

JAN 21 2016

A BILL FOR AN ACT

RELATING TO THE MAUNA KEA LANDS.

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

1 SECTION 1. The legislature finds that there is a need to
2 ensure transparency, consistency, and accountability in the
3 disposition and management of the Mauna Kea lands currently
4 leased to the University of Hawaii.

5 Mauna Kea is of particular significance to the Native
6 Hawaiian community, and to the cultural and historical heritage
7 of our State. Many Native Hawaiians consider Mauna Kea to be a
8 place of deep cultural significance, as a cultural piko that
9 connects the island-child of Hawaii to the heavens, as an "abode
10 of the gods," and as a leina, from which souls leap into the
11 spirit world. Numerous cultural sites -- including ahu, kuahu,
12 an adze quarry, and Lake Waiiau -- support a range of Native
13 Hawaiian practices. Lands on Mauna Kea held by the State also
14 constitute "ceded" lands, acquired through the illegal overthrow
15 of the Kingdom of Hawai'i, to which Native Hawaiians have never
16 relinquished their claims. Thus, the cultural and historical



1 significance of Mauna Kea counsels particular care in the
2 management of its lands.

3 As ceded and public land trust lands, the Mauna Kea lands
4 are held in trust for the benefit of Native Hawaiians and the
5 general public. Accordingly, the State and the University of
6 Hawaii have fiduciary duties related to the disposition and
7 management of these lands, including the obligation to deal
8 impartially and equally with regard to all trust beneficiaries,
9 and to use reasonable skill and care to make these lands
10 productive.

11 Unfortunately, the University of Hawaii's failure to use a
12 transparent, consistent, and accountable process to issue
13 subleases for the Mauna Kea lands raises serious concerns about
14 whether it is appropriately managing these lands or fulfilling
15 its fiduciary obligations to the beneficiaries of the public
16 lands trust. Notably, the University of Hawaii has failed to
17 charge sufficient sublease rent consistent with the cultural,
18 environmental, and economic value of the subleased parcels or
19 the actual costs of appropriate management. Furthermore, any
20 direct benefits realized from subleases have flowed to only a
21 small subset of one beneficiary class -- namely, members of the



1 public associated with the University of Hawaii's astronomy
2 program -- at significant expense to the Native Hawaiian
3 community and larger public. In order to ensure better
4 management in the future, this Act ensures that the University
5 of Hawaii will minimally consider key management-related
6 factors, including impacts to natural and cultural resources,
7 while continuing to give the University of Hawaii flexibility to
8 tailor lease terms and conditions.

9 Accordingly, the legislature finds that the State's moral
10 and fiduciary duties counsel greater transparency, consistency,
11 and accountability in subleasing procedures for the Mauna Kea
12 lands.

13 The purpose of this Act is to ensure that subleasing of the
14 Mauna Kea lands occurs through a standardized, consistent, and
15 transparent process, pursuant to administrative rules describing
16 the method for determining sufficient fees for lease rent.

17 SECTION 2. Section 304A-1902, Hawaii Revised Statutes, is
18 amended to read as follows:

19 "[+]§304A-1902[+] Mauna Kea lands; fees; lease agreements.

20 (a) The board of regents may charge a fee for use of the Mauna



1 Kea lands and for the use of facilities and programs related to
2 the Mauna Kea lands.

3 (b) The board of regents may enter into lease agreements
4 for the Mauna Kea lands; provided that the University of Hawaii
5 shall comply with all statutory requirements in the disposition
6 of ceded lands[-] and the requirements of this section. The
7 board shall adopt rules, pursuant to chapter 91, describing the
8 method by which fees for lease rent on leases are determined and
9 established. Any method of determining fees for lease rent
10 shall ensure a fair rate of return for the use and development
11 of state ceded land and public land trust resources, which shall
12 consider:

- 13 (1) The cost of administering a management plan approved
14 by the board of land and natural resources;
15 (2) Compensation for loss of the use of the leased land
16 for other uses;
17 (3) Compensation for loss of access to the leased land and
18 other areas;
19 (4) The potential costs of mitigating environmental
20 degradation resulting from activities by the lessee;
21 and



S.B. NO. 2127

1 (5) Additional considerations, including but not limited
2 to the impact of the lease on native Hawaiian rights,
3 wildlife habitat, and the health of the ecosystem.

4 Provided further that a written statement describing how the
5 above factors were considered in determining the fair rate of
6 return shall be required.

7 (c) Prior to entering into a lease agreement, the board of
8 regents shall hold an open public meeting on the proposed lease,
9 as described in section 92-3. The board shall give at least
10 thirty days' notice for the meeting. The notice shall include:

11 (1) A description of the area to be encumbered by the
12 proposed lease;

13 (2) The proposed fee for lease rent;

14 (3) A statement that a copy of the proposed lease will be
15 mailed to any interested person who requests a copy,
16 pays the required fees for the copy and the postage,
17 if any, together with a description of where and how
18 the requests may be made;

19 (4) A statement of when, where, and during what times the
20 proposed lease may be reviewed in person;



1 (5) A statement of when, where, and during what times a
2 written description of how the proposed fee for lease
3 rent was determined may be viewed; and

4 (6) The date, time, and place where the public meeting
5 will be held and where members of the public may be
6 heard on the proposed lease.

7 Notice shall be mailed to all persons who have made a timely
8 written request for advance notice of lease agreements. The
9 board shall fully consider all data, views, and arguments
10 submitted by the public on the proposed lease. The board may
11 make its decision to enter into the lease and establish the fee
12 for lease rent at the public meeting or announce the date when
13 it intends to make its decision. All fees for lease rent shall
14 be deposited into the Mauna Kea lands management special fund
15 established under section 304A-2170.

16 [~~(e)~~] (d) In establishing the fees[~~7~~] other than fees for
17 lease rent, the board of regents shall be exempt from the public
18 notice, public hearing, and gubernatorial approval requirements
19 of chapter 91; provided that the fees shall be established at an
20 open public meeting pursuant to chapter 92. The fees shall be



S.B. NO. 2127

1 deposited into the Mauna Kea lands management special fund
2 established under section 304A-2170."

3 SECTION 3. Statutory material to be repealed is bracketed
4 and stricken. New statutory material is underscored.

5 SECTION 4. This Act shall take effect upon its approval.

6

INTRODUCED BY: Wm. D. V. I.
BY REQUEST



S.B. NO. 2127

Report Title:

OHA Package; Mauna Kea Lands

Description:

Requires the UH BOR to adopt rules describing the method for determining sufficient fees for lease rent of Mauna Kea lands. Requires the BOR to hold an open meeting prior to entering into a lease agreement for Mauna Kea lands. Requires the BOR to prepare a written description of how the fee for lease rent in a proposed lease agreement was determined.

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