19 (2) For a second violation within five years of a previous
20 violation, a fine of not more than \$5,000; and



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

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

13 § -54 **Violations and penalties.** (a) The authority may
14 set, charge, and collect reasonable fines for a violation of
15 this chapter or any rule adopted pursuant to chapter 91.

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

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



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

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

9 (c) Any criminal action against a person for any violation
10 under this section shall not preclude the State from pursuing
11 civil legal action to recover administrative fines and costs
12 against the person. Any civil legal action against a person to
13 recover administrative fines and costs for any violation of this
14 chapter or any rules adopted thereunder shall not preclude the
15 State from pursuing any criminal action against that person
16 pursuant to this section.

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



1 (e) The continuance of a violation after conviction shall
2 be deemed a new offense for each day of a violation's
3 continuance."

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

6 "§171-2 Definition of public lands. "Public lands" means
7 all lands or interest therein in the State classed as government
8 or crown lands previous to August 15, 1895, or acquired or
9 reserved by the government upon or subsequent to that date by
10 purchase, exchange, escheat, or the exercise of the right of
11 eminent domain, or in any other manner; including lands accreted
12 after May 20, 2003, and not otherwise awarded, submerged lands,
13 and lands beneath tidal waters that are suitable for
14 reclamation, together with reclaimed lands that have been given
15 the status of public lands under this chapter, except:

- 16 (1) Lands designated in section 203 of the Hawaiian Homes
17 Commission Act, 1920, as amended;
- 18 (2) Lands set aside pursuant to law for the use of the
19 United States;
- 20 (3) Lands being used for roads and streets;



- 1 (4) Lands to which the United States relinquished the
2 absolute fee and ownership under section 91 of the
3 Hawaiian Organic Act prior to the admission of Hawaii
4 as a state of the United States unless subsequently
5 placed under the control of the board of land and
6 natural resources and given the status of public lands
7 in accordance with the state constitution, the
8 Hawaiian Homes Commission Act, 1920, as amended, or
9 other laws;
- 10 (5) Lands to which the University of Hawaii holds title;
- 11 (6) Lands to which the Hawaii housing finance and
12 development corporation in its corporate capacity
13 holds title;
- 14 (7) Lands to which the Hawaii community development
15 authority in its corporate capacity holds title;
- 16 (8) Lands to which the department of agriculture holds
17 title by way of foreclosure, voluntary surrender, or
18 otherwise, to recover moneys loaned or to recover
19 debts otherwise owed the department under chapter 167;
- 20 (9) Lands that are set aside by the governor to the Aloha
21 Tower development corporation; lands leased to the



1 Aloha Tower development corporation by any department
2 or agency of the State; or lands to which the Aloha
3 Tower development corporation holds title in its
4 corporate capacity;

5 (10) Lands that are set aside by the governor to the
6 agribusiness development corporation; lands leased to
7 the agribusiness development corporation by any
8 department or agency of the State; or lands to which
9 the agribusiness development corporation in its
10 corporate capacity holds title; [~~and~~]

11 (11) Lands to which the Hawaii technology development
12 corporation in its corporate capacity holds title; and

13 (12) Lands to which the Mauna Kea management authority
14 holds title, that the authority controls by lease from
15 any state department or agency, or that are designated
16 by the governor under section 171-11 for management by
17 the authority;

18 provided that, except as otherwise limited under federal law and
19 except for state land used as an airport as defined in section
20 262-1, public lands shall include the air rights over any



1 portion of state land upon which a county mass transit project
2 is developed after July 11, 2005."

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

5 "§199-3 Conservation and resources enforcement officers,
6 duties; other law enforcement officers. (a) The conservation
7 and resources enforcement officers, with respect to all state
8 lands, including public lands, state parks, forest reserves,
9 forests, aquatic life and wildlife areas, Kaho'olawe island
10 reserve, Mauna Kea lands as defined in section -2, and any
11 other lands and waters within the State, shall:

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

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

17 (3) Cooperate with enforcement authorities of the State,
18 counties, and federal government in development of
19 programs and mutual aid agreements for conservation
20 and resources enforcement activities within the State;



- 1 (4) Cooperate with established search and rescue agencies
2 of the 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 department of land and natural
8 resources;
- 9 (6) Enforce the laws relating to firearms, ammunition, and
10 dangerous weapons contained in chapter 134;
- 11 (7) Enforce the laws in chapter 291E relating to operating
12 a vessel on or in the waters of the State while using
13 intoxicants;
- 14 (8) Whether through a specifically designated marine
15 patrol or otherwise, enforce the rules in the areas of
16 boating safety, conservation, and search and rescue
17 relative to the control and management of boating
18 facilities owned or controlled by the State, ocean
19 waters, and navigable streams and any activities
20 thereon or therein, and beaches encumbered with
21 easements in favor of the public, and the rules



1 regulating vessels and their use in the waters of the
2 State; ~~and~~

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

6 ~~[(9)]~~ (10) Carry out other duties and responsibilities as
7 the board of land and natural resources from time to
8 time may direct.

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

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

16 "**§199-4 Board of land and natural resources, police**
17 **powers.** (a) The board of land and natural resources shall have
18 police powers and may appoint and commission enforcement
19 officers within the conservation and resources enforcement
20 program. Persons appointed and commissioned under this section
21 shall have and may exercise all of the powers and authority of a



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

15 (b) An enforcement officer, upon arresting any person for
16 violation of title 12, chapter 6D, 6E, or 6K, or any other state
17 law or county ordinance or rule adopted thereunder, may
18 immediately take the person arrested to a police station or
19 before a district judge, or take the name, address, and the
20 number of the fishing, hunting, or other licenses or permits, if
21 any, of the person, and note the violation of the law or rule by



1 the person, and issue the person a summons or citation, printed
2 in the form described in section 199-5, warning the person to
3 appear and to answer to the charge against the person at a
4 certain place and time within seven days after the arrest. Any
5 person failing to obey a summons issued pursuant to this section
6 shall be subject to section 199-6."

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

8 SECTION 6. Section 304A-2170, Hawaii Revised Statutes, is
9 repealed.

10 ~~["~~§304A-2170~~] ~~Mauna Kea lands management special fund.~~~~

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

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

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

17 ~~(3) All moneys collected for violations of subpart O of~~
18 ~~part IV; and~~

19 ~~(4) Interest earned or accrued on moneys in the special~~
20 ~~fund.~~

21 ~~(b) The proceeds of the special fund shall be used for:~~



1 ~~(1) Managing the Mauna Kea lands, including maintenance,~~
2 ~~administrative expenses, salaries and benefits of~~
3 ~~employees, contractor services, supplies, security,~~
4 ~~equipment, janitorial services, insurance, utilities,~~
5 ~~and other operational expenses; and~~

6 ~~(2) Enforcing administrative rules adopted relating to the~~
7 ~~Mauna Kea lands.~~

8 ~~(c) No moneys deposited into the Mauna Kea lands~~
9 ~~management special fund may be used by the governor or the~~
10 ~~director of finance as a justification for reducing any budget~~
11 ~~request or allotment to the University of Hawaii unless the~~
12 ~~University of Hawaii requests the reduction.~~

13 ~~(d) The University of Hawaii may establish separate~~
14 ~~accounts within the special fund for major program activities.~~

15 ~~(e) All expenditures from the special fund shall be~~
16 ~~subject to legislative appropriation.~~

17 ~~(f) For the purposes of this section, "Mauna Kea lands"~~
18 ~~shall mean the same as defined in section 304A-1901.]~~

19 SECTION 7. All moneys in the Mauna Kea lands management
20 special fund established pursuant to section 304A-2170, Hawaii
21 Revised Statutes, shall be deposited in the Mauna Kea management



1 revolving fund established pursuant to section -36, Hawaii
2 Revised Statutes, in section 1 of this Act.

3 PART II

4 SECTION 8. Title to all lands held in trust by the State
5 and identified as government lands of Kaohe, Hamakua District,
6 Hawaii, tax map keys:

7 (1) (3) 4-4-015:09;

8 (2) (3) 4-4-015:12; and

9 (3) That portion of (3) 4-4-015:01 serving as a road
10 easement comprising 70.798 acres,
11 are transferred by the department of land and natural resources
12 to the Mauna Kea management authority established pursuant to
13 section 1 of this Act.

14 PART III

15 SECTION 9. There is appropriated out of the general
16 revenues of the State of Hawaii the sum of \$800,000 or so much
17 thereof as may be necessary for fiscal year 2018-2019 for start
18 up costs for the Mauna Kea management authority.

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



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

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

8 PART IV

9 SECTION 11. Statutory material to be repealed is bracketed
10 and stricken. New statutory material is underscored.

11 SECTION 12. This Act shall take effect on December 31,
12 2033.



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 and the Department of Hawaiian Home Lands, as well as used for educational and other community purposes. 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 on 12/31/2033. (SD2)

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

