

STAND. COM. REP. NO. **252D**

Honolulu, Hawaii

FEB 16 2018

RE: S.B. No. 3090
S.D. 1

Honorable Ronald D. Kouchi
President of the Senate
Twenty-Ninth State Legislature
Regular Session of 2018
State of Hawaii

Sir:

Your Committees on Higher Education and Water and Land, to which was referred S.B. No. 3090 entitled:

"A BILL FOR AN ACT RELATING TO GOVERNMENT,"

beg leave to report as follows:

The purpose and intent of this measure is to:

- (1) Establish the Mauna Kea Management Authority;
- (2) Limit the number of telescopes that may be authorized on Mauna Kea;
- (3) Authorize the renegotiation of leases, subleases, easements, permits, and licenses pertaining to Mauna Kea;
- (4) Require that revenue derived from activities on Mauna Kea be shared with the Office of Hawaiian Affairs;
- (5) Exclude Mauna Kea lands from the definition of "public lands"; and
- (6) Provide for free access to Mauna Kea for traditional cultural purposes.



Prior to the hearing on this measure, your Committees posted and made available for public review a proposed S.D. 1, which inserts language for provisions related to, among other things, the disposition of lands, lease agreements, and mineral and water rights.

Your Committees received testimony in support of the proposed S.D. 1 from the Ho'omanapono Political Action Committee; Ho'omana Pono, LLC; and two individuals. Your Committees received testimony in opposition to the proposed S.D. 1 from the University of Hawai'i System, Department of Land and Natural Resources, County of Hawai'i Office of the Mayor, Maunakea Observatories, Ho'o Kili Farms, Momilani Farm, KTA Super Stores, Ka Lāhui Hawaii Political Action Committee, Sierra Club of Hawai'i, Life of the Land, Hawaii's Thousand Friends, Hawaii Island Economic Development Board, and numerous individuals. Your Committees received comments on the proposed S.D. 1 from the Department of Budget and Finance, Office of Hawaiian Affairs, and one individual.

Your Committees find that Mauna Kea is the most significant cultural and astronomical site in the world. The summit region of Mauna Kea is a spiritual and special place of significance that is home to cultural landscapes, fragile alpine habitats, historical and archaeological treasures, as well as endemic species found nowhere else on the planet. Since 1998, four audits by the State Auditor have been critical of the management, stewardship, and protection of Mauna Kea. Although significant changes have occurred on Mauna Kea since the 1998 audit, negative experiences over the past fifty years have eroded public confidence and demonstrated the critical need for fresh leadership centered on a new organizational structure, management system, and procedures.

Your Committees further find that there is a clear need for one entity to serve as a single focal point of management, responsibility, communication, and enforcement regarding Mauna Kea. This new entity will increase the accountability of all tenants on Mauna Kea and will ensure that each tenant is aware of its obligations and responsibilities. This entity will also provide the necessary stewardship for the sustainable use of Mauna Kea and the proper generation of revenue from that use. This entity will be headquartered on the island of Hawaii and will be recognized by the general public and the State as the single point of contact for Mauna Kea's summit region.



Your Committees have amended this measure by adopting the proposed S.D. 1 and further amending the measure by:

- (1) Reframing the findings and purpose of the Mauna Kea Management Authority to emphasize Mauna Kea's cultural and genealogical importance to Native Hawaiians and remove references to the Authority as serving as a new model for governance and management of Hawaii's most precious resources;
- (2) Specifying that the Mauna Kea Management Authority shall be attached to the Department of Accounting and General Services, rather than the Office of the Governor;
- (3) Specifying the term limits for members of the Mauna Kea Management Authority and changing its composition by:
 - (A) Reducing the number of members from nine to seven;
 - (B) Removing the Director of Business, Economic Development, and Tourism and members to be selected from specified private organizations from the Authority;
 - (C) Requiring that the members demonstrate certain expertise in business, astronomy, land management, the environment, and Native Hawaiian traditional and customary practices or Hawaiian history;
 - (D) Requiring one member to be a practitioner or the lineal descendant of practitioners of Native Hawaiian traditional and customary practices; and
 - (E) Requiring four of the members to be residents of the County of Hawaii;
- (4) Removing the Executive Director position and specifying that the Authority's day-to-day operations shall be led by the chairperson;
- (5) Requiring the Authority to be subject to chapters 76 and 89, Hawaii Revised Statutes, when appointing officers,



agents, and employees, prescribing their duties and qualifications, and fixing their salaries;

- (6) Including benchmark requirements for prepared comprehensive management plans by the Authority;
- (7) Authorizing the Authority to adopt advisory committees to advise the Authority on culture, science, environment, education, astronomy, and business;
- (8) Deleting all references to the ability of the Authority to sell or exchange Mauna Kea lands, including remnants;
- (9) Deleting provisions related to consent to mortgage;
- (10) Requiring annual updates to the Legislature on the status of administrative rules and implementation of management plans;
- (11) Deleting language that would have authorized the Authority to permit an alternative agricultural, aquaculture, or mariculture use or uses for any portion or portions of the land demised;
- (12) Deleting language that would have entitled a lessee to receive the value of growing crops that the lessee is not permitted to harvest from the condemning authority;
- (13) Clarifying that for leases within the last two years of their lease, the request for qualifications notice from the Authority specify that the land to be leased is classified as conservation lands, rather than commercial and industrial use;
- (14) Specifying that at no time shall the total combined footprint of all improvements on Mauna Kea lands exceed the total developed footprint of improvements present on Mauna Kea as of December 31, 2031;
- (15) Requiring the Authority to consult with the Office of Hawaiian Affairs in establishing rules to ensure protection of traditional and customary practices;



- (16) Clarifying the applicability of conservation district rules to the approval or disapproval of all projects by the Authority;
- (17) Requiring the Authority to establish policies that allow for reasonable access for traditional and customary practices;
- (18) Clarifying language related to the revenue subject to the Office of Hawaiian Affairs' pro rata share to be consistent with section 10-13.5, Hawaii Revised Statutes;
- (19) Inserting language that assures that the conservation district rules applicability shall maintain contested case opportunities in the conservation district use application process;
- (20) Inserting language that requires the granting of contested case hearings related to any decision by the Authority insofar as the decision impacts constitutional rights;
- (21) Inserting language that appropriates an unspecified amount of funds for start up costs for the Authority;
- (22) Inserting language that appropriates an unspecified amount of funds from the Mauna Kea management revolving fund for administration, capital improvement projects, and other purposes;
- (23) Deleting certain provisions related to mineral and water rights;
- (24) Deleting provisions related to leases to foreign governments;
- (25) Inserting an effective date of December 31, 2033, to encourage further discussion; and
- (26) Making technical, nonsubstantive amendments for the purposes of clarity and consistency.




As affirmed by the records of votes of the members of your Committees on Higher Education and Water and Land that are attached to this report, your Committees are in accord with the intent and purpose of S.B. No. 3090, as amended herein, and recommend that it pass Second Reading in the form attached hereto as S.B. No. 3090, S.D. 1, and be referred to your Committee on Ways and Means.

Respectfully submitted on
behalf of the members of the
Committees on Higher Education
and Water and Land,



KARL RHOADS, Chair

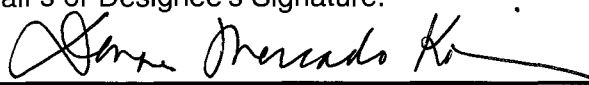


KAINALI'I KAHELE, Chair



The Senate
 Twenty-Ninth Legislature
 State of Hawai'i

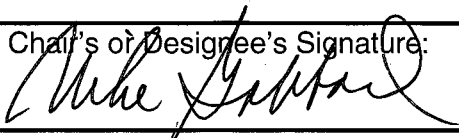
Record of Votes
Committee on Higher Education
HRE

Bill / Resolution No.:*	Committee Referral:	Date:		
SB 3090	<i>HRE/WFL, WAM</i>	<i>2/14/18</i>		
<input type="checkbox"/> The Committee is reconsidering its previous decision on this measure. If so, then the previous decision was to: _____				
The Recommendation is: <input type="checkbox"/> Pass, unamended 2312 <input checked="" type="checkbox"/> Pass, with amendments 2311 <input type="checkbox"/> Hold 2310 <input type="checkbox"/> Recommit 2313				
Members	Aye	Aye (WR)	Nay	Excused
KAHELE, Kaiali'i (C)	/			
KIM, Donna Mercado (VC)		/		
CHANG, Stanley				/
KEITH-AGARAN, Gilbert S.C.	/			
KIDANI, Michelle N.	/			
TOTAL	3	1		1
Recommendation: <input checked="" type="checkbox"/> Adopted <input type="checkbox"/> Not Adopted				
Chair's or Designee's Signature: 				
Distribution: Original Yellow Pink Goldenrod File with Committee Report Clerk's Office Drafting Agency Committee File Copy				

*Only one measure per Record of Votes

The Senate
Twenty-Ninth Legislature
State of Hawai'i

Record of Votes
Committee on Water and Land
WTL

Bill / Resolution No.:* SB 3090	Committee Referral: HPE/WTL, NAM	Date: FEB. 14, 2018		
<input type="checkbox"/> The Committee is reconsidering its previous decision on this measure. If so, then the previous decision was to: _____				
The Recommendation is: <input type="checkbox"/> Pass, unamended 2312 <input checked="" type="checkbox"/> Pass, with amendments 2311 <input type="checkbox"/> Hold 2310 <input type="checkbox"/> Recommit 2313				
Members	Aye	Aye (WR)	Nay	Excused
RHOADS, Karl (C)	✓	✓		
GABBARD, Mike (VC)		✓		
INOUYE, Lorraine R.	✓			
RIVIERE, Gil		✓		
THIELEN, Laura H.		✓		
TOTAL	2	3	-	-
Recommendation: <input checked="" type="checkbox"/> Adopted <input type="checkbox"/> Not Adopted				
Chair's or Designee's Signature: 				
Distribution: Original Yellow Pink Goldenrod File with Committee Report Clerk's Office Drafting Agency Committee File Copy				

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