

S.B. NO. 2391

JAN 25 2006

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**A BILL FOR AN ACT**

RELATING TO THE UNIVERSITY OF HAWAII.

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

1           SECTION 1. Pursuant to the Constitution and statutes of the  
2 State of Hawaii, the University of Hawaii is vested with  
3 autonomous authority to control and manage its educational and  
4 proprietary affairs. Such authority extends to the use and  
5 oversight of lands and real property owned, leased, or otherwise  
6 demised or transferred from various owners, including state,  
7 federal, or private entities, to the university for the  
8 furtherance of its educational, research, and agricultural  
9 activities.

10           Such autonomous authority presumably carries with it the  
11 necessary legal means to supervise, oversee, and permit public  
12 activities on those lands and may be implied from the autonomous  
13 character of the university. Nevertheless, the purpose of this  
14 measure is to clarify and add certainty to the law relating to  
15 the university's authority to manage and control public  
16 activities on lands which it may own or otherwise possess by  
17 providing express authority to the university to adopt rules

1 pursuant to chapter 91, Hawaii Revised Statutes, relating to  
2 public activity permitted or occurring on its lands that do not  
3 conflict with other statutes or their implementing rules that are  
4 applicable to these lands.

5 In addition, the university lacks the ability to enforce its  
6 rules and needs the authority to provide for fines for rule  
7 violations. Thus, another purpose of this bill is to grant the  
8 university the authority to create a scheme for levying fines for  
9 violations of its rules, and to provide a system for those  
10 accused of committing a violation to contest the allegation in a  
11 manner consistent with the Hawaii Administrative Procedure Act.

12 SECTION 2. Chapter 304, Hawaii Revised Statutes, is  
13 amended by adding a new section to be appropriately designated  
14 and to read as follows:

15 "§304- Mauna Kea management special fund. (a)  
16 There is established a university of Hawaii Mauna Kea  
17 management special fund into which shall be deposited one  
18 hundred per cent of the total amount of moneys collected  
19 for violations of the administrative rules adopted pursuant  
20 to this chapter, commercial permitting and related  
21 activities, and other fees collected relating to the  
22 management and use of the Mauna Kea Science Reserve, Mauna

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1 Kea access road, and Hale Pohaku mid-level facilities. The  
2 board of regents of the university of Hawaii, or its  
3 designated representative, may expend the moneys deposited  
4 in the fund for:

5 (1) Enforcement of the administrative rules adopted  
6 pursuant to this chapter; and

7 (2) Management of Mauna Kea.

8 (b) The university of Hawaii shall prepare and submit  
9 an annual report on the status of the Mauna Kea management  
10 special fund to the legislature twenty days before the  
11 convening of each regular session.

12 (c) Moneys deposited into the fund shall not be used as a  
13 basis for reducing any current or future budget request or  
14 allotment to the university of Hawaii unless the university  
15 requests such a reduction."

16 SECTION 3. Section 304-4, Hawaii Revised Statutes, is  
17 amended by amending subsection (a) to read as follows:

18 "(a) The board of regents shall have management and control  
19 of the general affairs, and exclusive jurisdiction over the  
20 internal organization and management, of the university. It may  
21 appoint a treasurer and such other officers as it deems  
22 necessary. It may authorize any officer, elected or appointed

1 by it, to approve and sign on its behalf any voucher or other  
2 document which the board may approve and sign. It may delegate  
3 to the president or the president's designee the authority to  
4 render the final decision in contested case proceedings subject  
5 to chapter 91, as it deems appropriate. It may purchase or  
6 otherwise acquire lands, buildings, appliances, and other  
7 property for the purposes of the university and expend such sums  
8 of money as may be from time to time placed at the disposal of  
9 the university from whatever source. All lands, buildings,  
10 appliances, and other property so purchased or acquired shall be  
11 and remain the property of the university to be used in  
12 perpetuity for the benefit of the university. The board of  
13 regents, in accordance with law, shall manage the inventory,  
14 equipment, surplus property, and expenditures of the university,  
15 and any real property owned, leased, or otherwise under its  
16 control, and, subject to chapter 91, may adopt rules, further  
17 controlling and regulating the same. The board of regents may  
18 also adopt rules, subject to chapter 91, to regulate activities  
19 at the Mauna Kea Science Reserve, Hale Pohaku, and the road  
20 corridor leading to and from Hale Pohaku to the Mauna Kea  
21 Science Reserve.

1 Through rulemaking, the board may set and provide for the  
2 assessment, and collection of fines for violations of any  
3 administrative rule adopted pursuant to this chapter. The board  
4 shall provide for procedures pursuant to chapter 91, including  
5 contested case hearings, for the purpose of enforcing its rules.

6 Fines shall be established as follows:

7 (1) For the first violation, a fine of not more than  
8 \$2,500;

9 (2) For the second violation within five years of a  
10 previous violation, a fine of not more than  
11 \$5,000; and

12 (3) For the third and any subsequent violation within  
13 five years of the last violation, a fine of not  
14 more than \$10,000.

15 Each day of violation shall constitute a separate  
16 offense.

17 The board may also assess against a party found to have  
18 violated a rule the costs of the enforcement proceeding,  
19 including costs of holding the contested case. Reasonable  
20 attorney's fees may also be assessed.

21 The board may institute court action to collect any fines  
22 and any costs and attorney's fees."

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1 SECTION 4. New statutory material is underscored.

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

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INTRODUCED BY:

A handwritten signature in black ink, appearing to read "Robert B. ...", is written over a horizontal line.

BY REQUEST

JUSTIFICATION SHEET

**SB. NO. 2391**

DEPARTMENT: University of Hawaii

TITLE: A BILL FOR AN ACT RELATING TO THE UNIVERSITY OF HAWAII.

PURPOSE: To provide express statutory authority to the university to allow it to adopt administrative rules applying to the public pursuant to chapter 91, Hawaii Revised Statutes, to manage and regulate public activity on lands it controls; to allow the university to assess and collect administrative fines pursuant to the adopted rules, especially in the Mauna Kea Science Reserve, Hale Pohaku, and the road corridor leading to and from Hale Pohaku to the Mauna Kea Science Reserve; and to deposit such fines into a newly established Mauna Kea Management Special Fund for expenditure in accordance with the purposes provided and specifically authorized by law. Currently, the law lists only inventory, equipment, surplus property, and expenditures as possible subject matters for university rules.

MEANS: Add a new section to chapter 304 and amend section 304-4(a), Hawaii Revised Statutes.

JUSTIFICATION: The university receives land or interests in land from various sources, such as private donors, the state or the federal government, and by various means, including long term leases, executive orders, and deeds such as that of the Mauna Kea Science Reserve, Hale Pohaku, and the road corridor leading to and from Hale Pohaku to the Mauna Kea Science Reserve. Often, within the context of its primary mission as the sole public institution for higher education for the State, limited public and commercial activity is permitted on the land. Although it may be argued that the University has the implied authority to adopt rules regulating

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public or commercial activity occurring on lands it controls, to avoid uncertainty, the University seeks express statutory authority. Administrative fines would allow the University to enforce those rules. Rules to be adopted by the University will not conflict with other applicable statutes or their implementing rules and are not intended to negate express restrictions in instruments of conveyance.

Impact on the public: This legislation is a grant of statutory authority to adopt rules. Through rulemaking, activities will be regulated to the extent necessary to preserve and protect significant and unique cultural and natural resources, and for public health and safety.

Impact on the department and other agencies: This express statutory authority will permit the University to regulate public and commercial activity on land controlled by the University by virtue of its lease.

- GENERAL FUNDS: None.
- OTHER FUNDS: None.
- PPBS PROGRAM DESIGNATION: UOH-900
- OTHER AFFECTED AGENCIES: Department of Land and Natural Resources.
- EFFECTIVE DATE: Upon approval.